

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

GEORGIA REPUBLICAN PARTY, INC., a state political party committee, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, PERDUE FOR SENATE, GEORGIANS FOR KELLY LOEFFLER, BETHANY BALLARD, ASHLEY GILLES, and JEAN M. SEAVER,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as the Secretary of State of Georgia and Chair of the State Election Board; REBECCA SULLIVAN, in her official capacity as Vice Chair of the State Election Board, DAVID J. WORLEY, MATTHEW MASHBURN, and ANH LE, in their official capacities as Members of the State Election Board; PATRICIA GIBSON, PATRICIA FEATHERSTONE, KEITH RUSTIN, TOMMY CLARK, and SANDRA DEAN, in their official capacities as Members of the Glynn County Board of Elections, THOMAS MAHONEY III, MARIANNE HEIMES, MALINDA HODGE, ANTWAN LANG, and DEBBIE RAUERS, in their official capacities as Members of the Chatham County Board of Elections,

Defendants.

Civil Action No.
2:20-cv-00135-LGW-BWC

PROPOSED INTERVENOR-DEFENDANTS' MOTION TO INTERVENE

COME NOW DEMOCRATIC PARTY OF GEORGIA (“DPG”) and DSCC (together, “Proposed Intervenors”), by and through their undersigned counsel of record, and file this *Motion to Intervene* in the above-referenced matter. Proposed Intervenors show this Honorable Court that intervention is appropriate under Federal Rule of Civil Procedure 24(a) and (b) as follows:

I. INTRODUCTION

This is the *fourth* lawsuit that Republican Party committees, candidates, and voters have filed in state and federal court in Georgia over the *last seven days*. In each, plaintiffs have attempted to use the judiciary as a weapon to make it harder for eligible, lawful Georgia voters to cast their ballots and have their votes counted in the January 5, 2020 runoff election. Two of those lawsuits—*Georgia Republican Party et al. v. Raffensperger et al.*, No. 20-cv-05018 (N.D. Ga. Nov. 17, 2020), and *Twelfth Congressional District Republican Committee et al. v. Raffensperger*, No. 20-cv-00180 (S.D. Ga. Nov. 17, 2020)—have already been dismissed by their respective courts. Both courts recognized not only that plaintiffs lacked standing, but that even if that jurisdictional hurdle were not an issue, the U.S. Supreme Court’s oft-repeated admonition that federal courts should not issue orders interfering with state elections laws on the eve of an election applied, supplying separate and independent grounds from issuing the requested relief. In each case preceding this one, the Proposed Intervenors here were granted intervention.

We are no longer on the “eve” of the January run-off election. We are in the middle of it. Advance voting began a week ago on December 14, and hundreds of thousands of voters have already cast their ballots in person or returned them by mail. Nevertheless, undeterred, the Georgia Republican Party, the National Republican Senatorial Committee, and the campaign committees for Republican Senators Kelly Loeffler and David Perdue, together with three Georgia voters (collectively, “Plaintiffs”), have filed this suit, taking yet another shot at interfering with the election, and injecting unwarranted confusion and uncertainty into the process and threatening the intimidation and disenfranchisement of thousands of lawful voters. In support, they trot out the same theories of “vote dilution,” “equal protection,” and “due process” that courts have roundly rejected as non-cognizable in case after case in the lead up to the 2020 general election, the

astonishingly brazen attack (but ultimately completely unsuccessful) assault on the presidential election that followed, and the run-off cases that have been filed and dismissed in Georgia over the past week. Like those cases, Plaintiffs' complaint here fundamentally misapprehends the law and comes far too late. And like all of the other baseless attacks on Georgia's election, should be dismissed. Moreover, as in the others, Proposed Intervenors, should be permitted to intervene to protect their rights and legal interests, as well as the candidates and voters among their membership and constituencies, that Plaintiffs directly threaten.

Proposed Intervenors are entitled to intervene in this case as a matter of right under Rule 24(a)(2). Such intervention is needed to protect their substantial and distinct legal interests, which otherwise will be inadequately represented in this litigation. In the alternative, Proposed Intervenors request permissive intervention pursuant to Rule 24(b). In accordance with Rule 24(c), a proposed answer is attached as Exhibit 1.

