

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

PAUL ANDREW BOLAND,

Plaintiff,

v.

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

Defendants.

CIVIL ACTION FILE
NO.

VERIFIED COMPLAINT

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

INTRODUCTION

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

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

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

PARTIES, JURISDICTION AND VENUE

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

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

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

COUNT 1: OUT OF STATE VOTERS

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

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

(A) the death of the registrant; or

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

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

² Id.

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

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

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

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

COUNT 2: LACK OF SIGNATURE VERIFICATION

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

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

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

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

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

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

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

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

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

⁸ *Id.*

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

12. Furthermore, the Secretary's analysis counted only rejections identified as "signature" based rejections without including the related category of "oath" based rejections. An "oath" based rejection occurs when a voter fails to sign or otherwise complete the oath accompanying a mail in ballot. It is thus a form of signature failure. When oath-based rejections are included, the rejection rate drop is even more dramatic as set forth above. (See the Affidavit of Benjamin A. Overholt, *supra*.)
13. Although the Secretary of State recently conducted an audit and recount, no signature matching was required during that process.⁹
14. Without a meaningful verification of signatures, the election results cannot be certified. The suspiciously low ballot rejection rate suggests that the verification procedures were not enforced with their usual rigor.
15. In addition, in the leadup to the election, the Secretary of State unilaterally modified the Elections Law that the Legislature established, to weaken safeguards against fraudulent ballots, such as signature requirements, in ways that are unlawful and unconstitutional.
16. The U.S. Constitution grants state legislatures, not state executive branch officials, the authority to determine the "Times, Places and Manner" of federal elections as well as the process for appointing Presidential Electors. U.S. CONST., Art. I, Sec 4, cl. 1; Art. 2 Sec. 1, cl. 2.

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

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

18. In October 2020, the Defendants issued an order that permitted the early opening of absentee ballots, in a direct violation of O.C.G.A. 21-2-386(a)(1)(A), which required county officials to keep the unopened absentee ballots safe and unopened until the closing of the polls on election day.¹⁰ See Rules of the State Board of Elections, Rule 183-1-14-0.9-.15 (Processing Absentee Ballots Prior to Election Day).

19. The Plaintiff suffered an injury in fact and actual harm as a result of both these unconstitutionally altered and inadequately enforced absentee ballot processing procedures utilized in connection with the November 3, 2020 presidential election, in that his vote was diluted relative to votes cast by electors whose identified signatures were not verified, as required by the Elections Law.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

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

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

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

Dated: November 30, 2020

Respectfully submitted,

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AFFIDAVIT OF BENJAMIN A. OVERHOLT

I, Benjamin A. Overholt, Ph.D., declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.
2. I have an M.S. and a Ph.D. in Applied Statistics and Research Methods from the University of Northern Colorado. I am currently an active federal civil servant for over seven years and served in the United States Army for 15 years. During that time, I spent more than five years reviewing election results for the Voting Rights Section of the Civil Rights Division of the U.S. Department of Justice in Washington, D.C.
3. I am familiar with and have analyzed public data from the office of the Secretary of State of Georgia (the "SoS") regarding the recent presidential election held on November 3, 2020 (the "2020 General Election".)
4. The plaintiff asked me to review the data available on the SoS website to determine its usefulness in questioning the rejection rates of mailed ballots ("mailed ballots") in the 2020 General Election and to determine whether anomalies existed that could change the outcome of the presidential race in

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

Anomalies Based on Rejected Ballots – Signature Verification and Missing Oath

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

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

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

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

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

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

9. Table 1 demonstrates the reduced rate of rejection for reasons with the term "SIG" and the near zero instances of reasons with the term "OATH" in the 2020 General Election. "SIG" is a shorthand designation for mailed ballots that were rejected because of a signature mismatch.
10. As the oath portion of the ballot is the portion signed, there is likely overlap between Oath and Signature issues. Considering only reasons with the term "SIG", the rejection rates were 0.28% in the 2016 general, 0.20% in the 2018 general and 0.28% in the 2020 primary but dropped to only 0.15% in the 2020 General Election.
11. Comparing the 0.15% rate in the 2020 General Election to the 0.28% rate in 2016 and the 2020 primary would suggest somewhere around 1,600 additional ballots should have been rejected for signature issues.
12. Considering the number of ballots classified as rejected in the "OATH" row, the rejection rates were 0.60% in 2016, 1.33% in 2018, and near zero in 2020.

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

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

Anomalies Based on Spoiled Ballots

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

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

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

Table 2: "Ballot Status Counts by Election

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

The Secretary of State Analysis

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

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

²

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

17. In calculating the percentage of “Rejected” ballots, the SOS Analysis uses as numerators (number of rejected ballots) the numbers 454, 3,266 and 2,011. Those numbers are the number of ballots rejected in the 2018 General Election, the 2020 Primary Election, and the 2020 General Election, respectively, and are all reasonably close to the numerators used in my analysis.
18. But the SOS Analysis uses differing denominators to calculate the reported percentages. In the 2018 General Election, the SOS Analysis divided the number of rejected ballots by a denominator which was the sum of all Ballot Statuses (Accepted, Cancelled, Rejected, Spoiled, even the blanks) to get their 284,393 number, which would minimize the reported percentage.
19. For the 2020 Primary Election, the SOS Analysis divided total rejections by Accepted ballots only. For the 2020 General Election, the SOS Analysis divided the number of Rejected ballots by the total of all Accepted, Rejected and Spoiled ballots (the method employed in this analysis). That was correct, but the SOS Analysis for the 2018 General Election minimized the percentage and maximized it for the 2020 Primary Election. The data in the article cited above reporting the SOS Analysis was therefore generated improperly and inconsistently and is misleading.


Further Anomalies

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

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


Benjamin A. Overholt, Ph.D.


COMMONWEALTH OF VIRGINIA

COUNTY OF PRINCE WILLIAM

CITY OF MANASSAS

Benjamin A. Overholt appeared before me, a Notary Public in and for the above jurisdiction, this 29th day of November 2020, and after being duly sworn, made the foregoing declaration, under oath.

[Affix Seal]


Notary Public

My Commission Expires 3-31-2023

