CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES
In Re:

CORECO JA'QAN PEARSON, VIKKI TOWNSEND CONSIGLIO, GLORIA KAY GODWIN, JAMES KENNETH CARROLL, JASON M SHEPHERD on behalf of the COBB COUNTY REPUBLICAN PARTY, and BRIAN JAY VAN GUNDY

Petitioners,

STATE OF GEORGIA, BRIAN KEMP, in his official capacity as Governor of Georgia, BRAD RAFFENSPERGER, in his official capacity as Secretary of State and Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a member of the Georgia State Election Board, REBECCA N. SULLIVAN, in her official capacity as a member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board, and ANH LE, in her official capacity as a member of the Georgia State Election Board,

Respondents

EMERGENCY PETITION UNDER RULE 20 FOR EXTRAORDINARY WRIT OF MANDAMUS

SIDNEY POWELL
Counsel of Record

Texas Bar No. 16209700
Sidney Powell, P.C.
2911 Turtle Creek Blvd., Suite 300
Dallas, Texas 75219
(517) 763-7499
sidney@federalappeals.com

Of Counsel
JULIA Z. HALLER
BRANDON JOHNSON
EMILY P. NEWMAN

/s/ Howard Kleinhendler
HOWARD KLEINHENDLER
New York Bar No. 2657120
Howard Kleinhendler Esquire
369 Lexington Avenue, 12th Floor
New York, New York 10017
(917) 793-1188
howard@kleinhendler.com

HARRY W. MACDOUGALD
Georgia Bar No. 463076
Caldwell, Propst & DeLoach, LLP
Two Ravinia Drive, Ste 1600
Atlanta, Georgia 30346
(404) 843-1956
hmacdougald@cpdlawyers.com

L. LIN WOOD
Georgia Bar No. 774588
L. LIN WOOD, P.C.
P.O. Box 52584

Atlanta, GA 30305-0584
(404) 891-1402

QUESTIONS PRESENTED

A. Do presidential electors have standing to challenge the outcome of a presidential election for fraud and illegality that cause the defeat of their candidate?

B. Are the Petitioners' claims barred by laches?

C. Do federal courts have and should they exercise jurisdiction under 42 U.S.C. § 1983 over claims by presidential electors that the presidential election was stolen from them by fraud and illegality under color law in violation of their constitutional rights under the Elections and Electors, Equal Protection and Due Process Clauses of the U.S. Constitution?

D. Is a claim by presidential electors to de-certify the results of a presidential election and enjoin voting in the electoral college by the rival slate of electors barred by laches when it is brought within the state law statute of limitations for post-certification election contests, and before the post recount re-certification?

E. Do the remedial powers of a federal court under 42 U.S.C. § 1983 and § 1988 include invalidation of an unconstitutionally conducted election, and an injunction against presidential electors appointed in such an election from voting in the Electoral College?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

INTRODUCTION

Petitioners respectfully request an immediate, emergency writ of injunction to order the Respondents—the State of Georgia, Governor Brian Kemp, Secretary of State and Chair of the Georgia Election Board, Brad Raffensperger, and the members of the Georgia State Election Board, David J. Worley, Rebecca N. Sullivan, Matthew Mashburn, and Anh Lee, each in their official capacities—to de-certify the results of the November 3, 2020 General Election ("2020 General Election") and to enjoin them from taking any further action to perfect the certification of the results of the 2020 General Election or permit Georgia's presidential electors to cast their votes for Vice President Biden in the Electoral College.

Alternatively, Petitioners request that this Court enter a writ of mandamus to the Honorable Timothy C. Batten, Sr. of the United States District Court, Northern District of Georgia, Atlanta Division ("District Court") ordering him to (1) vacate the District Court's December 7, 2020 final judgment in Docket No. 1:20-cv-4809-TCB ("December 7 Order") dismissing Petitioners' November 25, 2020 complaint ("Complaint"); and (2) grant Petitioners' November 27, 2020 Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief ("TRO Motion") in appropriate part.

The District Court erred when it summarily dismissed Petitioners' Complaint and TRO Motion without any analysis or consideration of the factual or legal issues raised in Petitioners' Complaint supported by dozens of fact and expert witnesses and by several subsequently filed

declarations and affidavits. Because the December 7 judgment does not provide any explanation for the District Court's decision, Petitioners must divine the rationale for the District Court's decision from the transcript of the December 7, 2020 hearing ("December 7 Transcript"), which suggests that the District Court dismissed the Complaint and TRO Motion for the reasons urged in the Respondents' filings: namely standing, laches, perhaps mootness, abstention, and an ersatz theory of exclusive state jurisdiction over all issues in this case that Defendants themselves did not argue. December 7 Transcript at 41-44.

****

Time is short so Petitioners will get straight to the point: Petitioners' Complaint to the District Court is part of a larger effort to expose and reverse an unprecedent multi-state conspiracy to steal the 2020 General Election, at a minimum in the States of Arizona, Georgia, Michigan, Pennsylvania, Wisconsin, and potentially others.

Petitioners and others like them seeking to expose the massive, coordinated inter-state election fraud that occurred in the 2020 General Election have been almost uniformly derided as "conspiracy theorists" or worse by Democrat politicians and activists, and have been attacked or censored by their allies in the mainstream media and social media platforms – the modern public square. But nearly every day new evidence comes to light, new eyewitnesses and whistleblowers come forward, and expert statisticians confirm Petitioners' core allegation: **the 2020 General Election was tainted by unconstitutional election fraud on a scale that has never been seen**

before—at least not in America. Hundreds of thousands if not millions of illegal, fraudulent, ineligible or purely fictitious ballots were cast for Biden (along with hundreds of thousands of Trump votes that were intentionally destroyed, lost or switched to Biden), changing the outcome from a Biden loss to a Biden "win."

Time is not on the fraudsters' side, as it becomes increasingly clear the election was stolen. The tide has now shifted with the filing on December 8 of the Complaint by the State of Texas—joined now by at least 18 States in support against Georgia, Michigan, Pennsylvania and Wisconsin, the four States where the most brazen fraud occurred (the "Defendant States"). *See State of Texas v. Commonwealth of Pennsylvania, et al.*, Motion for Leave to File a Bill of Complaint, Docket No. 220155 (Dec. 8, 2020). In its Complaint the State of Texas, urges this Court to exercise its original jurisdiction to waive the December 14, 2020 deadline for seating electors under 3 U.S.C. § 5 to allow discovery, litigation and investigations of this massive election fraud, rather than prematurely seat electors whose own elections may have been irredeemably tainted by fraud. Petitioners strongly support the State of Texas and the 18 *Amici* States in their requests for relief. Six states, Missouri, Arkansas, Louisiana, Mississippi, South Carolina, and Utah, have moved to intervene as of Thursday evening, December 10, 2020.

The Georgia legislatures may yet reclaim its plenary authority to appoint presidential electors under the Elections Clause, U.S. Const. Art. I, § 4, clause 1, that was usurped by Respondents in nullifying the statutory safeguards against absentee voter fraud. It is the

unconstitutional acts of Respondents, and their counterparts in the other Defendant States that have brought us to this constitutional donnybrook.

****

Petitioners' Complaint – supported by 25 fact and expert witness declarations attached and supported by 14 others filed thereafter – described how Georgia election officials, including Respondents, knowingly enabled, permitted, facilitated, or even collaborated with third parties in practices resulting in hundreds of thousands of illegal, ineligible or fictitious votes being cast in the State of Georgia. The rampant lawlessness witnessed in Georgia was part of a larger pattern of illegal conduct seen in several other states, including Arizona, Michigan,[1] Pennsylvania, and Wisconsin. Georgia State officials – administrative, executive and judicial – adopted new rules or "guidance" that circumvented or nullified the election laws, enacted by the Georgia Legislature, to protect election integrity and prevent voter fraud, using COVID-19 and public safety as a pretext.

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

---

[1] See *William Bailey v. Antrim County*, Michigan Circuit Court for the County of Antrim Case No. 2020009238CZ, pending before the Honorable Kevin A. Elsenheimer.

In the District Court, Respondents and the District Court dismissed Petitioners' requested relief as "unprecedented" and hinted that granting it could undermine faith in our election system. But to use a phrase favored by the District Court in a similar complaint in Michigan: that "ship has sailed." *King v. Whitmer*, No. 20-cv-13134 at *13 (E.D. Mich. Dec. 7, 2020). According to a Rasmussen poll, 75% of Republicans and ***30% of Democrats*** believe that "fraud was likely" in the 2020 General Election.[2] Public confidence is already shattered and will be destroyed beyond repair if an election widely perceived as fraudulent were ratified in the name of preserving confidence.

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

Now tens of millions have seen how this turnaround was achieved in Georgia. Election observers were told to

---

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

leave the State Farm Arena in Fulton County on the pretext that counting was finished for the night. But election workers resumed scanning when no one (except security cameras) was watching – a clear violation of the "public view" requirement of O.C.G.A. § 21-2-483(b). There are dozens of eyewitnesses and whistleblowers who have testified to illegal conduct by election workers, Dominion Voting Systems ("Dominion") employees or contractors, as well as other conduct indicative of fraud such as USB sticks discovered with thousands of missing votes, vote switching uncovered only after manual recounts, etc., etc.). This is 2020, and what is casually dismissed as a "conspiracy theory" one day proves to be a conspiracy fact the next.

The Respondents' official policies caused a substantial and unlawful erosion of statutory election integrity safeguards and permitted fraudulent schemes and artifices to flourish, resulting tens to hundreds of thousands of illegal ballots being counted. The same pattern writ large occurred in all the swing states with only minor variations in Michigan, Pennsylvania, Arizona and Wisconsin. See Ex. 2, William M. Briggs, Ph.D. "An Analysis Regarding Absentee Ballots Across Several States" (Nov. 23, 2020) ("Dr. Briggs Report") (R 106).

Petitioners presented an enormous multiple sworn statements and expert reports that the District Court dismissed without examination or consideration. The District Court instead accepted at face value Respondents' denials of any wrongdoing and their inapposite legal defenses – the opposite of the 12(b)(6) standard of review. The District Court did not acknowledge Petitioners' expert testimony showing that illegal ballots numbered well in excess of Biden's 11,779 post-recount vote margin. Evidence

of illegal ballots in excess of the margin of victory are sufficient to place the outcome of the election in doubt and warrants the injunctive relief of de-certification. *Cf.* O.C.G.A. § 21-2-527(d). The testimony of Petitioners' experts is sufficient to set aside the 2020 General Election and enjoin voting in the Electoral College by the Biden slate of presidential electors pending a final resolution of this case.

Petitioners also showed strong evidence of election computer fraud through expert mathematical and cyber security testimony. The forms of illegality present in this election put the results in doubt and warrant this Court setting aside the Georgia presidential election result.

While no decision of this Court can repair the fractures in our society, only a fair and open inquiry that allows the truth to be discovered can do so, for it is the truth that will set us free. Conversely, closing down any inquiry into the merits of the unconstitutional and illegal conduct in this election would be a slap in the face to many millions of Americans who believe it was a stolen election. Our common bonds require answers on the merits, not procedural evasion.

JURISDICTION

Petitioners invoke this Court's jurisdiction pursuant to 28 U.S. Code § 1254, Supreme Court Rule 11 (Certiorari to a United States Court of Appeals before Judgment) and Supreme Court Rule 20 (Procedure on Petition for an Extraordinary Writ). The district court entered its final judgment below on December 7, 2020. Petitioners filed a notice of appeal to the Eleventh Circuit later the same day.

The case is therefore "pending in a United States court of appeals . . . ." Sup. Ct. R. 11. They plan to file a Petition for Certiorari as soon as humanly possible. Because the Electors are set to vote on December 14, 2020, the time for obtaining effective relief is extraordinarily short, it would be impossible to present the case to the Eleventh Circuit and then await a decision from that court before seeking relief in this Court. Moreover, as demonstrated herein, "the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." *Id.*

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

DECISION UNDER REVIEW

The December 7, 2020, decision of the Northern District of Georgia dismissing Petitioners' Complaint and TRO Motion attached is as Exhibit 1. *Pearson v. Kemp*, Judgment, No. 1:20-cv-4809-TCB (NDGA Dec. 7, 2020) ("December 7 Order"). A transcript of the District Court hearing on the motion to dismiss, which includes the district court's oral ruling at pp. 41-44 is attached as Exhibit 2.