II. BACKGROUND

A person is eligible to vote in a Georgia primary or general election if that person is "a resident of this state and of the county or municipality in which he or she seeks to vote." O.C.G.A. § 21-2-216(a)(4). Residency "shall be held to be in that place in which such person's habitation is fixed, without any present intention of removing therefrom." *Id.* at § 21-2-217(a)(1). The registration deadline for special elections not held concurrently with a general election is the "fifth Monday prior to the date of the special or primary election," which this year fell on Monday, December 7. *See id.* at § 21-2-224(b)(2). No tenet of Georgia law makes eligibility to vote in the January runoff contingent on participation in the November election preceding it. In fact, a very similar issue has been previously litigated in Georgia, with Judge Batten of the U.S. Court for the Northern District of Georgia finding that the state's previous requirement to limit special election

registration solely to those who were registered at the time of the preceding general election ran afoul of and was pre-empted by the National Voter Registration Act. *Georgia State Conference NAACP v. Georgia*, No. 1:17-CV-1397-TCB, 2017 WL 9435558, at *4 (N.D. Ga. May 4, 2017). This determination—in place since early 2017—should be well known to Plaintiffs and would have alerted them of their potential claims here. Despite this, they have waited more than three years, and in the midst of a highly anticipated special election to bring their lawsuit.

Voter registration for the January run-off ended on December 7, and advance voting for the runoff election began on December 14. Unsurprisingly, interest and participation has been immense, with the number of Georgians casting ballots on the first day of early vote surpassing previous records. Alexandra Hutzler, *More Georgians Participated in First Day of Early Voting for Senate Runoffs than for General Election*, *Newsweek*, Dec. 15, 2020, <https://www.newsweek.com/more-georgians-participated-first-day-early-voting-senate-runoffs-general-election-1554931>. As of today, more than 1.1 million Georgians have cast ballots in the first week alone—with roughly 640,000 casting a ballot in person and the remainder returning their ballots through the mail. U.S. Elections Project, *Georgia Early Voting Statistics - 2021 Senate Run-Off Election*, (last visited Dec. 18, 2020), https://electproject.github.io/Early-Vote-2020G/GA_RO.html. In total, more than 1.3 million Georgians have already requested their mail ballots. *Id.*

Plaintiffs, however, did not file their Complaint initiating this action—and seeking “emergency” injunctive relief—until Thursday, December 17. Plaintiffs bring four claims alleging violations of the U.S. Constitution and the Voting Rights Act. Through their complaint and motion for a temporary restraining order, Plaintiffs allege that “tens of thousands” of voters have registered to vote in Georgia since the November general election. *See, e.g.*, Compl. ¶ 94. Of these, they

assert that some unknown number of new registrants voted in November in a different state for U.S. Senator, thus making them ineligible to vote in the upcoming senate elections in Georgia because of an alleged prohibition on double voting. *Id.* ¶¶ 109, 119, 128. Based on these claims, they request the court declare these votes unlawful and have *all* votes cast by voters having registered to vote in Georgia since November 3 segregated for further investigation. *See* Compl. Prayer for Relief.

DPG is the Democratic Party's official state party committee in Georgia, and its mission is to elect Democratic Party candidates to offices across the state, up and down the ballot. DSCC is the national senatorial committee of the Democratic Party as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party to the U.S. Senate, including in Georgia, and it works to accomplish its mission by making expenditures for and contributions to Democratic candidates for U.S. Senate and assisting state parties throughout the country. Both seek intervention on their own behalf and on behalf of their members, candidates, and voters.

III. ARGUMENT

A. This Court should grant the motion to intervene as of right.

Proposed Interveners qualify for intervention as of right under Rule 24(a)(2), which should be granted where (1) the motion to intervene is timely, (2) the proposed intervenor "has an interest in the subject matter of the suit," (3) "its ability to protect that interest may be impaired by the disposition of the suit," and (4) the "existing parties in the suit cannot adequately protect that interest." *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1250 (11th Cir. 2002). Proposed Interveners satisfy each of these requirements.

