

**IN THE SUPREME COURT
STATE OF GEORGIA**

PAUL ANDREW BOLAND,
Appellant,

v.

**BRAD RAFFENSPERGER, in his
official Capacity As Secretary of
State of Georgia, et al.,**

Appellees.

)

)CASE NO.: _____

)

)

)Certiorari from Fulton Superior

)

) Court Case No. 2020CV343018

)

)

**EMERGENCY DIRECT APPEAL, OR ALTERNATIVELY, EMERGENCY PETITION
TO SEEK A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA**

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**IN THE SUPREME COURT
STATE OF GEORGIA**

PAUL ANDREW BOLAND,)
SHAWN STILL,)
Appellants,)

CASE NO.: _____

v.)

BRAD RAFFENSPERGER, in his)
official capacity as Secretary of State)
of the 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 AHN LE, in her)
official capacity as a Member of the)
Georgia State Election Board,)
GLORIA BUTLER, BOBBY FUSE,)
DEBORAH GONZALEZ, STEPHEN)
HENSON, PEDRO MARIN, FENIKA)
MILLER, BEN MYERS, RACHEL)
PAULE, CALVIN SMYRE, ROBERT)
TRAMMELL, JR., MANOJ S SACHIN)
VARGHESE, NIKEMA WILLIAMS,)
In their capacity as Electors for Joseph)
R. Biden, Jr.,)
Appellees.)

**EMERGENCY DIRECT APPEAL OR ALTERNATIVE EMERGENCY
PETITION FOR WRIT OF CERTIORARI**

COMES NOW, APPELLANT PAUL ANDREW BOLAND, hereby directly
appeals, alternatively applies for an emergency Writ of Certiorari, to review the

“final” court order of the Honorable Emily K. Richardson of the Superior Court of Fulton County entered on December 7, 2020, a copy of which is attached hereto as **Exhibit “A”** (*hereinafter* “Order”) pursuant to this Court’s jurisdiction over “election contest[s]” and appeals therefrom. Ga. Const. of 1983, Art. VI, Sec. VI, Par. II(2); *See Donald J. Trump et al. v. Brad Raffensperger et. al.* S21M0561, Order dated Dec. 12, 2020) (*per curiam*); alternatively, Ga. Const. Art. VI, Sec. VI, Para. V. (matters of “which are of gravity or great public importance.”) This Court has authority to hear direct appeals from all “final judgments, that is to say, when the case is no longer pending in the court below. The Honorable Judge Richardson’s ruling is a “final judgment” as “the case is no longer pending in the court below.” *See* O.C.G.A. § 5-6-34; *Trump v. Raffensperger*, S21M0561. Wherefore, the Petitioner respectfully requests this Honorable Court **REVERSE** the ruling of the Superior Court and **REMAND** for an expedited hearing on the merits today.

I.

JURISDICTION OF SUPREME COURT OF GEORGIA

Article VI, Section VI, Paragraph V of the Constitution of the State of Georgia, and O.C.G.A. § 5-6-34(a)(1) allows direct appeal from all final judgments. Pursuant to O.C.G.A. § 5-6-30, et seq. this Court may also review the lower court’s order attached hereto as Ex. A It is the intent of O.C.G.A. § 5-6-30 that the appellate

rules “shall be liberally construed so as to bring about a decision on the merits of every case appealed and to avoid dismissal of any case or refusal to consider any points raised therein....” Petitioners timely filed their “Notice Of Direct Appeal, Alternatively, Intention To A Seek Emergency Writ Of Certiorari To The Supreme Court Of Georgia” in the Superior Court of Fulton County on December 14, 2020. Appellants do not request a hearing at this time, but are ready and willing to appear at the Court’s discretion and direction, and respectfully request that this Honorable Court issue an order setting aside the lower court’s order for reversible legal error and remanding as expeditiously as possible and directing an emergency hearing on the merits before a properly appointed judge.

II.

PROCEDURAL HISTORY

Petitioners filed the underlying special election contest statutory proceeding, on November 30, 2020. *See Exhibit “B”* for a copy of file stamped pleading without exhibits attached.

On December 3, 2020, Defendant-Intervenors filed their Motions to Intervene and Dismiss the Case. A hearing on the Motion to Intervene was held before the Honorable Emily Richardson on December 7, 2020 and that Motion was Granted. Judge Richardson then set the Motion to Dismiss for a hearing on December 8, 2020.

At the conclusion of the hearing, Judge Richardson entered the attached Order dismissing the case. This appealed followed.

III.

ARGUMENT AND CITATION OF AUTHORITY

The underlying action is an Election Contest which this Honorable Court has been vested exclusive appellate jurisdiction by the Constitution of the State of Georgia [Art. VI, Sec. 2, ¶ 2]. The election contest is governed by the special statutory Election Code which provides for direct appellate relief before this Honorable Court [O.C.G.A. § 21-2-523(c) and (d)]. Alternatively, this matter concerns issues of great concern, gravity, and importance to the public within the meaning of Supreme Court Rule 40 as there has been a violation of Constitutional due process rights of Appellant. The lower court case seeks equitable relief by an “aggrieved voter” to challenge the 2020 Presidential Election in the State of Georgia, amongst other relief, including requesting the extraordinary relief of demanding nullifying the election certification and seeking a new election in the State of Georgia as allowed by the Election Code. Moreover, proposed Intervenor Shawn Still was denied the ability to Intervene in the action. The Court deemed his motion to intervene moot based on the overall merits dismissal. Mr. Still joins this Direct

Appeal as a matter of right and also seeks reversal of the Order mooted his ability to seek intervention in the matter.

Appellant Paul Andrew Boland (“Appellant”), filed an election contest lawsuit under the Georgia Election Code which is a special statutory proceeding under Title 21 “Elections.” The action was brought against the named defendants (“Defendants” or “Appellees”) regarding the November 3, 2020 general election for the Office of President of the United States (the “Contested Election”). The underlying petition seeks, among other things, preliminary and permanent injunctive relief and sought an “expedited hearing” because the contested election was not conducted in accordance with the requirements of the Georgia’s Election Code. *See* Ex. B. A Motion for Expedited Hearing for was filed December 3, 2020 at 2:41pm as the Court had not set a hearing based on the petition filing itself. Ex. C. Secretary of State Brad Raffensperger certified the Georgia election recount for the 3rd time on December 7, 2020.

Attached to the Petition was an affidavit from an expert that asserted that the outcome was reached as a result of numerous irregularities during the election process that allowed thousands of improper votes to be cast, counted, and included in the tabulations for the Presidency, thereby creating substantial doubt regarding the results of that election. Ex. B. The Affidavit constituted evidence sufficient to ground the action, but at the hearing, the expert was not permitted to be tendered or

heard as a material witness. *See* Unofficial Transcript from hearing attached hereto as **Exhibit “C”**.¹ The empirical data and analyses relied upon by Appellant were sufficient, at the early stages of the action, to cast substantial doubt on the results of the Contested Election and Vice President Biden’s margin of victory in Georgia of only 12,670 votes. As a result, Appellant stated a claim for relief, and this Court should reverse the lower court’s decision and remand this matter for further expedited proceedings that fully comply with O.C.G.A. §§ 21-2-520 *et seq.*

The results of an election may be set aside or other relief granted when an aggrieved elector has “clearly established a violation of election procedures and has demonstrated that the violation has placed the result of the election in doubt.” *Martin v. Fulton Cty. Bd. of Registration & Elections*, 307 Ga. 193-94 (2019) (citation and quotations omitted); *see also*, O.C.G.A. § 21-2-521 (“aggrieved elector who was entitled to vote for such person...”)

***A. The Lower Court Judge Had No Authority To Preside Over The Case;
The Entry Of The Order Was A Violation Of Constitutional Due Process
And A Nullity.***

The Honorable Emily Richardson, Judge, of the Superior Court of Fulton County, Atlanta Judicial District, presided over and entered an Order on December

¹ The Official Certified Transcript was filed with the lower court and is being prepared for this Appeal.

8, 2020 in the lower case dismissing the entire case on the merits in violation of the express judicial appointment procedures set forth in the Election Code [O.C.G.A. 21-2-523 (a) – (e)]. Judge Richardson is a resident of Fulton County, and the Circuit in which the action was filed, and also an active sitting judge on the lower court. As such, she is disqualified from presiding over the underlying case as a matter of law and equity. Her presiding over the case was in direct violation of the Election Code. *Id.* at (d). Her Order was entered in violation of the Election Code. The Order expressly granted the motions to dismiss filed by Appellees (both Defendants and Intervenor Defendants), and denied Mr. Still’s Motion to Intervene as moot. The Order is void *ab initio*. Appellant was not required to give notice to the lower court to follow the judicial appointment procedures under the Georgia Election Code (O.C.G.A. § 21-2-523), as nothing in the special statutory proceeding directs a plaintiff to do so. A plaintiff in an election contest should be entitled to rely on the court system to follow the rules in appointing qualified judges to preside over such cases. The lower court judge had no authority to preside over the action, hear legal argument, hear evidence or to enter an order of dismissal on the merits. Accordingly, this Honorable Court should reverse the Order and any oral order made at the hearing.

At a hearing held on December 7, 2020, the lower court orally granted the Intervenor’s motions. The lower court then held a hearing on this matter on

December 8, 2020, the transcript of which has been filed with the lower court and is in the record. The same day, the lower court entered its Final Order granting the Motion to Dismiss and dismissing Appellant's Complaint. (*See generally* Ex. A)

In the Order, the Lower court first determined that the Defendants were not proper parties to this action under O.C.G.A. § 21-2-520(2). (*See* Ex. A., Order, p. 2.) The Lower court next concluded that the Complaint was barred by the doctrine of laches, "where [Appellant] challenges the validity of the presidential election after it has already been conducted based on procedures which were adopted long before the election and upon which election officials and voters alike relied." (*See id.*, p. 3.) The Lower court further found that Appellant lacked "standing to raise generalized grievances against election officials' conduct" because he is not a "Candidate." (*See id.*, p. 4.)

The lower court then stated that the Complaint failed to state a claim for relief because it challenged the election of Presidential Electors, and Presidential Electors are not "federal, state, county, or municipal" officers whose election can be contested under O.C.G.A. § 21-2-521. (*See* Ex. A, p. 4-5.) The Lower court also stated, that "[t]he allegations in the Complaint rest on speculation rather than duly pled facts," and were insufficient to "support an allegation of impropriety or a conclusion that sufficient illegal votes were cast to change or place in doubt the result of the election." (*See id.*, p. 5-6.) Finally, the Lower court determined that the

Complaint is moot because the results of the Contested Election have already been certified and “the mechanism available to challenge said certification is no longer available.” (*See id.*, p. 6.).

All of these foregoing issues must also be viewed in light of the federal deadline of **today, December 14, 2020**, which will set the date under federal law for when Electors are to submit their votes to certify the 2020 Presidential election. Appellants will be irreparably harmed if this deadline is allowed to expire without a true merits and evidentiary hearing before a properly appointed judge. Procedural miscues of the lower court, its clerks and administrators should not torpedo Appellant’s (or Mr. Still’s) case. There is likely no time for the lower court to hear this case on December 14, 2020, so this Honorable Court should exercise its extraordinary powers in this situation to take this case where there has been a blatant violation of Constitutional due process against Appellant. Appellant has attached the relevant parts of the record for this Court’s determination.

B. On The Merits, Appellant Stated A Claim.

Appellant initiated this action on November 30, 2020, with the filing of his Verified Complaint (the “Complaint”) in the Fulton County Superior Court (the “Lower court”). A verified Complaint is evidence as to the merits of the case under Georgia rules of evidence. Appellant is an individual resident of Monroe County,

Georgia, and is a qualified, registered “elector”² who possesses all of the qualifications for voting in the State of Georgia. *See* O.C.G.A. §§ 21-2-2(7), 21-2-216(a). *See* Ex. B. Appellant voted in the Contested Election believing that his vote would not be diluted by the presence of illegal votes cast by out-of-state voters or by votes cast by absentee ballots, the signatures upon which were not, or could not, be verified as required by Georgia’s Election Code. *See* O.C.G.A. §§ 21-2-1 *et seq.*; (*see also* Ex. B, Compl., Intro., ¶ 4).

A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor. *See Weathers v. Dieniahmar Music, LLC*, 337 Ga. App. 816, 816, 788 S.E.2d 852 (2016). Where the motion to dismiss is decided without an evidentiary hearing and based solely upon the written submissions of the parties, any

² An “Elector” as defined under the Election Code is synonymous with “Voter.” O.C.G.A. 21-2-2(39)

disputes of fact must be resolved in the light most favorable to the party asserting the claims, and an appellate court reviews the decision of the lower court *de novo*. *Id.*

***C. The Secretary Of State's Illegal Corruption Of the Election Code
Requires Reversal As A Matter of Law And Public Policy of This State.***

The Complaint claims that prior to the Contested Election, the Secretary of State unilaterally modified and, thereby corrupted as contemplated under O.C.G.A. 13-8-2, the Election Code established by the General Assembly. (*See* Ex. A, No. 1, Compl., Count 2, ¶ 15.) Those modifications weakened frustrated legislative safeguards against fraudulent ballots, such as signature requirements, in ways that were unlawful and unconstitutional and without the *imprimatur* of the General Assembly. (*See id.*); *Norman*, *infra.*, n.3. The corruption was effectuated through a limited party settlement agreement.³ In March of 2020, Defendants entered a “Compromise and Settlement Agreement and Release” (the “Consent Decree”) only with the Democratic Party of the State of Georgia that set forth more complicated standards to be followed by local election officials in processing absentee ballots in

³ The Georgia GOP and Libertarian Parties were not parties to the settlement and are not legally bound to the contract created thereby with the Georgia Democratic Party. It is well-established under Georgia law, that non-parties to a settlement agreement are not bound to its terms and cannot be held to the terms of the contract. *Norman Enters. Interior Design v Dekalb County*, 245 Ga. App. 538, 538 S.E.2d 130 (2000) (held that holding non-parties to settlement agreements where they are not parties to the agreement would frustrate the intent of the legislature in enacting the law.)

Georgia without legislative enactment.⁴ (*See id.*, Count 2, ¶ 17.) The entry of the Consent Decree was unauthorized by the Election Code and the United States Constitution, and the well-established public policy of this state. *See* U.S. Const. Art I, § 4, cl. 1, Art. II, § 2, cl. 2 (granting state legislatures the authority to determine the “Times, Places and Manner” of federal elections and the process for appointing Presidential Electors); (*see also* Ex. A, Count 2, ¶¶ 16-17); O.C.G.A. § 13-8-2 “Illegal and Void Contracts” (“A contract that is against the policy of the law cannot be enforced. Contracts deemed contrary to public policy include but are not limited to: (1) Contracts tending to corrupt legislation....”). Accordingly, the settlement agreement contract was not between all Elector slates in Georgia, was illegal on its face as is “tended to” and, in fact, corrupted the legislation governing the Georgia Election Code. While the Secretary of State may have power to set rules and regulations regarding process, he is not permitted to entered into legally binding contracts with limited parties that were not at the table, and especially a contract that corrupts the legislation duly enacted by the General Assembly of the State of Georgia. As a matter of law and the public policy under O.C.G.A. § 13-8-2(a)(1) and the stated Public Policy in the Georgia Election Code “which creates the responsibility to protect the integrity of the democratic process and to ensure fair

⁴ *See Democratic Party of Georgia, Inc. et al. v. Raffensperger, et al.*, No. 1:19-cv-05028-WMR, Doc. 56-1, Joint Notice of Settlement as to State Defendants Att. A, Compromise Settlement Agreement and Release (N.D. Ga. Mar. 6, 2020).

elections for constitutional offices...” (O.C.G.A. § 21-5-2), this Honorable Court must REVERSE the lower court order so that the settlement agreement may be voided as a matter of law and public policy.

Appellant suffered an injury in fact and actual harm as a result of Defendants’ illegal and unenforceable alterations to the Election Code and failure to adequately and uniformly enforce the Election Code in the Contested Election through the Georgia General Assembly. (*See* Ex. A, Count 2, ¶ 19.) Appellant’s vote was diluted relative to votes cast by persons whose identified signatures were not verified. (*See id.*)

As a result of Defendants’ failures, the certification of the results of the Contested Election should have been declared null and void by the lower court, and the Secretary of State required to perform an independently observed, monitor-confirmed audit of a sample of the 20,311 individuals identified as having voted although they do not reside in Georgia. (*See* Ex. A, Compl., Prayers for Relief.) The Secretary violated his Oath of Office and the settlement agreement must be voided to ensure compliance with his duties as an Election Official of this State and whose office is “imbued” with the authority to “enforce the [election laws].” *See Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). Appellant estimated that an audit and verification process could have been completed within five (5) days to ensure that the results of the Contested Election were consistent with the Election Code.

(*See id.*, Ex. A, Count 2, ¶ 20, Prayers for Relief.) There is no justifiable reason for the Secretary to hide information from the public or fail to verify that the procedures required by the Election Code were followed.

The actions of the Secretary of State concerning such unlawful anti-public policy actions and his ongoing inaction are unprecedented and illegal. He is a “Violator” as defined under the Election Code. O.C.G.A. § 21-2-2(37).

D. Out-of-State Votes Data.

The Complaint set forth that an expert analysis identified **20,312 ballots** cast by individuals in the Contested Election who ***do not reside in Georgia***.⁵ (*See* Ex. A, Count 1, ¶ 1.) The analysis matched Georgia’s list of early and absentee voters to the United States Postal Service’s National Change of Address (“NCOA”) database. (*See id.*, Ex. A, Count 1, ¶ 2.) Voters were flagged if they matched along three dimensions: Full Name, Address, and Date of Birth. (*See id.*) They also had to be listed in the public NCOA database as having moved out of Georgia prior to the Contested Election. (*See id.*) At least 4,926 of these individuals actually registered to vote in another state. (*See id.*) Accordingly, there was sufficient evidence to survive a motion to dismiss, and a merits hearing should have proceeded.

⁵ *See also Donald J. Trump, et al. v. Brad Raffensperger, et al.*, Case No. 2020CV343255, Fulton County Superior Court, Petitioners’ Notice of Filing of Exhibit 2 to Verified Petition, Affidavit of Matt Braynard, a true and correct copy of which is included as Number 2 in the Appendix hereto.

E. The Historical Rejection Rate Of Absentee Ballots.

Additionally, Appellant set forth in the Complaint that the rejection rate for absentee ballots cast in the Contested Election was abnormally low. (*See* Ex. B, Count 2, ¶ 7.) Election officials are required by the Election Code to compare voters' signatures to the oath on the secrecy envelope of absentee ballots with signatures on the applications for absentee ballots, as well as other signature samples within the state's database. O.C.G.A. § 21-2-386(a); (*see also* Ex. B, ¶ 6). If an election official determines that the signatures do not match, the absentee ballot is to be rejected and not included in the tabulation of votes. *See* O.C.G.A. § 21-2-386(a).

Examining the historical rates of rejection of absentee ballots in Georgia demonstrates that election officials failed to follow and enforce the Election Code's signature verification process during the Contested Election. (*See* Ex. A, Count 2, ¶ 8.) In Georgia in 2016, the rejection rate for absentee ballots due to signature abnormalities was 0.88%. (*See id.*) In 2018, the rejection rate was 1.53%. (*See id.*) In the 2020 Georgia primary election, it was 0.28%. (*See id.*) In the Contested Election, despite a massive increase in the number of absentee ballots cast, the rejection rate dropped dramatically to just 0.15%. (*See id.*, Count 2, ¶¶ 8-9.) Over 1,300,000 mail absentee ballots were cast in the Contested Election. (*See id.*, Count 2, ¶ 9.) If these ballots had been rejected at the historical rate of 0.28% to 1.53%, some 1,600 to 18,000 additional ballots should have been rejected. (*See id.*) That

could have been enough to change the outcome of the Contested Election because Mr. Biden's margin of victory was only 12,670 votes. (*See id.*)

The Secretary of State conceded that signature-based rejections of absentee ballots dropped significantly compared to the 2020 primary, but claimed the rejection rate was the same as it was in 2018. (*See* Ex. B, Count 2, ¶ 10.) That statement is not accurate, as the Secretary of State failed to use the most accurate comparison and calculated the rates for the two years using different, inconsistent methodologies. (*See id.*, Count 2, ¶¶ 10-11.) Furthermore, the Secretary's analysis counted only rejections identified as "signature" based rejections without including the related category of "oath" based rejections. (*See id.*, Count 2, ¶ 12.) An "oath" based rejection occurs when a voter fails to sign or otherwise complete the oath on the absentee ballot's secrecy envelope, and therefore is a form of "signature" failure. (*See id.*) When oath-based rejections are included, the rejection rate drop is even more dramatic. (*See id.*) The suspiciously low ballot rejection rate for the Contested Election suggests that the signature verification procedures were not enforced as required by the Election Code. (*See id.*, Count 2, ¶ 14.)

F. The Remaining Proceedings Before the Lower Court.

On December 4, 2020, Georgia's Presidential Electors for Mr. Biden moved to intervene before the lower court (the "Defendants' Motion to Intervene"), and further moved to dismiss the Complaint. (*See generally* **Exhibit "D"**, Mot. to

Intervene, ex. E, Br. in Support of Proposed Mot. to Dismiss Verified Compl. (the “Motion to Dismiss”).) In the Motion to Dismiss, Defendants improperly argued that “[t]he Complaint is barred by laches; that it falls outside of the scope of Georgia’s election contest statute; and that it fails to state a claim upon which relief can be granted.” (See Ex. D, Mot. to Intervene, Ex. E, Mot. to Dismiss, p. 5.)

On December 6, 2020, Shawn Still, a qualified “elector” (voter) in the State of Georgia and member of the slate of Presidential Electors for President Trump moved to intervene before the Lower court (the “Contestant’s Motion to Intervene”). (See generally **Exhibit “E”** Contestant’s Mot. to Intervene.) On December 7, Plaintiff’s and Intervenor-Contestant’s Brief in Opposition to Defendant-Intervenors’ Motion to Dismiss (the “Response”) was filed. (See, Resp. in record to be filed.) Therein, Appellant first demonstrated that the Complaint is not moot because January 6, 2021 is the first date on which electoral votes cast in the Electoral College are actually counted. (See Resp., p. 2.) Nothing in federal law requires states to resolve controversies over electoral votes prior to the meeting of the Electoral College, and indeed, there is no set deadline for a state to transmit to Congress a certification of which slate of Presidential Electors has been determined to be the valid one. (See *id.*, p. 3.) Appellants believe and allege the federal so-called “Safe Harbor” statute 3 U.S.C. § 5 is unconstitutional facially and as applied to the Georgia Elections Code as it conflicts with the ability of voters to challenge

and make an election contest after a recount, if that recount falls before (five day rule), during or after the Safe Harbor deadline. *See* 3 U.S.C. § 5; O.C.G.A. § 21-2-524. The Safe Harbor statute is void for vagueness and because it creates a due process and equal protection conflict with the Georgia Constitution and the Election Code. Of significant import, the Georgia Republic Party Electors (“Trump Electors”) are meeting to vote their slate of electors, and this Honorable Court or a lower court will need to decide which slate of electors is the proper and Constitutional slate.

Appellant and Mr. Still set forth that the Complaint is also not barred by the doctrine of laches because Appellant’s challenge to the results of the Contested Election could not have been raised until *after* the election. (*See* Appellants Resp., p. 4.) “[Appellant] simply wants an audit of the 20,312 specific ballots that appear to have been cast by voters who do not live in Georgia. [Appellant] could not possibly have identified those ballots prior to the certification of the election results.” (*Id.*) Appellant and Mr. Still also established that an election contest *is* an available remedy to them and that the Complaint, supported by empirical data and analyses, stated a claim for relief. (*See id.*, p. 5-8.) Moreover, the challenge to the settlement agreement is timely, as Appellant is a Republican Voter and was not a party to the settlement agreement, is not bound to its terms, and in any event, the statute of limitations on a settlement agreement contract is six (6) years under Georgia law,

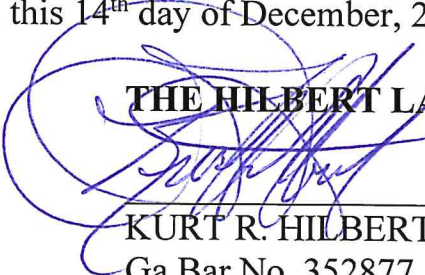
and four (4) years to challenge it on the basis of fraud or other such illegality. There is no laches or mootness argument applicable to this action and Appellants provided sufficient evidence to survive a Motion to Dismiss when construed in a light most favorable to them.

V.