PARTIES TO THE PROCEEDINGS AND STANDING

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

Each of the following Petitioners is a citizen of Georgia and a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia: Coreco Ja'Qan ("CJ") Pearson; Vikki Townsend Consiglio; Gloria Kay Godwin; James Kenneth Carroll, Georgia; Carolyn Hall Fisher; and Cathleen Alston Latham. Applicant Jason M. Shepherd brings this action in his official capacity as Chairman of the Cobb County Republican Party. Brian Jay Van Gundy is the Assistant Secretary of the Georgia Republican Party.

The Presidential Elector candidates have standing as candidates for the office of Presidential Elector under O.C.G.A. § 21-2-10. The representatives of the Cobb County Republican Party and the state Republican Party have associational standing.

Presidential Elector candidates "have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast," as "[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors." *Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing to challenge actions of Secretary of State in implementing or modifying State election laws); *see also McPherson v. Blacker*, 146 U.S. 1, 27 (1892); *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (per curiam).

Respondent Brian Kemp is named in his official capacity as Governor of the State of Georgia.

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

Respondents Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le are members of the Georgia State Election Board, which also includes Chairman Brad Raffensperger. The State Election Board is responsible for "formulating, adopting, and promulgating such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." O.C.G.A. § 21-2-31(2). Further, the State Election Board "promulgate[s] rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system" in Georgia. O.C.G.A. § 21-2-31(7). The State Election Board acted under color of state law at all times relevant to this action and are sued in their official capacities for emergency declaratory and injunctive relief.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case is brought under the Elections Clause, U.S. Const. Art. I, § 4, clause 1; the Electors Clause, U.S. Const. Art. II, § 1, clause 2; and the Equal Protection and Due Process Clauses of U.S. Constitution Amendment XIV, § 1; 42 U.S.C. § 1983 and § 1988; 52 U.S.C. § 20701, and

Georgia's election contest statutes, O.G.C.A § 21-2-520 et seq.

STATEMENT OF THE CASE

Petitioners brought this action under 42 U.S.C. § 1983 and § 1988, to remedy deprivations of rights, privileges, or immunities secured by the Constitution and laws of the United States. They also bring a supplemental jurisdiction state law claim under O.G.C.A § 21-2-521 and § 21-2-522 to contest the election results. 28 U.S.C. § 1367.

U.S. Const. Art. I, § 4, clause 1 ("Elections Clause") provides that:

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

With respect to the appointment of presidential electors, the Constitution provides:

> Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

U.S. Const. Art. II, clause 1 ("Electors Clause").

Under O.C.G.A. § 21-2-10 of the Georgia Election Code, the Electors of the President and Vice President for the State of Georgia are elected by popular vote:

> 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 and referred to in this chapter as presidential electors***, equal in number to the whole number of senators and representatives to which this state may be entitled in the Congress of the United States.

Georgia's election code provides that "A vote for the candidates for President and Vice President of a political party or body **shall be deemed to be a vote for each of the candidates for presidential electors of such political party or body.**" O.C.G.A. § 21-2-285(e). *See also* § 21-2-480(g) (same for optical scan ballots).

Once they have been elected, the presidential electors cast their votes in the Electoral College:

> The presidential electors chosen pursuant to Code Section 21-2-10 shall assemble … shall then and there perform the duties required of them by the Constitution and laws of the United States."

O.C.G.A. § 21-2-11.

None of respondents is a "Legislature". The Legislature is "the representative body which ma[kes] the laws of the people.'" *Smiley v. Holm*, 285 U.S. 355, 365 (1932). Regulations of congressional and presidential elections, thus "must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787 (2015).

States are accountable to their chosen processes when it comes to regulating federal elections. *Ariz. State Legis.*, 135 S.Ct. at 2688. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); *Smiley,* 285 U.S. at 365.

The Fourteenth's Amendment to the United States Constitution provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Petitioners Presidential Elector candidates are candidates for public office and, as such, are entitled to procedures for counting the votes in the election where they appear on the ballot in accordance with federal law and the United States Constitution, including the guarantee of

"equal protection of the laws." *Bush v. Gore*, 531 U.S. 98 (2000).

Based upon all the allegations of fraud, statutory violations, and other misconduct and in the declarations attached to the Complaint, a federal constitutional question is presented and it is necessary for this Court to exercise its authority to issue the extraordinary writ in aid of its jurisdiction given the exceedingly short time frame within which these controversies must be resolved.

Fact witness testimony submitted with the Complaint and supplemented thereafter establishes multiple categories of illegal conduct in the election, ranging from mysterious pristine absentee ballots, 98% of which were marked for Biden, illegal tabulation out of public view, multiple scanning of absentee ballots, and procedural violations in the hand audit and recount**.** These illegal procedures were implemented in some counties (those controlled by Democratic officials) but not in others, violating the presidential electors' right to uniform state-wide counting procedures established by this court in *Bush v. Gore.*

In addition, as discussed below in Section II(B) of the Argument, the Complaint presents testimony from multiple experts demonstrating that tens if not hundreds of thousands of illegal votes were counted, more than enough to put the outcome in doubt.

These and other "irregularities" provide this Court grounds to set aside the results of the 2020 General Election and to provide the other declaratory and injunctive relief requested herein.

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

ARGUMENT

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

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

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

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

In the Complaint, Petitioners submitted powerful evidence of widespread voter irregularities in Georgia. Other litigation shows similar or worse irregularities in four other States – Arizona, Michigan, Pennsylvania, and Wisconsin – that use Dominion voting machines. These states all show a common pattern of non-legislative State officials weakening statutory voter fraud safeguards, and strong evidence of voter fraud from eyewitnesses and statistical analyses. Petitioners also submitted evidence

that the 2020 General Election may have been subject to interference by hostile foreign governments including China and Iran. *See* Doc. 1-9 (Appdx. p. 525) and 1-10 (Appdx. p. 450).

The District Court summarily denied Petitioners' Complaint and TRO Motion in a one-sentence order. The Court's rationale, such as it is, is in the cursory, cryptic statements 5at the conclusion of the December 7 Hearing, when it dismissed this case from the bench. *See* December 7 Transcript 41:15-44:2 (Appdx. 3-46).

A. Presidential Electors have standing to challenge the outcome of a presidential election for fraud and illegality that cause the defeat of their candidate.

The District Court found that Petitioners, including Presidential Elector candidates, lacked standing based on a portion of the Complaint stating that Petitioners' "interests are one and the same as any Georgia voter." *Id.* at 42:24-25.

However, the District Court overlooked that six of the Petitioners rest their standing upon their status as Republican Party Presidential Electors, while the other two are senior officials of the State or Cobb County Republican Party. *See* Complaint, ¶¶ 23-30. (Appdx. p. 58-60).

The six Georgia Presidential Elector Petitioners were nominated by the Republican Party of Georgia, and their nominations certified to the Georgia Secretary of State pursuant to O.G.C.A. § 21-2-10. The office carries specific

responsibilities defined by law, namely voting in the Electoral College for President and Vice-President. O.G.C.A. § 21-2-11. While their names do not appear on the ballot, Georgia Law makes it clear that ("A vote for the candidates for President and Vice President of a political party or body shall be deemed to be a vote for each of the candidates for presidential electors of such political party or body." O.C.G.A. §§ 21-2-285(e), 21-2-480(g) They are entitled to compensation for their services. O.C.G.A. § 21-2-13. The Georgia Election Code is replete with code sections treating presidential electors as candidates.[3]

---

[3] In addition to what has already been cited, *see* O.C.G.A. §§ 21-2-2(25)(B) (defining political parties); 21-2-12 (vacancies in presidential electors); 21-2-13 (compensation of presidential electors); 21-2-132(a) (placement on ballots of names of presidential electors (superceded in 2005) and relieving presidential electors from having to file a notice of candidacy); 21-2-285(e) (vote for presidential and vice presidential candidates deemed vote for presidential electors); 21-2-132.1 (requiring independent candidates to file a slate of presidential electors); 21-2-153 (qualification of candidates for presidential elector); 21-2-216(e) (registering to vote in an election in which presidential electors are candidates); 21-2-285(e) (ballot placement presidential electors for voting by ballot) 21-2-379.5(e) (same for electronic recording voting systems); 21-2-480(g) (same for optical scan ballots); 21-2-501 (defining victory for presidential electors as victory by their presidential and vice presidential candidates); 21-2-322(2) (requiring for voting machines that a voter be able to choose one party's electors all at once); 21-2-365(2) (same for optical scan ballots); 21-2-379.1(2) (same for direct recording electronic voting); 21-2-379.22(2) (for ballot marking devices); 21-2-452 (when voters may approach voting machines); 21-2-381(d)(1) (permitting absentee ballot application in elections for presidential electors); 21-2-435(c)(4) (how to mark ballots to vote for presidential electors); 21-2-438 (marking ballot for president and vice president deemed vote for presidential electors); 21-2-455 (canvassing votes for presidential electors); 21-2-499(b) (tabulation and computation of votes

The standing of presidential electors to challenge fraud, illegality and disenfranchisement in a presidential election rests on a constitutional and statutory foundation—as if they are candidates—not voters. Theirs is not a generalized grievance, one shared by all other voters; they are particularly aggrieved by being wrongly denied the responsibility, emoluments and honor of serving as members of the Electoral College, as provided by Georgia law. This Court has recognized this when it decided two cases involving vote counting procedures for the 2000 presidential election, *Bush v. Gore* and *Bush v. Palm Beach Cty. Canvassing Bd.*

Petitioners have the requisite legal standing, and the District Court must be reversed on this point. As the Eighth Circuit held in *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020), "[b]ecause Minnesota law plainly treats presidential electors as candidates, we do, too." *Id.* at 1057. And this Court's opinion in *Bush v. Gore*, 531 U.S. 98 (2000)) (failure to set state-wide standards for recount of votes for presidential electors violated federal Equal Protection), leaves no doubt that presidential candidates have standing to raise post-election challenges to the manner in which votes are tabulated and counted. *See also Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70 (2000). Candidates for the office of Presidential Elector stand in the shoes of the candidate for President to whom they have pledged their vote, and suffer the same injury

---

for presidential electors by the Secretary of State); and 21-2-502(e) (certificates of election for presidential electors). That presidential electors are candidates under Georgia law is beyond dispute.

from any illegal conduct affecting the manner in which votes are tabulated or counted.

Petitioners have therefore met the requirements for standing: the injuries to their rights under the Equal Protection and Due Process clauses are (1) concrete and particularized for themselves, (2) actual or imminent and (3) are causally connected to Respondents' conduct because the debasement of their votes is a direct result of the policies and procedures of the Respondents and the public employee election workers they supervise. *See generally Lujan v. Defenders of Wildlife*, 504 U.S. 555 560-561 (1992).

The District Court also appeared to place great weight on the Eleventh Circuit's recent decision in *Wood v. Raffensperger*, 2020 WL 7094866 (11th Cir. Case No. 201-14418 Dec. 5, 2020) for the proposition that Applicant Electors present only non-justiciable generalized grievances. While *Wood* applies this rule to a citizen elector, it expressly notes that "perhaps a candidate or political party would have standing to challenge the settlement agreement or other alleged irregularities." *Id*. at *4.

B. The Petitioners' Claims Are Not Barred by Laches.

It appears the District Court accepted Respondents' arguments on *laches* insofar as Judge Batten stated that Petitioners "waited until over three weeks after the election to file the suit," December 7 Transcript at 43:2-3, and suggests that Petitioners should "have followed the Administrative Procedures Act and objected to the rule-

making authority that had been exercised by" Respondent Raffensperger. *Id.* at 43:6-8. (Appdx. p. 45).

Here there is no unreasonable delay in asserting Petitioners' rights and no resulting prejudice to the defending party. Petitioners could not file a lawsuit claiming the election was stolen until it actually was stolen.

The election was certified on November 20, 2020. Petitioners filed their Complaint on November 25, three business days later, and within the state law limitations period for election contests of five days. *See* O.C.G.A. § 21-2-524(a). Petitioners seek de-certification. De-certification presumes prior certification. The claim could not be ripe until then, much less barred by laches. Moreover, much of the misconduct identified in the Complaint was not apparent on Election Day and was not discovered until later through expert analysis. Indeed, some of the vote *counting* irregularities did not actually happen until after the polls closed on election day.