1. The motion to intervene is timely.

This motion to intervene is timely. In analyzing this factor, the Court considers

the length of time during which the [proposed intervenors] knew or reasonably should have known of their interest in the case before moving to intervene, the extent of prejudice to the existing parties as a result of the [proposed intervenors'] failure to move for intervention as soon as they knew or reasonably should have known of their interest, the extent of prejudice to the [proposed intervenors] if their motion is denied, and the existence of unusual circumstances militating either for or against a determination that their motion was timely.

Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989). “The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice.” *Id.* (quoting *McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970)).

Here, Proposed Intervenors seek intervention at the earliest possible stage of this action, and their intervention will neither delay the resolution of this matter nor prejudice any party. Plaintiffs filed their complaint yesterday, December 17. Although Plaintiffs have filed an emergency motion for temporary restraining order and preliminary injunction, *see* ECF No. 3, and the Court is holding a hearing on it today at the time of this filing, Proposed Intervenors stand prepared to follow any briefing schedule set by the Court and filed this motion within a day of initiation of the case. Accordingly, no party can legitimately claim that intervention by Proposed Intervenors would cause any prejudicial delay, whereas Proposed Intervenors would suffer prejudice if this motion is denied because they will be unable to protect their interests as well as the interests of their members and candidates. Under these circumstances, the motion is timely.

2. Proposed Intervenors have significant and protectable interests in this action that might be impaired by this Court's disposition.

Proposed Intervenors have significant and cognizable interests in intervening in this case to ensure that eligible Democratic voters have every opportunity to cast ballots in next month's runoff election and to defend their organizational interests. When considering the interests needed

for intervention, the Court’s inquiry is “a flexible one, which focuses on the particular facts and circumstances surrounding” the motion. *Chiles*, 865 F.2d at 1214 (quoting *United States v. Perry Cnty. Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978)); *see also U.S. Army Corps of Eng’rs*, 302 F.3d at 1251 (“To determine whether [the proposed intervenor] possesses the requisite interest for intervention purposes, we look to the subject matter of the litigation.”).

If Plaintiffs succeed in their request to segregate and investigate *all* ballots cast by voters who have registered since the November 3 general election which include ballots cast by Proposed Intervenors members and constituents, then Proposed Intervenors—both of which are organizations dedicated to promoting the franchise and supporting the election of Democratic Party candidates—will suffer direct injury because Democratic voters, including Proposed Intervenors’ members and constituents, will have to clear an addition hurdle to have their vote counted: namely inquiry and investigation by the opposing party into their eligibility to vote. This will inevitably dissuade certain voters from voting, and the result will be far less robust turnout among Democratic supporters. Courts have routinely concluded that such interference with a political party’s electoral prospects constitutes a direct injury that satisfies Article III standing, which goes beyond the requirement needed for intervention under Rule 24(a)(2) in this case. *See, e.g., Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–87 (5th Cir. 2006) (recognizing that “harm to [] election prospects” constitutes “a concrete and particularized injury”); *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding that “the potential loss of an election” is sufficient injury to confer Article III standing); *cf. Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) (noting that an intervenor by right only needs “Article III standing in order to pursue relief that is different from that which is sought by a party with standing”). Indeed, other state and national party organizations have intervened in several voting cases this year on this very

theory. *See, e.g., Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting intervention as of right to national party committee and state party where “Plaintiffs’ success on their claims would disrupt the organizational intervenors’ efforts to promote the franchise and ensure the election of Democratic Party candidates” (quoting *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020))); *see also Democratic Party of Ga., Inc. v. Crittenden*, No. 1:18-CV-5181-SCJ, slip op. at 2 (N.D. Ga. Nov. 14, 2018), ECF No. 40 (granting intervention to political party in voting rights lawsuit); *Georgia Republican Party et al. v. Raffensperger et al.*, No. 20-cv-05018, slip. op. at 2 (N.D. Ga. Nov. 14, 2020), ECF No. 12; *Twelfth Congressional District Republican Committee et al. v. Raffensperger*, No. 20-cv-00180, slip. op. at 1 (S.D. Ga. Nov. 14, 2020), ECF No. 14.