Conclusion

This Honorable Court is the only Court at this juncture to enforce or give the relief sought by Appellants within the time period to challenge the **voting of Presidential Electors** for the 2020 Presidential Election i.e., which is today **Monday, December 14, 2020**. The issues are vitally important to our State's system of democracy and Appellants' right to fair and open elections that are not corrupted by "misconduct, fraud, or irregularities" or where legislative enactments have been "corrupted" by the Secretary of State in violation of public policy (O.C.G.A. § 13-8-2 et seq.)

Respectfully submitted, this 14th day of December, 2020.


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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PAUL ANDREW BOLAND,

Plaintiff,

v.

Civil Action No. 2020CV343018

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,

and

GLORIA BUTLER, BOBBY FUSE, DEBORAH GONZALEZ, STEPHEN HENSON, PEDRO MARIN, FENIKA MILLER, BEN MYERS, RACHEL PAULE, CALVIN SMYRE, ROBERT TRAMMELL JR., MANOJ S. "SACHIN" VARGHESE, NIKEMA WILLIAMS, and CATHY WOOLARD, in their capacity as Electors for Joseph R. Biden, Jr.,

Intervenor-Defendants.

Final Order

Paul Andrew Boland ("Plaintiff") filed this action on November 30, 2020, to contest the November 3, 2020, election for Presidential Electors for the State of Georgia. Plaintiff named as defendants Brad Raffensperger, the Georgia Secretary of State, and Rebecca N.



Sullivan, David J. Worley, Matthew Mashburn, and Anh Le, the members of the Georgia State Election Board (“State Defendants”). On December 3, 2020, Intervenor-Defendants filed a Motion to Intervene. A hearing was held on December 7, 2020 and the Court granted the motion.

The Court held a hearing on December 8, 2020 to address the Intervenor-Defendants’ Motion to Dismiss. In attendance were counsel representing the Plaintiff, counsel representing the State Defendants,¹ counsel representing the Intervenor-Defendants, and counsel representing a party attempting to intervene in the contest as a petitioner, Shawn Still. Counsel for the State Defendants made an oral motion to dismiss the case and there was no objection by Plaintiff. The Court heard argument from the parties on the motions to dismiss by the State Defendants and Intervenor-Defendants, as well as arguments on the propriety of and scope of relief sought by the Petitioner.

The Court, having reviewed the record in this matter and having considered the pending Motions to Dismiss by Defendants and Intervenor-Defendants, respectively, the Memoranda of Law in support thereof, Plaintiff’s opposition thereto, and argument presented by all parties at a hearing before the Court on this day, it is hereby ORDERED that Defendants’ and Intervenor-Defendants’ Motions to Dismiss are GRANTED on the following grounds:

First, the Court finds that, pursuant to O.C.G.A. § 21-2-520, the State Defendants are improper parties to this action. O.C.G.A. § 21-2-520 (2) defines the proper “Defendants” for purposes of an election contest as follows:

(A) The person whose nomination or election is contested;

¹ Counsel from the Georgia Attorney General’s Office appeared at the hearing on behalf of the State Defendants and waived the statutory notice required under O.C.G.A. § 9-10-2.

(B) The person or persons whose eligibility to seek any nomination or office in a run-off primary or election is contested;

(C) The election superintendent or superintendents who conducted the contested primary or election; or

(D) The public officer who formally declared the number of votes for and against any question submitted to electors at an election.

O.C.G.A. § 21-2-520(2).

The Secretary of State is not one of these statutorily proscribed defendants, nor are the members of the State Election Board. They are not candidates for the office that is the subject of the contest, so neither subsections (A) nor (B) apply of O.C.G.A. § 21-2-520(2). The State Defendants are also not one or more of “the election superintendent[s]” who conducted the contested election, therefor subsection (C) does not apply.² Finally, because the Plaintiff has not asserted any claims regarding the constitutional amendments or the taxation issue put to the voters statewide, which were the only questions submitted to the voters statewide in the November 3, 2020 general election, subsection (D) is also inapplicable. As such, the State Defendants’ motion to dismiss for failure to name the proper Defendants is GRANTED as to State Defendants.

Second, Plaintiff’s claims are also barred by the equitable doctrines of laches, which bars a claim when (1) the lapse of time and (2) the claimant’s neglect in asserting rights (3) prejudiced the adverse party. *Waller v. Golden*, 288 Ga. 595, 597 (2011). All three elements are satisfied here, where Plaintiff challenges the validity of the presidential election after it has already been conducted based on procedures which were adopted long before the election and upon which elections officials and voters alike relied.

² The Code defines “superintendent” as one of five city or county officials/entities: (1) the judge of the probate court of a county; (2) the county board of elections; (3) the county board of elections and registrations; (4) the joint city-county board of elections; and (5) the joint city-county board of elections and registration. O.C.G.A. § 21-2-2(35)(A).

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The Doctrine of Laches precludes Plaintiff from asking this Court for relief based on *post hoc* challenges to the Secretary of State's voter registration list maintenance program and to the Settlement Agreement, which were in place well before the November 2020 general election. The National Voter Registration Act provides that States shall complete their programs to remove ineligible voters from the official lists "not later than 90 days prior to the date of a primary or general election for Federal office." 52 U.S.C. § 20507(c)(2)(A). Thus, any objection Plaintiff maintained against the State's list maintenance program for the November 3 election could have been raised well before the general election, and in any event by August 5. Similarly, the Settlement Agreement was entered into six months before election day, yet Plaintiff did not seek to intervene or challenge the Settlement Agreement until November 30, 2020. *See Wood v. Raffensperger*, No. 1:20-CV-04651-SDG, 2020 WL 6817513, at *7 (N.D. Ga. Nov. 20, 2020) (rejecting virtually identical post-election challenge to Settlement Agreement as barred by laches). As a result, the Plaintiff's Complaint is DISMISSED against State Defendants and Intervenor-Defendants on this ground as well.

Third, as an individual voter, Plaintiff lacks standing to raise generalized grievances against election officials' conduct. *Wood v. Raffensperger*, No. 20-14418, 2020 WL 7094866, at *4 (11th Cir. Dec. 5, 2020) (Pryor, J.). Plaintiff is not a "Candidate" for the election he seeks to contest in this action and thus has no standing to bring this action. As a result, the Complaint is DISMISSED against Defendants and Intervenor-Defendants on this ground as well.

Fourth, even if the Court were to examine the merits of this action, Plaintiff fails to state a claim upon which relief can be granted.

Plaintiff seeks to challenge the election of presidential electors, who are the candidates selected by voters under state law. *See* O.C.G.A. § 21-2-10 ("At the November election to be

held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as electors of President and Vice President of the United States.”). Presidential electors are neither “federal, state, county, or municipal” officers, and therefore Plaintiff cannot bring a claim under Georgia’s election contest statute to challenge their election. O.C.G.A. § 21-2-521.

Even if Plaintiff’s Complaint could be brought under O.C.G.A. § 21-2-521, it also fails to state a claim upon which relief can be granted because it is based on the premise that the election is in doubt because the voter rolls were not properly maintained, and because election officials did not properly verify voter signatures. Even if credited, the Complaint’s factual allegations do not plausibly support his claims. The allegations in the Complaint rest on speculation rather than duly pled facts. They cannot, as a matter of law, sustain this contest.

Count I, which alleges that 20,312 people may have voted illegally in Georgia, relies upon a YouTube video which purportedly is based upon United States Postal Service mail forwarding information. Pet. ¶ 1. Count II alleges that the signature-matching process resulting from a Settlement Agreement entered into by the State nine months ago is inconsistent with Georgia’s election code, and allegedly violates the federal Constitution.³ Pet. ¶ 17. The Court finds that Plaintiff’s allegations, as pled, do not support an allegation of impropriety or a

³ These arguments have been offered and rejected in other courts. *See Wood*, 2020 WL 6817513, at *10. Furthermore, the statutory changes put in place by the General Assembly permitting voters to cure signature issues on their ballot as a result of 2019 legislation, as well as regulatory changes adopted by the State Election Board contemporaneous with execution of the Settlement Agreement, would be expected to result in fewer signature rejections. This would not be because illegal votes are somehow evading review, but because subjecting signatures to more thorough verification and permitting voters to cure suspected errors should reduce the number of lawful ballots that are improperly thrown out.

conclusion that sufficient illegal votes were cast to change or place in doubt the result of the election.

Fifth, and finally, the Court finds that Plaintiff's complaint is moot. The results of the November 3, 2020 election have been certified by Secretary of State and the Governor as required under the Georgia Election Code, and then re-certified, and the certificate of ascertainment has been transmitted to the Archivist of the United States. Moreover, the Supreme Court of the United States has cautioned courts against jeopardizing a state's ability to meet the federal "safe harbor" deadline in 3 U.S.C. § 5. *See Bush v. Gore*, 531 U.S. 98, 110 (2000) (per curiam) (explaining that "safe harbor" provision "requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by [the safe harbor date]."); *see also id.* at 114 (Rehnquist, C.J., concurring) ("[W]e must ensure that postelection state-court actions do not frustrate the legislative desire to attain the 'safe harbor' provided by § 5."). Because the November 3, 2020, election has been certified and because the mechanism available to challenge said certification is no longer available, the Court finds that Plaintiff's action is moot because the relief which he seeks in his Complaint is not available.

Accordingly, for the forgoing reasons, the motions to dismiss by the State Defendants and the Intervenor-Defendants are **GRANTED** and Plaintiff's Complaint is **DISMISSED**. In light of this, proposed Intervenor-Plaintiff Shawn Still's motion to intervene as a plaintiff is **DENIED** as moot

This 8th day of December, 2020.



Judge Emily K. Richardson
Superior Court of Fulton County

Prepared by:
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Edited by the Court.

IN THE SUPERIOR COURT OF FULTON COUNTY
 STATE OF GEORGIA

PAUL ANDREW BOLAND,

Plaintiff,

v.

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

Defendants.

CIVIL ACTION FILE
 NO. 2020CV343018

VERIFIED COMPLAINT

Paul Andrew Boland ("Plaintiff"), is the plaintiff in the above-styled action, by and through his counsel of record, hereby files this Verified Complaint, and shows this Court the following:

INTRODUCTION

1. Plaintiff contests the election results on two empirical grounds: First, data showing 20,312 ballots were cast by individuals who are no longer Georgia residents, casting doubt on the



integrity of the Election until such persons are excised from the ballot count. Second, data showing that decreased signature verification arose because counties did not screen mismatched and absent signatures and ballots unsigned without the oath, as required by the Election Code.

2. Plaintiff believes that his lawsuit may be settled with equitable relief in the nature of (A) an audit of the voter rolls to confirm they were maintained as required by Georgia's Election Code and (B) a comparison with the written ballots cast, and a verification that all outside envelopes used to transmit absentee ballots have been matched with a valid signature in the State's E-Net system; such a review would confirm that signature verifications were conducted as required by Georgia's Election Code as required by Georgia laws and the United States Constitution for federal elections. Plaintiff estimates such an Audit and Verification could be completed within five (5) days and that technology exists to provide the Audit and Verification in a shorter time frame than the recently conducted "hand count."
3. If equitable relief is not granted, or the Audit and Verification demonstrate that the results of the election cannot be relied upon, Plaintiff seeks decertification of the results of the Election and that a new election be ordered.

PARTIES, JURISDICTION AND VENUE

4. Plaintiff is an individual residing in Monroe County, Georgia and is a qualified, registered "elector" who possesses all of the qualifications for voting in the State of Georgia. See O.C.G.A. §§ 21-2-2(7), 21-2-216(a). Plaintiff voted in the November 3, 2020 General Election, believing that his vote would not be diluted by the presence of out-of-state voters

or persons whose signatures were not, or could not be, verified as required by the Elections Code. As an aggrieved elector, Plaintiff is qualified to contest the election.

5. This court has original jurisdiction and venue pursuant to O.C.G.A. § 21-2-524, as the defendant resides in Fulton County. The office contested is for the electors for the Presidency of the United States.
6. Georgia's Secretary of State is a defendant in his official capacity, the chief elections officer responsible for overseeing the conduct of Georgia's elections, responsible for assuring the elections are conducted in a free, fair, and lawful manner, and is the official responsible for certifying the vote for the Presidential election in the state of Georgia. The Secretary of State certified the results for the Presidential electors on November 20, 2020, but a recount is ongoing.
7. The Elections Code sets forth a clear and efficient process for maintaining the voter rolls and handling absentee ballots (the "Elections Law"). To the extent that there is any change in those processes, that change must, under Georgia law and Article I, Section 4 of the United States Constitution, be prescribed by the Georgia General Assembly. See U.S. CONST., Article I, Section 4. Although 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," all such rules and regulations must be "consistent with law." O.C.G.A. § 21-2-31(2).

COUNT 1: OUT OF STATE VOTERS

1. An expert analysis identified 20,312 ballots cast by individuals in the 2020 General Election who do not reside in Georgia.¹ This number of invalid votes far exceeds the certified margin of victory of 12,670 in the presidential results. O.C.G.A. § 21-2-216(a)(4).
2. The analysis matched Georgia's list of early and absentee voters to the United States Postal Service's ("USPS") National Change of Address ("NCOA") database. Voters were flagged if they matched along three dimensions: Full Name, Address, and Date of Birth. They also had to be listed in the NCOA database as having moved out of Georgia prior to the election. At least 4,926 of them were shown to have actually registered to vote in another state.²
3. Under the Elections Law, one loses residency for voting purposes if one registers to vote in another state or performs other acts indicating a desire to change one's residence. A general intention to return to the state "at some indefinite future period" is insufficient to retain Georgia residency. O.C.G.A. § 21-2-217(a)(2) and (a)(5).
4. Under the Elections Law, the Secretary of State is designated as the "chief state election official to coordinate the responsibilities of this state under the National Voter Registration Act of 1993 ("NVRA")" O.C.G.A. 21-2-210. The NVRA provides that the State of Georgia "shall ...

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—

- (A) the death of the registrant; or
- (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d) of this section [which set

¹ Braynard, Voter Integrity Project: Findings and Conclusions, at 25:35, YouTube (Nov. 24, 2020) (This video encapsulates the findings of the Voter Integrity Project's analysis and presents Matt Braynard's conclusions and recommendations.), available at <https://www.youtube.com/watch?v=XH9ihoLi1NA&feature=youtu.be>.

² Id.

forth the mechanics for comparing the voting roles and the timetables for completing those tasks];”

42 U.S.C. Sec. 1973gg-6(a)(4).

To satisfy the State’s obligations under the NVRA, the Legislature authorized the Secretary of State to (A) remove deceased voters (O.C.G.A. Sec. 21-2-231(d)) and (B) conduct an analysis of the NCOA database to determine the voter rolls (O.C.G.A. Sec. 21-2-233(a)).

5. The failure of the Secretary of State to carry out the duties required by the NVRA and the Elections Law were stark. As a result, Plaintiff believes the evidence shows that 20,312 ballots were cast by individuals who, according to USPS records, do not live in Georgia. This does not include electors who may be ineligible to vote due to movement within Georgia or within Georgia counties.

COUNT 2: LACK OF SIGNATURE VERIFICATION

6. Signature matching and signing an oath in connection with the casting of an absentee ballot are required by the Elections Code – they are not merely technicalities. The Elections Code mandated those actions to preserve the integrity of the elections process. Experts agree that voter fraud is far likelier to occur with mail in ballots than with in-person voting.³
7. The typical rejection rate for mail in ballots is approximately 1%. For those voting by mail for the first time it is 2%.⁴ An analysis by National Public Radio (NPR) found “[a]n extraordinarily high number of ballots” were rejected in the 2020 presidential primaries. NPR said this “raised alarms” about “what might happen in November when tens of

³ Stern, *Voter Fraud Exists. Republican Restrictions Won’t Stop It*, Slate (Sept. 1, 2016). (“Voter fraud does happen—but it almost never occurs at the polls. Instead, as election law expert and occasional Slate contributor Rick Hasen has explained, voter fraud occurs through absentee ballots.”).

⁴ Ramgopal, *More than 1 percent of mail-in ballots may be rejected, say experts*, NBC News (Oct. 28, 2020).

millions of more voters are expected to cast their ballots by mail, many for the first time.”⁵

Instead, reports in November found that “[m]ail-in ballots are being rejected at surprisingly low rates.”⁶

8. In Georgia, in 2016, the rejection rate for mail in ballots stemming from signature failures was 0.88%. In 2018, it was 1.53%. In the 2020 primary, it was 0.28%. In the general election it dropped dramatically to just 0.15%. (See the Affidavit of Benjamin A. Overholt dated November 29, 2020.)
9. Over 1,300,000 mail in ballots were cast in the 2020 general election. If these ballots had been rejected at the expected rate of 0.28% - 1.53%, some 1,600 to 18,000 additional ballots would have been rejected. This is enough to change the result since the margin of victory in the presidential election was just 12,670 votes.⁷ The number of votes needed to secure the election of other federal officials was even lower.
10. The Secretary of State concedes that signature-based rejections dropped significantly compared to the primary. However, the Secretary of State’s office has claimed that the rejection rate was the same as it was in 2018.⁸ This is not accurate.
11. As demonstrated in the Affidavit of Benjamin A. Overholt, the office of the Secretary of State has made and is continuing to advance this argument based on elementary errors. That office did not use the most accurate comparison and calculated the rates for the two

⁵ Fessler & Moore, *More Than 550,000 Primary Absentee Ballots Rejected In 2020, Far Outpacing 2016*, NPR (Aug. 22, 2020).

⁶ Krawczyk, *Mail-in ballots are being rejected at surprisingly low rates*, Yahoo (Nov., 2, 2020).

⁷ Press Release, Georgia Secretary of State, NUMBER OF ABSENTEE BALLOTS REJECTED FOR SIGNATURE ISSUES IN THE 2020 ELECTION INCREASED 350% FROM 2018; available at, https://sos.ga.gov/index.php/elections/number_of_absentee_ballots_rejected_for_signature_issues_in_the_2020_election_increased_350_from_2018.

⁸ *Id.*

years using different, inconsistent methodologies. (See the Affidavit of Benjamin A. Overholt, *supra*.)

12. Furthermore, the Secretary's analysis counted only rejections identified as "signature" based rejections without including the related category of "oath" based rejections. An "oath" based rejection occurs when a voter fails to sign or otherwise complete the oath accompanying a mail in ballot. It is thus a form of signature failure. When oath-based rejections are included, the rejection rate drop is even more dramatic as set forth above. (See the Affidavit of Benjamin A. Overholt, *supra*.)

13. Although the Secretary of State recently conducted an audit and recount, no signature matching was required during that process.⁹

14. Without a meaningful verification of signatures, the election results cannot be certified. The suspiciously low ballot rejection rate suggests that the verification procedures were not enforced with their usual rigor.

15. In addition, in the leadup to the election, the Secretary of State unilaterally modified the Elections Law that the Legislature established, to weaken safeguards against fraudulent ballots, such as signature requirements, in ways that are unlawful and unconstitutional.

16. The U.S. Constitution grants state legislatures, not state executive branch officials, the authority to determine the "Times, Places and Manner" of federal elections as well as the process for appointing Presidential Electors. U.S. CONST., Art. I, Sec 4, cl. 1; Art. 2 Sec. 1, cl. 2.

⁹ Moffatt, *Fact Check: Georgia Rejected More Than 2,000 Absentee Ballots Because Of Signature Issues*, WABE/NPR (Nov. 19, 2020).

17. The Georgia Legislature via the Elections Law instructs those who handle absentee ballots to follow clear procedures to handle absentee ballots, to confirm the information and signature on the absentee ballot. O.C.G.A. § 21-2-386(a)(1)(B) & 380.1. But in March 2020, Defendants Secretary Raffensperger, and the State Election Board, which has ministerial responsibility for the State elections (collectively the "Administrators") entered into a "Compromise and Settlement Agreement and Release," setting forth more complicated standards to be followed by local officials in processing absentee ballots in Georgia. See *Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division. This was unauthorized by the Elections Law and the U.S. Constitution.
18. In October 2020, the Defendants issued an order that permitted the early opening of absentee ballots, in a direct violation of O.C.G.A. 21-2-386(a)(1)(A), which required county officials to keep the unopened absentee ballots safe and unopened until the closing of the polls on election day.¹⁰ See Rules of the State Board of Elections, Rule 183-1-14-0.9-.15 (Processing Absentee Ballots Prior to Election Day).
19. The Plaintiff suffered an injury in fact and actual harm as a result of both these unconstitutionally altered and inadequately enforced absentee ballot processing procedures utilized in connection with the November 3, 2020 presidential election, in that his vote was diluted relative to votes cast by electors whose identified signatures were not verified, as required by the Elections Law.

¹¹ See e.g., *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1347 (N.D. Ga. 2018) ("The Secretary of State is **ENJOINED** from certifying the State Election results until she has confirmed that each county's returns include the counts for absentee ballots where the birth date was omitted or incorrect.").

20. Accordingly, this Court should enter an injunction declaring that the election results are defective and ordering the Defendants to cure their Constitutional and statutory violations in accordance with the provisions of the United States Constitution and Georgia law. Plaintiff estimates that an Audit and Verification process could be completed within five days and ensure that the election results are consistent with the Elections Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

1. Grant an order decertifying any results from the General Election for the electors to the Presidency until the Secretary of State:
 - (A) Initiates and completes an independently observed, monitor-confirmed investigation of a sample of the 20,311 individuals flagged as having voted even though they do not live in Georgia.
 - (B) Initiates and completes an independently observed, monitor-confirmed signature match check for the absentee ballots cast in this election, including producing the digital records of the signatures such that an independently, publicly confirmed signature match can occur, and that all ballots and envelopes used in casting of absentee ballots be available for public scrutiny;¹¹
2. Require Defendant to issue an Official Election Bulletin urging meaningful and transparent cooperation with the Audit and Verification and with the requirements of this Order;
3. Retain jurisdiction to supervise disputes as to the Audit and Verification; and

¹¹ See e.g., *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1347 (N.D. Ga. 2018) (“The Secretary of State is **ENJOINED** from certifying the State Election results until she has confirmed that each county's returns include the counts for absentee ballots where the birth date was omitted or incorrect.”).

4. Award Plaintiff such other and further relief as this Court deems just and equitable.

Dated: November 30, 2020

Respectfully submitted,

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AFFIDAVIT OF BENJAMIN A. OVERHOLT

I, Benjamin A. Overholt, Ph.D., 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 have an M.S. and a Ph.D. in Applied Statistics and Research Methods from the University of Northern Colorado. I am currently an active federal civil servant for over seven years and served in the United States Army for 15 years. During that time, I spent more than five years reviewing election results for the Voting Rights Section of the Civil Rights Division of the U.S. Department of Justice in Washington, D.C.
3. I am familiar with and have analyzed public data from the office of the Secretary of State of Georgia (the "SoS") regarding the recent presidential election held on November 3, 2020 (the "2020 General Election".)
4. The plaintiff asked me to review the data available on the SoS website to determine its usefulness in questioning the rejection rates of mailed ballots ("mailed ballots") in the 2020 General Election and to determine whether anomalies existed that could change the outcome of the presidential race in

the 2020 General Election. Based on my experience and because of my personal interest in the matter, I felt qualified to do so. I am not being compensated for this work or for my time, rather, I am reviewing the data for the sake of verifying outcomes.

Anomalies Based on Rejected Ballots – Signature Verification and Missing Oath

5. I generated tabulations of mailed ballot rejection and spoil rates from 2016 to 2020 to check the accuracy of data on the SoS website and to demonstrate the discrepancies in the number of mailed ballots that were “rejected” and “spoiled” when comparing previous elections to the 2020 General Election. All data used for this analysis was downloaded directly from the SoS’s public website. The datafile for the 2020 General Election was last updated on November 16, 2020.¹
6. In the datasets, the variables “Ballot Style”, “Ballot Status”, and “Status Reason” are each critical to understanding ballot rejection reasons and rates. “Ballot Style” is the type of ballot cast – values included are “ELECTRONIC”, “IN PERSON”, and “MAILED”. In the results below, I considered only those ballots marked as “MAILED”. “BALLOT STATUS” is the current status of a ballot, values are “A” for accepted, “C” for cancelled,

¹ <https://elections.sos.ga.gov/Elections/voterabsenteefile.do>

“R” for rejected and “S” for “spoiled”. In this analysis only values “A”, “R” and “S” were considered.

7. There are over 6,000 different “Status Reason” codes. They seem to be handwritten phrases and include similarities such as “R-ADDR MISSING” and “RADDR NOT A MATCH”. The “grepl” function in R was used to search for key words in “Status Reason”. Table 1 shows the keywords searched for that showed concerning discrepancies from 2016 to 2020 and are related to signatures. To get the “[Percentage] of Mail In Ballots” in Table 1, the “Counts” were divided by the total number of mailed ballots with a Status of “Accepted”, “Rejected”, or “Spoiled”.
8. The data was sorted for the general and primary elections in 2016, 2018 and 2020 in Georgia, with a “g” or “p” denominating the information in the columns below, respectively.