The state law election contest remedy must be brought within 5 days of certification. O.C.G.A. § 21-2-524(a) (counting rules at O.C.G.A. § 1-3-1(d)(3). Petitioners' Complaint was brought within this period and should not be subject to a laches defense. Contrary to the trial court, certification does not immunize an election from judicial review. An election contest claim is only ripe *after* certification. O.C.G.A. § 21-2-524(a) (when election contest can be brought). Moreover, the Georgia Election Code expressly provides for invalidation of elections *after certification* where the case is properly proven. O.C.G.A. § 21-2-527(d) ("such court shall declare the … election …to be invalid … .)"

The claims of prejudice to the Defendants and to lawful voters who cast their legal votes in the election presume the point in controversy – whether the election was lawful or fraudulent. No defendant, no candidate, no intervenor, no political party and no citizen can claim a legally protectible interest in a fraudulent vote count; there can be no prejudice to anyone from invaliding such an election. The notion that there is no cognizable legal, equitable or constitutional remedy for an election won through fraudulent means is obnoxious to history, law, equity, the Constitution and common sense. Elections may and should be invalidated where the evidence shows they are tainted by fraud and illegality.

C. Federal courts have and should exercise jurisdiction under 42 U.S.C. § 1983 over claims by Presidential Elector candidates that the election was stolen from them by fraud and illegality under color law in violation of their constitutional rights.

Once again, it is difficult to understand the District Court's rationale. Judge Batten stated that Petitioners' constitutional election fraud claims, whether "Equal Protection, Due Process, Elections Clause and Electors Clause, it does not matter. The 11th Circuit has said these claims in this circuit must be brought in State court." December 7 Transcript at 42:2-5. *Id.* at 42:13-15 ("these types of cases are not properly before Federal Courts, that they are State elections, State courts should evaluate these proceedings from start to finish."). (Appdx. p. 44).

Petitioners' claims cannot all be shoe-horned into the exclusive state court remedy of a state law election contest. Respondents' actions in modifying, or violating, the Georgia Legislature's election laws—for example, de facto eliminating the signature requirement for absentee ballots or authorizing county election officials to process absentee ballots prior to election day—amount to "[a] significant departure from the legislative scheme for appointing Presidential electors," which "presents a federal constitutional question." *Bush v. Gore*, 531 U.S. at 112 (Rehnquist, C.J., joined by Scalia and Thomas, J.J, concurring).

The federal court system exists to provide a forum for redress of violations under color of law of rights secured by the Constitution and laws of the United States. The 14th Amendment and 42 U.S.C. § 1983 have not been repealed. The Complaint does not present a "garden variety" election dispute beneath the dignity of the federal courts. It goes instead to the core process for election of the President and Vice President.

The District Court may also have dismissed the Complaint on federal abstention grounds, but in doing so, it was obligated to explain why that was justified in light of this Court's and the Eleventh Circuit's strong precedent against abstention in voting rights cases: "Our cases have held that voting rights cases are particularly inappropriate for abstention." *Siegel v. LePore*, 234 F.3d 1163, 1174 (11th Cir. 2000). *See also Harman v. Forssenius*, 380 U.S. 528, 534 (1965) (same).

D. The District Court erred to the extent it dismissed the complaint as moot.

It is well-settled that the mere occurrence of an election does not moot an election-related challenge, nor does certification necessarily moot a post-election challenge. The Eleventh Circuit squarely addressed this issue in *Siegel*, which involved a post-certification challenge in connection with the 2000 General Election recount. The *Siegel* court first noted that neither of the requirements for mootness had been met post-certification because "[i]n view of the complex and ever-shifting circumstances of the case, we cannot say with any confidence that no live controversy is before us." *Siegel,* 234 F.3d at 1172-73. The Eleventh Circuit's recent *Wood* decision also would not support the District Court's position because the plaintiff there requested only a delay in certification from the district court, *Wood*, 2020 WL 7094866 at *6, rather than de-certification and other prospective relief that Petitioners requested from, but rejected by, the District Court. And, of course, this Court *twice* considered and decided cases following the 2000 presidential election. *Bush v. Gore* and *Bush v. Palm Beach Cty. Canvassing Bd.*

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

A. Respondents Violated the Electors Clause by Modifying the Georgia Election Code Through Non-Legislative Action.

The Complaint identifies several ways in which Secretary of State, Brad Raffensperger and the Georgia

State Election Board without the approval or ratification of the Georgia Legislature changed or effectively nullified provisions of the Georgia Election Code that were specifically intended to prevent absentee ballot voter fraud.

1. On March 6, 2020, Respondents Secretary Raffensperger and the Georgia State Election Board entered into a settlement agreement with the Democratic Party of Georgia, Inc., the DSCC, and the DCCC setting standards for processing absentee ballots different from those in the Georgia Election Code. Among other things, the Settlement Agreement abrogated the signature verification process for absentee ballots, reducing it to a watery process giving local officials broad and unguided discretion, rather than the strict enforcement required by O.C.G.A. § 21-2-386(a)(1). Complaint ¶¶ 51-59.

2. O.C.G.A. § 21-2-386(a)(2) prohibits the opening of absentee ballots until after polls open on Election Day. In April 2020, the State Election Board adopted Secretary of State Rule 183-1-14-0.9-.15, permitting absentee ballots to be opened up to three weeks before election day, in direct and irreconcilable conflict with O.C.G.A. § 21-2-386(a)(2). Complaint ¶¶ 60-63 (Appdx. 71-72).

3. Respondents permitted hand recounts and audits that violated Georgia Election Code requirements, in particular O.C.G.A. § 21-2-498, which requires audits to be completed "in public view." Petitioners provided eyewitness testimony that these requirements were not followed, and in Democrat-

majority counties were conducted in an unlawful manner, discriminated against Republican observers, counted certain ballots without signatures or spoiled ballots, conducted machine recounts instead of hand recounts and other violations. ¶¶ 65-75. Aside from the illegality of many of these procedures, their differential application in different counties suffered from precisely the type of non-uniformity that this Court held violated equal protection in *Bush v. Gore*.

4. Eyewitness testimony documents numerous violations by local election workers, including ballot switching (Trump to Biden), systematic failure to follow election laws, threats to Republican observers, blocking or prohibiting access by Republican observers, failure to comply with chain-of-custody requirements, and voting machines with serial numbers that did not match the related documentation. ¶¶ 78-91 (Appdx. 78-83).

B. Respondents Knowingly Enabled Election Fraud by Election Workers, Dominion, Democratic Operatives, Unknown Third Parties, and Potentially by Hostile Foreign Actors.

The State Defendants through their official policies, practices and procedures left the door wide open for fraud:

1. There is evidence of illegal tabulation of a significant volume of absentee ballots in Fulton County out of public view in violation of O.C.G.A. § 21-2-483(b). See Complaint,

paras. 10-11, 116-119. (Appdx. 53, 102-104). Republican observers were told to leave around 10:30 PM. (Appdx. 104). Doc. 1-28 and 1-29 (Appdx. 615, 619). This has recently been confirmed by surveillance video obtained from State Farm Arena which clearly shows this activity, and further shows that the same ballots were scanned over and over, another clear election fraud. This video evidence was filed with District Court Monday December 7, 2020, and has been seen by tens of millions of Americans since its release on December 4, 2020 in connection with hearings held by the Georgia Legislature. (Appdx. 2090).

2. Eye-witness testimony from a poll manager with 20 years' experience that stacks of utterly pristine mail-in ballots were counted – impossible for any absentee ballot returned in the mail (as they all are) because they have to be folded twice to fit in the envelope. To the witness' observation, 98% of these ballots were voted for Vice President Biden. Complaint ¶ 75 (Appdx. 77); Doc. 1-16 (Affidavit of Susan Voyles, ¶¶ 14-16, 27) (Appdx. 502, 507, 510-511). Another experienced observer testified that he also observed pristine ballots during the recount which were voted for Biden. *See* Doc. 67-3, Declaration of Wilburn J. Winter, filed December 6, 2020. (Appdx. 2336).

3. There is compelling evidence that the electronic security of the Dominion system is so lax as to present a "extreme security risk" of undetectable hacking, and does not include properly auditable system logs. Complaint ¶ 8 (Appdx. 54); Doc. 1-4 (Hursti Declaration ¶¶ 37, 39 (Appdx. 213-215), ¶¶ 45-48 (Appdx. 218-219); Doc. 1-5, at Appdx. 278-279, p. 29, ¶ 28). Judge Totenberg's decision in *Curling v. Raffensperger*, 2020 WL 5994029 (NDGA 10/11/20) presents a detailed review of the evidence on these issues.

4. There is sworn evidence that the process of uploading data from memory cards to the Dominion servers is fraught with serious bugs, frequently fails and is a serious security risk. Doc. 1-4 (Hursti Declaration ¶¶ 41-46) (Appdx. 216-218).

5. There has been no inventory control over USB sticks, which were regularly taken back and forth from the Dominion server to the Fulton County managers' offices, creating another extreme security gap. *Id*. at ¶ 47. (Appdx. 218-219).

6. "The security risks outlined above – operating system risks, the failure to harden the computers, performing operations directly on the operating systems, lax control of memory cards, lack of procedures, and potential remote access, are extreme and destroy the credibility of the tabulations and

output of the reports coming from a voting system." *Id*. at ¶ 49. (Appdx. 219).

7. There is evidence that the Dominion voting system ballots marked by Ballot Marking Devices are not voter-verifiable or auditable in a software-independent way. Complaint ¶¶ 13 & 110(a) (Appdx. 54, 95); Doc. 1-5, ¶ 7; Doc. 1-8 passim) (Appdx. 398-431). This issue has been litigated and decided against the State Defendants in *Curling v. Raffensperger*, 2020 WL 5994029 (NDGA 10/11/20), which again presents a detailed analysis of this question.

8. The Spider Affidavit, Doc. 1-9 (Appdx. 433), reports on cyber security testing and analysis, penetration testing, and network connection tracing and analysis with respect to Dominion Voting Systems servers and networks. The Affiant is formerly of the 305th Military Intelligence Battalion with substantial expertise in cyber security. In testing on November 8, 2020, he found shocking vulnerabilities in the Dominion networks, with unencrypted passwords, network connections to IP addresses in Belgrade, Serbia, and reliable records of Dominion networks being accessed from China. Doc. 1-9, ¶¶ 7-10 (Appdx. 433-439). The Spider affidavit also finds that Edison Research, an election reporting affiliate of Dominion, has a directly connected Iranian server, which is in turn tied to a server in the

Netherlands which correlates to known Iranian use of the Netherlands as a remote server. *Id*. at ¶¶ 10-11 (Appdx. 433-440). The Spider affidavit identifies a series of Iranian and Chinese connections into Dominion's networks. The affidavit concludes in ¶ 21 (Appdx. 448-449):

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

9. The Declaration of Russell Ramsland, Doc. 1-10, finds similar shocking vulnerabilities in the Dominion networks and systems, and confirms the findings of the Spider affidavit. (Appdx. 451). He further shows that malware

on servers operated by SCYTL (an affiliated intermediary for processing and reporting election results) and can capture log in credentials used in the Dominion networks. *Id*. at ¶¶ 4-5 (Appdx. 452). Ramsland finds that Dominion's source code is available on the Dark Web, and that Dominions election systems use unprotected logs, enabling undetectable hacking by sophisticated hackers. *Id*. at 6-7 (Appdx. 452-453). This latter point confirms Judge Totenberg findings about the vulnerabilities in the Dominion system in *Curling v. Raffensperger*, 2020 WL 5994029 (NDGA 10/11/20).

10. Dominion's Chief Technical Officer, strategy director, co-inventor on several Dominion patents, and primary defense expert witness in *Curling v. Raffensperger*, is a member of Antifa, a violent revolutionary communist group, responsible for months of mayhem in Portland, Oregon, and violent rioting all over the United States. Dr. Coomer is consumed with an intense loathing of Donald Trump and all of his supporters. Dr. Coomer said in an Antifa conference call "Don't worry. Trump won't win the election, we fixed that." Complaint p. 120 (Appdx. 104-105). Dr. Coomer thus had motive, means and opportunity to rig the election through the Dominion software, and declared that he had done so.