Moreover, the disruptive effects of Plaintiffs’ action would require Proposed Intervenors to divert resources to engage in extensive education efforts to inform voters that they are indeed eligible to vote and should not be intimidated by this action and to staff tabulation centers to defend against incorrect challenges for ineligibility. *See, e.g., Democratic Nat’l Comm. v. Reagan*, 329 F. Supp. 3d 824, 841 (D. Ariz. 2018) (finding standing where law “require[d] Democratic organizations . . . to retool their [get-out-the-vote] strategies and divert [] resources”), *rev’d on other grounds sub nom. Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (en banc); *Democratic Party of Ga., Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1337 (N.D. Ga. 2018) (finding standing where “Plaintiffs provide declaration evidence that they will be required to divert resources from existing uses to address both [voting] issues”); *see also Issa*, 2020 WL 3074351, at *3 (granting intervention and citing this protected interest).

Lastly, Proposed Intervenors have a legally cognizable interest in ensuring that Plaintiffs’ action does not serve to intimidate or disenfranchise their members in Georgia. *See, e.g., Ne. Ohio*

Coal. for Homeless v. Husted, 696 F.3d 580, 585 (6th Cir. 2012) (per curiam) (Ohio Democratic Party permitted intervention in case where challenged practice would lead to disenfranchisement of its voters); *see also Crawford*, 553 U.S. at 189 n.7 (agreeing with unanimous view of Seventh Circuit that Indiana Democratic Party had standing to challenge voter identification law that risked disenfranchising its members); *Democratic Party of Ga.*, 347 F. Supp. 3d at 1337 (finding that DPG had standing to sue on behalf of its members to challenge State’s rejection of absentee ballots); *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1079 (N.D. Fla. 2004) (finding that Florida Democratic Party “has standing to assert, at least, the rights of its members who will vote in the November 2004 election”). Accordingly, Proposed Intervenors satisfy the second and third requirements of Rule 24(a)(2).

3. Proposed Intervenors’ interests may not be adequately represented by the existing parties.

Finally, neither Plaintiffs nor Defendants adequately represent Proposed Intervenors’ interests. This requirement “is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Clark v. Putnam County*, 168 F.3d 458, 461 (11th Cir.1999) (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10 (1972)); *see also Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993) (“Any doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action.”). Moreover, where one of the original parties to the suit is a government entity whose “views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it,” courts have found that “the burden [of establishing inadequacy of representation] is

comparatively light.” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation Law Found. of New Eng., Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992); *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)).

Here, while Defendants have an interest in defending their actions as state and local officials, Proposed Intervenors have a different objective: ensuring that every Democratic voter in Georgia has a meaningful opportunity to cast a ballot in the runoff election free from intimidation and the specter of investigations and have that ballot counted. Courts have “often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *accord Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 899 (9th Cir. 2011) (“[T]he government’s representation of the public interest may not be ‘identical to the individual parochial interest’ of a particular group just because ‘both entities occupy the same posture in the litigation.’” (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009))). That is the case here. Proposed Intervenors have specific interests and concerns—from their overall electoral prospects to the most efficient use of their limited resources—that neither Defendants nor any other parties in this lawsuit share. *See Paher*, 2020 WL 2042365, at *3 (granting intervention as of right where proposed intervenors “may present arguments about the need to safeguard [the] right to vote that are distinct from [state defendants’] arguments”). As one court recently explained under similar circumstances,

While Defendants’ arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors [including national party committee and state party] are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures. As a result, the parties’ interests are neither “identical” nor “the same.”

Issa, 2020 WL 3074351, at *3 (citation omitted). Because Proposed Intervenor’s particular interests are not shared by the present parties in this litigation, they cannot rely on Defendants or anyone else to provide adequate representation. They have thus satisfied the four requirements for intervention as of right under Rule 24(a)(2). *See id.* at *3–4; *Paher*, 2020 WL 2042365, at *3.