Table1: "Status Reason" Search Terms By Year for "Rejected" and "Spoiled Ballots"

Search Term	Counts				% of Mail In Ballots			
	2016g	2018g	2020p	2020g	2016g	2018g	2020p	2020g
ALL Rejections	6,059	7,889	11,772	4,471	2.90%	3.46%	1.01%	0.34%
"SIG"	581	457	3,212	1,998	0.28%	0.20%	0.28%	0.15%
"OATH"	1,259	3,029	0	0	0.60%	1.33%	0.00%	0.00%
"ADDR"	373	156	0	0	0.18%	0.07%	0.00%	0.00%
"DOB"	598	19	0	0	0.29%	0.01%	0.00%	0.00%
"DATE"	371	24	0	0	0.18%	0.01%	0.00%	0.00%
"DEADLINE"	1,004	1,783	8,495	2,400	0.48%	0.78%	0.73%	0.18%
"BY ELECTION"	1,836	1,788	0	0	0.88%	0.79%	0.00%	0.00%

9. Table 1 demonstrates the reduced rate of rejection for reasons with the term "SIG" and the near zero instances of reasons with the term "OATH" in the 2020 General Election. "SIG" is a shorthand designation for mailed ballots that were rejected because of a signature mismatch.

10. As the oath portion of the ballot is the portion signed, there is likely overlap between Oath and Signature issues. Considering only reasons with the term "SIG", the rejection rates were 0.28% in the 2016 general, 0.20% in the 2018 general and 0.28% in the 2020 primary but dropped to only 0.15% in the 2020 General Election.

11. Comparing the 0.15% rate in the 2020 General Election to the 0.28% rate in 2016 and the 2020 primary would suggest somewhere around 1,600 additional ballots should have been rejected for signature issues.

12. Considering the number of ballots classified as rejected in the "OATH" row, the rejection rates were 0.60% in 2016, 1.33% in 2018, and near zero in 2020.

The fact that there were two or three instances of “OATH” in both 2020 elections for spoiled ballots shows that “OATH” issues are still possible, but almost eliminated compared to earlier elections.

13. Comparing the 0.60% rate for 2016 and the 1.33% rejection rate in 2018 to the near zero rate in 2020 would suggest an additional 7,900 or 17,500 ballots should have been rejected, respectively. Together the difference in rejection reasons with the terms “SIG” and “OATH” would account for more ballots than the margin of victory in the presidential race in the 2020 General Election and might have affected other state-wide or local races.

Anomalies Based on Spoiled Ballots

14. I observed an additional issue when I considered the rate of spoiled ballots.

Essentially, a spoiled ballot is a ballot with multiple markings or damage that make it difficult to determine the voter’s intent. In both 2016 and 2018, fewer than 100 Mailed ballots were “Spoiled” (0.03% and 0.04% of Accepted, Spoiled and Rejected ballots cast, respectively). In 2020, the corresponding number increased to 1,794 in the primary (0.15% of Accepted, Spoiled and Rejected ballots cast) and 4,082 in the 2020 General Election (0.31% of Accepted, Spoiled and Rejected ballots cast – nearly 10 times the 2016 rate). The rate of spoiled ballots in the 2020 General Election was twice the rate in

the primary, over seven times the rate in 2018 and over 9 times the rate in 2016.

Table 2: "Ballot Status Counts by Election

Ballot Status	2016g	2018g	2020p	2020g
Accepted	202,492	219,731	1,150,478	1,308,447
Cancelled	12,053	20,601	116,424	318,086
Rejected	6,059	7,889	11,772	4,471
Spoiled	69	98	1,794	4,082
<blank>	25,948	36,074	333,608	133,886

The Secretary of State Analysis

15. The office of the SoS published the results of its own review of this same data (the "SOS Analysis")², concluding that, "The number of absentee ballot rejections for signature issues increased approximately 350% in the November 2020 election in Georgia from the 2018 election." This conclusion is misleading and the SOS Analysis is flawed in two material ways.

16. First, the SOS Analysis does not make any comparison to the most probative election available, the 2016 General Election. Second, the SOS Analysis inconsistently applies rules for computing the denominators for their percentages.

²
[https://sos.ga.gov/index.php/elections/number of absentee ballots rejected for signature issues in the 2020 election increased 350 from 2018](https://sos.ga.gov/index.php/elections/number%20of%20absentee%20ballots%20rejected%20for%20signature%20issues%20in%20the%2020%20election%20increased%20350%20from%202018)

17. In calculating the percentage of “Rejected” ballots, the SOS Analysis uses as numerators (number of rejected ballots) the numbers 454, 3,266 and 2,011. Those numbers are the number of ballots rejected in the 2018 General Election, the 2020 Primary Election, and the 2020 General Election, respectively, and are all reasonably close to the numerators used in my analysis.

18. But the SOS Analysis uses differing denominators to calculate the reported percentages. In the 2018 General Election, the SOS Analysis divided the number of rejected ballots by a denominator which was the sum of all Ballot Statuses (Accepted, Cancelled, Rejected, Spoiled, even the blanks) to get their 284,393 number, which would minimize the reported percentage.

19. For the 2020 Primary Election, the SOS Analysis divided total rejections by Accepted ballots only. For the 2020 General Election, the SOS Analysis divided the number of Rejected ballots by the total of all Accepted, Rejected and Spoiled ballots (the method employed in this analysis). That was correct, but the SOS Analysis for the 2018 General Election minimized the percentage and maximized it for the 2020 Primary Election. The data in the article cited above reporting the SOS Analysis was therefore generated improperly and inconsistently and is misleading.

Further Anomalies

20. There is one caveat regarding the dataset for the 2020 General Election. The datafile contains records for 4,505,778 ballots while Georgia's official election totals currently show a total of 4,998,482 votes cast for the top 3 candidates in the presidential contest. It is surprising that while the dataset I used is missing around 500,000 votes, it is only missing 13 rejected ballots.

21. There are other anomalies in the reported data that should be analyzed, and many raise significant questions about the conduct and results of the 2020 General Election. The effect of the difference in ballot totals on this analysis is unknown and cannot be calculated without better understanding of the underlying conduct of the election throughout Georgia. The recent "hand recount" would not resolve these issues. I understand there are further questions about the conduct and outcomes of that process.

[SIGNATURE AND OATH ON NEXT PAGE]

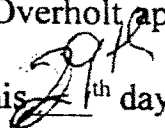
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Benjamin A. Overholt, Ph.D.

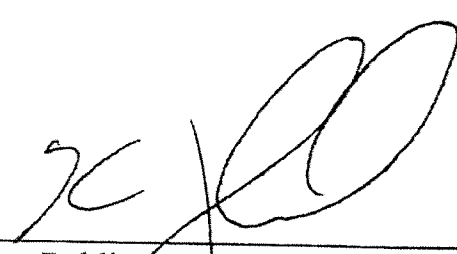
COMMONWEALTH OF VIRGINIA

COUNTY OF PRINCE WILLIAM

CITY OF MANASSAS

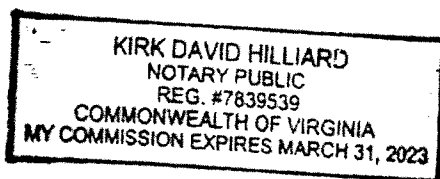
Benjamin A. Overholt appeared before me, a Notary Public in and for the above jurisdiction, this  th day of November 2020, and after being duly sworn, made the foregoing declaration, under oath.

[Affix Seal]


Notary Public

My Commission Expires

3-31-2023



PAUL ANDREW BOLAND vs BRAD RAFFENSPERGER, ET AL.
Hearing on 12/08/2020

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PAUL ANDREW BOLAND,

Contestant,

CIVIL ACTION

vs.

FILE NUMBER:

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
AHN LE, in her official capacity
as a member of the Georgia State
Election Board,

2020CV343018

Defendants.

HEARING ON MOTION TO INTERVENE

HELD ON : DECEMBER 8, 2020

2:00 PM to 3:30 PM

PROCEEDINGS BEFORE:

THE HONORABLE EMILY K. RICHARDSON



Page 2 1 APPEARANCES OF PARTICIPATING ATTORNEYS 2 3 On Behalf of the Contestant: 4 5 DAVID F. GULDENSCHUH, ESQUIRE 6 DAVID F. GULDENSHUH, PC 7 512 EAST 1ST STREET 8 ROME, GA 30161 9 Office: (706) 295-0333 10 Fax: (706) 295-5550 11 E-mail: DFG@GULDENSCHUHLAW.COM 12 13 On Behalf of the Defendants: 14 15 KEVIN J. HAMILTON, ESQUIRE 16 PERKINS COIE, LLP 17 1201 THIRD AVENUE SUITE 4900 18 SEATTLE, WA 98101 19 Office: (206) 359-8000 20 Fax: (206) 359-9000 21 E-mail: KHAMILTON@PERKINSCOIE.COM 22 23 RUSSELL D. WILLARD, ESQUIRE 24 GEORGIA OFFICE of the ATTORNEY GENERAL 25 40 CAPITOL SQUARE SW ATLANTA, GA 30334 Office: (404) 656-7298 Fax: (404) 657-8733 E-mail: RWILLARD@LAW.GA.GOV	Page 4 1 is not permitted to bring an election contest 2 against any of those individuals. 3 O.C.G.A. 21-2-520(2) defines who may be a 4 defendant in an election contest. It does not include 5 the Secretary of State or the members of the State 6 Election Board. It is limited to four categories of 7 individuals, none of whom fit the definition of 8 Secretary of State or State Election Board members. As 9 such, there can be no claims brought against them 10 pursuant to Article 13 of Chapter 2 of Title 21 for an 11 election contest. 12 They are not proper parties. They enjoy 13 sovereign immunity for any claims brought against them 14 and should be dismissed from this action. 15 THE COURT: All right. Thank you, 16 Mr. Willard. Is there anything further that, you 17 know, the Secretary of State or the Election Board 18 members wish to put on the record at this point? 19 MR. WILLARD: Your Honor, I believe that we'll 20 have some argument to make if the Court wishes to 21 go forward with the State Defendants, at least for 22 the moment, as defendants to this action for some 23 of the prayers for relief that the Plaintiffs have 24 pled. I believe that the Court is going to hear 25 argument on that today, and we will have some
Page 3 1 PROCEEDINGS 2 THE COURT: The first thing that I think we 3 need to address is -- I see Mr. Willard here on 4 behalf of the Attorney General's office. And, so, 5 let's go ahead and establish and get on the record, 6 Mr. Willard, your position as to the State's waiver 7 as to 9.10(2). 8 MR. WILLARD: Your Honor, by my appearance 9 today, the State has waived 9.10(2). We're happy 10 with proceeding with the matter before the Court 11 today. It's my understanding that I will be 12 permitted to make oral motions today and respond to 13 arguments raised by both the Plaintiffs, as well as 14 Defendant Intervenor, as appropriate. 15 THE COURT: Okay. All right. Is there -- are 16 there any oral motions that you wish to make or 17 anything else that you want to put on the record? 18 MR. WILLARD: Yes, Your Honor. It is my 19 understanding that at this point, outside of the 20 Intervenor Defendants, the only defendants in this 21 action, and those that were originally named by the 22 Plaintiffs, are the Georgia Secretary of State and 23 the four other members of the State Election Board: 24 Rebecca Sullivan, David Worley, Matthew Mashburn, 25 and Ahn Le. They are not proper defendants, and it	Page 5 1 responses to the unavailability of the relief that 2 they seek. 3 THE COURT: Okay. All right. Thank you, 4 Mr. Willard. All right. We also said that we'd be 5 addressing, today, the motion to dismiss on behalf 6 of the Intervenor. So, Mr. Hamilton. 7 MR. HAMILTON: Good afternoon, Your Honor, and 8 thank you for the opportunity. I'm Mr. Hamilton, 9 on behalf of the Intervenor Defendants, the Biden 10 electors. Your Honor, on November 3rd, the voters 11 of Georgia, and the nation as a whole, elected Joe 12 Biden as President of the United States. In 13 Georgia, that margin was 12,000 votes; those 14 results have been carefully canvassed, audited, and 15 certified by county and state officials. 16 They were counted, recounted, and then 17 recounted a second time. That final recount is now 18 complete. The results have been certified, and a 19 Certificate of Ascertainment, signed by the Governor of 20 Georgia, has been transmitted to the Archivist of the 21 United States in accordance with federal law. 22 In the weeks since this general election, a 23 virtual parade of litigants has marched through the 24 state and federal courts in Georgia and across this 25 country. They all seek a similar result: To invoke the

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Page 6 1 power of the Judiciary to force the states to overturn 2 the results of the election and declare Donald Trump the 3 winner. Mr. Boland is just the latest in this long and 4 unfortunate string of litigants. His election contests 5 claims that Georgia election officials failed to purge 6 no fewer than 20,000 voters from the registration rolls 7 and that the State signature rejection rate for mail 8 ballots is simply too low to be believed. 9 In his petition and in his opposition to the 10 motion to dismiss, he performs constitutional backflips, 11 in service of this extraordinary, indeed breathtaking, 12 claim. He seeks no less than decertification of the 13 election and an injunction mandating a "do-over" 14 election. No court, in American history, has ever 15 entered such breathtaking relief. 16 Indeed, in this election cycle, every court to 17 consider these requests -- and there have been dozens -- 18 has flatly rejected it. Just yesterday, federal courts 19 in Michigan and Georgia dismissed similar claims, and a 20 similar contest was filed by John Wood, before this very 21 court. It was rejected by Judge Barwick as well. And 22 all that was just yesterday; just the most recent 23 decisions in a string of dismissals that stretch, 24 virtually, the breath of this country. Courts in 25 Nevada, Georgia, Minnesota, Michigan, Arizona,	Page 8 1 November 3rd election, or order an entirely new 2 presidential election for the state of Georgia. None of 3 this is supported in the record or appropriate in the 4 law. 5 So let me first suggest that the Court should 6 dismiss the case on the basis of laches. The claims -- 7 numerous courts have rejected similar claims, including 8 state and federal courts here in Georgia. The 9 settlement agreement Mr. Boland challenges was entered 10 into six full months prior to the election. It was not 11 a secret. And since that time, Georgia election 12 officials have administered two separate elections -- 13 the primary and the general here. Mr. Bolin could and 14 should have brought whatever claims or challenges he 15 had, relating to that settlement agreement, a long time 16 ago. 17 There's a different Plaintiff, Mr. Lin Wood, 18 who brought a challenge to this same settlement 19 agreement in a federal lawsuit -- that's the Wood versus 20 Raffensperger case in the Northern District of Georgia. 21 That claim was decisively rejected by Judge Grimmer, in 22 part, on the basis on laches. And just last Friday, 23 that dismissal was affirmed by the 11th Circuit in an 24 order that was sharply critical of the claim to begin 25 with.
Page 7 1 Pennsylvania have all rejected similar claims, and we 2 would submit this Court should too for several reasons. 3 First, Mr. Boland's claims are barred by 4 laches. Second, the very statutory contest provisions 5 he invoked do not cover this election of presidential 6 electors, and his legal arguments fall woefully short of 7 the mark. With a respect, the case should be dismissed 8 with prejudice, and we would ask the Court to enter 9 final judgment today, December 8th, the federal Safe 10 Harbor deadline. 11 Let me just start with a quick overview of 12 Mr. Bowman's claims. First, Mr. Boland contends that 13 20,312 voters should have been removed from the voter 14 registration rolls, under The National Registration Act, 15 for allegedly changing their residency out of state. 16 Second, he contends that a settlement agreement entered 17 into by Secretary Raffensperger and the board in March, 18 9 months ago, relating to processing absentee ballots, 19 resulted in what he believes is a suspiciously low 20 rejection rate for signature failures. 21 So based on those claims, Mr. Boland asked 22 this Court to order the State to decertify the election 23 results, require Secretary Raffensperger to audit and 24 verify the residency of over 20,000 individuals and 25 signatures out of 1 million mail ballots cast in the	Page 9 1 Judge Grimmer wrote, "The Plaintiff could 2 have, and should have, filed his constitutional 3 challenge much sooner than he did and certainly not two 4 weeks after the general election." Allowing Mr. Boland, 5 like allowing Mr. Wood, to sandbag 5 million Georgia 6 voters by waiting until after they voted, and after 7 their votes had been counted and recounted and then 8 recounted again, and then asking this Court to reject 9 them all, with the stroke of a judicial pen, is the very 10 definition of prejudice. And, so, for that reason, the 11 claims are barred by the statutes of limitations and 12 should be dismissed. 13 Second, the claim should be dismissed for a 14 second, independent reason that they fall outside of 15 Georgia's Election Contest Statute. Georgia voters 16 don't vote directly for presidential candidates, nor do 17 any other voters anywhere else in the country. Instead, 18 Georgia voters vote for presidential electors who, in 19 turn, cast the state's 16 electoral college votes in the 20 Electoral College. 21 Georgia's Election Contest Statute, 21-2-521, 22 only applies to "federal, state, county or municipal 23 offices." Presidential electors do not fall within any 24 of those categories. They're certainly not municipal or 25 county employees. And because they're appointed

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Page 10 1 pursuant to the Federal Constitution, they're not state 2 officers either. And the US Supreme Court, in Ray v. 3 Blair -- and we cited that case in the briefing -- 4 directly held that electors are not federal officers or 5 agents either. 6 Thus, because this election was for 7 presidential electors, it simply falls outside of the 8 Georgia Election Contest Statute and should be dismissed 9 for that reason. But even if these claims were not 10 barred by laches, and even if they were cognizable under 11 the statute, they should still fail on the merits. 12 Mr. Boland's claims are based on the premise 13 that Georgia election officials failed to properly 14 maintain the voter registration rolls and that they 15 failed to properly verify voter signatures. But his 16 allegations are based on nothing more than wild 17 conspiracy theories, speculation, and plain hearsay. 18 First, the suggestion that 20,312 voters voted 19 illegally is based on nothing more than a YouTube video, 20 in an unspecified effort to match Georgia's voter 21 registration base against the U.S. Postal Service 22 National Change of Address Database, but that's far from 23 sufficient. 24 The USPS National Change of Address Database 25 was never created as a tool for voter registration. And	Page 12 1 writing, the change of address or the voter's failure to 2 respond to written notice and have to wait for two 3 elections in which that voter doesn't cast a ballot. So 4 the Secretary couldn't have purged these 20,000 voters, 5 and neither can this Court. So the first claim fails as 6 a matter of law. 7 The second fails no better, but he claims the 8 settlement agreement and the signature verification 9 procedures adopted by the Secretary are somehow 10 inconsistent with Georgia law. These arguments have 11 been repeatedly considered and rejected by the state and 12 federal courts in Georgia. I've mentioned before the 13 Woods v. Raffensperger case. There, Judge Grimberg 14 expressly considered this claim and held that it was 15 barred by laches, but then went on to address the claims 16 on the merits as well. And the Court said, "The 17 percentage of absentee ballots rejected for missing or 18 mismatched signature is the exact same for the 2018 and 19 the general election, 0.15 percent. This is despite the 20 substantial increase in the total number of absentee 21 ballots submitted by voters during the general election, 22 as compared to the 2018 election." 23 Nor is the settlement agreement or the 24 procedures adopted by the Secretary some sort of 25 legislative action that usurped the legislative
Page 11 1 it is notoriously reliable -- unreliable, which is why 2 the NVRA, The National Voter Registration Act, allows 3 states to rely on change of address information for list 4 maintenance, only if the information is supplied through 5 a licensee, and then only after extensive procedures to 6 mitigate the risk of improper removal. 7 The statute explicitly prohibits systemic 8 removal of names on the basis, within 90 days of a 9 federal election. In other words, Secretary 10 Raffensperger is prohibited by federal law from using 11 Mr. Boland's methodology to purge voter rolls, and it 12 certainly follows that the same methodology cannot be 13 used in this lawsuit to achieve the same result. 14 And, of course, there's all sorts of reasons 15 why Georgia residents move out of state. And by doing 16 so, a Georgia resident doesn't lose his or her 17 residency, which is explicitly recognized in several 18 provisions of Georgia law -- think military service or 19 attending college or temporary living out of state to 20 assist aging parents or seeking medical care or a doing 21 summer job or living in a winter vacation home or a 22 summer vacation home. And that's precisely why the NVRA 23 requires that state's list-maintenance activity to take 24 steps prior to removing names. 25 They have to confirm with the voter, in	Page 13 1 authority of the General Assembly. The Secretary is the 2 State's chief elections officer, and he has primary 3 authority to regulate elections in the state of Georgia. 4 So Mr. Boland's claims, to the extent they're based on 5 the settlement agreement, fail as well. And that's 6 literally all his claims, start to finish. None of them 7 state claims on which relief can be granted, and none of 8 them are remotely supported on the record before the 9 Court. 10 And, finally, even if the petition weren't 11 barred, even if it stated the claim, and it doesn't, and 12 even if he had supported that claim with evidence, and 13 he hasn't, the Court isn't empowered to give him the 14 relief. And I hate to steal Mr. Willard's thunder -- I 15 suspect he might say the same thing. But an order 16 nullifying the effects of a presidential election, or an 17 injunction to the governor prohibiting certification of 18 duly-elected presidential electors, is simply outside of 19 the power of this Court. 20 It would violate state and federal law, it 21 would violate the rights of over 5 million Georgia 22 voters who participated in this election, and it would 23 disenfranchise millions of voters. Just yesterday, 24 Judge Batten dismissed the so-called "kraken" lawsuit in 25 Pearson v. Kemp, on a variety of grounds, but

Page 14 1 specifically found that the remedy sought there, a 2 "do-over" election, like the remedy sought here, was 3 simply not available. 4 In Michigan, yesterday, a federal court 5 reached precisely the same conclusion in another one of 6 these cookie-cutter cases, Kane v. Whitmer. So 7 intervenors would urge this Court to reach the same 8 conclusion or the same reason: The remedy Mr. Boland 9 seeks is not something this, or any other court, can 10 order. And so his claims fail for that reason as well. 11 And I'll wrap up here, your Honor. The Third 12 Circuit wrote, last week, "Voters, not lawyers, choose 13 the President. Ballots, not briefs, decide elections." 14 It's a sad commentary that that's something a court 15 should have to remind litigants. But since the 16 election, just one month ago, we've seen this same 17 pattern across the country -- baseless lawsuits filed by 18 plaintiffs who simply can't effect -- accept the fact 19 that Joe Biden won. 20 But that's the decision the people of Georgia 21 made; that's the decision the people of the United 22 States made, and it's a choice that could only be thrown 23 out by this Court, or any court, on the most powerful 24 showings of clear and convincing evidence of widespread 25 fraud or error. But Mr. Boland stands in front of you	Page 16 1 brings on behalf of 2.4 million voters of Georgia, a 2 minimum of those. It was almost 5 million votes cast in 3 this election -- is one of the most fundamental rights 4 that can possibly exist. 5 Now, let's go to each of the three issues that 6 were raised as a basis for dismissing the case. We 7 begin with the laches issue. I want to, again, let the 8 Court -- we are not asking you to decertify this 9 election at this moment; we have asked for that as our 10 relief. And that is important that we ask for that 11 relief as part of proceeding with the case, but that's 12 not where we're at yet. 13 As far as the laches goes, we have raised two 14 very targeted issues with your Honor, one -- both of 15 which have been addressed by Mr. Hamilton. First is the 16 fact that we have a report, that we provided you 17 citation to, that reflects 20,312 votes were potentially 18 cast in this election that were from non -- out-of-state 19 voters. Of that amount, over 4,000 of those appeared to 20 be registered in other states. 21 Now, it's not our -- we're not trying, here, 22 to prove our case to you right now. Our burden -- our 23 standard is -- assuming we have the right to file this 24 case, assuming we have standing, then our burden is to 25 give you enough evidence to where we can proceed with
Page 15 1 with utterly nothing of that sort; nothing that is 2 sufficient to justify this contest or the jaw-dropping 3 invitation to throw out the votes of over 5 million 4 voters. 5 So, your Honor, we would ask this Court to 6 grant the motion to dismiss and enter final judgment, 7 today, within the Safe Harbor deadline and dismiss the 8 lawsuit. Thank you. 9 THE COURT: All right. Thank you, 10 Mr. Hamilton. 11 All right. Mr. Guldenschuh. 12 MR. GULDENSCHUH: Thank you, your Honor. 13 Let me begin by saying this is not Lin Wood, 14 and this is not Sidney -- I forgot her last name -- 15 Powell. This is not that kind of case. The case that 16 we have brought here is the case that every Georgia 17 voter has the right to file under the Election Contest 18 Statute, which Mr. Boland had done, and I'm going to 19 address their standing issue for the purpose of 20 determining when there are irregularities in election, 21 whether that election can stand. 22 Is it different with the federal election? 23 Yeah, it is, with the presidential election, because we 24 have the Constitution we have to take into account. But 25 the right of Mr. Boland to bring this suit -- which he	Page 17 1 some -- the equivalent of expedited discovery. So we 2 have, first, the 20,000 votes. 3 Now, as to the laches argument, we didn't know 4 those people had voted until the election actually 5 occurred. As to the request, with respect to the 6 checking of signatures, we didn't know who had voted and 7 whether those signatures had been checked or not until 8 the election occurred. So the concept that we could 9 have filed this case, could a case have been filed 10 earlier on the consent decree. Well, there's courts 11 that have ruled on that issue, but that's not what the 12 issue is that we're pursuing at this point. 13 We're talking about those two very targeted 14 items. And as I will state later on the consent -- 15 well, I'll get to it later in just a second. So the 16 concept that we could have filed this case earlier is 17 absurd. Had we filed -- how do you file a case to 18 challenge an out-of-state voter who hasn't voted yet? 19 How do you challenge a case to see who returned an 20 absentee ballot that hasn't been returned yet? You 21 can't. 22 And so the argument as to laches, we submit 23 that's a great argument that they've used in these other 24 cases that are challenging, at a Constitutional level, 25 the consent decree. And, admittedly, we have some