C. Petitioners Submitted Expert Witness Testimony Establishing Wide-Spread Voting Fraud That Changed The Outcome of the Election.

Petitioners submitted the following evidence from fact and expert witnesses demonstrating that widespread voting fraud occurred in Georgia in the 2020 General Election. Former Vice-President Biden's margin in Georgia is only 11,779 votes.

Petitioners presented several estimates of illegal or ineligible Biden ballots (or lost Trump votes) that ***each individually exceeds this margin and if even one were correct would swing the vote from Biden to Trump***: ¶ 1 (non-resident voters), ¶ 2 (illegal and unrequested ballots), ¶¶ 3 & 5 (estimates of absentee ballots sent but listed as unreturned and likely destroyed or lost), ¶4 (anomalous and "mathematically impossible" Biden turnout increase in Fulton County), ¶¶ 6-8 (unauthorized change in absentee ballot rejection criteria), ¶10 (Dominion differential and discriminatory weighting of Trump votes vs. Biden votes).

1. Expert testimony that 20,311 non-residents voted illegally. Matt Braynard and the Voting Integrity Project determined that at least 20,311 absentee or *early* voters voted in Georgia despite having moved out of state – sufficient in itself to put the outcome of the election in doubt. *See* Complaint ¶ 122(d); *See* Doc. 45-1 (Expert Report of Matthew Braynard) (Appdx. 1393).

2. A massive number of unrequested absentee ballots were sent in violation of the legislative scheme, estimated to a 95% confidence interval to be between 16,938 and 22,771 ballots – sufficient in itself to put the outcome of the election in doubt. Complaint ¶ 122(b); Doc. 1-1 (Briggs Declaration and Report) (Appdx. 152); Doc. 45-1 (Expert Report of Matthew Braynard) (Appdx. 1393).

3. A massive number of absentee ballots that were returned by the voters but never counted, estimated to a 95% confidence interval to be between 31,559 to 38,886. Complaint ¶ 122(a); Doc 1-1, Briggs Declaration (Appdx. 106); Doc. 45-1, Braynard Report (Appdx. 1347).

4. A statistical analysis of Fulton County precinct voting results by Eric Quinnell, Ph.D. identifies 32,347 votes in Fulton County alone as statistically anomalous, and notes that in certain precincts Biden gained more than 100% of the increase in new registrations between the 2016 general election and this election. Complaint ¶ 123; Doc. 1-27, ¶¶ 7-8 (Appdx. 596-597). A second declaration from Dr. Quinnell and S. Stanley Young, Ph.D., a member of the American Association for the Advancement of Science in the area of statistics, further analyzes Fulton County absentee ballots and finds mathematically impossible statistical

anomalies in the absentee ballot data. *See* Doc. 45-2 (Appdx. 1419).

5. An analysis by Russell Ramsland of absentee ballot statistics showing that 5,990 absentee ballots had impossibly short intervals between the dates they were mailed out and the dates they were returned, and that at least 96,000 absentee ballots were voted but are not reflected as having been returned. Complaint ¶¶ 16 & 190; Doc. 1-10, ¶¶ 15 (Ramsland Declaration) (Appdx. 455).

6. The absentee ballot signature rejection rate announced by the Secretary of State was .15%. Only 30 absentee ballot *applications* were rejected statewide for signature mismatch, with nine in tiny Hancock County, population 8,348, eight in Fulton County and *zero* in any other metropolitan county. (Appdx. 131-132). Under the faulty consent decree, signatures could be matched (if there was any matching done at all) with the applications alone rather than voter registration records – allowing unfettered injection of bootstrapped signatures into the "valid" absentee ballot pool. Petitioners allege that these facts represent the de facto abolition of the statutory signature match requirement of O.C.G.A. § 21-2-386 in violation of state statute, the Elections and Electors Clause, and the Equal Protection and Due Process Clauses. Complaint ¶ 181 (Appdx. 131-132). Moreover, the non-

uniformity of procedures employed by different local officials violate this Court's clear command in *Bush v. Gore*.

7. An analysis by Benjamin Overholt, filed at Doc. 45-3, calculates that the signature rejection rate in Georgia for absentee ballots in the 2020 election was .15%, and that the Secretary of State has used inconsistent methodologies in calculating the 2016, 2018 and 2020 rejection rates to make the 2020 rejection rate seem better by comparison. Overholt says the Secretary of State's press release is "misleading" and uses inconsistent methodologies and faulty comparisons. See Doc. 45-3 (Overholt Declaration) (Appdx. 1435).

8. "If the rejection rate of mailed-in absentee ballots remained the same in 2020 as it was in 2016, there would be 83,517 less tabulated ballots in 2020. The statewide split of absentee ballots was 34.68% for Trump and 65.2% for Biden. Rejecting at the higher 2016 rate with the 2020 split between Trump and Biden would decrease Trump votes by 28,965 and Biden votes by 54,552, which would be a net gain for Trump of 25,587 votes. This would be more than needed to overcome the Biden advantage of 12,670 votes, and Trump would win by 12,917 votes." Texas Complaint ¶ 76.

9. In further analysis, Ramsland finds through sophisticated mathematical techniques that there was a distinct political bias in favor of Joe Biden and against Donald Trump in the results reported from Dominion machines vs. those reported on other systems. (Appdx. 454-455 at ¶¶ 8-10). Biden averaged 5% higher on Dominion and Hart systems than on other systems. *Id*. Biden overperformed Ramsland's predictive model in counties where other machines were used only 46% of the time, indicating machine neutrality. However, in the Dominion/Hart system counties, Biden overperformed the model 78% of the time, an anomalous or unnatural result to the 99.99% confidence level. *Id*. at 10-12. This analysis was confirmed by checking it by another machine learning method. *Id*. at ¶ 12. See also ¶13 ("**This indicates the fraud was widespread** and impacted vote counts in a systematic method **across many machines and counties**.") (Emphasis in original). The consonance between this evidence and Dr. Coomer's vow that he had "fixed" it so that Trump could not win cannot just be brushed aside.

10. Ramsland reaches the same conclusion as the Spider affidavit, and adds the following:

> Based on the foregoing, we believe this presents unambiguous evidence that using multiple statistical tools and techniques to examine if the use

> of voting machines manufactured by different companies affected 2020 US election results, we found the use of the Dominion X/ICX BMD (Ballot Marking Device) machine, manufactured by Dominion Voting Systems, and machines from Hart InterCivic, appear to have abnormally influenced election results and **fraudulently and erroneously attributed from 13,725 to 136,908 votes to Biden in Georgia**. (Emphasis in original). (Appdx. 460-461).

D. Respondents' Actions Satisfy the Requirements for a Constitutional Election Fraud Claim under 42 U.S.C. § 1983 That Can Be Remedied by This Court.

The pleading requirements for stating a constitutional election fraud claim under Section 1983 are set forth in *Kasper v. Bd. of Election Com'rs of the City of Chicago*, 814 F.2d 332 (7th Cir. 1987). In *Kasper*, Republican plaintiffs alleged some of the same conduct that occurred in Georgia and other states in the 2020 General Election, in particular, maintenance of voter lists with ineligible voters, fictitious or fraudulent votes, and failure to enforce safeguards against voting fraud. Their complaint did not allege active state participation in vote dilution or other illegal conduct, but rather that state defendants were 'aware that a substantial number of registrations are bogus and [had] not alleviated the situation." *Id.* The *Kasper*

court held that "casting (or approval) of fictitious votes can violate the Constitution and other federal laws," and that for the purposes of Section 1983, it is sufficient to allege that this conduct was permitted pursuant to a state "'policy" of diluting votes" that "may be established by a demonstration" state officials who "despite knowing of the practice, [have] done nothing to make it difficult." *Id.* at 344. This "policy" may also lie in the "design and administration" of the voting system that is "incapable of producing an honest vote," in which case "[t]he resulting fraud may be attributable" to state officials "because the whole system is in [their] care and therefore is state action." *Id.* The state action requirement is thus clearly met for the Respondents' conduct described above.

While the U.S. Constitution itself accords no right to vote for presidential electors, "[w]hen the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." *Bush v. Gore*, 531 U.S. 98, 104 (2000) The evidence shows not only that Respondents failed to administer the November 3, 2020 election in compliance with the manner prescribed by the Georgia Legislature in the Georgia Election Code, but that Respondents through their policies, practices and procedures departed from the Georgia Election Code and thereby left the door wide open for schemes and artifices to fraudulently and illegally manipulate the vote count to make certain the election of Biden as President of the United States. This conduct violated the rights of Petitioners as Presidential Electors to a constitutional election under the Elections and Electors, Equal Protection and Due Process clauses.

Respondents' policies also disenfranchised Republican voters in violation of the U.S. Constitution's "one person, one vote" requirement by:

- **Republican Ballot Destruction: "1 Person, 0 Votes."** Fact and witness expert testimony alleges and provides strong evidence that tens or even hundreds of thousands of Republican votes were destroyed, thus completely disenfranchising that voter.

- **Republican Vote Switching: "1 Person, -1 Votes."** Petitioners fact and expert witnesses further alleged and provided supporting evidence that in many cases, Trump/Republican votes were switched or **counted** as Biden/Democrat votes. Here, the Republican voter was not only disenfranchised by not having his vote counted for his chosen candidates, but the constitutional injury is compounded by adding his or her vote to the candidates he or she opposes.

- **Dominion Algorithmic Manipulation: For Republicans, "1 Person, 0.5 Votes," while for Democrats "1 Person, 1.5 Votes.** Petitioners presented evidence in the Complaint regarding Dominion's algorithmic manipulation of ballot tabulation, such that Republican voters in a given geographic region, received less weight per person, than Democratic voters in the same or other geographic regions. *See* Doc. 1-10 (Appdx. 450). This unequal treatment is the 21st century version of the evil that the Supreme Court sought to remedy in the apportionment cases beginning with *Baker v. Carr*, 369 U.S. 186 (1962), and *Reynolds v. Sims*, 377 U.S. 533 (1964). Further, Dominion did so under its contracts with State actors to

carry out non-delegable duties of election administration so this form of discrimination is under color of law.

This Court, in considering Petitioners' constitutional and voting rights claims under a "totality of the circumstances" must consider the cumulative effect of the specific instances or categories of Respondents' voter dilution and disenfranchisement claims. Taken together, these various forms of unlawful and unconstitutional conduct destroyed or shifted tens or hundreds of thousands of Trump votes, and illegally added tens or hundreds of thousands of Biden votes, changing the result of the election and harming the Presidential Elector Petitioners.

Petitioners also allege new forms of voting dilution and disenfranchisement made possible by new technology. The potential for voter fraud inherent in electronic voting was increased as a direct result of Respondents' policies. The State Defendants implemented more widespread absentee voting while eliminating the traditional protections against voting fraud (voter ID, signature matching, witness and address requirements, etc.).

Petitioners retain their Constitutional rights even against novel forms of vote dilution. Respondents have allowed likely the most wide-ranging and comprehensive scheme of voting fraud yet devised, integrating new technology with old fashioned urban machine corruption and skullduggery. Novelty is not a defense, nor does it prevent this Court from fashioning appropriate injunctive relief.

CONCLUSION

WHEREFORE, the Petitioners respectfully request this Honorable Court grant this Emergency Petition Under Rule 20 For Extraordinary Writ Of Mandamus To Vacate the December 7 Judgment of the United States District Court for the Northern District of Georgia.

Petitioners seek an emergency order instructing Respondents to de-certify the results of the General Election for the Office of President, and prohibiting Respondents from empaneling the Biden slate of electors to cast their votes in the Electoral College

Petitioners seek an emergency order prohibiting Respondents from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with the Georgia Election Code.