B. Proposed Intervenor’s are also entitled to permissive intervention.

Even if Proposed Intervenor’s were not entitled to intervene as of right, permissive intervention is warranted under Rule 24(b). “On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1); *see also Ga. Aquarium, Inc. v. Pritzker*, 309 F.R.D. 680, 690 (N.D. Ga. 2014) (“[T]he claim or defense clause of Rule 24(b)(2) is generally given a liberal construction.”). The court must also consider “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

Proposed Intervenor’s easily satisfy these requirements. Their motion is timely and intervention will not unduly delay or prejudice the adjudication of the original parties’ rights. *See* Part III.A.1 *supra*. Moreover, Proposed Intervenor’s will raise common questions of law and fact in opposing Plaintiff’s suit, including whether Plaintiff’s have standing and whether the equitable doctrine of laches bars their claims. *See* Ex. 1. As stated above, Proposed Intervenor’s are prepared to proceed in accordance with any schedule this Court determines, and their intervention will serve to contribute to the complete development of the factual and legal issues before the Court. *See Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, slip op. at 2 (M.D. Pa. Nov. 12, 2020), ECF No. 72 (finding that national party committee “readily . . . satisf[ies] the requirements for permissive intervention under Fed. R. Civ. P. 24(b)”).

IV. CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully ask this Court to grant their motion to intervene.

Dated: December 18, 2020.

Respectfully submitted,

/s/ Joyce Gist Lewis

Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Adam M. Sparks*
Georgia Bar No. 341578
KREVOLIN & HORST, LLC
1201 W. Peachtree Street, NW
Suite 3250, One Atlantic Center
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
sparks@khlawfirm.com

Marc E. Elias*
Amanda R. Callais*
Henry J. Brewster*
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005
Telephone: (202) 654-6200
melias@perkinscoie.com
acallais@perkinscoie.com
hbrewster@perkinscoie.com

Laura Hill*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101
Telephone: (206) 359-8000
lhill@perkinscoie.com

Counsel for Proposed Intervenor-Defendants
**Pro Hac Vice Application Forthcoming*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

GEORGIA REPUBLICAN PARTY, INC., a state political party committee, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, PERDUE FOR SENATE, GEORGIANS FOR KELLY LOEFFLER, BETHANY BALLARD, ASHLEY GILLES, and JEAN M. SEAVER,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as the Secretary of State of Georgia and Chair of the State Election Board; REBECCA SULLIVAN, in her official capacity as Vice Chair of the State Election Board, DAVID J. WORLEY, MATTHEW MASHBURN, and ANH LE, in their official capacities as Members of the State Election Board; PATRICIA GIBSON, PATRICIA FEATHERSTONE, KEITH RUSTIN, TOMMY CLARK, and SANDRA DEAN, in their official capacities as Members of the Glynn County Board of Elections, THOMAS MAHONEY III, MARIANNE HEIMES, MALINDA HODGE, ANTWAN LANG, and DEBBIE RAUERS, in their official capacities as Members of the Chatham County Board of Elections,

Defendants.

Civil Action No.
2:20-cv-00135-LGW-BWC

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: December 18, 2020

/s/ Joyce Gist Lewis
Joyce Gist Lewis
Georgia Bar No. 296261

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit 1

RETRIEVED FROM DEMOCRACYDOCKET.COM

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

GEORGIA REPUBLICAN PARTY, INC., a state political party committee, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, PERDUE FOR SENATE, GEORGIANS FOR KELLY LOEFFLER, BETHANY BALLARD, ASHLEY GILLES, and JEAN M. SEAVER,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as the Secretary of State of Georgia and Chair of the State Election Board; REBECCA SULLIVAN, in her official capacity as Vice Chair of the State Election Board, DAVID J. WORLEY, MATTHEW MASHBURN, and ANH LE, in their official capacities as Members of the State Election Board; PATRICIA GIBSON, PATRICIA FEATHERSTONE, KEITH RUSTIN, TOMMY CLARK, and SANDRA DEAN, in their official capacities as Members of the Glynn County Board of Elections, THOMAS MAHONEY III, MARIANNE HEIMES, MALINDA HODGE, ANTWAN LANG, and DEBBIE RAUERS, in their official capacities as Members of the Chatham County Board of Elections,

Defendants.