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Page 18 1 language in our complaint to that effect, but that's not 2 the focus of the two items that we're looking at right 3 now. Perhaps that aspect of the case we can't pursue. 4 But as to these two items and the contest of 5 the election, we didn't have -- we didn't know what we 6 could challenge until the election actually occurred, so 7 the doctrine of laches simply does not apply. The 8 statute -- you also have to look at the statute. The 9 contest Statute itself says, the first window that you 10 have to file -- there's multiple windows in this case. 11 The first window that you have to file, is five days 12 after the certification; in the case of recount, you get 13 another five-day window down the road. 14 We filed within five days of the very first 15 certification, taking -- at risk they would come back 16 and say, "Oh, no, no, no. You filed too soon; you have 17 to wait until the recount is over." They didn't do that 18 in this case, and the recount is now over as of 19 yesterday. So to file within the five-day statutory 20 period and then have counsel come say, "Oh, that's 21 laches," just seems to be an extreme argument on their 22 part. That is a sign of part of the desperation their 23 showing to try to get out of this matter. 24 The next argument they make, is that we don't, 25 essentially, have standing because the Georgia Statute	Page 20 1 case -- and let me be clear. Mr. Boland is here as a 2 voter, which is one of the people allowed to contest. 3 But, also, there is an Intervenor, Mr. Still, who is on 4 the Republican elector's slate, and so he has moved to 5 intervene. Perhaps at some point, we should address 6 that, just to get all of the loose ends tied in this 7 case. But if the guy who's on the other side of the 8 ballot can't contest, then nobody can. And I just 9 submit the Georgia -- 10 THE COURT: You're not representing -- 11 MR. GULDENSCHUH: Pardon? 12 THE COURT: Mr. Guldenschuh, you're not 13 representing the guy on the other side of the 14 ballot. You're not representing Donald Trump; 15 you're representing a voter. And in Judge Pryor's 16 opinion in the Lin Wood case, he spells it out very 17 clearly about how individual voters do not have 18 standing. He -- his analysis of Georgia law is 19 that, yes, the presidential candidate may have 20 standing, but individual voters do not have 21 standing to contest this, simply based on the fact 22 that there were a voter. 23 So what's your response to that? 24 MR. GULDENSCHUH: So Sean Still has moved to 25 intervene on this case as a plaintiff.
Page 19 1 does not allow any human being, any citizen, any voter, 2 any elector, including the losing presidential 3 candidate, to assert a election contest in Georgia, with 4 respect to the presidency. And the way they do it is, 5 this clever -- almost depends on what your definition is 6 is argument. It's so parsimonious, the argument that 7 they make, claiming that electors -- because it's a vote 8 for electors and not for a president, that we can't go 9 there. 10 Well, I couldn't help but laugh -- or smile, 11 shall I say, during Mr. Hamilton's argument when he 12 referred to this election as an election of Joe Biden. 13 He didn't refer to it as an election of the Intervenor 14 Defendants, which he makes so carefully in his argument. 15 He referred to the election of Joe Biden, and they do 16 that in their brief. 17 Now, it comes down to what did our state 18 legislature truly intend when they passed this law. And 19 the fact that it is inconceivable -- it is inconceivable 20 to me, that the state legislature passed this law and 21 with this very parsimonious interpretation of it, 22 intended to exclude a contest to the presidential 23 election. That is, again, beyond reason to me, which is 24 the argument that they are essentially making here. 25 So if you were to find no standing in this	Page 21 1 THE COURT: I understand. We're not there 2 yet, but he's also not the candidate. 3 MR. GULDENSCHUH: Right. Well, according to 4 defense counsel, he is the candidate. So, you 5 know -- 6 THE COURT: Well, I'm asking you about 7 Mr. Boland right now, because that's where we are 8 right now. 9 MR. GULDENSCHUH: Well, again, I can only tell 10 you that the statue says what it says. I have not 11 read Judge Pryor's opinion. I'm a Plaintiff's 12 lawyer up in Rome, Georgia, and I apologize for 13 that. We'd be happy -- maybe I can get some people 14 to provide you with a letter brief, at some point, 15 that can address that in more detail. I mean, 16 immediately. But I'm not in position to address 17 that with you, your Honor. 18 THE COURT: That's fine. Okay. So your 19 argument is that any voter has standing to 20 challenge elections. 21 MR. GULDENSCHUH: My argument is that any 22 voter -- that a voter has standing. But more 23 importantly, because we have an Intervenor, who's 24 knocking at the door, then we should allow him to 25 intervene and that covers that issue. I might

Page 22 1 point out, Judge Pryor's opinion, I believe, is on 2 appeal, and so we will hopefully find more. I 3 don't know that it's necessarily precedent for you; 4 although, it certainly may be persuasive to you. 5 But it is on appeal, your Honor. 6 So, anyway, my bottom line is, it's 7 inconceivable to me that the Georgia legislature did not 8 intend for someone to be able to raise this issue. And 9 if you accept Plaintiff's -- or Defense -- Intervenor 10 Defendant's argument, I don't see who that person is, 11 again, as I read through their brief. 12 That brings us to the issue of, well, is there 13 a legal basis to proceed, if we have standing? And the 14 question becomes, are they entitled to a motion to 15 dismiss? And the question -- we don't have to win the 16 case here, your Honor. We just have to show you there's 17 sufficient issue out there to allow some discovery at 18 this point. It may be that, down the line, we get to 19 that issue, but now is not the time for that. 20 We have provided you with an affidavit, and I 21 believe Mr. Overholt is actually prepared to testify, if 22 you so desire. But an affidavit from Mr. Overholt. He 23 is a former -- well, first of all, he is a PhD in 24 statistical analysis. He is a former Department of 25 Justice expert on election statistical analysis; that's	Page 24 1 a statistician. 2 But the point is, another significant point of 3 his affidavit, they referred to the other litigation 4 where the judge found that there was no difference in 5 the 2016, 2020 rejection rates. And the problem with 6 that argument is, one, Mr. Overholt didn't testify in 7 that case. And he has taken the data that the Secretary 8 of State provided in that case and looked at it. And 9 what he has concluded is, the Secretary of State made an 10 error in his calculation, that it wasn't the same. It 11 was .28 to .15, I believe, and that's based upon the 12 fact that while the data they used in the numerator was 13 from the same group, the data they that used from the 14 denominator was from a different -- they didn't use data 15 in the denominator, and the result of that was that they 16 misstated the percentages. 17 And there's a significant drop in the 18 percentage, I think almost 50 percent, which, again, if 19 applied to the number of voters involved, would make a 20 dramatic difference and would throw out far more than 21 the 12,000 votes that we have at issue here. So the 22 question isn't are we right or are they right; that's 23 not the issue right now. The issue is, do we get past a 24 motion to dismiss on the -- can they state -- have we 25 failed to state a claim?
Page 23 1 what he did for the Department of Justice for some five 2 years. 3 He has taken the Secretary of State's data and 4 looked at it and has arrived at a number of conclusions 5 that would affect the outcome of this election. Among 6 other things is, if you compare the 2016 and 2018 and 7 2020 certain -- specific rates involved there, it would 8 suggest that somewhere around 17,500 ballots should have 9 been rejected, that were not. Now, the other side wants 10 to say, "Oh, no no no. This has to do with the consent 11 decree. It's a problem with the consent decree." 12 No, Mr. Overholt's analysis deals with not 13 only 2016 and 2018 data, but also 2020 primary and 14 general election data. And he finds that there are 15 statistically significant differences that could impact 16 this election, so the consent decree is really a red 17 herring that they're tossing out here. 18 If you have a primary election and data from 19 the primary election, that's after the consent decree 20 was entered. And he looked at the rejection rate there 21 and then compared it to the 2020 primary or general 22 election, and he found a statistical difference. Again, 23 we have him available to testify, if you so desire, and 24 explain in more detail his affidavit. It is a bit, as 25 you would expect, the kind of thing that you'd see from	Page 25 1 And the answer to that is, they have their 2 expert, we have our expert, and they disagree. And our 3 expert says, yeah, this could have affected the outcome. 4 That's enough to get past whether we have stated a 5 claim, upon which relief can be granted. Once you get 6 past that, then we get to, really, what we should be 7 here about, and what I hope the Secretary of State, when 8 he speaks, is not going to say that 5 million voters 9 he's not willing to do. 10 And that is essentially this: We're not 11 asking for 20,000 non-registered people to be audited. 12 We're not asking for however many hundreds of thousands 13 or millions of, I think, 1.3 million absentee votes -- 14 we're not asking to analyze every single one of them. 15 We're asking for you to grant us the equivalent of some 16 very targeted, limited discovery over -- which can be 17 completed, from the IT people that I'm talking to, in 18 three to five days, that will allow us, simply, to 19 sample those two items. 20 Now, both -- the governor has called upon the 21 Secretary of State to do a sampling of the signatures. 22 You heard Mr. Hamilton talk about, "Oh, we counted, and 23 we've recounted and we've recounted." Yeah, but you 24 haven't looked at the signatures. You haven't done 25 that, and that's what the people of Georgia are

Page 26 1 concerned about. 2 Senator Ligon, in the Judiciary Committee, did 3 a lengthy, full-day hearing on different challenges to 4 this, and one of the huge challenges -- one of the 5 information that came out, was that things were almost 6 chaotic over in Fulton County in the way that they 7 challenge things; they closed things, they counted votes 8 when people weren't there, and that's not part of our 9 case. 10 But my point is, there's enough smoke and 11 there's enough problems out there, and we've given you 12 hard-core, statistical evidence to say, "Okay, I'm going 13 to allow y'all some very limited, expedited discovery." 14 If this case was going to go on for a year, your Honor, 15 the information we're asking for, we'd be entitled to. 16 I don't think there's any question that we'd be entitled 17 to it, if that's what we were fighting. 18 If the issue in this case was, were the 19 numbers correct or not, and that's what we were fighting 20 over, we would get this data. So what we're saying here 21 is, given the constraints of this case, that we should 22 be entitled to move forward with it. I know that your 23 Honor expressed some concern the other day about the 24 Safe Harbor rule and I would like to, very quickly, 25 address that if that's still an issue for your Honor.	Page 28 1 would submit that the Safe Harbor rule does not moot 2 this case. Just a couple of other points I want to make 3 in response, a specific response to some of the things 4 that Mr. Hamilton said. And this maybe a little bit out 5 of -- it may be kind of odd points, your Honor, because 6 I was writing fast. 7 But as to the signatures, we don't contend, 8 necessarily, that the Secretary of State should have 9 written all 20,000 of those off, or that the Secretary 10 of State should have done something contrary to the 11 90-day rule in the statute. We're simply saying that, 12 what we do know -- 20,000 people didn't move out of the 13 state of Georgia in those last 90 days; that didn't 14 happen. So what we do know is there's issues of those 15 some 4,000 or more are registered to vote in another 16 state, which would disqualify them here. 17 The Secretary of State does have an obligation 18 to maintain that database and do certain things when 19 they do a comparison with the Postal Service 20 information, and it shows that these things came up. So 21 we've got 20,000 votes, a 12,000 disparity. Again, 22 we're simply asking you to allow us to check to see if 23 this is or isn't a significant problem. 24 So the other thing I would say is, with 25 respect to the relief that we're requesting, ultimately,
Page 27 1 THE COURT: Go ahead. 2 MR. GULDENSCHUH: The State only qualifies for 3 Safe Harbor -- in order for it to qualify, Congress 4 must accept it's electoral votes as valid. But a 5 state only qualifies if, by whatever the date is, 6 in this case we think it's December 8 -- I'm going 7 to tell you a little bit about that in a second. 8 "A final determination has been made regarding any 9 controversy or contest concerning appointment." 10 Well, there are multiple contests going on 11 right now, including this action. And then most 12 significantly today, the Wood case, they filed their 13 petition for certiorari -- of course it challenges these 14 matters, this election. And then significantly, 15 yesterday, the state of Texas filed a suit of original 16 jurisdiction in the Georgia Supreme -- in the United 17 States Supreme Court against, among other things, the 18 state of Georgia, challenging this election. And more 19 significantly, your Honor, requesting, among other 20 things, that that December 14th date, that you have 21 got to back up six days to get to your Safe Harbor date, 22 that that date be postponed. 23 So at this point in time, we don't know what 24 that date is going to be. Georgia doesn't qualify, in 25 any event, for it because of the contest. And so we	Page 29 1 that's -- right now, we're not at that point of what 2 relief would be appropriate for you. We have asked. I 3 mean, I'm not trying to back up off; we said what we 4 said. 5 THE COURT: Well, it is before me because the 6 motion to dismiss is based upon failure to state a 7 claim upon which relief can be granted. 8 MR. GULDENSCHUH: Right. 9 THE COURT: So the relief you're seeking is 10 before me. 11 MR. GULDENSCHUH: Well, we don't know what 12 relief can be shaped at this point. And, yes, we 13 have asked you for that. But we've -- I would say 14 two things. First, the Governor has -- Governor 15 Kemp has stated openly that his reason for not 16 calling a special session of the legislature, is 17 because this is a matter that has to be resolved in 18 the courts. So maybe he's begging off on you, your 19 Honor, and may be it doesn't feel good that he's 20 doing that to you, but that's, in fact, what he is 21 doing, and that's where we're at. 22 And in summing up Mr. Hamilton, he quoted from 23 a judge who said, "Voters are not lawyers." I totally 24 agree with that. But, then, he said something really 25 significant. He said, "Ballots are not briefs." Your

Page 30 1 Honor, we're asking to look at the ballots; not the 2 briefs. We don't need -- and I hope that we won't hear 3 from the Secretary of State, that he has -- he's not 4 willing to do something to help 2.4 million or more 5 voters in Georgia that genuinely have a concern with the 6 outcome of this election. And which we've provided you 7 statistical evidence from a Department of Justice expert 8 who says, "Yeah, there's valid reasons for that." So in 9 the end, your Honor -- 10 THE COURT: So Mr. Guldenschuh -- 11 MR. GULDENSCHUH: Yes, your Honor? 12 THE COURT: I'd also like to address the issue 13 that your expert affidavit doesn't address anything 14 about the alleged out-of-state voters. 15 MR. GULDENSCHUH: That's correct. 16 THE COURT: The affidavit -- so you have 17 nothing that you have submitted to support this 18 claim, other than signing onto a YouTube video, 19 which, obviously, is not competent evidence in the 20 Court, to establish a basis for your claim 21 regarding the out-of-state voters. 22 MR. GULDENSCHUH: Your Honor, that's 23 something -- there's the Brainard Report that's out 24 there. I tried everything I know to do, as a Rome, 25 Georgia, lawyer to try to get it. My guess is, if	Page 32 1 is going to take me for lunch when this is all over, and 2 I have my limitations. And that's kind of where I'm at 3 on that, and I hope you'll give me some indulgence on 4 that. 5 THE COURT: Okay. 6 MR. GULDENSCHUH: Thank you, your Honor. 7 THE COURT: Thank you, Mr. Guldenschuh. 8 I'll hear a response from Mr. Willard first, 9 and then Mr. Hamilton. 10 MR. WILLARD: Thank you, your Honor. I assure 11 you, Mr. Guldenschuh, it is myself and one other 12 attorney in our office, with the occasional 13 assistance from another attorney, and I promise 14 you, we've had a lot more on our docket than you 15 have lately. The seminal question asked by 16 Mr. Guldenschuh is, "Can we get past today?" And 17 the answer to that is an emphatic no. 18 This Court has an obligation to inquire into 19 it's jurisdiction, before it proceeds any further in 20 this matter. I had raised, at the outset of the 21 hearing, to give Mr. Guldenschuh the opportunity to make 22 argument as to why this claim should proceed against the 23 State Defendants. O.C.G.A 21-2-520 specifically 24 delineates who, and only who, can be named as a 25 defendant in an election contest.
Page 31 1 you say you want to see it, that might light a fire 2 under somebody to where I can get it to you. All 3 you can do at this point, is take judicial notice 4 of it. I think, I'm not positive, but I think that 5 it was attached to an affidavit, authenticating it 6 in another case. 7 I agree with you that that's weak, but it is 8 out there. It is well -- there's actually evidence out 9 there of other reports that say the number's much 10 higher. But the Brainard Report is one, which within 11 the media, had been, by a number of people, 12 acknowledged. And, you're correct, that's where we 13 stand. 14 If you'll give me the time, you know, I ask -- 15 I wasn't sure if we were even going to use witnesses 16 today. I do have Mr. Overholt here. He's not here to 17 talk about the out-of-state residents; he's here to 18 speak to the rejection rate and the errors in the 19 Secretary of State's testimony in the other case. So it 20 might be something that I have to go find for you, your 21 Honor. 22 Once again, I know that's not a very 23 satisfactory answer to -- but, gee whiz. I'm -- there's 24 not 11 lawyers on my side, and I'm not getting paid \$500 25 and hour to do this. I'm working -- probably Mr. Boland	Page 33 1 It is either A) The person whose nomination in 2 an election is contested, which neither the Secretary or 3 the State Election Board are; someone who is seeking to 4 qualify for a runoff primary election. Once again, not 5 applicable to the Secretary or the State Election Board. 6 The public officer who formally declares the number of 7 votes for and against any questions submitted to 8 electors at an election. 9 Mr. Guldenschuh has not brought, on behalf of 10 Mr. Boland, any argument as to the two Constitutional 11 Amendments or the taxation question that were presented 12 to the voters of the November 3rd, 2020 election. Thus, 13 (2) (d) is not applicable to the Secretary of State or to 14 the State Election Board. And, finally, it permits a 15 claim to be brought against the election superintendent, 16 or superintendents, who conducted the contested primary 17 or election. 18 For purposes of the Georgia Election Code, the 19 term "superintendent" is defined, for the entire Chapter 20 2, as either the judge of the Probate Court, the County 21 Board of Elections, the County Board of Elections and 22 Registration, or, in the case of a joint city and county 23 government, the joint City and County Board of 24 Elections, or the joint City and County Board of 25 Elections and Registration. The Secretary and the State

Page 34 1 Election Board fit none of those definitions. 2 Therefore, Mr. Guldenschuh's complaint, on 3 behalf of Mr. Boland, cannot proceed against the State 4 Defendants beyond today. I'm going to address some of 5 the points raised by Mr. Guldenschuh as well. I think 6 your Honor has correctly pointed out that his evidence, 7 and I'm using the term loosely, in regards to the 8 out-of-state voters, is woefully inadequate for purposes 9 of continuing this matter forward, whether it's against 10 the State's Defendants or the Intervenor Defendants, 11 beyond today. 12 If regards to the Overholt signature mismatch 13 analysis and his determination based on statistics 14 between 2016, 2018, and 2020, the most critical factor 15 between those three election cycles, that lies 16 completely unaddressed in the Overholt analysis, is the 17 fact that, for the 2020 election, for the first time, 18 The General Assembly statutorily permitted voters to 19 cure both signature mismatches, as well as omitted 20 signatures for the 2020 election cycle. 21 Whereas for the 2018 and the 2016 election 22 cycle, if I forget to sign my name, if I forgot to 23 include the date of birth, if I forgot any of that 24 information or if I had arthritis in my hand that day 25 and my signature looked significantly different than it	Page 36 1 have been previewing a little bit of my argument. 2 Decertification is not an option. One, there is no 3 authority under the code for decertification of the 4 Presidential race; it's just ultra vires at this point. 5 There is absolutely no authority for the Court to come 6 in and decertify the election. Two -- 7 THE COURT: So, then, is the State's position 8 that the suit is moot, because the election results 9 have already been certified? 10 MR. WILLARD: They have been certified, and 11 the Certificate of Ascertainment has already 12 transmitted to the Archivist of the United States; 13 that is in the Archivist's hands. Or, I think, 14 actually, he has delegated that responsibility to 15 the Office of Federal Registry, and so it is their 16 hot little hands at this point. The envelope has 17 the certified vote totals for the electors for 18 Joseph Biden and Kamala Harris, the electors for 19 Donald Trump and Mike Pence, and then -- I'm sorry. 20 I'm blanking on the certified electors for the 21 Libertarian Party candidate for President and Vice 22 President. I think it was Jorgensen, and if you 23 held a gun to my head, I wouldn't be able to come 24 up with who the Vice President was right now. 25 But you've got a situation, and I'm
Page 35 1 did on my voter registration card, but I was willing to 2 go down and swear an oath in 2018 that that was my vote, 3 it wouldn't have mattered; my vote was rejected. In 4 2020, that is no longer the law in Georgia. The General 5 Assembly has said that voters can come in and cure any 6 issue regarding signature mismatch or missing signature 7 on their absentee ballots. 8 Plaintiff's also -- and they don't really 9 raise it in their argument today, but I feel it's 10 important to address it. In Paragraph 19, somehow 11 Mr. Boland conflates the early opening, permitted as 12 part of the COVID-19 pandemic and the tremendous influx 13 of absentee votes that came in, as somehow conflating 14 that with a signature mismatch, to establish that county 15 election officials were, because of this permissive 16 ability to open, but not tabulate absentee ballots 17 early, that they somehow short-circuited the signature 18 matching process. That could not be more accurate. It 19 is unsupported by any factual evidence in the record. 20 What you had is, a situation where the 21 counties, once the signature match had occurred, were 22 then permitted to go ahead and begin collating the 23 absentee ballots in an ability to then tabulate them on 24 election day, so as to speed the reporting of returns. 25 Mr. Hamilton referenced earlier that he might	Page 37 1 sympathetic to Mr. Guldenschuh as not having read Judge 2 Pryor's opinion. We sort of were scrambling on 3 Saturday; we got the opinion at 11:35 and had to 4 incorporate it our merits briefing that was due at 9 5 p.m. on Saturday night. So that caused us to have to 6 roll with the punches a little bit. 7 But he is correct in regards to his argument 8 as to why laches should not apply. It's really the 9 only, even arguably, factually-supported argument that 10 he's making, and it's woefully inadequate in terms of 11 it's factual support. But in terms of the 12 signature-check process, what he wants to do is say, 13 "Because we didn't know what the actual signatures were, 14 we couldn't have challenged the rule," and that turns 15 the laches analysis on it's head. What he is wanting 16 this Court to do, is allow him to do what the Fifth 17 Circuit criticized in Toney v. White at 488 F.2d 310. 18 It's a 1973 decision of the Fifth Circuit, which is 19 binding on the Eleventh Circuit as it's the pre-1982 20 split, or the split into the Eleventh Circuit. 21 To prevent challengers, like Mr. Boland, to 22 lay in wait and allow the election to proceed, permits, 23 if not encourages, parties who could have raised a claim 24 to lay by and gamble upon receiving a favorable decision 25 of the elected. And, then, upon losing, like they did