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

Respectfully submitted,

/s/ Howard Kleinhendler
HOWARD KLEINHENDLER

SIDNEY POWELL
Counsel of Record
Texas Bar No. 16209700

New York Bar No. 2657120
Howard Kleinhendler
Esquire
369 Lexington Avenue, 12th
Floor
New York, New York 10017
(917) 793-1188
howard@kleinhendler.com

Sidney Powell, P.C.
2911 Turtle Creek Blvd.,
Suite 300
Dallas, Texas 75219
(517) 763-7499
sidney@federalappeals.com

HARRY W. MACDOUGALD
Georgia Bar No. 463076
Caldwell, Propst & DeLoach,
LLP
Two Ravinia Drive, Ste 1600
Atlanta, Georgia 30346
(404) 843-1956
hmacdougald@cpdlawyers.com

Of Counsel
JULIA Z. HALLER
BRANDON JOHNSON
EMILY P. NEWMAN

L. LIN WOOD
Georgia Bar No. 774588
L. LIN WOOD, P.C.
P.O. Box 52584
Atlanta, GA 30305-0584
(404) 891-1402

Date: December 11, 2020

CERTIFICATE OF COMPLIANCE

The attached Writ of Certiorari complies with the

type-volume limitation. As required by Supreme Court Rule 33.1(h), I certify that the document contains 8,974 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

Respectfully submitted,

/s/ Howard Kleinhendler
HOWARD KLEINHENDLER
Attorney for Plaintiff/Petitioners
369 Lexington Avenue, 12th Floor
New York, New York 10017
(917) 793-1188
howard@kleinhendler.com

Date: December 11, 2020

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CORECO JA'QAN PEARSON, VIKKI TOWNSEND CONSIGLIO, GLORIA KAY GODWIN, JAMES KENNETH CARROLL, CAROLYN HALL FISHER, CATHLEEN ALSTON LATHAM and BRIAN JAY VAN GUNDY

Plaintiffs,

vs.

BRIAN KEMP, in his official capacity as Governor of Georgia, BRAD RAFFENSPERGER, in his official capacity as Secretary of State and Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a member of the Georgia State Election Board, REBECCA N. SULLIVAN, in her 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,

DEMOCRATIC PARTY OF GEORGIA, INC., DSCC, DCCC, JOHN MANGANO, ALICE O'LENICK, BEN SATTERFIELD, WANDY TAYLOR, and STEPHEN DAY,

Intervenors.

CIVIL ACTION FILE

NO. 1:20-cv-4809-TCB

J U D G M E N T

This action having come before the court, Honorable Timothy C. Batten, Sr., United States District Judge, for consideration of defendant's and the intervenor defendant's motions to dismiss, and the court having granted said motions, it is

Ordered and Adjudged that the action be, and the same hereby is, dismissed.

Dated at Atlanta, Georgia, this 7th day of December, 2020.

JAMES N. HATTEN
CLERK OF COURT

By: s/ D. Barfield
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
December 7, 2020
James N. Hatten
Clerk of Court

By: s/ D. Barfield
Deputy Clerk

United States District Court
Northern District Of Georgia
Atlanta Division

Coreco Jaqan Pearson, et al.,
Plaintiff,
vs.
Brian Kemp, et al.,
Defendant.

Civil Action
File No. 1:20-CV-4809-TCB

Atlanta, Georgia
Monday December 7, 2020
10:00 a.m.

Transcript of Motions Hearing
Before The Honorable Timothy C. Batten, Sr.
United States District Judge

APPEARANCES:

FOR THE PLAINTIFFS: Sidney Powell
Harry MacDougald
Attorneys at Law

FOR THE DEFENDANTS: Carey Allen Miller
Joshua Barret Belinfante
Charlene Swartz McGowan
Melanie Leigh Johnson
Attorneys at Law

Lori Burgess, Official Court Reporter
(404) 215-1528

Proceedings recorded by mechanical stenography, transcript produced by CAT.

THE COURT: Good morning. I would like to point out that this hearing is being audio streamed nationally, so whatever you say near your microphones will be picked up for the world to hear, so you might want to be discreet in what you have to say this morning with the microphones. Also, I would ask that -- each of y'all should have some plastic bags. As you leave the lectern, take the bag with you, and the next person who comes up should put a new bag. You all have bags, right? Okay. So that is what we are going to do. All right.

In this case, the Plaintiffs are a group of disappointed Republican presidential electors. They assert that the 2020 presidential election in Georgia was stolen, and that the results, Joe Biden winning, occurred only because of massive fraud. Plaintiffs contend that this massive fraud was manifest primarily, but not exclusively, through the use of ballot stuffing. And they allege that this ballot stuffing has been rendered virtually invisible by computer software created and run by foreign oligarchs and dictators from Venezuela to China to Iran.

The defendants deny all of Plaintiffs' accusations. They begin in their motions to dismiss by rhetorically asking what a lot of people are thinking, why would Georgia's Republican Governor and Republican Secretary of State, who were avowed supporters of President Trump, conspire to throw the election in favor of the Democratic candidate for

President.

We are going to turn now to the legal arguments. We have several motions today, but primarily they are grouped into two. First we have a motion to dismiss that has been filed by the State Defendants, the original defendants in the case, and then we have another motion to dismiss filed by the Intervening Defendants in the case. The Plaintiffs of course oppose both of these motions. They've been fully briefed, and I have read everything that has been filed in this case by the Plaintiffs and everything pertaining to these motions. If the Defendants are not successful on those motions to dismiss, we will proceed to hear argument on the substantive merits of the complaint and the claims in the complaint. The way that time is going to be -- well let me begin it this way. In their legal arguments the Defendants contend that Plaintiffs lack standing to bring this suit, which is pretty much what the 11th Circuit just held in Mr. Woods's own separate suit against the State on Saturday. The Defendants further argue that under Georgia law this kind of suit, one for election fraud, should be filed in State Court, not Federal Court. This too is what the 11th Circuit held in a separate but similar case recently. And next, Defendants assert that Plaintiffs waited too long to file this suit which seeks an order decertifying the election results. The Secretary of State has already certified the election result, and there is

no mechanism that the Court is aware of of decertifying it, but that is that the Plaintiffs seek.

And finally, the law is pretty clear that a party cannot obtain the extraordinary remedy of injunctive relief unless he acts quickly. And Defendants contend that the Plaintiffs have failed to do that, pointing out that all of Plaintiffs' claims about the Dominion voting machines, the ballot marking devices, could have been raised months ago, and certainly prior to the November 3 election, and certainly before Plaintiffs filed this suit over three weeks after the election took place.

So these are the procedural arguments that the Defendants are making today, or at least the main ones, I believe. And then the question is, assuming the Plaintiffs can survive these procedural hurdles, what is the relief that they want? They want me to agree with their allegations of massive fraud. And what do they want me to do about it? They want me to enter injunctive relief, specifically the extraordinary remedy of declaring that the winner of the election in Georgia was Donald Trump and not Joe Biden. They ask me to order the Governor and the Secretary of State to undo what they have done, which is certify Joe Biden as the election winner. We will get to those merits if the Plaintiffs survive the motion to dismiss.

At this time we're going to begin with the motion to

dismiss, and the time allotment will be as follows: The State Defendants have 20 minutes -- let me back up. Each side gets 30 minutes. The Plaintiffs get all 30 of their minutes, and the Defendants' 30 minutes are divided among the two sets of Defendants. The State Defendants -- the State Defendants get 20 minutes, and then the Intervening Defendants get 10 minutes, following which we will hear the Plaintiffs' response. They have up to 30 minutes. And then whatever time was saved in -- reserved for rebuttal, the State Defendants and Intervening Defendants will then have.

But before we go forward, is there any way we can stop this fuzzy sound that is coming through up here? I don't know if it is coming through in the whole courtroom. I don't think has anything to do with my microphone. (pause). All right, is that better? I think it was the speaker, one of the two speakers up here on the bench. I talk loud enough and I think the lawyers talk loud enough that I can hear what they are going to say. I don't need a microphone. So at this time I will turn the matter over to the State Defendants.

MR. MILLER: Good morning, Your Honor. Carey Miller on behalf of the State Defendants. I am joined today by Josh Belinfante, Charlene McGowan, and Melanie Johnson. Mr. Belinfante will be handling the motion to dismiss. I do want to raise with the Court, to the extent that we get there, State Defendants would like to renew their motion to alter the

TRO that is in place at this point. I understand that we can address that in that section.

THE COURT: All right. Thank you, sir.

MR. BELINFANTE: I am not checking email, I am trying to keep my time.

THE COURT: Okay.

MR. BELINFANTE: I would ask this. Would the Court allow me to speak without the mask? Or do you prefer I keep the mask on to speak?

THE COURT: I think I need to have everybody keep the mask on.

MR. BELINFANTE: I'll be happy to do it. Good morning, Your Honor. I think you have hit the nail on the head in terms of what the issues are. This case simply does not belong in this Court. The relief that Plaintiffs seek is, as the Court described, extraordinary. It is to substitute by judicial fiat the wishes of the Plaintiffs over presidential election results that have been certified, that have been audited, that have been looked over with a hand-marked count. There is zero authority under the Federal law, under the Constitution of the United States, or even under Georgia law for such a remedy.

If the Plaintiffs wanted the relief they seek, they are not without remedies. They could do what the campaign of the President has done, which is file a challenge in Georgia

court under Georgia law challenging election irregularities. There are three currently pending. I have with me two Rule Nisi orders. One will proceed today at 3:30 in the Cobb Superior Court sitting by designation. Another I believe is Wednesday. And the President's, as I understand it, is to proceed on Friday. That is where these claims should be brought.

To the extent that the claims are about something else, the Court need only look at what has happened in Georgia since roughly 2019 and the passage of House Bill 316. It was at that time that the Georgia legislature completely redid Georgia election law. And there had been suit after suit after suit, many of which brought by the Defendant interveners, their allies, and others who question election outcomes. And in every suit no relief has been ordered that has been upheld by the 11th Circuit. In fact, no court has ordered relief. And to the extent that two have, the *Curling* case and the *New Georgia Project* case on discrete issues, the 11th Circuit stayed those because it concluded that there was a strong likelihood of reversible error.

So what does this tell you? It tells you that Georgia laws are constitutional, Georgia elections are constitutional, and Georgia machines are constitutional. The constitutional that the legislature has set forward is constitutional. Now, that's where the Plaintiffs have backed

themselves into a corner from which they cannot escape. In their reply brief, the claims, from the State's perspective, got significantly crystallized. It became much clearer. And they're relying heavily on *Bush v. Gore*. The problem is that they are turning *Bush v. Gore* on its head.

In *Bush v. Gore* the challenge was that a Florida Supreme Court decision was going to, as the Plaintiffs repeat often, substitute its will for the legislative scheme for appointing presidential elections. That is exactly what they are asking this Court to do, substitute this Court for the Florida Supreme Court, and you have *Bush v. Gore* all over again. And that manifests itself in various different forms that the Court has seen in our brief and the Court has already identified. I will not go through all of them. I will try to hit the high notes on some, but we will rely on our briefs. We're not dropping or conceding arguments, but we will rely on our briefs for those that I don't address expressly.

Let's talk briefly about what the complaint is, because that has been I think significantly clarified with the reply brief. One, the parties are presidential electors. And they argue that that makes a significant difference. But what are the acts of the State? Not Fulton County, not mullahs in Iran, not dictators in Venezuela. What are the acts of the State that are at issue? And it's in the discussion about traceability and the *Jacobson* decision in the 11th Circuit

where that gets fleshed out really for the first time in the reply brief, and there are three. And they tell you, and I will keep coming back to it, on Page 20 of their reply brief.

The Plaintiffs, describing the State, say they picked the Dominion system. Their policies led to de facto abolition of the signature match requirement, their regulations to permit early processing of absentee ballots is unlawful and unconstitutional. Those are the three acts of the State. Everything else is happening at a county level, period. And from that they raise what appears to now be four claims. One is the Elections and Electors Clause citing the absentee ballot opening rule, I will refer to it as, the settlement agreement. They raise equal protection claims saying that the violation of the Election Clause has led to a vote dilution and discrimination against Republican voters. They argue that due process is violated because they have a property interest in lawful elections, again, under the Elections and Electors Clause. And finally, they raise a pure State claim in Federal Court under a voter election challenge.

What is the relief they seek? The Court has identified it. Why do they seek it? The Court is informed of this on Page 25 of the reply brief. And it is -- if the Court will not order a different result than what a certified election has, they seek it through another means. They say on Page 25 that allowing the electors to be chosen by the

legislature under the plenary power granted to them for this purpose by the elections and election laws. One way or the another, the relief they seek is judicial fiat, changing certified election results. And to evaluate these claims the Court does need to consider aspects of State law. And this is where the problem lies. I am going to keep going until you tell me to stop.