Civil Action No.
2:20-cv-00135-LGW-BWC

**PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFFS'
COMPLAINT**

Proposed Intervenor-Defendants Democratic Party of Georgia (“DPG”) and DSCC (together, “Proposed Intervenor”), by and through their undersigned counsel of record, answer Plaintiffs’ Complaint as set forth below. Unless expressly admitted, each allegation in the Complaint is denied, and Proposed Intervenor demand strict proof thereof.

INTRODUCTION

1. Denied.
2. Admitted.
3. Admitted.
4. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint.
5. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint.
6. Denied.
7. Denied.
8. Proposed Intervenors admit the allegations in the second and third sentences of Paragraph 8 of the Complaint. Proposed Intervenors deny all remaining allegations in Paragraph 8 of the Complaint.
9. Proposed Intervenors deny the allegations in Paragraph 9 of the Complaint to the extent they suggest that the challenged votes are “unlawful” or that any of Plaintiffs’ rights will be irreparably harmed. The remaining allegations in Paragraph 9 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.
10. Denied.

PARTIES

11. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint, including Exhibit A referenced

therein.

12. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint, including Exhibit B referenced therein.
13. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, including Exhibit C referenced therein.
14. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint, including Exhibit D referenced therein.
15. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint, including Exhibit E referenced therein.
16. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint, including Exhibit F referenced therein.
17. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint, including Exhibit G referenced therein.
18. Proposed Intervenors admit that Defendant Brad Raffensperger is the Secretary of State of Georgia. The remaining allegations in Paragraph 18 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.
19. The allegations in Paragraph 19 are mere characterizations, legal contentions, conclusions,

and opinions to which no response is required.

20. Admitted.

21. The allegations in Paragraph 21 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

22. The allegations in Paragraph 22 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

23. Admitted.

24. Admitted.

25. The allegations in Paragraph 25 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

26. Proposed Intervenors admit that Plaintiffs in this lawsuit have listed Defendants as being sued in their official capacities seeking declaratory and injunctive relief.

JURISDICTION AND VENUE

27. Denied.

28. Paragraph 28 of Plaintiffs' Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the same.

29. Denied.

30. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint.

31. Proposed Intervenors deny that the Plaintiff Voters have Article III standing. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the

remainder of the allegations in Paragraph 31 of the Complaint.

32. Denied.

33. Denied.

34. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint.

35. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint.

36. Proposed Intervenors deny that the Plaintiff Political Organizations are compelled to divert any resources toward their entirely voluntarily and baseless effort to attack the eligibility of lawful Georgia voters. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the remainder of the truth of the allegations in Paragraph 36 of the Complaint, including Plaintiffs' allegations about what they would do with those resources if they were not choosing to pursue these meritless challenges.

37. Denied.

38. Admitted.

39. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint.

40. Denied.

41. Denied.

42. Denied.

FACTUAL ALLEGATIONS

43. Admitted.

44. Admitted.

45. The allegations in Paragraph 45 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

46. Admitted.

47. Admitted.

48. Proposed Intervenors admit that the Georgia run-off election is likely to determine which party controls the Senate. To the extent Plaintiffs mean to incorporate the assertions made in the cited news article into their Complaint as factual allegations, Proposed Intervenors deny the remainder of the assertions in Paragraph 48 of the Complaint.

49. Admitted.

50. Denied.

51. Proposed Intervenors deny the allegations in Paragraph 51 of the Complaint to the extent they suggest that the named journalist is an “activist” or engaged in any improper activities. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 51 of the Complaint, and on that basis deny them.

52. Proposed Intervenors deny the allegations in Paragraph 52 of the Complaint to the extent they suggest that the named journalist is an “activist” or engaged in any improper activities. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 52 of the Complaint, and on that basis deny them.

53. Plaintiffs deny the assertion that “[m]any out-of-staters heeded this call to action.” Plaintiffs admit the remainder of the allegations in Paragraph 53 of the Complaint.

54. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 of the Complaint.
55. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint.
56. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 of the Complaint.
57. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 of the Complaint.
58. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 of the Complaint.
59. Denied.
60. The allegations in Paragraph 60 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.
61. The allegations in Paragraph 61 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the allegations are denied.
62. The allegations in Paragraph 62 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.
63. Denied.
64. The allegations in Paragraph 64 are mere characterizations, legal contentions, conclusions, and opinions to which no response is required.
65. Proposed Intervenors deny the allegations in Paragraph 65 of the Complaint to the extent

they suggest that the challenged votes are “unlawful” and that there is an “imminent threat of unlawful double voting.” Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 65 of the Complaint.

66. Denied.

67. Denied.

68. Denied.

69. Proposed Intervenors deny the allegations in Paragraph 69 of the Complaint to the extent they suggest that the challenged votes are “unlawful.” Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 69 of the Complaint.

70. Admitted that Defendants have not ordered segregation of ballots cast by voters registering to vote between November 4, 2020 and December 7, 2020 and for good reason — such segregation would be unlawful. Proposed Intervenors deny the remainder of the allegations in Paragraph 70 of the Complaint.

71. Proposed Intervenors deny the allegations in Paragraph 71 of the Complaint to the extent that they suggest that the challenged votes are “unlawful double votes.” Proposed Intervenors admit that Defendants intend to count and certify votes cast in the January 5, 2021 run-off elections.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. The allegations in Paragraph 79 of the Complaint are mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny that the Plaintiffs are entitled to any relief whatsoever, regardless of how they characterize the scope of the relief they request.

FIRST CLAIM FOR RELIEF

80. Proposed Intervenors incorporate by reference all other responses in this Proposed Answer as though set forth fully herein.

81. Paragraph 81 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

82. Paragraph 82 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

83. Paragraph 83 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations in Paragraph 83 of the Complaint.

84. Paragraph 84 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

85. Paragraph 85 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is

required, Proposed Intervenor deny the allegations in Paragraph 85 of the Complaint.

86. Paragraph 86 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations in Paragraph 86 of the Complaint.

87. Paragraph 87 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

88. Proposed Intervenor deny that the quoted language in Paragraph 88 of the Complaint was made by Congress. The remaining allegations in Paragraph 88 of the Complaint contain mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

89. Paragraph 89 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor admit the allegations in Paragraph 89 of the Complaint.

90. Paragraph 90 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations in Paragraph 90.

91. Paragraph 91 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Proposed Intervenor deny the allegations in Paragraph 91.

92. Proposed Intervenor lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 92 of the Complaint.

93. Proposed Intervenor admit that Kelly Loeffler and David Perdue are on the ballot in Georgia's 2021 run-off election. Proposed Intervenor lack knowledge or information

sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 93 of the Complaint.

94. Proposed Intervenors admit that tens of thousands of new voters have lawfully registered to vote in Georgia since November 3, 2020. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the remainder of the truth of the allegations in Paragraph 94 of the Complaint.

95. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 95 of the Complaint.

96. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 96 of the Complaint.

97. Denied.

98. Denied.

SECOND CLAIM FOR RELIEF

99. Proposed Intervenors incorporate by reference all other responses in this Proposed Answer as though set forth fully herein.

100. Paragraph 100 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

101. Paragraph 101 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

102. Paragraph 102 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

103. Proposed Intervenors lack knowledge or information sufficient to form a belief as

to the truth of the allegations in Paragraph 103 of the Complaint.

104. Proposed Intervenors admit that Kelly Loeffler and David Perdue are on the ballot in Georgia's 2021 run-off election. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 104 of the Complaint.

105. Proposed Intervenors admit that tens of thousands of new voters have lawfully registered to vote in Georgia since November 3, 2020. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the remainder of the truth of the allegations in Paragraph 105 of the Complaint.

106. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 106 of the Complaint.

107. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 107 of the Complaint.

108. Denied.

109. Denied.

THIRD CLAIM FOR RELIEF

110. Proposed Intervenors incorporate by reference all other responses in this Proposed Answer as though set forth fully herein.

111. Paragraph 111 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

112. Paragraph 112 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

113. Paragraph 113 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

114. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114 of the Complaint.

115. Proposed Intervenors admit that Kelly Loeffler and David Perdue are on the ballot in Georgia's 2021 run-off election. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 115 of the Complaint.