Page 38 1 in this instance, seek to undo the ballot results in a 2 court action. That is not anything that this court 3 should countenance. The federal courts clearly have not 4 countenanced it in either the Wood or the Pearson cases. 5 He also talks about why there's no laches as 6 to him bringing his claims on -- I believe he brought 7 his claims on November 30th. And he says, "Well, we 8 were still within our five days of the certification." 9 I think your Honor has to be cognizant of what the 10 Georgia Supreme Court has said about the time limit set 11 out in the Election Code for bringing actions related 12 elections. 13 In Jordan v. Cook, 277 Ga. 155, and it was a 14 case regarding a challenge to the qualifications of a 15 candidate for office, but its analysis applies to 16 equally, if not more importantly in a contest like this, 17 where you have a statutory 10-day right to seek an 18 appeal. And you had the appellant in that case wait and 19 file his appeal on Day 10. And what the Court said was, 20 by waiting that long and not acting earlier at a time 21 before the acts have already been done, you have lost 22 your right to contest this action judicially. 23 And, in effect, that's what you have here. 24 We're not even dealing with a situation where we have a 25 candidate for office to sit on a public-service	Page 40 1 about something about, "Well, you know, we're got 2 January; we've got when Congress actually looks at it." 3 That's incorrect, and he cites to the Ginsberg dissent 4 in Bush v. Gore. And the reason why he cites to the 5 dissent is, the majority makes clear you look to state 6 law to determine what the applicable procedures are for 7 a particular jurisdiction. 8 And, in Georgia, under 21-2-499 and 21-2 -- I 9 believe it is 12, but give me one second. And I'm 10 sorry; I've now lost my -- 21-211. Georgia has set out 11 what it's methods are for both certifying the election 12 results, preparing the Certificate of Ascertainment, and 13 having it's electors cast their ballots. Those 14 mechanisms are already either completed or are 15 irrevocably underway at this point. 16 At this point, there is no changing what slate 17 of electors is going to be meeting next week and casting 18 the 16 electoral votes for the state of Georgia. As 19 such, for the foregoing reasons, the State Defendants 20 should be dismissed from this lawsuit, this lawsuit 21 should be dismissed, and we should move forward with the 22 electoral process that was completed on November 3rd, 23 which is, at this point, it's just being certified in 24 the administrative after-work done from how the people 25 have cast their ballots.
Page 39 1 commission, or to take a judicial office in January of 2 next year. Everyone who understands this process 3 understands the Certificate of Ascertainment going to 4 the Archivist of the United States. They understand 5 that the Electoral College will be meeting and casting 6 their votes next week. 7 And by waiting until what, at that point, was 8 the -- I think the second five-day window of potential 9 opportunity to bring the lawsuit. But at a minimum, he 10 was at the end of the first period of time that he could 11 bring the lawsuit. I will contrast that with John Wood, 12 whose case I argued in front of Judge Barwick yesterday. 13 He brought his lawsuit on November 25th; Mr. Boland 14 waited until November 30th to bring his. 15 I won't even talk about the Trump campaign and 16 David Schaefer's lawsuit that they tried to file last 17 Friday, that they finally corrected to the filing error 18 sometime late in the day yesterday. That's for a 19 different argument down the road. But in terms of Mr. 20 Boland today, he has abandoned any argument he has to 21 why he should be permitted to go forward, because the 22 Governor has already sent the Certificate of 23 Ascertainment. 24 The electors are ready to meet and to vote 25 next week, pursuant to state statutory law. He's talked	Page 41 1 THE COURT: Thank you, Mr. Willard. 2 Mr. Hamilton. 3 MR. HAMILTON: I will be brief. Mr. Willard 4 ably addressed most of the issues I would have, but 5 let me make a couple points, first, on laches. The 6 argument that he didn't have a claim because he 7 didn't know that these 20,000 people would actually 8 vote, even though they were obviously on the voter 9 rolls that were available to him and every other 10 citizen in the state of Georgia or anywhere else, 11 is insufficient to defeat the laches argument. 12 It's an argument that has been raised and rejected 13 by court after court. The fact is, if he had a 14 problem with the voter registration rolls, then the 15 time to address it was long ago, and certainly long 16 before the 90-day period, preceding the election, 17 in which federal law prohibits the removal of any 18 of those names. 19 So he could have brought that claim earlier, 20 he should have brought that claim earlier, and he 21 didn't. And, therefore, laches bars his claims, as 22 numerous courts have held. And the same is true with 23 respect to the settlement agreement; maybe it's even 24 clearer. That was signed nine months ago. The 25 Secretary took steps to improve the process for voter

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Page 42 1 signature comparison at that point, and published them, 2 you know -- a published Rule. It wasn't a secret. If 3 he had a problem with that, he should have raised it at 4 that time, not laid in wait until after two elections 5 had occurred, and that's exactly the reason that this 6 argument has been rejected. 7 On the construction of the statute, you know, 8 as I pointed out, the statute doesn't allow for election 9 contests in this setting for Presidential electors. I'm 10 accused of being parsimonious in raising an 11 inconceivable argument. Unfortunately, the statute -- 12 Georgia law is really quite clear about the nature of 13 this election. O.C.G.A. 21-2-10, "At the November 14 election to be held in the year 1964, and every fourth 15 year thereafter, there shall be elected by the electors 16 of this state persons to be known as electors of 17 President and Vice President of the United States." 18 That's the election that we're dealing with 19 here. The O.C.G.A. 21-2-379.5 similarly says, "When 20 presidential electors are to be elected, the ballot 21 shall not list the individual names of of the candidates 22 for presidential electors but shall list the names of 23 each political party and body and the names of the 24 political party or body candidates for the office of 25 President and Vice President."	Page 44 1 assert that the 2020 general election rejection rate of 2 0.15 percent is the true rejection rate and that 3 improper excess rejections occurred in 2016 and 2018. 4 He offers no basis to conclude the opposite, so it's for 5 both of those reasons his, shall I say, cursory analysis 6 is insufficient. 7 Finally, he asked -- Counsel's asked 8 repeatedly for limited discovery, three to five days, 9 just wants to look at the signatures -- that's not the 10 purpose of an election contest. An election contest is 11 a very specific, narrowly-drawn statute. It's not 12 imagined to be a six-month or nine-month discovery-laden 13 civil litigation process. And that's because we have to 14 decide with finality. 15 In Minnesota, where there was a famous 16 election contest in 2008, the trial has to start within 17 21 days. In Nevada, it has to start within 5 days. And 18 the reason for those "shotgun" sort of very short time 19 frames, is to allow the Court to hear the evidence and 20 resolve it at once. A contest -- it's not supposed to 21 be easy to bring an election contest, because the law 22 presumes the state has administered the election in the 23 appropriate way. 24 And the Plaintiff in such action, The 25 Contestant, has a heavy burden because he is, or she is,
Page 43 1 So Georgia is clear. In fact, his own contest 2 petition states, in Paragraph 5, the office contested is 3 for the electors of the Presidency of the United States. 4 So I won't go through the argument again, other than 5 point out The Georgia General Assembly could make that 6 statute available for this purpose, but chose not to. 7 It's not an irrational choice, and it's not an 8 unreasonable reading of the statute. There are other 9 ways to raise issues, and they excluded it. 10 Number three, the Overholt declaration. There 11 are all sorts of things wrong with this analysis, but 12 I'll just point out a couple of them. First of all, and 13 most significantly, is my colleague, Mr. Willard, 14 already pointed out there were significant differences 15 between the 2016 and 2018 elections, on the one hand, 16 and the 2020 election on the other, that make comparing 17 one to the other simply a meaningless comparison, 18 because there were significant immaterial differences in 19 the requirements for mail ballots at this time that 20 could have, and almost certainly did, lead to 21 differential rejection rates. So that's Number 1. 22 Number 2, Mr. Overholt's comparison assumes 23 that the "true" or correct baseline for the accepted 24 rejection rate of all ballots is in 2016, but there's no 25 basis for concluding that. One could just as easily	Page 45 1 seeking to overturn a certified election that the state 2 has gone through in an extraordinary number of steps to 3 ensure that it is complete and safe and accurate. So, 4 sure, there's an opportunity to come in and contest that 5 in a court of law, but you better have strong evidence. 6 And every court in the union requires a strong showing 7 before anyone can prevail on such a claim, and that is 8 exactly what we're missing here. 9 A final word on the Safe Harbor deadline. 10 Your Honor, the Court in Bush v. Gore, the majority 11 settled this dispute and said where a state is of 12 instant intent to meet the Safe Harbor as Florida did 13 there and Georgia does here, there's a strong stated 14 interest in fully and finally resolving all outstanding 15 controversies by the Federal Safe Harbor deadline, and 16 that's exactly what we're doing -- what's happening 17 here. 18 There's a concerted effort through -- to try 19 to take a vintage of this Court's docket to somehow cast 20 ambiguity and uncertainty. And to be very clear, 21 nothing about these contests that, even those that may 22 outlast today, will cast doubt on whether Georgia has 23 met the Safe Harbor deadline. But to make sure that we 24 remove any ambiguity, any uncertainty, we ask the Court 25 to enter a final judgment and dismiss this election

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Page 46 1 contest today. Thank you, your Honor. 2 THE COURT: All right. Thank you, 3 Mr. Hamilton. 4 MR. GULDENSCHUH: Your Honor, I do have the 5 response, if it's appropriate. 6 THE COURT: You can respond briefly, yes. 7 MR. GULDENSCHUH: Your Honor, as far as the 8 grounds for keeping the state officials in, I 9 believe, if you will look at Sections A and D of 10 the Statute; they are applicable in this situation. 11 But even if they're not, we have the -- we now have 12 the Intervenor Defendants, who are the actual 13 electors, who I think the State can see are proper 14 parties. So that would be first thing that I say 15 to that. 16 You know, on the laches argument, your Honor 17 -- first of all, we filed this case on the fourth day; 18 not the fifth. It was the first window; not the second. 19 And we filed it during the middle of the Thanksgiving 20 holiday. I just don't know how much of a burden you 21 want to put on a citizen to try to bring a case in a 22 timely fashion. We filed it within the timeframe called 23 for by the Statute; not the last day, but the fourth 24 day, during a holiday weekend. I don't think that meets 25 the issue there.	Page 47 1 THE COURT: Was that with the first 2 certification on November 20th? 3 MR. GULDENSCHUH: That's right, and I think 4 that's a Friday, and there's five business days -- 5 THE COURT: Does the statute say business 6 days? 7 MR. GULDENSCHUH: Yeah, I think there is law 8 to justify that, your Honor. I can't cite it to 9 you off the top of my head, but we looked at the 10 issue, and that's what we asked -- what I was told 11 by people who have more knowledge than me about the 12 elections statute. Again, as far as who, you 13 know -- whether the Georgia statute allows for a 14 contest of a Presidential election, we don't 15 dispute that the election is, in fact, an election 16 for a slate of electors. The question is, did the 17 Georgia legislature intend to exclude Presidential 18 elections from the statute? 19 And, you know, I'll go to my grave and I'll 20 never believe that. Mr. Overholt is available to 21 testify. Counsel can take their best shots at him at 22 trying to show that his analysis is inappropriate. But 23 in this case -- I mean, so we'll put him on, if that's 24 what you want. The fact of the matter is, again, we've 25 got a Department of Justice statistician and he is	Page 48 1 saying that the problems exist not only in comparing 2 2016 and '18 to 2020, but they exist within 2020 itself. 3 And so, you know, the bottom line at this 4 point is, can we state a claim for relief, and in this 5 case, they've not refuted, at all, his testimony that 6 the Secretary of State's analysis was wrong; they've not 7 tried to. And, in fact, it's one affidavit here by one 8 expert and another here. That's hardly meaningless 9 testimony at this point. 10 I'm going to close with this, your Honor. I 11 want to go back to something Mr. Hamilton said, and this 12 is ultimately the bottom line. It takes a courageous 13 judge to take a case like this, and we had such a 14 limited amount of time to do what we can do. If you 15 follow all the rules that these wonderful lawyers are 16 putting forth, there's very rarely going to be a case 17 that somebody can make that kind of -- have the 18 strong -- I mean, they want us to present strong 19 evidence, but they don't want to give us access to it. 20 And it takes a courageous judge to even 21 continue these cases. What most judges do, they just 22 dismiss them on some ground. But it comes back to this, 23 what Mr. Hamilton said. He said this is about balance, 24 not briefs, and this is what this whole case is about. 25 We have 2.4 million voters in Georgia who believe that	Page 49 1 their ballots were not properly legitimate in this case 2 because of some issues that occurred that resulted in a 3 flip of the election. 4 We're not asking you to do anything other than 5 give us very, very limited opportunity to examine the 6 issue so that we can give you strong evidence, if it 7 exists. And if it doesn't, you know, the Secretary of 8 State should be thanking us to not trying to find a way 9 out of this thing, because it would at least validate 10 for many Georgia voters that this issue of the 11 signatures, which the governor has called for and 12 numerous other people have called for an analysis of, 13 and because the Secretary of State has just flat out 14 refused to do. 15 And the Governor has sent us to you to ask you 16 for this very limited relief. It's not a lot; all it 17 requires is -- again, if you find that we have standing, 18 which I think we do, and you find that we've stated 19 claim, then let us have this limited discovery, and 20 we'll see where we end up down the road. 21 You know -- again, they talk about the Safe 22 Harbor. The Safe Harbor only applies if the election is 23 not in contest, and this election very clearly is. So, 24 your Honor, I go back to -- yeah, let's make this 25 election about balance; not lawyers briefs. And I hope
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Page 50 1 you'll give me all the indulgence you possibly can. 2 I understand somebody who's watching has 3 forwarded to my e-mail The Brainard Report if you would 4 like me to also provide it to you for this election. 5 But I want to, again, point out that Mr. Overholt is 6 available to testify if Counsel wanted to take their 7 best shot at him. 8 Thank you, your Honor. 9 THE COURT: All right. Thank you, 10 Mr. Guldenschuh. 11 All right. Thank you all for all of your 12 arguments and quick responses in this case. While I 13 understand Mr. Guldenschuh making the argument that the 14 Safe Harbor deadline does not apply, my reading of 15 federal law is that it does. And, so, we were in a bit 16 of a deadline issue due to O.C.G.A. 9-10-2. 17 But because the Secretary of State waived 18 their deadline requirements that appear today, I'm able 19 to make a ruling on this case today, and that is what I 20 intend to do. I will issue a written ruling as well, 21 but I will go ahead and orally announce that the Court 22 is going to grant the motion to dismiss on behalf of the 23 Secretary of State and the named members of the Georgia 24 State Board of Elections, as well as the motion to 25 dismiss on behalf of the Intervenor, the Defendant	Page 52 1 a written ruling before the end of the day. 2 Mr. Hamilton or Mr. Willard, I know it's 3 getting late. Do either of you already have a proposed 4 order? 5 MR. HAMILTON: We'd be happy to provide you 6 with one, your Honor. 7 THE COURT: Okay. That's fine. I'm happy to 8 make modifications also drafting one myself as well 9 because I know we're getting close to the deadline. 10 So I appreciate your arguments. Mr. Guldenschuh, I 11 understand you're working with limited resources, 12 and so I do understand. But based on the Court's 13 reading of the law and Georgia statutes, I'm 14 granting motions to dismiss. 15 MR. GULDENSCHUH: I hate to hear that, your 16 Honor, but I certainly understand. 17 THE COURT: I know. I understand. 18 All right. Well, thank you all very much. I 19 appreciate everyone's time. 20 (Hearing concluded at 3:30 p.m.) 21 22 23 24 25
Page 51 1 Intervenor. 2 I'm granting the motion to dismiss for the 3 Secretary of State and the named electors based on 4 O.C.G.A. 21-2-520 for the Plaintiff's failure to the 5 name the proper defendants in this case. Additionally, 6 with regard to all defendants in this case I am granting 7 the motion to dismiss, because this claim is barred by 8 the doctrine of laches that the Plaintiff lacks 9 standing, specifically Plaintiff Mr. Boland, lacks 10 standing as simply a voter under Georgia law. 11 The failure to state a claim and the fact that 12 this lawsuit is now moot because the election results 13 have been certified and forwarded on to the federal 14 government. With regard to the outstanding motion by 15 Mr. Still to intervene as a Plaintiff in this case, the 16 Court is going to decline to permit him to intervene, 17 because, as I've stated, there isn't a basis for this 18 suit based on what what's before me. I see the motion 19 to intervene as simply a way of trying to assert 20 standing, because Mr. Boland does not have standing 21 under federal -- or excuse me, Georgia law. 22 But at this point, because there is no case 23 regardless, I'm not going to permit the intervention 24 motion that was filed yesterday to be considered in this 25 case. So that is the ruling of The Court. I will issue	Page 53 1 DISCLOSURE 2 STATE OF GEORGIA 3 COUNTY OF FULTON 4 Pursuant to Article 10.B of the rules and 5 regulations of the Board of Court Reporting of the 6 Judicial Council of Georgia, I make the following 7 disclosure: 8 I am a Georgia Certified Court Reporter. I am 9 here as an independent contractor for Huseby, Inc. 10 Huseby, Inc. was contacted by Krevolin & Horst, LLC 11 to provide court reporting services for this deposition. 12 Huseby, Inc. will not be taking this deposition under 13 any contract that is prohibited by O.C.G.A. 15-14-37(a) 14 and (b). Huseby, Inc. has no contract/agreement to 15 provide court reporting services with any party to 16 the case, any counsel in the case, or any reporter or 17 reporting agency from whom a referral might have been 18 made to cover this deposition. 19 20 21 22 (Continued on following page.) 23 24 25

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1	Huseby, Inc. will charge its	Page 54
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1	C E R T I F I C A T E	Page 55
2	STATE OF GEORGIA	
	COUNTY OF FULTON	
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4	I hereby certify that the foregoing transcript	
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6	caption; the colloquies, statements, questions, and	
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14	counsel, nor am I financially interested in the action.	
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16	This, the 12th day of December 2020.	
17		
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20	ANGELA A. SANDERS	
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

v.

Civ. Act. No. 2020CV343018

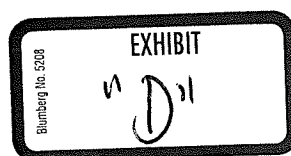
Brad Raffensperger, in his official capacity as
Secretary of State of the State of Georgia, Rebecca
N. Sullivan, in her official capacity as Vice Chair of
the Georgia State Election Board, David J. Worley,
in his official capacity as a Member of the Georgia
State Election Board, Matthew Mashburn, in his
official capacity as a Member of the Georgia State
Election Board, and Ahn Le, in her official capacity
as a Member of the Georgia State Election Board,

Defendants.

Motion to Intervene as Defendants

Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. “Sachin” Varghese, Nikema Williams, and Cathy Woolard (collectively, the “Biden Electors”) seek to participate as intervening defendants to defend their interests in protecting their established victory, the rights of Georgia voters who cast ballots in the November 3, 2020 general election, and the integrity of the election process.

For the reasons discussed in the memorandum in support, filed concurrently herewith as Exhibit A, the Biden Electors are entitled to intervene in this case as a matter of right under O.C.G.A. § 9-11-24(a). In the alternative, the Biden Electors request permissive intervention pursuant to O.C.G.A. § 9-11-24(b). In accordance with O.C.G.A. § 9-11-24(c), the Biden Electors’ Proposed Answer to the Petition is attached as Exhibit B. The Biden Electors also submit a Proposed Order granting their Motion to Intervene attached as Exhibit C. The Biden Electors also



submit their Proposed Motion to Dismiss Contestant's Petition, attached as Exhibit D, with a supporting memorandum of law, attached as Exhibit E.

WHEREFORE, the Biden Electors respectfully request that the Court grant them leave to intervene in the above-captioned matter.

Dated: December 3, 2020

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**Pro Hac Vice Application Forthcoming*

EXHIBIT

A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

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 Ahn Le, in her official capacity
as a Member of the Georgia State Election Board,

Defendants.

Civ. Act. No. 2020CV343018

Memorandum in Support of Motion to Intervene

I. INTRODUCTION

Pursuant to O.C.G.A. §§ 9-11-24, 21-2-520, and 21-2-524, Proposed Intervenor Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. “Sachin” Varghese, Nikema Williams, and Cathy Woolard, move to intervene as Defendants in this action. Each of the proposed Intervenor-Defendants are among the slate of sixteen presidential electors nominated by the Democratic Party and certified by Governor Brian Kemp (the “Governor”) after Secretary of State Brad Raffensperger (the “Secretary”) certified the election results to formally declare President-Elect Joseph R. Biden, Jr. the winner of Georgia’s presidential race (collectively the “Biden Electors”). They are now empowered to and intend to cast Georgia’s electoral college votes for President-Elect Biden.

President-Elect Biden won the popular vote in Georgia. The initial reported results were subsequently confirmed by a hand recount of every one of the nearly five million ballots cast in the presidential race. On November 20, the Secretary certified the results of the election. That same day, the Governor certified the slate of Democratic electors, officially appointing the Biden Electors to the Electoral College. Ten days later, Contestant Paul Andrew Boland, an individual voter, filed this extraordinary petition to “contest[] the election results.” Pet. at ¶ 1.

Through this action, Mr. Boland attempts to unilaterally reverse the will of the millions of voters who chose President-Elect Biden as the winner of the presidential race in Georgia. Mr. Boland requests that the Court issue an order decertifying the results of the election and requiring that Defendants conduct an audit to Boland’s personal specifications and satisfaction. *See* Pet. at 9. If the results of his requested audit are not to his satisfaction, Mr. Boland asks the Court to order “a new election.” *Id.* at ¶ 3. This is extraordinary and rightfully unprecedented relief. And Mr. Boland seeks it based on a Petition riddled with fatal procedural flaws that is without foundation in law or fact.

The Biden Electors—who are the proper defendants if this contest moves forward—should be permitted to intervene to protect their own interests, the interests of the candidate they are pledged to support, and the interests of the millions of Georgians who voted for President-Elect Biden.

II. STATEMENT OF FACTS

On November 3, 2020, Georgia’s voters chose former Vice President, and now President-Elect, Biden to be the next President of the United States of America. Georgia’s certified vote

count confirmed that President-Elect Biden defeated Donald J. Trump by 12,670 votes.¹ The Secretary and Governor certified the results, and consequently the Biden Electors were appointed to the Electoral College. *See* O.C.G.A. § 21-2-10 (“At the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as electors of President and Vice President of the United States”); *see also* O.C.G.A. § 21-2-379.5(e) (“When presidential electors are to be elected, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President.”); O.C.G.A. § 21-2-285(e) (same).

On November 11, the Secretary announced that a statewide hand recount of the presidential election would take place.² It began on November 12 and concluded without issue on November 18. No significant irregularities in the original counts or the recount were reported. On November 20, the Secretary confirmed Biden’s victory and certified that the “consolidated returns for state and federal offices are a true and correct tabulation of the certified returns received by this office from each county.”³ The Governor then certified President-Elect Biden’s slate of sixteen electors.⁴

¹ Kate Brumback, *Georgia officials certify election results showing Biden win*, AP (Nov. 20, 2020), <https://apnews.com/article/georgia-certify-election-joe-biden-ea8f867d740f3d7d42d0a55c1aef9e69>.

² Tal Axelrod, *Georgia secretary of state announces hand recount of presidential race*, The Hill (Nov. 11, 2020), <https://thehill.com/homenews/campaign/525476-georgia-secretary-of-state-announces-hand-recount>.

³ Michelle Ye Hee Lee, *Georgia certifies election results — the first to do so among states where Trump is mounting legal challenges*, Wash. Post (Nov. 20, 2020), https://www.washingtonpost.com/politics/georgia-certifies-election-results--the-first-to-do-so-among-states-where-trump-is-mounting-legal-challenges/2020/11/20/66c77530-2b4b-11eb-9b14-ad872157ebc9_story.html.

⁴ Kate Brumback, *Georgia officials certify election results showing Biden win*, AP (Nov. 20, 2020), <https://apnews.com/article/georgia-certify-election-joe-biden-ea8f867d740f3d7d42d0a55c1aef9e69>.

The next day—despite a comprehensive hand recount of every single ballot having just occurred—President Trump’s reelection campaign sought a *third* count of Georgia’s votes. This second recount will be conducted by machine.⁵ It must be completed by December 2.⁶

Mr. Boland, an individual voter, filed this action on November 30. He asks this Court to decertify Georgia’s election results, order an audit of the results, and, if he is not satisfied with the results of the audit, order a new election. *See* Pet. at ¶ 3. In support of these sweeping and unprecedented requests, Mr. Boland points to an online video by a former Trump staffer that makes wild and conspiratorial accusations of widespread fraud and complains that not enough votes were rejected. Neither claim is supported by evidence. Mr. Boland conjures illusions of widespread fraud that he contends effectively undermined his ability to elect his preferred candidate, while, ironically, ignoring that his sought-after remedy would effectively negate the power of the votes cast by millions of his fellow voters. In short, Mr. Boland is dissatisfied that President Trump did not win and asks this Court to decertify all of Georgia’s results based on nothing more than pure speculation.

Despite widespread acknowledgement that no fraud occurred, various similar lawsuits have been filed around the country and in Georgia in an attempt to sow confusion and cast doubt on the legitimacy of the election.⁷ Indeed, a lawsuit alleging similar improprieties was filed more

⁵ *Trump team requests recount of Georgia’s presidential race*, AP, (Nov. 21, 2020), <https://apnews.com/article/election-2020-joe-biden-donald-trump-georgia-elections-7bba105439653d530ee8023d54d7ec89>.