(noise from courtroom audio system).

THE COURT: I am sorry, Mr. Belinfante. I don't know what the issue is. We just have to bear through it unless or until somebody fixes it. I've got six kids. It doesn't bother me.

MR. BELINFANTE: I have three, I understand. I also have the loudest dog in America. In any case, to evaluate the claims, you have to look at State law. And because the Plaintiffs raise Code Section 21-2-522 and the statutes that surround it, it's those cases that are important. It allows a challenge based on these grounds - in fact some are pending now - misconduct, fraud, irregularity, illegal votes, and error are all grounds to challenge an election in Georgia. All of these issues can be brought in in those cases. Those election challenges have to be decided promptly under 21-2-525. And, and this is critical, the relief sought is not to declare someone else a winner, it is to have another election. This goes to the point that there is simply no

authority for the relief that they seek.

Turning first, with that factual predicate in mind, to standing. There has been a fair amount of briefing on whether the status as a presidential elector guarantees standing. The 8th Circuit said yes, the 3rd Circuit said no. And I think the 3rd Circuit's analysis is more persuasive. And to the extent that the Plaintiffs say the 3rd Circuit did not consider their status as an electorate, that is true, but the electorate is not what gives you unique status, it's if the electorate is a candidate. And that is expressly what the 3rd Circuit considered in the *Bognet* decision, and we would suggest that that is the more persuasive one that we rely on in our briefs.

But I do want to address two other aspects of standing that are more particularized. One is that when they are seeking to invalidate a State rule or a consent decree that the State has entered into, or anything truly under the Elections Clause, the *Bognet* case speaks to this as well. And it says that because Plaintiffs are not the General Assembly, nor do they bear any conceivable relationship to the State law-making process, they lack standing to sue over the alleged usurpation of the General Assembly's rights under the Elections and Electors Clauses. That is absolutely true here. The *Wood* court, the 11th Circuit *Wood* opinion, says the same, citing *Walker,* because Federal Courts are not constituted as

freewheeling enforcers of the Constitution and laws. And that is the injury that underlies all of their claims, which is why they lack standing.

I am not going to get into traceability as much because I think the most useful aspect of the traceability issue is the crystallizing of Plaintiffs' complaints, and as I've indicated, the isolating of the State acts in particular.

On sovereign immunity, I only want to highlight that a decision just came out in Michigan seeking very similar relief. We will get you the cite. It is Michigan -- it is against Whitmer, *King versus Whitmer*, in the Eastern District of Michigan. Walks through all of the issues in this case and rejects the claims, denies the relief. On sovereign immunity they raise the point that under *Young*, you can only get prospective injunctive relief. That is not decertification, that is a retrospective. And so sovereign immunity would bar that. They do seek to prevent the Governor from mailing the results; that can be prospective, but there is just no relief for it. So that is all I will says on sovereign immunity.

On laches, the Michigan Court also joined in with Judge Grimberg on laches in the *Wood* case and said that there is time that is inexcusable. The Court is well-aware of the elements, was there a delay, was it not excusable, and did the delay cause undue prejudice. Judge Grimberg has already looked at this argument in the context of the *Wood* case and

the challenge to the consent order and said laches applied. And it does here for all of the Plaintiffs' arguments, and all you need to do, again, is go back to that Page 20 and see why. They say that their policies, the State's policies, led to a de facto abolition of the signature requirement. The complaint at Paragraph 58 acknowledges in Exhibit A that that happened in March of this year. There has been plenty of time that they thought the Secretary overstepped his bounds to bring a challenge in that case or to bring a challenge even afterwards, challenge the OEB. They did not.

They say on Page 20 that they, the State, picked the Dominion system. They tell you on Paragraph 12 that happened in 2019. There has been significant litigation over the Dominion system. Nothing has been held in order that the Dominion system is unconstitutional, is flawed, or anything else that has stuck.

Third, they said that their regulation, the absentee ballot regulation, permitted absentee ballots as unlawful and unconstitutional. They tell you in Paragraph 60 that happened in April of 2020. Georgia law, in the Administrative Procedures Act, specifically allows you to challenge rules, 50-13-10. That wasn't done. They certainly could have. And you don't need the fraud, as they allege, to happen first, because their argument is not based on the fraud, it is based on usurpation of power by the Executive Branch. That can be

challenged when the rule has been promulgated, when the order is out, and when the Dominion machines were selected.

We raise in our brief several forms of abstention. And truly, Your Honor, they all kind of get to the same place under different theories. And again, the reply brief made this point to the clearest. I think at the end of the day, while we will rely on our briefs in terms of why those matter, and the Michigan court found that *Colorado River* abstention should apply, there are parallel proceedings in State Court --

THE COURT: Did they even argue why it shouldn't?

MR. BELINFANTE: They argued that in voting rights cases the 11th Circuit does not typically abstain. And those cases are slightly different. They are challenging an underlying statute, for the most part. *Siegel* is a slightly -- it's a different case. But they are mostly challenging underlying statutes. And there is not a pending election challenge on the same thing in State Court. It's like the other cases that we have seen that we've defended since the gubernatorial election in 2018. So no, I don't think so. But I think the *Bush v. Gore* analysis is the one that is most critical, and it is that simply the Secretary -- the legislative scheme for electing presidential electors is set forth in the Code in Title 21, it has a means of challenging fraudulent illegal votes, it has a means of allowing the Secretary to address various issues, the State Election Board

to pass regulations. All of that authority has been delegated by, first, Congress to the Georgia Legislature, and then to the Executive Branch. That is the scheme that is put in place, and that is exactly what they seek to turn on its head. And what the three justice concurrence on which they rely says, makes that impossible. Because the Supreme Court said at Page 120, for the Court, in that case the Florida Court, to step away from this established practice prescribed by the Secretary, the State official charged by the Legislature with the responsibility to obtain and maintain uniformity in the application, operation, and interpretation of election laws was to depart from the legislative scheme.

Read the proposed order. That is exactly what the Plaintiffs seek here, and that is exactly what their own authority says the Court cannot issue in terms of relief, and that would actually trump the remaining claims because it would violate the Elections Clause in order to arguably save some other vague right in terms of due process.

Turning to that, let me talk briefly about the absentee ballot regulation, the return of the ballots. There is nothing that is inconsistent with that, number one, because if you look in the Election Code, there are five times that the General Assembly said something cannot occur earlier than X date. This doesn't say that. This says beginning on this date they can do this, but it doesn't say it can only happen.

And the five times elsewhere in the Code would suggest that the legislature knew how to change it if they wanted. That is 121-2-132, 133, 153, 187, and 384. They are simply reading the regulation to create the conflict, when every piece of Federal and State law says you should read it to avoid the conflict. In terms of the settlement agreement itself, I think Judge Grimberg has sufficiently analyzed that. And it fills the gap. There is no conflict. They can't point to any language that it does. And at the end of the day it is an OEB, an Official Election Bulletin, not a statute and not a regulation of the State Election Board anyway.

On the Dominion machines, I think we will rely on -- Mr. Miller is going to talk about that a good deal, but also they argue that the audit somehow doesn't save it because of *Prohm* and that we are estopped from raising *Prohm.* There are two problems with that. One, estoppel doesn't apply. There has been no final order. They're not estopped from doing anything. That's the *Community State Bank vs. Strong* decision from the 11th Circuit applying Georgia law 2011. And two, there has not been an order in *Curling* saying that the machines are unconstitutional. There have been nine preliminary injunctions filed, no standard relief, and it ignores -- the entire premise of the argument ignores that when a voter gets a ballot from the machine they can read who they voted for. And when the hand count took place, they

didn't scan it back in, they looked at what the ballot said and who they voted for and that is why things were put in different boxes. Their own affidavits talk about that provision of separating the boxes by hand. It resolves the issue.

The remaining theories fail -- again, I want to be cognizant of time and save some time for rebuttal. We rely on our briefs in terms of the merits of those, but the equal protection and due process allegations I think are addressed in *Wood* from the 11th Circuit. On procedural due process, to the extent that that is the due process claim, they don't challenge the Georgia election means of correcting as somehow invalid or insufficient. In fact, they raised it. And so you can't have a procedural due process claim if you have a remedy. You can't have a substantive due process claim if it doesn't shock the conscience, which having to use the remedy here, they can do. Your Honor, with that, unless there are questions, I would will reserve the rest of my time for rebuttal.

THE COURT: Thank you, sir.

MS. CALLAIS: Good morning, Your Honor. I am Amanda Callais on behalf of Intervenor Defendants, the Democratic Party of Georgia, the DSCC and the DCCC, and I am mindful of many of the points Mr. Belinfante just made, and I will not repeat them, but for the record, Your Honor, I would just like

to say that for the statements that we've made in our motion to dismiss, this case should be dismissed. The Plaintiffs in this case lack standing. They bring their claims and assert only generalized grievances. This Court also lacks jurisdiction to hear their claims because this case is moot now that the election has been certified, which is what the 11th Circuit found just this past Saturday in the *Wood v. Raffensperger* case. And then Plaintiffs have also failed to state any cognizable claim under the Election and Elections Clause, Equal Protection Clause, and Due Process Clause.

Where I would like to begin though is where Mr. Belinfante started, and I would like to bring us back to this point about where we are in terms of Georgia elections and with the remedy asked for in this case. Over a month ago five million Georgians cast their ballots in the 2020 presidential election with the majority of them choosing Joseph R. Biden, Jr. as their next President. Those votes, both the ballots that were cast on Dominion machines and the ballots that were cast by absentee were counted. Almost immediately after that count took place, those votes were counted again by hand, and then almost immediately after that count finished, the recount began again, a third time, by machine. Each and every one of those counts has confirmed Georgia voters' choice. Joe Biden should be the next President of The United States. At this point there is simply

no question that Joe Biden won Georgia's presidential election and with it all of Georgia's 16 electoral votes. Despite that, Plaintiffs have come to this Court eight months after a settlement agreement they challenged was entered, three weeks after the election is over, and days after certification took place, and they asked this Court to take back that choice, to set aside the choice that Georgia voters have made, and to choose the next president by decertifying the 2020 presidential election results and ordering the governor to appoint a new slate of electors.

THE COURT: Speaking of taking back, how do the Intervening Defendants respond to the Plaintiffs' point in their complaint that many people, including Stacey Abrams, affiliated with the Democratic Party, opposed these machines from the beginning and said that they are rife with the possibility of fraud?

MS. CALLAIS: I think, Your Honor, that the key there is that when we talk about a possibility of fraud, that does not mean that fraud has actually occurred. And here Plaintiffs come after an election has taken place and they say on very -- as we will talk about if we get to the TRO portion -- on very limited specious evidence that there is a possibility of fraud. A possibility of fraud does not mean that fraud has actually occurred. And truthfully, Your Honor, that is what the Plaintiffs would need to show to get some

sort of -- the relief that they are requesting here, that there has been actual fraud. And that is just not in their complaint, it is not in their evidence. It makes no difference whether there has been a possibility of fraud or issues with the machines. That is a case that is in front of Judge Totenberg and that she is deciding. But that is not the evidence that they have presented here, and it certainly does not support their claims.

So with that, Your Honor, as the 3rd Circuit explained just a little over a week ago when denying an emergency motion to stop certification in a case similar to this one brought by Donald J. Trump's campaign, voters not lawyers choose the President. Ballots not briefs decide elections. Plaintiffs' request for sweeping relief in this case is unprecedented. It is unprecedented anywhere, and it is particularly unprecedented in Georgia where the ballots have been counted not once, not twice, but three times, and the vote has been confirmed. Their request for relief is not just unprecedented, but also provides a separate and independent grounds for this Court to dismiss this case.

As we explained in our motion to dismiss, granting Plaintiffs' remedy in and of itself would require the Court to disenfranchise over 5 million Georgia voters, violating their constitutional right to vote. Post-election disenfranchisement has consistently been found to be a

violation of the Due Process Clause throughout the courts. For example, in *Griffin v. Burns* the 1st Circuit found that throwing out absentee votes post election that voters believed has been lawfully cast would violate the Due Process Clause. Similarly, in *Marks v. Stinson*, a number of years later, the 3rd Circuit found the same thing in their finding where they found even if there is actual evidence of fraud, discarding ballots that were legally cast or that voters believed to be legally cast violates the Due Process Clause and is a drastic remedy. This is precisely what would happen here if this Court were to order the requested relief. That order would violate the Due Process Clause. And because of that, this Court cannot grant the remedy that Plaintiffs seek and the Court should dismiss this suit.