116. Proposed Intervenors admit that tens of thousands of new voters have lawfully registered to vote in Georgia since November 3, 2020. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the remainder of the truth of the allegations in Paragraph 116 of the Complaint.

117. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 117 of the Complaint.

118. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118 of the Complaint.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

FOURTH CLAIM FOR RELIEF

123. Proposed Intervenors incorporate by reference all other responses in this Proposed

Answer as though set forth fully herein.

124. Paragraph 124 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

125. Paragraph 125 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

126. Paragraph 126 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

127. Paragraph 127 of the Complaint contains mere characterizations, legal contentions, conclusions, and opinions to which no response is required.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. Admitted.

133. Denied.

134. Denied.

PRAYER FOR RELIEF

Proposed Intervenor deny that Plaintiffs are entitled to any relief and any remaining allegations in Plaintiffs' unnumbered Prayer for Relief, including the lettered paragraphs therein.

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Plaintiffs lack standing to assert their claims.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the Eleventh Amendment to the U.S. Constitution.

FOURTH AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the equitable doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are precluded from bringing these claims.

Proposed Intervenors reserve the right to assert any further defenses that may become evident during the pendency of this matter.

PROPOSED INTERVENORS' REQUEST FOR RELIEF

Having answered Plaintiffs' Complaint, Proposed Intervenors request that the Court:

1. Deny Plaintiffs are entitled to any relief;
2. Dismiss Plaintiffs' Complaint with prejudice;
3. Award Proposed Intervenors their costs and attorneys' fees incurred in defending against Plaintiffs' claims in accordance with 42 U.S.C. § 1988; and

4. Grant such other and further relief as this Court deems just and proper.

Dated: December 18, 2020.

Respectfully submitted,

/s/ Joyce Gist Lewis

Halsey G. Knapp, Jr.

Georgia Bar No. 425320

Joyce Gist Lewis

Georgia Bar No. 296261

Adam M. Sparks*

Georgia Bar No. 341578

KREVOLIN & HORST, LLC

1201 W. Peachtree Street, NW

Suite 3250, One Atlantic Center

Atlanta, GA 30309

Telephone: (404) 888-9700

Facsimile: (404) 888-9577

hknapp@khlawfirm.com

jlewis@khlawfirm.com

sparks@khlawfirm.com

Marc E. Elias*

Amanda R. Callais*

Henry J. Brewster*

PERKINS COIE LLP

700 Thirteenth Street NW, Suite 800

Washington, D.C. 20005

Telephone: (202) 654-6200

meliass@perkinscoie.com

acallais@perkinscoie.com

hbrewster@perkinscoie.com

Laura Hill*

PERKINS COIE LLP

1201 Third Avenue, Suite 4900

Seattle, Washington 98101

Telephone: (206) 359-8000

lhill@perkinscoie.com

Counsel for Proposed Intervenor-Defendants

**Pro Hac Vice Application Forthcoming*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

GEORGIA REPUBLICAN PARTY, INC., a state political party committee, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, PERDUE FOR SENATE, GEORGIANS FOR KELLY LOEFFLER, BETHANY BALLARD, ASHLEY GILLES, and JEAN M. SEAVER,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as the Secretary of State of Georgia and Chair of the State Election Board; REBECCA SULLIVAN, in her official capacity as Vice Chair of the State Election Board, DAVID J. WORLEY, MATTHEW MASHBURN, and ANH LE, in their official capacities as Members of the State Election Board; PATRICIA GIBSON, PATRICIA FEATHERSTONE, KEITH RUSTIN, TOMMY CLARK, and SANDRA DEAN, in their official capacities as Members of the Glynn County Board of Elections, THOMAS MAHONEY III, MARIANNE HEIMES, MALINDA HODGE, ANTWAN LANG, and DEBBIE RAUERS, in their official capacities as Members of the Chatham County Board of Elections,

Defendants.

Civil Action No.
2:20-cv-00135-LGW-BWC

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: December 18, 2020

/s/ Joyce Gist Lewis

Joyce Gist Lewis
Georgia Bar No. 296261

RETRIEVED FROM DEMOCRACYDOCKET.COM