⁶ Kate Brumback, *Georgia counties set to start recount requested by Trump*, AP (Nov. 23, 2020), <https://apnews.com/article/election-2020-joe-biden-donald-trump-georgia-state-elections-352e729f14a243b98fdefda94ff164ce>.

⁷ *See, e.g.*, Nick Corasaniti, et al., *The Times Called Officials in Every State: No Evidence of Voter Fraud*, N.Y. Times (Nov. 10, 2020), <https://www.nytimes.com/2020/11/10/us/politics/voting-fraud.html>; *Secretary Raffensperger announces completion of voting machine audit using forensic techniques: no sign of foul play*, Ga. Sec’y of State,

than two weeks ago in the U.S. District Court for the Northern District of Georgia. After considering the parties' briefing and argument in a comprehensive two-hour argument, the court denied plaintiff's motion for a temporary restraining order. *See* Opinion and Order, *Wood v. Raffensperger*, No. 20-cv-04651, 2020 WL 6817513 at *12 (N.D. Ga. Nov. 20, 2020) (denying plaintiff's claim for emergency injunctive relief in part because plaintiff "cannot show a likelihood of success on the merits"). That plaintiff also sought to prevent the certification of the Biden Electors' victory, which the Court called an "extraordinary remedy . . . [that] would breed confusion, undermine the public's trust in the election, and potentially disenfranchise of over one million Georgia voters." *Id.* That court explained that "interfer[ing] with the result of an election that has already concluded would be unprecedented and harm the public in countless ways." *Id.*

III. ARGUMENT

Georgia courts permit winning candidates to intervene in election contests challenging their victory. *See, e.g., Williams v. Heard*, 302 Ga. 114, 115 (2017) ("[T]he court allowed [the winning candidate] to intervene in the contest action."). The Biden Electors have an undeniable interest in this lawsuit, which seeks to declare their victory null and void. Not only is Mr. Boland's request wholly unwarranted (not least of all because it comes upon the heels of the state's thorough hand recount of all ballots and near the tail end of a *second* recount), but the Biden Electors have particular interests in showing that the allegations in this action are utterly specious and cannot justify the extraordinary relief that Mr. Boland seeks.

https://sos.ga.gov/index.php/elections/secretary_raffensperger_announces_completion_of_voting_machine_audit_using_forensic_techniques_no_sign_of_foul_play (Nov. 17, 2020); *Joint statement from elections infrastructure government coordinating council & the election infrastructure sector coordinating executive committees*, Cybersecurity & Infrastructure Sec. Agency, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election> (Nov. 12, 2020) ("There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.").

A. The Biden Electors have a statutory right to intervene.

Georgia law permits intervention as a matter of right “[w]hen a statute confers an unconditional right to intervene” O.C.G.A. § 9-11-24(a)(1). Here, the election contest statutes provide the statutory basis for intervention. They clearly state that, in an election contest, the “defendant” means “[t]he person whose . . . election is contested.” O.C.G.A. § 21-2-520(2)(A). The statutes also require the contestant allege “[t]he name of the defendant” and “[t]he name of each person who was a candidate at such . . . election for such . . . office,” each of whom is served by the court clerk. O.C.G.A. § 21-2-524(a)(3)(4), (f). Those defendants and candidates “shall be deemed [] litigant[s] to such proceeding and may set up by way of answer or cross action any right of interest or claim he or she may have.” O.C.G.A. § 21-2-524(f).

Presidential candidates are not elected by the voters of Georgia; rather, Georgia’s electorate selects presidential electors who then vote for presidential candidates on behalf of the state at the Electoral College. Georgia’s Election Code states, “[a]t the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as *electors of President and Vice President* of the United States” O.C.G.A. § 21-2-10 (emphasis added). “When *presidential electors are to be elected*, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President.” O.C.G.A. § 21-2-379.5(e) (emphasis added); *see* O.C.G.A. § 21-2-285(e). The Georgia Supreme Court has confirmed that presidential elections in Georgia are actually “election[s] for presidential electors.” *Rose v. State*, 107 Ga. 697 (1899); *Franklin v. Harper*, 205 Ga. 779, 785 (1949) (describing an “election . . . for presidential electors”); *Moore v. Smith*, 140 Ga. 854 (1913) (same). The U.S. Supreme Court reiterated this understanding in a decision issued earlier this year. *See Chiafalo v. Washington*, 140 S. Ct. 2316, 2319 (2020) (“Every four years,

millions of Americans cast a ballot for a presidential candidate. Their votes, though, actually go toward selecting members of the Electoral College, whom each State appoints based on the popular returns. Those few ‘electors’ then choose the President.”). The Biden Electors are therefore proper “defendants” as “[t]he person[s] whose nomination or election is contested.” O.C.G.A. § 21-2-520(2)(A).

If this contest is to proceed, the Court should permit the Biden Electors to exercise their statutory right to appear before the Court. Granting the Biden Electors’ intervention motion per their statutory right is necessary to the fairness and validity of this contest.

B. The Biden Electors are otherwise entitled to intervene as a matter of right under O.C.G.A. § 9-11-24(a)(2).⁸

Even absent their statutory right to intervene, the Biden Electors easily meet Georgia’s traditional test for motions to intervene as of right. O.C.G.A. § 9-11-24(a)(2) provides that after timely application “anyone *shall* be permitted to intervene” in an action “[w]hen the applicant claims an interest relating to” the subject matter of the action and the applicant “is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”⁹ O.C.G.A. §

⁸ The Georgia Supreme Court has clarified that “[t]he [Civil Practice Act (CPA)] ‘shall apply to all special statutory proceedings except to the extent that specific rules of practice and procedure in conflict [with it] are expressly prescribed by law.’” *Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193, 210 (2019) (quoting O.C.G.A. § 9-11-81). Thus, it follows that “the CPA provides background [procedural] rules in election contests—which are civil actions—except to the extent the Election Code sets forth ‘specific rules of practice and procedure’ that conflict with the CPA.” *Id.* The Election Code does not provide intervention rules that conflict with the CPA’s intervention provisions; rather, it only grants certain statutory rights to intervene that are *already contemplated* by O.C.G.A. § 9-11-24. *See, e.g.*, O.C.G.A. §§ 21-2-32(a); § 21-2-524(f).

⁹ “[W]hether a motion to intervene is timely is a decision entrusted to the sound discretion of the trial court.” *Kroger v. Taylor*, 320 Ga. App. 298, 298 (2013) (quoting *Payne v. Dundee Mills, Inc.*, 235 Ga. App. 514, 515(1) (1998)). “But where intervention appears before final judgment, where the rights of the intervening parties have not been protected, and where the denial of intervention

9-11-24(a)(2) (emphasis added). Georgia courts have described this as a three-part inquiry, consisting of “[1] interest, [2] impairment resulting from an unfavorable disposition, and [3] inadequate representation.” See *Baker v. Lankford*, 306 Ga. App. 327, 329 (2010). The Biden Electors satisfy each prong.

First, the Biden Electors clearly have a direct interest in defending the certification of their own electoral victory from frivolous attacks. Under Georgia law, “the interest of the intervenor must be of such a direct and immediate character that he will either gain or lose by the direct effect of the judgment, and must be created by the claim in suit.” *State Farm Mut. Auto. Ins. Co. v. Jiles*, 115 Ga. App. 193, 195 (1967). There is no question that the Biden Electors will “gain or lose by the direct effect of [a] judgment” in this suit that seeks to prevent their appointment to the Electoral College in direct contravention of the decision of Georgia’s electorate. See *id.* The Biden Electors also have a direct interest in defending and supporting the will of the 2,474,507 Georgia voters who supported their election. See, e.g., *Bay Cnty. Democratic Party v. Land*, 347 F. Supp. 2d 404, 422 (E.D. Mich. 2004) (“[P]olitical parties and candidates have standing to represent the rights of voters”); *Penn. Psychiatric Soc’y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 288 n.10 (3d Cir. 2002) (“[C]andidates for public office may be able to assert the rights of voters”); *Walgren v. Bd. of Selectmen of Amherst*, 519 F.2d 1364, 1365 n.1 (1st Cir. 1975) (same).¹⁰

would dispose of the intervening parties’ cause of action, intervention should be allowed and the failure to do so amounts to an abuse of discretion.” *Id.* This request for intervention was filed only five days after Mr. Boland filed his petition, the same day he filed his supporting exhibits, and before any hearing in this contest. Accordingly, it is timely.

¹⁰ Georgia courts regularly apply principles from federal caselaw to the scope of a party’s interest in litigation, for example, to determine whether a party’s injury is sufficient to confer standing to litigate a case. See *Feminist Women’s Health Ctr. v. Burgess*, 282 Ga. 433, 434 (2007) (collecting Georgia cases that look to federal law to resolve issues of standing); *Aldridge v. Ga. Hosp. & Travel Ass’n*, 251 Ga. 234, 235 (1983) (reviewing federal precedent to determine “associational standing”). Though the interest required for intervention is less than that required for standing, this Court should still look to instructive federal case law.

Second, there is no question that this action threatens to impair the Biden Electors' interests. Mr. Boland asks the Court to rescind certification of an election that has *already been certified* as a victory for the Biden Electors. He also asks the Court to order an additional auditing process after the votes have been counted three times and duly certified by the Governor and the Secretary. If his requested audit does not meet with his approval—presumably the overturning of the election and the crowning of his preferred candidate as winner—Mr. Boland asks this court to order a new election. Such measures would only delay and obstruct the finality of this election, which the Biden Electors won. Put simply, the Biden Electors have been elected by the voters of Georgia to cast Georgia's sixteen electoral votes for President-Elect Biden. The Court should not permit Mr. Boland, a single voter disappointed in that outcome, to use the state judiciary as a prop in his efforts to subvert the democratic process by disenfranchising the millions of Georgians who preferred a different candidate.

Finally, the Biden Electors' interests cannot adequately be represented by the State Defendants, who are not proper defendants in this suit to begin with. *See Martin*, 307 Ga. at 193 n.1 (noting the trial court's dismissal of Georgia Secretary of State as a defendant in an election contest); *see also* Br. of Amicus Curiae Sec'y of State, *Coal. of Good Governance v. Fulton Cnty. Bd. of Registration & Elections*, No. S19A0769, 2019 WL 2010128, at *1 n.1 (Ga. May 2, 2019), *Martin*, 307 Ga. 193 (noting "the superior court's dismissal of the Secretary as an improper party to [an] election contest petition"). To the extent they remain parties to the lawsuit, their stake in this lawsuit is defined solely by their statutory duties to implement the electoral process. The Secretary of State, as the chief elections officer, is responsible for the general administration of the state laws affecting voting. *See* O.C.G.A. §§ 21-2-50, 21-2-384. Because the State is not institutionally designed to be an advocate for electing the President-Elect or protecting individual

voters' rights, it cannot adequately represent the interests of the Biden Electors, whose mission is just that.

C. In the alternative, the Biden Electors request the Court grant them permission to intervene under O.C.G.A. § 9-11-24(b).

If the Court does not grant intervention as a matter of right, the Biden Electors respectfully request that the Court exercise its discretion to allow them to intervene under O.C.G.A. § 9-11-24(b). Permissive intervention is appropriate “[w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” O.C.G.A. § 9-11-24(b)(2). “In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*

The Biden Electors easily meet the requirements for permissive intervention. *First*, the Biden Electors and the State will inevitably raise common questions of law and fact in defending this lawsuit and the elections process. *Second*, given the early stage of this litigation, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. To the contrary, the Biden Electors are prepared to proceed in accordance with any schedule the Court establishes and have an interest in moving as expeditiously as possible. Their intervention will only serve to contribute to the full development of the factual and legal issues before the Court.

IV. CONCLUSION

For the reasons stated above, the Biden Electors respectfully request that the Court grant their motion to intervene as a matter of right under O.C.G.A. § 9-11-24(a) or, in the alternative, permit them to intervene under O.C.G.A. § 9-11-24(b).

Dated: December 3, 2020

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**Pro Hac Vice Application Forthcoming*

EXHIBIT

B

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

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 Ahn Le, in her official capacity
as a Member of the Georgia State Election Board,

Defendants.

Civ. Act. No. 2020CV343018

**Proposed Intervenor-Defendants' Proposed Answer to Contestant's Verified
Complaint**

Proposed Intervenor-Defendants, Proposed Intervenors Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. "Sachin" Varghese, Nikema Williams, and Cathy Woolard ("Intervenors") by and through their attorneys, answer the Verified Complaint (hereafter, "Complaint" or "Contestant's Petition") as set forth below. Unless expressly admitted, each allegation in the petition is denied, and the Intervenors demand strict proof thereof.

NATURE OF THE ACTION

1. The Intervenors admit that the Contestant contests the election results on the grounds set forth in Paragraph 1 of Contestant's Petition. The Intervenors deny the substance of the grounds set forth in Paragraph 1 and each other or different allegation.

2. The Intervenors deny that Contestant is entitled to any relief.

3. The Intervenors deny that Contestant is entitled to any relief.

PARTIES, JURISDICTION, AND VENUE

4. The Intervenors deny that Contestant is an aggrieved voter qualified to contest the election. The Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4 and, on that basis, deny the same.

5. The Intervenors deny that the Court has jurisdiction pursuant to O.C.G.A. § 21-2-524, including because this contest is not timely. The remaining allegations contain characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

6. The Intervenors admit that Brad Raffensperger is the Secretary of State of Georgia with certain responsibilities as described by law. To the extent Contestant's characterization and interpretation of Defendant Raffensperger's responsibilities differs from the text of the provisions setting forth his responsibilities, the Intervenors deny the allegations. The Intervenors admit that the Secretary of State certified the results for the Presidential electors on November 20, 2020 and that a recount was ongoing at the time Contestant filed his petition. The recount concluded on December 2.

7. The allegations in Paragraph 7 contain characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

COUNT I: OUT OF STATE VOTERS

1. Denied.

2. In response to the allegations explaining the process used to analyze data in the video cited in the footnote to Paragraph 2, the Intervenor state that the video speaks for itself. The Intervenor deny each other or different allegation.

3. The allegations in Paragraph 3 contain characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

4. The Intervenor admit that the quoted language in the first sentence of Paragraph 4 is from O.C.G.A. § 21-2-210. The Intervenor deny that the quoted language in the remainder of Paragraph 4 is from 42 U.S.C. § 1973gg-6(a)(4) and affirmatively state that this language is from 42 U.S.C. § 20507. The remaining allegations contain characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

5. Denied.

COUNT 2: LACK OF SIGNATURE VERIFICATION

6. The Intervenor admit that Georgia law requires absentee ballot voters to sign an oath and requires that their signature match the one on file. The Intervenor lack knowledge and information sufficient to form a belief as to the truth of sentence two of Paragraph 6 and, on that basis, deny the same. Intervenor deny the remaining allegations.

7. To the extent the Contestant relies on information from the cited article in Paragraph 7, the document speaks for itself. The Intervenor deny any other or different allegation in Paragraph 7 under Count 2.

8. The Intervenors lack knowledge and information sufficient to form a belief about the truth of the substance of the cited data or any other or different allegation in Paragraph 8 and, on that basis, deny the same.

9. The Intervenors admit that Joseph R. Biden, Jr. won the presidential election in Georgia by thousands of votes. The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9 and, on that basis, deny the same.

10. To the extent that the Contestant relies on information in the cited press release in Paragraph 10, the document speaks for itself. The Intervenors deny any other or different allegation in Paragraph 10.

11. The Intervenors lack knowledge and information sufficient to form a belief about the substance of the cited information in Paragraph 11 and, on that basis, deny the same.

12. The Intervenors lack knowledge and information sufficient to form a belief about the substance of the cited information in Paragraph 12 and, on that basis, deny the same.

13. Admitted.

14. Denied.

15. Denied.

16. Paragraph 16 contains legal contentions, characterizations, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

17. The Intervenors admit that O.C.G.A. §§ 21-2-386(a)(1)(B), 21-2-380.1 address absentee ballots. The Intervenors admit that the Democratic Party of Georgia, Inc., the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee and Brad Raffensperger, Rebecca N. Sullivan, David J. Worley, Seth Harp, and

Anh Le entered into Compromise Settlement Agreement on March 6, 2020. That Agreement speaks for itself. The Intervenor deny each other or different allegation.

18. Paragraph 18 contains legal contentions, characterizations, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

19. Denied.

20. Denied.

PRAYER FOR RELIEF

21. The Intervenor deny that Contestant is entitled to any of the requested relief set forth in the Prayer for Relief section of Contestant's petition.

AFFIRMATIVE DEFENSES

The Intervenor assert the following affirmative defenses without accepting any burdens regarding them:

FIRST AFFIRMATIVE DEFENSE

The Contestant's claims are barred in whole or in part because this Court lacks jurisdiction to adjudicate Contestant's claims.

SECOND AFFIRMATIVE DEFENSE

Contestant lacks standing to assert his claims.

THIRD AFFIRMATIVE DEFENSE

Contestant's Petition fails, in whole or in part, to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Contestant's claims are barred by the doctrine of laches.

The Intervenor 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 Contestant's Petition, the Political Party Committees request that the Court:

1. Deny Contestant is entitled to any relief;
2. Dismiss Contestant's Petition with prejudice;
3. Award the Political Party Committees their costs and attorneys' fees incurred in defending against Contestant'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.

[signature block on following page]

Dated: December 3, 2020

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Counsel for Proposed Intervenor-Defendants

**Pro Hac Vice Application Forthcoming*

VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Cathy Woolard and who on oath, does depose and say that she has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from her own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

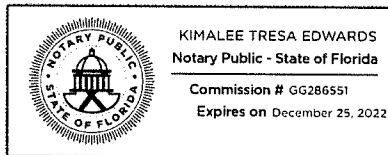
Catheren Martha Woolard

State of Florida
County of Broward

By: Cathy Woolard

Sworn to and subscribed before me
This 3rd day of December 2020.
by Catheren Martha Woolard

Kimalee Tresa Edwards
Notary Public Kimalee Tresa Edwards
Commission expires 12-25-2022



Notarized online using audio-video communication

VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Robert Trammell Jr. and who on oath, does depose and say that he has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

Robert Trammell Jr.

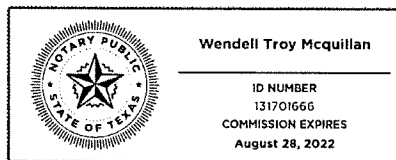
By: Robert Trammell Jr.

STATE OF TEXAS, COUNTY OF TARRANT

Sworn to and subscribed before me
This 3rd day of December 2020.

Wendell Troy McQuillan

Notary Public



Notarized online using audio-video communication

VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Ben Myers and who on oath, does depose and say that he has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

Ben E Myers

By: Ben Myers

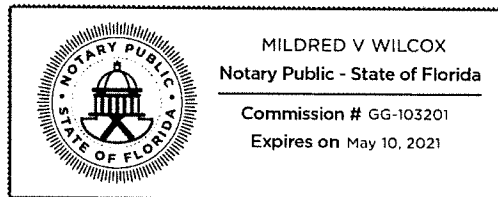
State of Florida, County of Duval
Sworn to and subscribed before me
This 3rd day of December 2020.

by Ben Myers, signer produced Georgia Driver License

Mildred V. Wilcox

Notary Public Mildred V Wilcox

Notarized online using audio-video communication



VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Stephen Henson and who on oath, does depose and say that he has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

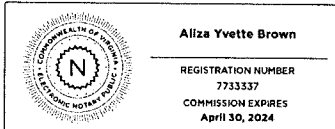
Stephen Bradley Henson

By: Stephen Henson

Sworn to and subscribed before me
This 3rd day of December 2020.

Aliza Yvette Brown

Notary Public



Virginia
Fairfax
Aliza Yvette Brown
04/30/2024
7733337

Notarized online using audio-video communication

VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Gloria Butler and who on oath, does depose and say that she has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from her own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

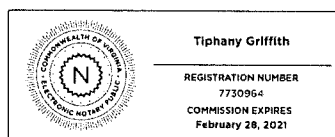
Gloria A Butler

By: Gloria Butler

State of Virginia
Hampton County
Sworn to and subscribed before me
This 3rd day of December 2020.

Tiffany Griffith

Notary Public
Electronic Notary Public



Notarized online using audio-video communication

EXHIBIT

C

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PAUL ANDREW BOLAND,

Contestant,

v.

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

Defendants.

Civil Action No. 2020CV343018

[Proposed] Order Granting Motion to Intervene

Presently before the Court is the Motion to Intervene by Proposed Intervenor-Defendants. The Court having considered the Motion, the Memorandum of Law in support thereof, and any opposition thereto, it is hereby ORDERED that the Motion is GRANTED.

It is further ORDERED that the proposed pleadings to the Motion to Intervene shall constitute the initial pleadings of the Proposed Intervenor-Defendants and shall be deemed to have been filed this date.

IT IS SO ORDERED, this ___ day of December, 2020.

The Hon. Emily Richardson
Judge, Fulton County Superior Court

Prepared by:

/s/ Adam M. Sparks

Halsey G. Knapp, Jr.

Georgia Bar No. 425320

Joyce Gist Lewis

Georgia Bar No. 296261

Susan P. Coppedge

Georgia Bar No. 187251

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Counsel for Proposed Intervenor-Defendants

EXHIBIT

D

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

v.

Civ. Act. No. 2020CV343018

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 Ahn Le, in her official capacity
as a Member of the Georgia State Election Board,

Defendants.

Proposed Motion To Dismiss Verified Complaint

Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. “Sachin” Varghese, Nikema Williams, and Cathy Woolard (collectively, the “Biden Electors”) move to dismiss Paul Boland’s Verified Complaint.

For the reasons discussed in the memorandum in support filed concurrently herewith, the Biden Electors move to dismiss the Complaint, which sounds in the nature of a petition for election contest, because it is barred by the doctrine of laches, is prohibited under Georgia law, and fails to state a claim upon which relief can be granted.

WHEREFORE, the Biden Electors respectfully request that the Court grant their motion to dismiss Boland’s Complaint in the above-captioned matter.

Dated: December 3, 2020

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**Pro Hac Vice Application Forthcoming*

EXHIBIT

E

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

PAUL ANDREW BOLAND,

Contestant,

v.

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

Defendants.

Civil Action No. 2020CV343018

Brief in Support of Proposed Motion to Dismiss Verified Complaint

I. INTRODUCTION

A parade of litigants has been marching through state and federal courts since the November 3 election, here in Georgia and across the country. The plaintiffs all sing a similar tune, asking the judiciary to use its powers of compulsion to force states to reject the will of the electorate and declare President Donald Trump the winner of election contests that he very definitively lost. The latest participant in this drawn-out pageant is Paul Boland, who claims that Georgia officials failed to purge roughly 20,000 voters from the registration rolls, and that this election's rejection rate for mail ballots stemming from signature failures just cannot be true. Like those before him, he engages in statutory and constitutional acrobatics in service of extraordinary goals: delay, decertification, and ultimately an election do-over. This show cannot go on. Boland's claims come much too late, and are barred by the doctrine of laches. The election contest he seeks is not permitted by Georgia law. And his legal arguments are contradicted by the very statutes he cites and elementary constitutional doctrine. The Complaint should be dismissed with prejudice.

II. BACKGROUND

A. Electors pledged to President-elect Biden win the November 3 election in Georgia.

On November 3, 2020, Georgia voters chose Joseph R. Biden, Jr. as the next President of the United States and the rightful recipient of Georgia's 16 electoral college votes. A few days later, in response to unsubstantiated complaints from Republican leaders about the integrity of the elections, Georgia undertook a statewide full manual audit of all votes cast, which arrived at the same result.¹ On November 20, Secretary of State Brad Raffensperger officially certified

¹ *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Nov. 19, 2020), available at https://sos.ga.gov/index.php/elections/historic_first_statewide_audit_of_paper_ballots_upholds_result_of_presidential_race.

President-elect Biden's victory, and Governor Brian Kemp certified the Democratic Party's slate of presidential electors, appointing them to the electoral college.² On November 22, President Donald Trump's campaign formally requested that the ballots be counted a third time.³ This recount was completed on December 2.⁴

B. Boland objects to the election results.

On November 30, Boland filed a Verified Complaint against Secretary Raffensperger and members of the State Election Board (the "Board") stating two counts, both in search of a means to reject the will of the electorate and deliver the state of Georgia to Boland's preferred candidate, President Trump. First, Boland claims 20,312 voters should have been removed from the registration rolls under the National Voter Registration Act ("NVRA") for allegedly changing their residency out of state. Second, he alleges that a Settlement Agreement entered into by Secretary Raffensperger and the Board in March of this year that affected procedures for processing mail ballots resulted in (what he believes to be) a suspiciously low rejection rate for signature failures and usurped the State Legislature's authority to regulate election procedures. Boland requests "an order decertifying any results from the General Election for the electors to the Presidency" until Secretary Raffensperger audits and verifies the residency of 20,311 flagged individuals and the signatures on the more than one million absentee ballots that were cast in the November 3 election. If this relief is not granted or the results of the audit and verification are not to Boland's liking, he

² Kate Brumback, *Georgia Officials Certify Election Results Showing Biden Win*, NPR (Nov. 20, 2020), available at <https://apnews.com/article/georgia-certify-election-joe-biden-ea8f867d740f3d7d42d0a55c1aef9e69>.