In finding that the Court can't grant this relief, this Court would not be alone, it would be in actually quite good company, not just from the 1st Circuit and the 3rd Circuit in *Griffin* and *Stinson,* but also from more recent cases. In 2016 in *Stein v. Cortes*, the District Court declined to grant Jill Stein's request to a recount because, quote, it would well insure that no Pennsylvania vote counts, which would be outrageous and unnecessary. Just this cycle, in *Donald J. Trump for President v. Boockvar* the Plaintiffs sought to invalidate 7 million mail ballots under the Equal Protection Clause, and the Court explained that it has been

unable to find any case in which a plaintiff has sought such drastic remedy in the contest of an election in terms or the sheer volume of votes asked to be invalidated. The Court also promptly dismissed there.

Just this last Friday in *Law v. Whitmer* in Nevada State Court, which actually would have the ability to hear a contest, found that it would not decertify the election in Nevada. And the list goes on, Your Honor. We could talk about findings in State Court in Arizona on Friday. There have been over 30 challenges to this election that have been repeatedly dismissed since -- basically since election day. Since election day.

So the Court is in good company, and it's not just in company good company nationwide, but it is in good company with the judge right down the hall from here who, just two weeks ago, in a case nearly identical to this one, found a request to disenfranchise nearly 1 million absentee voters in Georgia to be extraordinary. Judge Grimberg explained that to prevent Georgia certification of the votes cast in the general election after millions of people have lawfully cast their ballots, to interfere with the results of an election that has already concluded would be unprecedented and harm the public and in countless ways. Granting injunctive relief here would breed confusion, undermine the public's trust in the election, and potentially disenfranchise over 1 million Georgia voters.

Viewed in comparison to the lack of any demonstrable harm, this Court finds no basis in fact or law to grant Plaintiff the relief he seeks.

That same reasoning applies here. And in fact, it applies here even more because most of the claims that were brought in front of Judge Grimberg are the same, but the amount of votes that Plaintiffs here seek to decertify are far greater in scope.

On this last point, Your Honor, about the inability of the Court to order the remedy, I wanted to respond to something that Plaintiffs raised in their brief last night. In their brief last night they react to the briefing on mootness that we included in our TRO and note that this Court -- this case would not be moot because the Court can decertify an election. And that *Wood v. Raffensperger* that came out by the 11th Circuit didn't discuss decertification of the election, only halting certification.

And I would just like to point out that if this Court were to decertify the election and specifically to point a new slate of electors, which is what is asked, that in and of itself would also violate the law. The U.S. Constitution empowers State Legislatures to choose the manner of appointing presidential electors, and that is the Electors Clause that Plaintiffs actually challenge. And pursuant to that clause, the Georgia General Assembly has chosen to appoint electors

according to popular vote. Those are certified by the governor through certificate of ascertainment. That popular vote has already taken place, Your Honor, and if this Court were to order a new slate of electors to be appointed, that would -- that would violate the Electors Clause.

In addition, Congress has also provided that electors shall be appointed in each and every state on the Tuesday next after the first Monday in November in every 4th year as also known as Election Day, which this year took place on November 3rd. Georgia has held that election on Election Day, and if this Court were to now, months after the -- over a month after the election, to go and order that a new slate be appointed, it would be violating that statute as well. So for the very reasons that the Plaintiffs -- the very relief that Plaintiffs ask is actually what prevents this Court from issuing any relief in this case, and precisely why it should be dismissed.

THE COURT: All right. Thank you. All right, I will hear from the Plaintiffs.

MS. POWELL: May it please the Court. Sidney Powell and Harry MacDougald for the Plaintiffs. We are here on a motion to dismiss which requires the Court to view the pleadings and all the facts alleged in the light most favorable to the Plaintiff. In my multiple decades of practice I have never seen a more specifically pled complaint

of fraud, and replete with evidence of it, both mathematical, statistical, computer, expert, testimonial, video, and multiple other means that show abject fraud committed throughout the State of Georgia.

Forget that this machine and its systems originated in Venezuela to ensure the election of Hugo Chavez and that it was designed for that purpose. Look just at what happened in Georgia. Let's start, for example, with the language, "the insularity of the Defendants' and Dominion's stance here in evaluation and management of the security and vulnerability of the system does not benefit the public or citizens' confident exercise of the franchise. The stealth vote alteration or operational interference risk posed by malware that can be effectively invisible to detection, whether intentionally seeded or not, are high once implanted, if equipment and software systems are not properly protected, implemented, and audited. The modality of the system's capacity to deprive voters of their cast votes without burden, long wait times, and insecurity regarding how their votes are actually cast and recorded in the unverified QR code makes the potential constitutional deprivation less transparently visible as well; at least until any portions of the system implode because of system breach, breakdown, or crashes" -- all of which the State of Georgia experienced -- "the operational shortcuts now in setting up or running election equipment or software

creates other risks that can adversely impact the voting process."

THE COURT: You don't have to get into any of the evidence or any of the statements or averments of the complaint because I have read it. And all these statements, I am assuming that every word of it is true. My question -- the first question I have for you, for the Plaintiffs in the case, is why -- first of all, whether you can or cannot pursue these claims in State Court, specifically in Georgia Superior Courts. Just the question is, can you?

MS. POWELL: No, Your Honor, we can't. These are exclusively Federal claims with the exception of the election contest allegation. They are predominantly Federal claims, they are brought in Federal Court for that purpose. We have a constitutional right to be here under the Election and Electors Clause. I was not reading evidence. What I was reading to the Court was the opinion of Judge Totenberg that was just issued on 10-11-20 which defeats any allegation of laches or lack of concern over the voting machines. This has been apparent to everyone who has looked at these machines or discussed them in any meaningful way or examined them in any meaningful way, beginning with Carolyn Maloney, a Democratic Representative to Congress back in 2006 who objected to them being approved by CFIUS. Judge Totenberg went on to say that "the Plaintiffs' national cybersecurity experts convincingly

present evidence that it's not a question of might this actually ever happen but, quote, when will it happen, especially if further protective measures are not taken. Given the masking nature of malware in the current systems described here, if the State and Dominion simply stand by and say we have never seen it, the future does not bode well." And sure enough, exactly the fears articulated in her 147 page opinion, and all the means and mechanisms and problems discussed in that three day hearing she held have now manifested themselves within the State of Georgia in the most extreme way possible.

THE COURT: She did not address the question before the Court today though as to the propriety of bringing this suit in this Court, did she?

MS. POWELL: There is no other place to bring this suit of Federal Equal Protection claims and the electors.

THE COURT: You couldn't bring all of these claims in State Court? Is that your position?

MS. POWELL: We are entitled to bring these claims in Federal Court, Your Honor. They are Federal constitutional claims.

THE COURT: What do you do with the 11th Circuit's holding in *Wood* on Saturday that we cannot turn back the clock and create a world in which the 2020 election results are not certified?

MS. POWELL: Actually we can, but we don't need to because we are asking the Court to decertify.

THE COURT: Where does that exist?

MS. POWELL: *Bush v. Gore*. *Bush v. Gore* was a decertification case. There are other cases we've cited in our brief that allow the Court the decertify. And at the very minimum this Court should order a preliminary injunction to allow discovery and allow us to examine the forensics of the machines. For example, we know that already in Ware County, which is a very small precinct, there were 37 votes that were admittedly flipped by the machines from Mr. Trump to Mr. Biden. That is a 74 vote swing. That equates to approximately the algorithm, our experts also believe, was run across the State that weighed Biden votes more heavily than it did Trump votes. That is a systemic indication of fraud that Judge Totenberg was expressing concern about in her decision just weeks before the election. We have witness after witness who have explained how the fraud can occur within the machines. We know for example that there were crashes, just like she feared in the decision, and everybody expressed concern about. We know machines were connected to the internet which is a violation of their certification requirements and Federal law itself. We could not have acted more quickly. In fact, the certification issue wasn't even ripe until it was actually certified.

THE COURT: But you weren't limited in your remedies to attacking the certification, you could have attacked the machines months ago.

MS. POWELL: That is what happened in the Totenberg decision, and that is why I read it to the Court. The machines were attacked by parties, and the election was allowed to go forward. And we have come forward with our claims as fast as is humanly possible. This is a massive case, and of great concern not just to the nation and to Georgia, but to the entire world, because it is imperative that we have a voting system that people can trust.

They talk about disenfranchising voters, well there are over a million voters here in Georgia that will be disenfranchised by the counting of illegal ballots that render theirs useless. It's every legal vote that must be counted. Here we have scads of evidence. And the vote count here is narrow. I mean, the disparity now is just a little over 10,000 votes. Just any one of our categories of that we have identified require decertification. For example, 20,311 nonresidents voted illegally. Between 16,000 and 22,000 unrequested absentee ballots were sent in in violation of the legislative scheme. Between 21,000 and 38,000 absentee ballots were returned by voters but never counted. 32,347 votes in Fulton County were identified to be statistically anomalous. And the vote spike for Mr. Biden, that is

completely a mathematical impossibility, according to multiple expert affidavits we provided, shows that it was like 120,000 Biden votes all of a sudden magically appear after midnight on election night. That happens to coincide with the time we have video of the Fulton County election workers running the same stack of rather pristine-looking ballots through the machine multiple times. And as for the recounts, that makes no difference because if you recount the same fake ballots, you achieve -- in the same machines, you achieve the same results. That is why the hand count in Ware County that revealed the 74 swing is so important and indicative of the systemic machine fraud that our experts have identified, and why it is so important that we at least get access for the Department of Defense even, or our own experts, or jointly, to examine the machines in Fulton County and the ten counties that we requested in our protective order, or our motion for --

THE COURT: How is this whole case not moot from the standpoint of even if you were to win, and win Georgia, could Mr. Trump win the election?

MS. POWELL: Well fraud, Your Honor, can't be allowed by a Court of Law to stand --

THE COURT: That is not what I am asking. I am not saying that there may not be other issues that need to be addressed, and that there might not be questions that need to

be investigated, I am asking, as a practical matter, in this particular election, can Mr. Trump even win the election even if he wins Georgia?

MS. POWELL: Yes, he can win the election.

THE COURT: How would that happen?

MS. POWELL: Because there are other states that are still in litigation that have even more serious fraud than we have in Georgia. It is nowhere near over. And it doesn't affect just the presidential election. This fraud affects senate seats, congressional seats, gubernatorial seats, it affects even local elections. Another huge statistic that is enough by itself to change the result is the at least 96,000 absentee ballots that were voted but are not reflected as being returned. All of these instances are violations of Federal law, as well as Georgia law. And in addition, Mr. Ramsland's report finds that the ballot marking machine appears to have abnormally influenced election results and fraudulently and erroneously attributed between thirteen thousand seven hundred and twenty-five thousand and the 136,908 votes to Mr. Biden just in Georgia. We have multiple witnesses who just saw masses of pristine ballots appearing to be computer marked, not hand marked, and those were repeatedly run through machines until votes were injected in the system that night without being observed by lawfully required observers in violation of Georgia and Federal law that

resulted in the mass shoot-up spike of votes for Mr. Biden. Mr. Favorito's affidavit is particularly important. He talks about the Ware County Waycross City Commission candidate who reported that the Ware County hand audit is flipped those 74 votes. That is a statistically significant swing for a precinct that small, and there is no explaining for it other than the machine did it. We have testimony of witnesses who saw that their vote did not come out the same way it was. Mr. Favorito is a computer tech expert. He said that the vote flipping malware was resident on the county election management system of possibly one or more precinct or scanners. There was also an instance where it came out of the Arlo system changed, and there was no way to verify the votes coming out of the individual precincts versus coming out of Arlo because apparently they didn't keep the individual results so that they can be compared. So there was a vote swapping incident through the Arlo process also.

There was a misalignment of results, according to Mr. Favorito, among all three presidential candidates. Rather than just a swapping of the results for two candidates, in other words, they would sometimes put votes into a third-party candidate and take those out and put them in Mr. Biden's pile. The system itself according to its own technological handbook explains that it allows for votes to be put in, it can scan to set or overlook anything it wants to overlook, put those in an

adjudication pile, and then in the adjudication process, which apparently was conducted in top secret at the English Street warehouse, where all kinds of strange things were going on, were just thrown out. They could just literally drag and drop thousands of votes and throw them out. That is why it is so important that we at least get temporary relief to examine the systems and to hold off the certification or decertify or ask the Court to halt the proceedings continuing right now until we can have a few days to examine the machines and get the actual evidence off the machines and look at the ballots themselves, because we know there were a number of counterfeit ballots that were used in the Fulton County count that night. It would be a simple matter to examine 100,000 or so ballots and look at which ones are fake. It is possible to determine that with relative ease.

This is not about who or which government officials knew anything was wrong with the machine. It's entirely possible that many people did not know anything was wrong with them. But it is about ensuring the integrity of the vote and the confidence of the people that the will they expressed in their vote is what actually determines the election. Very few people in this country have any confidence in that level right now. Very few.

The standard is only preponderance of the evidence. We have shown more than enough for a prima facie case to get

to -- meet the standard required -- this Court is required to apply. It is crucial that we decertify and stop the vote. We need to have discovery. It's so important to the American people, particularly in a country that is built on the rule of law, to know that their election system is fair and honest.

THE COURT: But that rule of law limits where these suits can be filed and who can bring them. Specifically on the standing issue, how does your -- how do your clients survive the motion to dismiss with respect to the standing issue if I don't follow the 8th Circuit's case opinion in *Carson*?

MS. POWELL: Even the Court's decision in *Wood* is so distinguishable it should make clear electors have standing. In that case, for example, the State could not even say who did have standing. But under the Constitution, electors clearly do.

THE COURT: But Georgia, unlike Minnesota, differentiates between candidates and Presidential electors. Right?

MS. POWELL: I am not sure about that. But we also have the Cobb County Republican Party official who is suing, and the electors themselves are part of the Constitutional Clause that entitles them to standing.

THE COURT: I just think you have a pretty glib response to what the 11th Circuit has held regarding these

cases. I mean, the 11th Circuit has basically said, you know, we are not -- the Federal Courts are courts of limited jurisdiction and we are not open 24/7 to remedy every freewheeling constitutional issue that comes up. They have made it clear, the Appellate Courts have made it clear, they don't want District Courts handling this matter, they want State Courts handling State election disputes, even regarding in Federal elections. The Federal Government has nothing to do with the State election and how it is conducted. As you said, it is the Secretary of State who is the chief election officer, and decides it. Why shouldn't the State of Georgia investigate this? Why should it be a Federal judge?

MS. POWELL: Because we raise Federal constitutional issues that are paramount to --

THE COURT: They raised Federal constitutional issues in *Wood*.

MS. POWELL: -- to equal protection. He did not request decertification. That is one of the things that distinguished that case. He was not an elector or representative of a county. He was simply an individual. And I am not sure that decision is correct because, in that case, they were also wondering who could challenge it. Well obviously the Federal Equal Protection Clause and the constitutional issues we have raised here give this Court Federal question jurisdiction. This Court's one of the

primary checks and balances on the level of fraud that we are experiencing here. It is extremely important that this Court exercise its jurisdiction as a gatekeeper on these issues. There were numerous departures from the State statute, including the early processing of votes, and the de facto abolition of signature matches that give rise to Federal Equal Protection claims.

THE COURT: Well, back to the standing question. You know, the Plaintiffs allege that their interests are the same, basically one in the same, as any Georgia voters. In Paragraph 156 of the complaint they aver that Defendants diluted the lawful ballots of Plaintiffs and of other Georgia voters and electors. Further, Defendants allege that -- the Plaintiffs allege that Defendants further violated Georgia voters's rights, and they allege, the Plaintiffs, that quote, all candidates, political parties, voters, including without limitation Plaintiffs, have a vested interest. It doesn't sound like your clients are special, that they have some unique status that they enjoy that allows them to bring this suit instead of anyone else. How do they have standing?

MS. POWELL: They have the unique status of being the Presidential electors selected to vote for Donald Trump at the electoral college. They were not certified as -- and decertification is required to make sure they can do their jobs that they were selected to do.

THE COURT: Under the 3rd Circuit case, does your theory survive?

MS. POWELL: Our theory is -- I think the 3rd Circuit decision is wrong, the 8th Circuit decision is correct. There is no circumstance in which a Federal elector should not be able to seek relief in Federal Court, thanks to our Constitution. It is one of our most important principles.

There were multiple means of fraud committed here. We have also the military intelligence proof of interference in the election, the Ware County 37 votes being flipped, the video of the Fulton City vote count, they lied about the water leak, they ran off observers, they brought in unusually packaged ballots from underneath a table. One person is seen scanning the same QR code three different times in the machine and big batch of ballots which would explain why the same number of ballots gets injected repeated into the system. That corresponds with the math and the algorithms showing a spike of 26,000 Biden votes at that time. After Trump's lead of 103,997 votes there were mysteriously 4800 votes injected into the system here in Georgia multiple times, the same number, 4800 repeatedly. That simply doesn't happen in the absence of fraud. All of the facts we have laid out in our well-pleaded complaint require that this Court decertify the election results or at least, at the very least, stop the process now in a timely fashion and give us an opportunity to

examine the machines in ten counties and get further discovery, particularly of what happened in Fulton County. Those things need to be resolved before any citizen of Georgia can have any confidence in the results of this election.

Allowing voters to cast ballots that are solely counted based on their voting designations and not on an unencrypted humanly unverifiable QR code that can be subject to external manipulation and does not allow proper voter verification and ballot vote auditing cannot withstand the scrutiny of a Federal Court and cannot pass muster as a legitimate voting system in the United States of America. For those reasons, we request the Court to deny the motion to dismiss, allow us a few days, perhaps even just five, to conduct an examination of the machines that we have requested from the beginning, and find out exactly what went on and give the Court further evidence it might want to rule in our favor, because the fraud that has happened here has destroyed any public confidence that the will of the people is reflected in their vote, and just simply cannot stand.

THE COURT: Thank you, ma'am. All right, rebuttal? This is Josh Belinfante.

MR. BELINFANTE: Just briefly, Your Honor. Your Honor, just a few points. One, I want the get back to *Colorado River* abstention. There was a means and a process to do that. You had asked earlier about their response. I did

go back and check. The *Siegel* case they rely on cites to only *Burford* and *Pullman* abstention, not *Colorado River*. It is appropriate in this case, and as the Michigan Court concluded, the *Moses Cone* case which establishes it says that there is really not a reason not to do so when you have concurrent jurisdiction.

And that is one of the problems with the Plaintiffs' argument. They keep telling you that they can't go to State Court because they have Federal constitutional claims. Those can be litigated in State Court pursuant to 1983. They also say on laches that -- it is interesting, they have cited to you and read to you numerous aspects of the *Curling* case, and they say that going back to 2006 somebody thought that there was something wrong with these machines. Well if that's the case, then it makes the laches argument even stronger. These are the arguments that they are about the machines. They certainly could have been litigated prior to after the certification of the election.

The other big problem that they raise is that the *Curling* case, everything that was read was stayed by the 11th Circuit, presuming that it is reading the part of the opinion that I think it is. If it is going back to a prior opinion, that is about old machines which aren't even used anymore. And then in Ware County, that was provided in an affidavit that was new as part of the reply brief, it should not be

counted. There is authority for that, *Sharpe v. Global Security International* from the Southern District of Alabama, from 2011. But even still, that can be brought in the State Court under the challenge mechanisms set.

You asked what is the authority for decertifying the election. The citation was *Bush v. Gore*. *Bush v. Gore* stayed a Florida recount, it did not decertify the election. But most importantly, what *Bush v. Gore* said is, when there is a State process, the Elections Clause says that has to continue. And they have not shown you that the State process is insufficient, invalid, whatsoever. On standing, they find themselves in a bind. If they are candidates as electors, the State election code says you can bring a challenge under 21-2-522. If they are not candidates and the 3rd Circuit reasoning applies, then the 11th Circuit in *Wood* would apply too, and say that when you are not a candidate you don't have standing. So either way, they find themselves out of Federal jurisdiction on these arguments.

Just a few points on closing. They tell you that the voters lack confidence in the election system. Well, since 2018 candidates that were not successful have tried to overturn the rule of voters in the Courts. Since 2018 courts have stayed with the State of Georgia and upheld Georgia's election laws and Georgia's election machines. This Court should do the same. The State is doing what it can to enhance

public confidence. That is why we went the extra step of a hand count, not that pushes ballots through a machine, but that looks at what the ballot says, and when the voter had access to that ballot they could see too. And if they voted for Donald Trump it will show it on the ballot; if they voted for Joe Biden it will show it on the ballot. And if not, they can correct it right there. That is the actions that instill confidence, not this. And if they want to challenge those election results, the State Courts are open for them to do it, there are hearings scheduled now, and those hearings should proceed and not this one. Thank you.

THE COURT: Thank you, sir. Ms. Callais, did you have anything else?

MS. CALLAIS: No, Your Honor.

THE COURT: All right. Thank you very much. I have considered the entire record in the case and I find that, even accepting as true every averment of the complaint, I find that this Court must grant the Defendants' motions to dismiss, both of the motions to dismiss, beginning with the proposition that Federal Courts are courts of limited jurisdiction; they are not the legal equivalent to medical hospitals which have emergency rooms that are open 24/7 to all comers. On the contrary, the 11th Circuit has specifically held that Federal Courts don't entertain post election contests about vote counting and misconduct that may properly be filed in the

State courts. So whether the Defendants have been subjected to a Federal claim, which is Equal Protection, Due Process, Elections Clause and Electors Clause, it does not matter. The 11th Circuit has said these claims in this circuit must be brought in State court. There is no question that Georgia has a statute that explicitly directs that election contests be filed in Georgia Superior Courts, and that is what our Federal Courts have said in this circuit, it is that is exactly right.

Sometimes Federal judges are criticized for committing the sin of judicial activism. The appellate courts have responded to that and said enough is enough is right. In fact, enough is too much. And the courts have convincingly held that these types of cases are not properly before Federal Courts, that they are State elections, State courts should evaluate these proceedings from start to finish.

Moreover, the Plaintiffs simply do not have standing to bring these claims. This Court rejects the 8th Circuit's nonbinding persuasive-value-only holding in *Carson vs Simon* and I find that the Defendants -- excuse me -- the Plaintiffs don't have standing, because anyone could have brought this suit and raised the exact same arguments and made the exact same allegations that the Plaintiffs have made in their complaint. The Plaintiffs have essentially alleged in their pleading that their interests are one and the same as any Georgia voter. I do not believe that the 11th Circuit would

follow the reasoning of the 8th circuit in *Carson*.

Additionally, I find that the Plaintiffs waited too late to file this suit. Their primary complaint involves the Dominion ballot marking devices. They say that those machines are susceptible to fraud. There is no reason they could not have followed the Administrative Procedure Act and objected to the rule-making authority that had been exercised by the Secretary of State. This suit could have been filed months ago at the time the machines were adopted. Instead, the Plaintiffs waited until over three weeks after the election to file the suit. There is no question in my mind that if I were to deny the motions to dismiss, the matter would be brought before the 11th Circuit and the 11th Circuit would reverse me. The relief that the Plaintiffs seek, this Court cannot grant. They ask the Court to order the Secretary of State to decertify the election results as if such a mechanism even exists, and I find that it does not. The 11th Circuit said as much in the *Wood* case on Saturday.

Finally, in their complaint, the Plaintiffs essentially ask the Court for perhaps the most extraordinary relief ever sought in any Federal Court in connection with an election. They want this Court to substitute its judgment for that of two-and-a-half million Georgia voters who voted for Joe Biden, and this I am unwilling to do.

The motion for temporary restraining order that was

entered on November 29 is dissolved. The motions to dismiss are granted. And we are adjourned.

(end of hearing at 11:07 a.m.)

* * * * *

REPORTER'S CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____

Lori Burgess
Official Court Reporter
United States District Court
Northern District of Georgia

Date: December 8, 2020