³ Stephen Fowler, *Trump Requests Georgia Recount, Meaning 5 Million Votes Will Be Tabulated a 3rd Time*, NPR (Nov. 22, 2020), available at <https://www.npr.org/sections/biden-transition-updates/2020/11/22/937739336/trump-requests-georgia-recount-meaning-5-million-votes-will-be-tabulated-a-3rd-t>.

⁴ As of 7:00 p.m. on December 3 the results of this recount have not been fully reported.

demands “decertification of the results of the Election and that a new election be ordered.” Compl. ¶ 3.

C. A March 2020 Settlement Agreement results in revised absentee balloting procedures.

Because the Settlement Agreement supplies the factual predicate for Count II of Boland’s Complaint, Intervenors offer this background on the Agreement and related litigation. The Settlement Agreement resolved a case that Democratic Party committees filed in November 2019 challenging Georgia’s signature-matching and cure procedures as unconstitutionally arbitrary and unreliable. Compl., *Democratic Party of Ga., Inc. v. Raffensperger*, No. 1:19-cv-5028, ECF No. 1 (N.D. Ga. Nov. 6, 2019). On March 6, 2020, the parties entered into the Settlement Agreement, which was publicly docketed that same day. As memorialized therein, the Secretary and the Board maintained that Georgia’s laws and processes were constitutional, and they did not agree to modify Georgia’s elections statutes. *See Wood v. Raffensperger.*, No. 1:20-cv-04651, ECF No. 5-1 at 1-2 (N.D. Ga. Nov. 17, 2020).

Rather, the Board implemented a revised absentee ballot cure process by way of State Election Board 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, including 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). In addition, on May 1, the Secretary issued an Official Election Bulletin 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. *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6694033, at *3 (N.D. Ga. Nov. 13, 2020). When two officials agree the signature does not match, the ballot is rejected. *Id.*

The Board's rule and the Secretary's guidance 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. Ballots were rejected for signature mismatches in all elections; indeed, "the percentage of absentee ballots rejected for missing or mismatched information and signature is the exact same for the 2018 [general] election and the [2020 g]eneral [e]lection." *Id.*, 2020 WL 6817513, at *10.

A few weeks ago, L. Lin Wood, Jr., another private Georgia voter, objected in federal court to the certification of election results on similar grounds as here, alleging that the Settlement Agreement resulted in a "cumbersome process" for matching signatures that allegedly usurped the Legislature's authority to make election laws. Am. Compl., *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6694033 (N.D. Ga. Nov. 13, 2020). On November 20, Judge Grinberg of the U.S. District Court for the Northern District of Georgia denied Wood's motion for a temporary restraining order for reasons that support dismissing Boland's Complaint as well.

First, the Court determined Wood lacked standing to assert his claims because private citizens do not have standing to assert claims under the Elections and Electors Clauses, and because Wood's theory of vote dilution was "a textbook generalized grievance" that failed to state a concrete and particularized injury. *Wood*, 2020 WL 6817513, at *5. Second, the court determined the doctrine of laches independently barred Wood's claims because the Settlement Agreement was executed on March 6, 2020, and Wood had no excuse for his prejudicial delay in waiting to

challenge the Agreement. *Id.* at *7-*8. Third, the court concluded Wood’s claims failed on the merits because his statistical argument that invalid ballots must have been accepted was “belied by the record.” *Id.* at *10. Next, the court held that Secretary Raffensperger did not usurp the General Assembly’s power because “[t]he Settlement Agreement is a manifestation of Secretary Raffensperger’s statutorily granted authority.” *Id.* The court concluded, “To interfere with the result of an election that has already concluded would be unprecedented and harm the public in countless ways.” *Id.* at *13. “Granting injunctive relief here would breed confusion, undermine the public’s trust in the election, and potentially disenfranchise of over one million Georgia voters.” *Id.*

III. LEGAL STANDARD

An election contest “vests in trial courts broad authority to manage the proceeding” to “balance[] citizens’ franchise against the need to finalize election results, which, in turn, facilitates the orderly and peaceful transition of power that is a hallmark of our government.” *Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193, 194 (2019). An election may be contested for misconduct, fraud, irregularity, or illegal votes only where the error “is sufficient to change or place in doubt the result.” O.C.G.A. § 21-2-522. Under Georgia law, an action can be dismissed because the litigant failed to state a claim upon which relief can be granted. O.C.G.A. § 9-11-12(b); *see, e.g., DeLaGal v. Burch*, 273 Ga. App. 825 (2005) (upholding dismissal of election challenge for failure to state a claim).

IV. ARGUMENT

Intervenors respectfully request that the Court grant their motion to dismiss Boland’s Complaint. The Complaint is barred by laches; it falls outside the scope of Georgia’s election contest statute; and it fails to state a claim upon which relief can be granted.

A. Boland's Complaint is barred by laches.

Both of the Complaint's counts are barred by the equitable doctrines of laches. Laches may bar a claim when time has lapsed such that it would be inequitable to permit the claim against the defendant to be enforced. *See Waller v. Golden*, 288 Ga. 595, 597 (2011). Under Georgia law, laches may bar a complaint when (1) the lapse of time and (2) the claimant's neglect in asserting rights (3) prejudiced the adverse party. *Id.* All three elements are satisfied here.

Boland's delay in bringing this action is considerable and patently unreasonable. Boland challenges the validity of the presidential election after it has already been conducted based on procedures, adopted through formal rulemaking processes long before the election, upon which elections officials and voters alike relied. The State expended substantial resources in ensuring that the election took place in a secure and lawful manner. Untold numbers of Georgians devoted countless hours, at personal risk during a pandemic, to prepare for and hold the election, and then to tally the vote not once, not twice, but *three times*. And Georgia voters' only fault was in casting their ballots as directed in accordance with the law in place at the time. Boland now asks this Court to undo all of those efforts and abrogate the fundamental right to vote for all Georgians based on *post hoc* challenges to the Secretary's voter registration list maintenance program and the Settlement Agreement, both of which have been in place for months.

The NVRA provides that States shall complete their programs to remove ineligible voters from the official lists "not later than 90 days prior to the date of a primary or general election for Federal office." 52 U.S.C. § 20507(c)(2)(A). Thus, any objection Boland maintained against the State's list maintenance program for the November 3 election should have been raised well before the general election, and in any event by August 5. A State program to remove names for change of residency after that date is barred by federal law. Boland was free at any time to purchase postal

service change of address information and notify Secretary Raffensperger of any perceived irregularities. *See id.* § 20510(b) (requiring a person who is aggrieved by a violation of the NVRA to provide notice to the state’s chief election official). But what Boland may not do is save his analysis for *after* the election, and then ambush state officials with a grievance related to residency changes.

Similarly, the Settlement Agreement was entered six months before election day, and Boland did not seek to intervene or challenge the Settlement Agreement before it was closed. *Wood*, 2020 WL 6817513, at *3. In rejecting a virtually identical post-election challenge to the Settlement Agreement, Judge Grinberg recently concluded the plaintiff’s claims were barred by laches because the plaintiff “could have, and should have, filed his constitutional challenge much sooner than he did, and certainly not two weeks *after* the General Election.” *Wood v. Raffensperger*, No. 1:20-CV-04651-SDG, 2020 WL 6817513, at *7 (N.D. Ga. Nov. 20, 2020). This conclusion is equally applicable to Boland’s challenge here. As in *Wood*, Boland’s claims “were ripe the moment the parties executed the Settlement Agreement,” and did not depend on the outcome of the November 3 election. *Id.*

Nor can there be serious doubt that Boland’s unjustifiable delay has prejudiced not only elections officials, but millions of Georgia voters, who dutifully cast their votes according to the rules and practices that Boland could have challenged prior to the election. Indeed, courts regularly find that even pre-election challenges that are brought too close to an election are barred. Here, Boland waited until the election and then some. This Court should find that laches firmly bars this action. *See, e.g., Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (“In the context of elections . . . any claim against a state electoral procedure must be expressed expeditiously” because, “[a]s time passes, the state’s interest in proceeding with the election increases in

importance as resources are committed and irrevocable decisions are made.”); *see also Clark v. Reddick*, 791 N.W.2d 292, 294-96 (Minn. 2010) (declining to hear ballot challenge when petitioner delayed filing until 15 days before absentee ballots were to be made available); *Knox v. Milwaukee Cty. Bd. of Election Comm’rs*, 581 F. Supp. 399, 402 (E.D. Wis. 1984) (denying preliminary injunction where complaint was filed seven weeks before election).

That these claims are raised in the context of an election contest does not alter the required result. Typically, an election contest is brought to challenge some alleged error or impropriety in the election that could not reasonably have been predicted before the election. *See, e.g., McIntosh Cnty. Bd. of Elections v. Deverger*, 282 Ga. 566 (2007) (successful contest where original election was decided by four votes and challenger identified four votes that were erroneously rejected); *Whittington v. Mathis*, 253 Ga. 653, 324 S.E.2d 727 (1985) (successful contest where original election was decided by two votes and challenger identified four voters who were wrongfully turned away from voting because of poll worker error). Here, by contrast, the bases of Boland’s contest—the Secretary’s voter registration list maintenance program and the Settlement Agreement regarding absentee voting—were well known long before the election. By the time Boland filed this action, the presidential election had been over for four weeks, and more than 5 million Georgians had voted. Boland had an affirmative obligation to air his concerns before the election to avoid precisely these after-the-fact, could-have should-have complaints about what election officials might have done differently. As federal courts have held, “the law imposes the duty on parties having grievances . . . to bring the grievances forward for pre-election adjudication.” *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973). “[T]he failure to require prompt pre-election action in such circumstances as a prerequisite to post-election relief,” the court explained, “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.* Numerous courts have likewise denied extraordinary relief in election-related cases due to laches or similar considerations.⁵ As the Pennsylvania Supreme Court said last week in rejecting a similar post-election challenge, “The want of due diligence demonstrated in this matter is unmistakable.” *Kelly v. Commonwealth*, No. 68 MAP 2020, 2020 WL 7018314, at *1 (Pa. Nov. 28, 2020).

B. Georgia law does not permit a contest for the election of presidential electors.

Boland’s Complaint, which sounds in the nature of a petition for election contest, should also be dismissed because it falls outside the scope of the election contest statute. Presidents are not directly elected by Georgia voters; rather, Georgia’s electorate selects presidential electors who then vote for presidential candidates on behalf of the state at the Electoral College. Georgia’s Election Code states, “[a]t the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as *electors of President and Vice President* of the United States.” O.C.G.A. § 21-2-10 (emphasis added). Boland recognizes as much: “The office contested is for the electors for the Presidency of the United States.” Compl. ¶ 5; *see also id.* Prayer for Relief ¶ 1 (seeking “an order decertifying any results

⁵ *See, e.g., Clark v. Reddick*, 791 N.W.2d 292, 294-296 (Minn. 2010); *see also Nader v. Keith*, 385 F.3d 729, 736 (7th Cir. 2004) (“It would be inequitable to order preliminary relief in a suit filed so gratuitously late in the campaign season.”); *Fulani*, 917 F.2d at 1031 (denying relief where plaintiffs’ delay risked “interfer[ing] with the rights of other Indiana citizens, in particular the absentee voters”); *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) (laches barred claims where candidate waited two weeks to file suit and preliminary election preparations were complete); *McCarthy v. Briscoe*, 539 F.2d 1353, 1354-1355 (5th Cir. 1976) (denying emergency injunctive relief where election would be disrupted by lawsuit filed in July seeking ballot access in November election); *Navarro v. Neal*, 904 F. Supp. 2d 812, 816 (N.D. Ill. 2012) (“By waiting so long to bring this action, plaintiffs ‘created a situation in which any remedial order would throw the state’s preparations for the election into turmoil.’”), *aff’d*, 716 F.3d 425 (7th Cir. 2013); *State ex rel. Schwartz v. Brown*, 197 N.E.2d 801 (Ohio 1964) (dismissing mandamus complaint to place candidate on ballot after ballot form was certified).

from the General Election for the electors to the Presidency”). As Georgia law provides, “[w]hen *presidential electors are to be elected*, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President.” O.C.G.A. § 21-2-379.5(e) (emphasis added). The Georgia Supreme Court has confirmed that Georgia presidential elections are actually “election[s] for presidential electors.” *Rose v. State*, 107 Ga. 697 (1899); *Franklin v. Harper*, 205 Ga. 779, 785 (1949) (describing an “election . . . for presidential electors”); *Moore v. Smith*, 140 Ga. 854 (1913) (same). The U.S. Supreme Court reiterated this understanding in a decision issued earlier this year. *See Chiafalo v. Washington*, 140 S. Ct. 2316, 2319 (2020) (“[M]illions of Americans cast a ballot for a presidential candidate. Their votes, though, actually go toward selecting members of the Electoral College, whom each State appoints based on the popular returns. Those few ‘electors’ then choose the President.”).

Georgia’s election contest statutes apply only to “federal, state, county, or municipal office[s].” O.C.G.A. § 21-2-521. The Complaint should be dismissed outright because Boland does not—and cannot—show that presidential electors fall into any of these categories. A presidential elector is obviously not a municipal or county officer, as they serve no local role and are selected on a statewide basis. Further, federal presidential electors are not state officers—they are appointed pursuant to the U.S. Constitution. *See* U.S. Const. art. II, § 1, cl. 2 (“Each State shall appoint . . . a Number of Electors,”); *see also id.* amend. XII; 3 U.S.C. § 3 (setting forth the number of Electors by state). Rather than serving as state officers, the U.S. Supreme Court has found that “[t]he presidential electors exercise a federal function in balloting for President and Vice-President.” *Ray v. Blair*, 343 U.S. 214, 224 (1952). The Supreme Court went on to clarify that electors are *also* not federal officers or agents. *See id.*

Various provisions of state law fortify the conclusion that a presidential elector in Georgia is neither a state nor federal officer. For example, O.C.G.A. § 21-2-153, which describes the qualifications of candidates in state primaries, has one subsection that pertains to “[a]ll qualifying for federal and state offices” and a separate subsection that addresses “[a]ll qualifying for the office of presidential elector.” Similarly, O.C.G.A. § 21-2-132, which pertains to filing a notice of candidacy, provides one set of procedures for “[e]ach elector for President or Vice President of the United States” and a separate procedure for “[e]ach candidate for United States Senate, United States House of Representatives, or state office.” Presidential electors cannot be state or federal officers; otherwise language that separates *all* electors from *all* federal and state officers would be meaningless. “[I]t is well established that a statute ‘should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part.’” *Premier Health Care Invs., LLC v. UHS of Anchor, L.P.*, No. S19G1491, 2020 WL 5883325, at *9 (Ga. Oct. 5, 2020) (quoting *Hall Cnty. Bd. of Tax Assessors v. Westrec Props., Inc.*, 303 Ga. 69, 77 (2018)).

If the General Assembly wishes to make elections for presidential electors available for contest, it may do so, provided that the parameters of those contests do not violate federal law. But because the plain text of the Election Code reveals that Georgia’s General Assembly has not done so, this contest must be dismissed.

C. The Complaint fails to state a claim upon which relief can be granted.

Even if Boland’s Complaint could be brought under O.C.G.A. § 21-2-521 (and for the reasons discussed above, it cannot), it must independently be dismissed because it fails to state a claim upon which relief can be granted. Boland’s contest is based on the premise that the election is in doubt because the voter rolls were not properly maintained, and because election officials did not properly verify voter signatures. But even if believed, Boland’s factual allegations do not

plausibly support his claims. To the contrary, they rest on nothing more than rank speculation and conspiracy theories attempting to masquerade as duly pled facts. They cannot, as a matter of law, sustain this litigation.

1. Boland's unsupported guess that ineligible individuals may have voted cannot support an election contest.

Boland thinks 20,312 people may have voted illegally because he watched a YouTube video. Compl. ¶ 1. But nothing in that video, let alone in his allegations, supports the accusation. The figure Boland cites from the video was calculated by “matching Georgia’s list of early and absentee voters to the United States Postal Service’s (‘USPS’) National Change of Address (‘NCOA’) database.” *Id.* ¶ 2. This methodology is not sufficient to support a claim of illegal voting and throw an election in doubt.

First, the generally-available NCOA database is notoriously unreliable, which is why the NVRA allows states to rely on change-of-address information for list maintenance only if the information is supplied by USPS through one of its NCOA licensees, *see* 52 U.S.C. § 20507(c)(1)(A), and only after following extensive procedures that mitigate the risk of erroneous removal, *see id.* § 20507(c)(2)(A) (prohibiting states from systematically removing names from the registration lists on the basis of residency change within 90 days of a federal election); § 20507(d) (prohibiting states from removing names from the registration lists on the basis of residency change unless the person confirms the change of address in writing or fails to respond to a special notice and does not vote in two subsequent elections for federal office). In other words, Secretary Raffensperger would be *prohibited* by federal law from relying on Boland’s methodology to determine the eligibility of registered voters; thus, the same suspect methodology clearly cannot support an action to overturn the results of a presidential election.

Boland's allegations suffer from a second fundamental flaw: the fact that a voter requests mail to be forwarded out of state does not in any way render him ineligible to vote. While the place that a person receives significant mail, such as personal bills, may be evidence of the person's residency for voter registration purposes, O.C.G.A. § 21-2-217(15), both the Election Code and federal law enumerate legitimate reasons that a person may change their mail address out of state without forfeiting their eligibility to vote, including:

- Any citizen who begins residence in another state within 30 days of the presidential election may vote in Georgia if the person is not permitted to register in the new state, § 21-2-216(e);
- "A person shall not be considered to have lost such person's residence who leaves such person's home and goes into another state or county or municipality in this state, for temporary purposes only, with the intention of returning, unless such person shall register to vote or perform other acts indicating a desire to change such person's citizenship and residence," § 21-2-217(a)(2)⁶;
- "The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention," § 21-2-217(a)(9);
- "If a person removes to the District of Columbia or other federal territory, another state, or foreign country to engage in government service, such person shall not be considered to have lost such person's residence in this state during the period of such service; and the

⁶ Boland alleges that a subset of 4,926 Georgia voters moved and registered to vote in another state. Even if true, this fails to allege illegal votes "sufficient to change or place in doubt the result" as the election contest statute requires. O.C.G.A. § 21-2-522(3).

place where the person resided at the time of such person's removal shall be considered and held to be such person's place of residence," § 21-2-217(a)(11);

- "Each State shall . . . permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 52 U.S.C. § 20302(a)(1).

Thus, any voter who moves out of state for a few months to take college classes, or to care for a sick parent, or to work a summer job, or to engage in government service, or any other number of perfectly valid reasons may request to receive mail outside of Georgia without forfeiting the right to vote in Georgia. Boland's allegations make no mention of if or when any voter actually moved, which would be critical for any threshold determination of the voter's eligibility. And also fatally for his claim, it is *impossible* to deduce from NCOA data *why* a voter filed a change of address with the USPS. There is nothing irregular or unusual about out-of-state voting; indeed, the availability of absentee voting accommodates exactly that. *See* O.C.G.A. § 21-2-380(b). If the certified results of an election can be contested any time a voter alleges that some people voted from out-of-state, which is not illegal, then *every single election* will become embroiled in desperate litigation just like this one.

Boland's claim that Secretary Raffensperger failed "to carry out the duties required by the NVRA and the Elections Law" by not removing these 20,312 voters from the registration rolls for allegedly moving out of state, Compl. ¶ 5, further ignores that federal law clearly prohibits the voter purge that Boland demands.⁷ As Boland points out, the NVRA instructs states to "conduct a

⁷ Rather than being too lax in his voter registration list maintenance program, Secretary Raffensperger may have been unlawfully aggressive in purging voters from the rolls based on inaccurate change-of-address data. *See* Complaint, *Black Voter's Matter Fund v. Raffensperger*, No. 1:20-cv-04869-SCJ (N.D. Ga. Dec. 2, 2020), ECF No. 1.

general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of . . . a change in the resident of the registrant, in accordance with subsections (b), (c), and (d).” Compl. ¶ 4, quoting 52 U.S.C. § 20507(a)(4). Notably, this provision only requires states to make a “reasonable effort,” not a perfect effort, and Boland has not alleged any reason to believe a purported failure to cull a few thousand names from the rolls in a state with over 7.2 million registered voters is “unreasonable.”⁸ What’s more, Boland ignores the text of the provision he quotes, which explicitly precludes the relief he is seeking.

Section 20507(a)(4) requires the state’s list maintenance program to be conducted “in accordance with,” as relevant here, subsections (c) and (d). Subsection (c) provides that “A State shall complete, *not later than 90 days prior to the date of a primary or general election for Federal office*, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A). This rule applies to removals where an individual is believed ineligible due to a change of residence. *Id.* § 20507(c)(2)(B) (emphasis added). Thus, as discussed above in Part III.A, Secretary Raffensperger was *prohibited* from removing any voter from the rolls after August 5 based on Boland’s alleged change of address data. Even if this Court granted Boland’s extraordinary request for a new election, the 90-day restriction on list maintenance means Secretary Raffensperger *still* would not be permitted under federal law to systematically remove the names of any voters based on alleged change of residency.

Additionally, section 20507(d) provides that “A State *shall not remove* the name of a registrant from the official list of eligible voters in elections for Federal office *on the ground that the registrant has changed residence* unless the registrant” confirms in writing the change of

⁸ Voter Registration Statistics, available at https://sos.ga.gov/index.php/Elections/voter_registration_statistics.

address, or fails to respond to written notice and does not vote in two subsequent general elections. (Emphasis added.) Of the 20,312 voters that Boland disputes, then, Secretary Raffensperger could have removed (prior to August 5) only those who either a) expressly confirmed their change of address, or b) moved years ago, received official notice from the State prior to 2016, and then failed to vote in the 2016 and 2018 elections. Because nothing in Boland's Complaint alleges that this subset of voters exceeds President-elect Biden's margin of victory in Georgia, the Complaint fails to state a ground for judicial intervention. *See* O.C.G.A. § 21-2-522(3) (permitting election contest where challenged votes are "sufficient to change or place in doubt the result"); *see also Hughes v. Griner*, 208 Ga. 47, 50 (1951) ("in the absence of an allegation that, when all votes at those precincts are thrown out, the result of the election would be changed, this complaint would be an insufficient ground for equity intervention").

Boland has not alleged that Secretary Raffensperger's list maintenance program was "unreasonable." He has not alleged that a number of electors sufficient to determine the outcome of the presidential election in Georgia could lawfully have been removed on the basis of residency by Secretary Raffensperger. He has not alleged that any relief available now could cure the purported problem of non-resident individuals remaining on the registration rolls for the 2020 presidential election. And just two months ago, a judge on this Court held that private electors cannot compel election officials to remove voters from the registration lists based on alleged non-residency in any way that conflicts with the NVRA. *See* Final Order Granting Motion to Dismiss Without Prejudice, *Schmitz v. Fulton Cnty. Bd. of Registration and Elections*, No. 2020-cv-339337-JCB (Ga. Super. Ct. Oct. 1, 2020). Because Boland seeks to do precisely that, he has failed to state a claim for which relief may be granted. Count I of Boland's Complaint must be dismissed.

2. Boland's challenges to Georgia's signature verification procedures do not state a claim for relief.

Boland's untimely challenge to the processing procedures for absentee ballots agreed to in the Settlement Agreement has no basis in law. He asserts that the signature-matching process resulting from the Agreement made it more difficult to reject absentee ballots, is inconsistent with Georgia's election code, and violates the federal constitution. Compl. ¶ 17. All of these arguments have already been offered and rejected in court.

In *Wood*, the court expressly rejected statistical assertions similar to those offered by Boland that the rejection rate for signature errors was mysteriously lower this election. To the contrary, the district court found that, "the percentage of absentee ballots rejected for missing or mismatched information and signature *is the exact same* for the 2018 election and the General Election (.15%). This is despite a substantial increase in the total number of absentee ballots submitted by voters during the General Election as compared to the 2018 election." 2020 WL 6817513, at *10 (citations omitted) (emphasis added). But even if the Court were to take Boland's allegations as true and assume that the rejection were lower for the November 3 election, that would not support an allegation of impropriety, and certainly not with the precision that could allow this court to conclude that illegal votes were received "sufficient to change or place in doubt the result" of the election. O.C.G.A. § 21-2-522(3). In fact, given the policy changes required by the Settlement Agreement, fewer signature rejections should have been expected—not because illegal votes are somehow evading review, but because subjecting signatures to verification by more than one official and permitting voters to cure suspected errors should reduce the number of *lawful* ballots that are improperly thrown out. Boland has alleged no more than that the election was conducted just as it should have been.

Further, it is not true that the Settlement Agreement represented some kind of legislative action by Secretary Raffensperger that is the exclusive prerogative of the General Assembly under state law and the federal constitution's Elections Clause. As *Wood* explained, "State legislatures—such as the Georgia General Assembly—possess the authority to delegate their authority over elections to state officials in conformity with the Elections and Electors Clauses." 2020 WL 6817513, *10 (collecting cases). The General Assembly has empowered Secretary Raffensperger as "the state's chief election official," O.C.G.A. § 21-2-50(b), and has made it the duty of Secretary Raffensperger and the State Election Board to "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2). Thus, the court in *Wood* concluded, the "Settlement Agreement is a manifestation of Secretary Raffensperger's statutorily granted authority. It does not override or rewrite state law. It simply adds an additional safeguard to ensure election security by having more than one individual review an absentee ballot's information and signature for accuracy before the ballot is rejected." 2020 WL 6817513, at *10. Taking at face value the argument that any policy reached by Secretary Raffensperger and the State Election Board is unlawful unless it is a verbatim recitation of the statutory code "renders O.C.G.A. § 21-2-31(2) superfluous. A state official—such as Secretary Raffensperger—could never wield his or her authority to make rules for conducting elections that had not otherwise already been adopted by the Georgia General Assembly." 2020 WL 6817513, at *10. This carefully reasoned and persuasive opinion reveals the terminal flaws with Count II of Boland's Complaint.⁹

⁹ *Wood*'s conclusion that the plaintiff there did not have standing under the Elections Clause to challenge the Settlement Agreement is also instructive here. *See* 2020 WL 6817513, at *10; *see also Bognet v. Sec'y Commonwealth of Pa.*, No. 20-3214, 2020 WL 6686120, at *6 (3d Cir. Nov. 13, 2020) ("[P]rivate plaintiffs lack standing to sue for alleged injuries attributable to a state government's violations of the Elections Clause."); *cf. Feminist Women's Health Ctr. v. Burgess*,

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An election contest is a grave matter and should be reserved for the timely presentation of grave unlawfulness. That is not present in this case. If Boland receives his requested relief, partisans will know to stow away any conceivable objection to election procedures until after the results are clear, and then cry for a redo if their candidate loses. If an election contest is indulged every time a litigant objects to voter registration list maintenance or the state's chosen procedures for verifying ballots, then we can expect that every election will be decided not by voters in polling booths but by lawyers in courtrooms. *See Donald J. Trump for President, Inc. v. Pennsylvania*, No. 20-3371, 2020 WL 7012522, at *9 (3d Cir. Nov. 27, 2020) ("Voters, not lawyers, choose the President. Ballots, not briefs, decide elections."). Decertification of the State's presidential electors on these grounds will produce confusion and cynicism, inviting Georgians to question the point of their participation in democracy's defining event. The law does not require this; indeed, here the law does not allow it.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss Boland's Verified Complaint with prejudice.

282 Ga. 433, 434 (2007) (collecting Georgia cases that look to federal law to resolve issues of standing). Allowing a plaintiff such as Boland to bring claims under the guise of an election contest that would otherwise be barred for lack of standing would greenlight a pernicious gamesmanship, whereby litigants could evade the usual rules of justiciability by saving their generalized and undifferentiated grievances for after the election.

Dated: December 3, 2020

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**Pro Hac Vice Application Forthcoming*

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

v.

Civ. Act. No. 2020CV343018

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 Ahn Le, in her official capacity
as a Member of the Georgia State Election Board,

Defendants.

Certificate of Service

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court via *Odyssey eFileGA*, which will provide notice and service to all counsel of record:

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This 3rd day of December 2020.

/s/ Adam M. Sparks
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Defendants*

IN THE SUPERIOR COURT OF FULTON COUNTY
 STATE OF GEORGIA

PAUL ANDREW BOLAND,	)	
	)	
<i>Contestant,</i>	)	
	)	Civ. Act. No 2020CV343018
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 Ahn Le, in her official capacity as a Member	)	
of the Georgia State Election Board,	)	
	)	
<i>Defendants</i>	)	

MOTION TO INTERVENE AS CONTESTANT

COMES NOW Shawn Still, in his capacity as a member of the slate of Republican electors for President of the United States eligible for election in the November 3, 2020 general election, as well as his personal capacity as a qualified elector, (the "Movant") by and through the undersigned counsel, and seeks to participate as an intervening Contestant both as an individual and to defend his interest as a member of the Republican slate of presidential electors eligible for election in the November 3, 2020, general election and as an aggrieved elector in said election. The Movant is entitled to intervene in this case as a matter of right under O.C.G.A. § 9-11-24(a). In the alternative, the Movant requests permissive intervention pursuant to O.C.G.A. § 9-11-24(b). In support of his Motion, Movant respectfully shows as follows:



STATEMENT OF FACTS

Movant is among the slate of sixteen presidential electors nominated by Republican Party to serve as appointees to the electoral college contingent upon the outcome of the November 3, 2020, general election. The result of the November 3, 2020, general election is currently in dispute and is the subject of this contest. An initial certification of the election was made by the Secretary of State and the Governor on November 20, 2020, however pursuant to the statutory right to a recount exercised by President Trump, such certification is deemed void. The Secretary of State has opined that in the event a county's results change the county will need to recertify its election results. At such time, the Secretary of State will need to re-certify the results of the election to account for this change. Counties have reported different numbers necessitating recertification of the election results by the Secretary of State. Additionally, questions about the validity of the election returns have arisen due to the manner in which the election was conducted. The laws of the State of Georgia were violated in the run up to and execution of the election, which has resulted in non-domiciliaries voting, absentee voting that does not comport with the statutes and an overall disenfranchisement of millions of qualified Georgian voters through vote dilution.

ARGUMENT AND CITATION OF AUTHORITY

Movant Has the Right to Intervene

O.C.G.A. §21-2-520 et sq. expressly provides the grounds for an election contest and who may bring such a contest. O.C.G.A. §21-2-521 explicitly states that a “candidate at such primary or election for such nomination or office, or by any aggrieved elector who was entitled to vote for such person...” Movant stood for election in the November 3, 2020 as a presidential elector. Additionally, as a qualified elector in the state of Georgia, Movant was entitled to vote in the election. As such Movant clearly meets the statutory requirements to be a contestant by right.

In addition to his statutory right to intervene, Movant meets Georgia's traditional test for motions to intervene as of right. O.C.G.A. § 9-11-24(a)(2) provides that after timely application "anyone *shall* be permitted to intervene" in an action "[w]hen the applicant claims an interest relating to" the subject matter of the action and the applicant "is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Georgia courts have described this as a three-part inquiry, consisting of "[1] interest, [2] impairment resulting from an unfavorable disposition, and [3] inadequate representation." *See Baker v. Lankford*, 306 Ga. App. 327, 329 (2010). Movant satisfies each prong.

First, the Movant has an interest as in the instant action as a candidate for election as a Presidential Elector. Under Georgia law, "the interest of the intervenor must be of such a direct and immediate character that he will either gain or lose by the direct effect of the judgment, and must be created by the claim in suit." *State Farm Mut. Auto. Ins. Co. v. Jiles*, 115 Ga. App. 193, 195 (1967). It is indisputable that Movant will "gain or lose by the direct effect of [a] judgment" as the outcome of this case will explicitly effect his election. Movant also has an interest as a voter and ensuring that his vote, and those of his fellow Georgians was cast in a process that was free, fair, and undiluted by illegal votes, misconduct, irregularity or fraud. *See Penn. Psychiatric Soc'y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 288 n.10 (3d Cir. 2002) ("[C]andidates for public office may be able to assert the rights of voters"); O.C.G.A. § 21-2-522.

Second, an unfavorable disposition unquestionably threatens to impair the Movant's interests. Mr. Boland asks the Court to ensure that only qualified voters cast votes in the election. It is unconscionable that this Court action is necessary to ensure that the Secretary of State performs his duties as required by law to maintain the voter rolls and ensure that only the Citizens

of Georgia vote in Georgia's elections and that each qualified voter gets only one vote. However, the refusal of the Secretary of State to perform a proper audit and to failure to provide proper access to all election documentation (including without limitation applications, envelopes, documents for signature matches, and other related information) has cast doubt on the result of the election and provides sufficient evidence to change the election result. Numerous questions remain as to the result of the election as there are at least two different vote totals thus far, and a third vote total is expected after the completion of the statutory recount. This Honorable Court should not be satisfied with different numbers in an election that is fundamental to our democracy and system of pure elections. An unfavorable disposition in this case would irreparably deny the Movant his ability to contest an election in which he was a candidate under the processes laid out in O.C.G.A. §21-2-520 et seq.

Finally, the Movant's interest cannot be adequately represented by the current Contestant as the Court will not be able to provide the full and complete relief requested by the Movant. Movant seeks not only an audit of the election, but a new election as provided by O.C.G.A. 21-2-250 et seq.

Movant Requests to Intervene

If the Court determines that Movant is not entitled to intervene by right, Movant respectfully requests that the Court exercise its discretion to allow him to intervene under O.C.G.A. § 9-1124(b). Permissive intervention is appropriate "[w]hen an applicant's claim or defense and the main action have a question of law or fact in common." O.C.G.A. § 9-11-24(b)(2). "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.*

Movant meets the requirements for permissive intervention. *First*, Movant will raise common questions of law and fact prosecuting this. *Second*, since proceedings have yet to begin in this suit, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. To the contrary, the Movant is prepared to proceed in accordance with any schedule the Court establishes and have an interest in moving as expeditiously as possible. His intervention will only serve to contribute to the full development of the factual and legal issues before the Court.

IV. CONCLUSION

For the reasons stated above, the Movant respectfully requests that the Court grant their motion to intervene as a matter of right under O.C.G.A. § 9-11-24(a) or, in the alternative, permit them to intervene under O.C.G.A. § 9-11-24(b).

Respectfully submitted this 6th day of December 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court via Odyssey eFileGA, which will provide notice and service to all counsel presently of record:

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I hereby certify that a copy of the foregoing will be served upon all Respondent/Defendants in this matter by causing a copy of the same to be deposited in the United States mail, postage prepaid, on Monday, December 6, 2020, addressed as follows:

Hon. Brad Raffensperger
Secretary of State
214 State Capitol
Atlanta GA 30334

Hon. Rebecca Sullivan
Hon. David Worley
Hon. Matthew Mashburn
Hon. Anh Lee
Ga. State Board of Elections
2 MLK Jr. Drive
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As a matter of courtesy, service was similarly attempted and made by e-mailing the same to the following members of the Attorney General's Office identified by the Secretary of State's Office as counsel for Defendants:

Russ Willard rwillard@law.ga.gov
Charlene McGowan cmcgowan@law.ga.gov

This 6th day of December 2020.

/s/ David F. Guldenschuh

David F. Guldenschuh
*Attorney for Plaintiff and for
Movant-Intervenor Shawn Still*

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

PAUL ANDREW BOLAND,

Plaintiff,

v.

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

Defendants.

CIVIL ACTION FILE
NO.

PETITION OF CONTESTANT SHAWN STILL

NOW COMES SHAWN STILL, "Contestant," and in his capacity as a pending and moving Plaintiff-Intervenor-in this action, show this Court the following:

INTRODUCTION

1. Contestant joins with Plaintiff to contest the election results on two empirical grounds:
First, data showing 20,312 ballots were cast by individuals who are no longer Georgia residents, casting doubt on the integrity of the Election until such persons are excised from

the ballot count. Second, data showing that decreased signature verification arose because counties did not screen mis-matched and absent signatures and ballots unsigned without the oath, as required by the Election Code.

2. Contestant believes that this lawsuit may be settled with equitable relief in the nature of (A) an audit of the voter rolls to confirm they were maintained as required by Georgia's Election Code and (B) a comparison with the written ballots cast, and a verification that all outside envelopes used to transmit absentee ballots have been matched with a valid signature in the State's E-Net system; such a review would confirm that signature verifications were conducted as required by Georgia's Election Code as required by Georgia laws and the United States Constitution for federal elections. Contestant agrees with Plaintiff that such an Audit and Verification could be completed within five (5) days and that technology exists to provide the Audit and Verification in a shorter time frame than the recently conducted "hand count."
3. If equitable relief is not granted, or the Audit and Verification demonstrate that the results of the election cannot be relied upon, Contestant seeks decertification of the results of the Election, that a new election be ordered and that the Georgia legislature be ordered to convene to select Georgia Electors pursuant to the U.S. Constitution..

PARTIES, JURISDICTION AND VENUE

4. Plaintiff is an individual residing in Monroe County, Georgia and is a qualified, registered "elector" who possesses all of the qualifications for voting in the State of Georgia. See O.C.G.A. §§ 21-2-2(7), 21-2-216(a). Plaintiff voted in the November 3, 2020 General Election, believing that his vote would not be diluted by the presence of out-of-state voters or persons whose signatures were not, or could not be, verified as required by the Elections Code. As an aggrieved elector, Plaintiff is qualified to contest the election. Contestant is

among the slate of sixteen presidential electors nominated by Republican Party to serve as appointees to the electoral college contingent upon the outcome of the November 3, 2020, general election. He moves to intervene in his individual capacity and as an Elector. As Contestant's right to serve as an Elector is directly impacted by the results of this election, he has standing to assert the claims set forth herein.

5. This court has original jurisdiction and venue pursuant to O.C.G.A. § 21-2-524, as the defendant resides in Fulton County. The office contested is for the electors for the Presidency of the United States.
6. Georgia's Secretary of State is a defendant in his official capacity, the chief elections officer responsible for overseeing the conduct of Georgia's elections, responsible for assuring the elections are conducted in a free, fair, and lawful manner, and is the official responsible for certifying the vote for the Presidential election in the state of Georgia.
7. The Elections Code sets forth a clear and efficient process for maintaining the voter rolls and handling absentee ballots (the "Elections Law"). To the extent that there is any change in those processes, that change must, under Georgia law and Article I, Section 4 of the United States Constitution, be prescribed by the Georgia General Assembly. See U.S. CONST., Article I, Section 4. Although 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," all such rules and regulations must be "consistent with law." O.C.G.A. § 21-2-31(2).

COUNT 1: OUT OF STATE VOTERS

1. An expert analysis identified 20,312 ballots cast by individuals in the 2020 General Election who do not reside in Georgia.¹ This number of invalid votes far exceeds the certified margin of victory of 12,670 in the presidential results. O.C.G.A. § 21-2-216(a)(4).
2. The analysis matched Georgia's list of early and absentee voters to the United States Postal Service's ("USPS") National Change of Address ("NCOA") database. Voters were flagged if they matched along three dimensions: Full Name, Address, and Date of Birth. They also had to be listed in the NCOA database as having moved out of Georgia prior to the election. At least 4,926 of them were shown to have actually registered to vote in another state.²
3. Under the Elections Law, one loses residency for voting purposes if one registers to vote in another state or performs other acts indicating a desire to change one's residence. A general intention to return to the state "at some indefinite future period" is insufficient to retain Georgia residency. O.C.G.A. § 21-2-217(a)(2) and (a)(5).
4. Under the Elections Law, the Secretary of State is designated as the "chief state election official to coordinate the responsibilities of this state under the National Voter Registration Act of 1993 ("NVRA")" O.C.G.A. 21-2-210. The NVRA provides that the State of Georgia "shall ...

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—

(A) the death of the registrant; or

¹ Braynard, Voter Integrity Project: Findings and Conclusions, at 25:35, YouTube (Nov. 24, 2020) (This video encapsulates the findings of the Voter Integrity Project's analysis and presents Matt Braynard's conclusions and recommendations.), available at <https://www.youtube.com/watch?v=XH9ihoLi1NA&feature=youtu.be>.

² Id.

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d) of this section [which set forth the mechanics for comparing the voting roles and the timetables for completing those tasks];”

42 U.S.C. Sec. 1973gg-6(a)(4).

To satisfy the State’s obligations under the NVRA, the Legislature authorized the Secretary of State to (A) remove deceased voters (O.C.G.A. Sec. 21-2-231(d)) and (B) conduct an analysis of the NCOA database to determine the voter rolls (O.C.G.A. Sec. 21-2-233(a)).

5. The failure of the Secretary of State to carry out the duties required by the NVRA and the Elections Law were stark. As a result, Plaintiff believes the evidence shows that 20,312 ballots were cast by individuals who, according to USPS records, do not live in Georgia. This does not include electors who may be ineligible to vote due to movement within Georgia or within Georgia counties.

COUNT 2: LACK OF SIGNATURE VERIFICATION

6. Signature matching and signing an oath in connection with the casting of an absentee ballot are required by the Elections Code – they are not merely technicalities. The Elections Code mandated those actions to preserve the integrity of the elections process. Experts agree that voter fraud is far likelier to occur with mail in ballots than with in-person voting.³
7. The typical rejection rate for mail in ballots is approximately 1%. For those voting by mail for the first time it is 2%.⁴ An analysis by National Public Radio (NPR) found “[a]n extraordinarily high number of ballots” were rejected in the 2020 presidential primaries. NPR said this “raised alarms” about “what might happen in November when tens of

³ Stern, *Voter Fraud Exists. Republican Restrictions Won’t Stop It*, Slate (Sept. 1, 2016). (“Voter fraud does happen—but it almost never occurs at the polls. Instead, as election law expert and occasional Slate contributor Rick Hasen has explained, voter fraud occurs through absentee ballots.”).

⁴ Ramgopal, *More than 1 percent of mail-in ballots may be rejected, say experts*, NBC News (Oct. 28, 2020).

millions of more voters are expected to cast their ballots by mail, many for the first time.”⁵

Instead, reports in November found that “[m]ail-in ballots are being rejected at surprisingly low rates.”⁶

8. In Georgia, in 2016, the rejection rate for mail in ballots stemming from signature failures was 0.88%. In 2018, it was 1.53%. In the 2020 primary, it was 0.28%. In the general election it dropped dramatically to just 0.15%. (See the Affidavit of Benjamin A. Overholt dated November 29, 2020, attached to the Original Complaint filed in this action on November 30, 2020.)
9. Over 1,300,000 mail in ballots were cast in the 2020 general election. If these ballots had been rejected at the expected rate of 0.28% - 1.53%, some 1,600 to 18,000 additional ballots would have been rejected. This is enough to change the result since the margin of victory in the presidential election was just 12,670 votes.⁷ The number of votes needed to secure the election of other federal officials was even lower.
10. The Secretary of State concedes that signature-based rejections dropped significantly compared to the primary. However, the Secretary of State’s office has claimed that the rejection rate was the same as it was in 2018.⁸ This is not accurate. .
11. As demonstrated in the Affidavit of Benjamin A. Overholt, the office of the Secretary of State has made and is continuing to advance this argument based on elementary errors. That office did not use the most accurate comparison and calculated the rates for the two

⁵ Fessler & Moore, *More Than 550,000 Primary Absentee Ballots Rejected In 2020, Far Outpacing 2016*, NPR (Aug. 22, 2020).

⁶ Krawczyk, *Mail-in ballots are being rejected at surprisingly low rates*, Yahoo (Nov., 2, 2020).

⁷ Press Release, Georgia Secretary of State, NUMBER OF ABSENTEE BALLOTS REJECTED FOR SIGNATURE ISSUES IN THE 2020 ELECTION INCREASED 350% FROM 2018; available at, https://sos.ga.gov/index.php/elections/number_of_absentee_ballots_rejected_for_signature_issues_in_the_2020_election_increased_350_from_2018.

⁸ *Id.*

years using different, inconsistent methodologies. (See the Affidavit of Benjamin A. Overholt, *supra*.)

12. Furthermore, the Secretary's analysis counted only rejections identified as "signature" based rejections without including the related category of "oath" based rejections. An "oath" based rejection occurs when a voter fails to sign or otherwise complete the oath accompanying a mail in ballot. It is thus a form of signature failure. When oath-based rejections are included, the rejection rate drop is even more dramatic as set forth above. (See the Affidavit of Benjamin A. Overholt, *supra*.)

13. Although the Secretary of State recently conducted an audit and recount, no signature matching was required during that process.⁹

14. Without a meaningful verification of signatures, the election results cannot be certified. The suspiciously low ballot rejection rate suggests that the verification procedures were not enforced with their usual rigor.

15. In addition, in the leadup to the election, the Secretary of State unilaterally modified the Elections Law that the Legislature established, to weaken safeguards against fraudulent ballots, such as signature requirements, in ways that are unlawful and unconstitutional.

16. The U.S. Constitution grants state legislatures, not state executive branch officials, the authority to determine the "Times, Places and Manner" of federal elections as well as the process for appointing Presidential Electors. U.S. CONST., Art. I, Sec 4, cl. 1; Art. 2 Sec. 1, cl. 2.

17. The Georgia Legislature via the Elections Law instructs those who handle absentee ballots to follow clear procedures to handle absentee ballots, to confirm the information and

⁹ Moffatt, *Fact Check: Georgia Rejected More Than 2,000 Absentee Ballots Because Of Signature Issues*, WABE/NPR (Nov. 19, 2020).

signature on the absentee ballot. O.C.G.A. § 21-2-386(a)(1)(B) & 380.1. But in March 2020, Defendants Secretary Raffensperger, and the State Election Board, which has ministerial responsibility for the State elections (collectively the "Administrators") entered into a "Compromise and Settlement Agreement and Release," setting forth more complicated standards to be followed by local officials in processing absentee ballots in Georgia. See *Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division. This was unauthorized by the Elections Law and the U.S. Constitution.

18. In October 2020, the Defendants issued an order that permitted the early opening of absentee ballots, in a direct violation of O.C.G.A. 21-2-386(a)(1)(A), which required county officials to keep the unopened absentee ballots safe and unopened until the closing of the polls on election day. See Rules of the State Board of Elections, Rule 183-1-14-0.9-.15 (Processing Absentee Ballots Prior to Election Day).
19. The Plaintiff suffered an injury in fact and actual harm as a result of both these unconstitutionally altered and inadequately enforced absentee ballot processing procedures utilized in connection with the November 3, 2020 presidential election, in that his vote was diluted relative to votes cast by electors whose identified signatures were not verified, as required by the Elections Law.
20. Accordingly, this Court should enter an injunction declaring that the election results are defective and ordering the Defendants to cure their Constitutional and statutory violations in accordance with the provisions of the United States Constitution and Georgia law.

Plaintiff estimates that an Audit and Verification process could be completed within five days and ensure that the election results are consistent with the Elections Law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

1. Grant an order decertifying any results from the General Election for the electors to the Presidency until the Secretary of State:
 - (A) Initiates and completes an independently observed, monitor-confirmed investigation occurred of a sample of the 20,311 individuals flagged as having voted even though they do not live in Georgia.
 - (B) Initiates and completes an independently observed, monitor-confirmed signature match check for the absentee ballots cast in this election, including producing the digital records of the signatures such that an independently, publicly confirmed signature match can occur, and that all ballots and envelopes used in casting of absentee ballots be available for public scrutiny;¹⁰
2. Require Defendant to issue an Official Election Bulletin urging meaningful and transparent cooperation with the Audit and Verification and with the requirements of this Order;
3. Retain jurisdiction to supervise disputes as to the Audit and Verification;
4. If the Court find such irregularities in the election so as to call into question its legitimacy, then to order a new election, or alternatively, to order the State legislature to convene and select Georgia's Electors for the 2020 Presidential election; and

¹⁰ See e.g., *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1347 (N.D. Ga. 2018) ("The Secretary of State is **ENJOINED** from certifying the State Election results until she has confirmed that each county's returns include the counts for absentee ballots where the birth date was omitted or incorrect.").

4. Award Plaintiff such other and further relief as this Court deems just and equitable.

Respectfully submitted this 6th day of December 2020.

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CERTIFICATE OF SERVICE

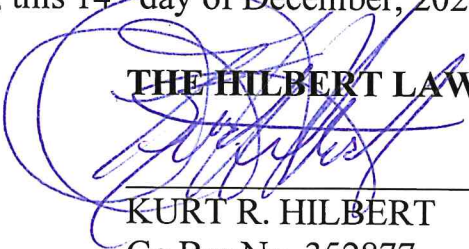
I hereby certify that on this 14th day of December 2020, I did cause to be sent and served through the Court's electronic filing system and, if requested, via STATUTORY ELECTRONIC SERVICE (O.C.G.A. 9-11-5) a true and accurate copy of the foregoing ***EMERGENCY DIRECT APPEAL, OR ALTERNATIVELY, EMERGENCY PETITION TO SEEK A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA*** of to:

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Respectfully submitted, this 14th day of December, 2020.


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