IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and the GEORGIA STATE REPUBLICAN PARTY, INC., a state political party committee,

Plaintiffs,

v.

STATE ELECTION BOARD, an agency of the State of Georgia; BRAD RAFFENSPERGER, in his official capacities as the Secretary of State of Georgia and the Chairman of the State Election Board; REBECCA N. SULLIVAN, in her official capacity as the Vice Chair of the State Election Board; DAVID J. WORLEY, in his official capacity as a member of the State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the State Election Board; and ANH LE, in her official capacity as a member of the State Election Board,

Defendants.

Civ. Act. No. 2020CV343319

Motion of Democratic Party of Georgia and DSCC to Intervene as Defendants

Proposed Intervenor-Defendants Democratic Party of Georgia, Inc. and DSCC ("Proposed Intervenors") seek to participate as intervening defendants to defend their members' interest in the administration of a free and fair runoff election on January 5, 2020.

For the reasons discussed in the memorandum in support, filed concurrently herewith as Exhibit A, Proposed Intervenors are entitled to intervene in this case as a matter of right under O.C.G.A. § 9-11-24(a). In the alternative, Proposed Intervenors request permissive intervention pursuant to O.C.G.A. § 9-11-24(b). In accordance with O.C.G.A. § 9-11-24(c), Proposed Intervenors' Proposed Answer to the Complaint is attached as Exhibit B. Proposed Intervenors

also submit their Proposed Motion to Dismiss, attached as Exhibit C, a memorandum in support of their Motion to Dismiss, attached as Exhibit D, and a Proposed Order granting their Motion to Intervene, attached as Exhibit E.

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

Dated: December 15, 2020.

Respectfully submitted,

/s/ Adam M. Sparks
Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Susan P. Coppedge
Georgia Bar No. 187251
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Ste. 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
coppedge@khlawfirm.com
sparks@khlawfirm.com

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

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

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

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and the GEORGIA STATE REPUBLICAN PARTY, INC., a state political party committee, Plaintiffs, v. STATE ELECTION BOARD, an agency of the State of Georgia; BRAD RAFFENSPERGER, in his official capacities as the Secretary of State of Georgia and the Chairman of the State Election Board; REBECCA N. SULLIVAN, in her official capacity as the Vice Chair of the State Election Board; DAVID J. WORLEY, in his official capacity as a member of the State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the State Election Board; and ANH LE, in her official capacity as a member of the State Election Board, Defendants.	Civ. Act. No. 2020CV343319

Certificate of Service

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

This 15th day of December 2020.

/s/ Adam M. Sparks
Adam M. Sparks
Georgia Bar No. 341578
Counsel for Proposed Intervenor-Defendants

EXHIBIT
A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and the GEORGIA STATE REPUBLICAN PARTY, INC., a state political party committee, Plaintiffs, v. STATE ELECTION BOARD, an agency of the State of Georgia; BRAD RAFFENSPERGER, in his official capacities as the Secretary of State of Georgia and the Chairman of the State Election Board; REBECCA N. SULLIVAN, in her official capacity as the Vice Chair of the State Election Board; DAVID J. WORLEY, in his official capacity as a member of the State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the State Election Board; and ANH LE, in her official capacity as a member of the State Election Board, Defendants.	Civ. Act. No. 2020CV343319

Memorandum in Support of Motion to Intervene

Pursuant to O.C.G.A. § 9-11-24, Proposed Intervenor-Defendants Democratic Party of Georgia, Inc. ("DPG") and DSCC (together, "Proposed Intervenors"), by and through their counsel, move to intervene as Defendants in this action for the reasons stated herein.

I. INTRODUCTION

On January 5, 2020 the state of Georgia will hold two runoff elections for both of the state's United States Senate seats. While administering elections in a pandemic is difficult, Georgia state and local administrators are well-versed in those particulars, having just conducted a general election and multiple recounts over the last month. Rather than allowing Defendants to rely on that

experience in conducting the upcoming election, however, Plaintiffs seek to inject new rules and uncertainty into Georgia's election administration based on a plain misreading of Georgia law, which is just one of the many flaws in their Complaint.

In addition to wreaking havoc on Defendants' administration of the election, Plaintiffs' flawed request for relief also has the potential to substantially impair Proposed Intervenors' interests. 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, including the Democratic candidates for Senate in the upcoming run-off elections. 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. Proposed Intervenors' interests stand to be substantially impaired by Plaintiffs' requested relief, which erects additional roadblocks for those individuals who vote absentee, a method of accessing the franchise which Proposed Intervenors have encouraged their supporters to utilize given the ongoing global pandemic. Indeed, the United States is currently in the worst period of the pandemic, making this method of voting in the upcoming election even more critical. While Defendants have an interest in orderly election administration and clarity on election rules, they do not share the same special interest as Proposed Intervenors in ensuring that Proposed Intervenors' supporters can utilize whatever method they find safest to vote. Because Proposed Intervenors have a significant interest that is likely to be impaired by Plaintiffs' requested relief and is not adequately represented by any party in this litigation, the Court should grant intervention.

II. STATEMENT OF FACTS

On November 3, 2020, Georgia—along with the rest of the nation—held its general election. Unlike any other state this year, Georgia had both of its United States Senate seats on the ballot.[1] Georgia law requires that to win elected office in the state, a candidate must receive "a majority of the votes cast." O.C.G.A. § 21-2-501(a)(1). If no candidate surpasses the 50% threshold, the state must administer a special election runoff between the two candidates that received the highest vote totals on the Tuesday of the ninth week following the general election. *Id.* No candidate in either Senate race garnered majority support, meaning both seats progressed to a special election to be held on January 5, 2020 (the "January runoff").

Against this backdrop, Plaintiffs—national and state Republican party committees—filed this action on December 8. In it, they pursue two changes to Georgia law. First, they seek a series of broad declarations from this Court to allow for what they characterize as "full and meaningful" observation of each and every step in the ballot processing and tabulation procedures. Am. Compl. ¶¶ 3, 16, 31. Second, they assert that ballot drop boxes should be available to the public "only during regular business hours when county election offices are open and accessible" to the public and that video surveillance of drop boxes must be made publicly available in real time. *Id.* ¶¶ 60-68.

Plaintiffs seek to have these stark departures from existing policy in place for the January runoff. Because their political and financial interests, as well as the rights of their members, are greatly impacted by the resolution of this lawsuit, Proposed Intervenors now seek to intervene.

[1] The first of Georgia's two seats, the one held by incumbent Republican Senator David Perdue, was always scheduled for a 2020 contest. The second seat was subject to a special election in November 2020 following the resignation last year of Senator Johnny Isakson and subsequent appointment of Kelly Loeffler, who had to run in her own right in a 2020 special election to carry out the balance of Isakson's term.

This motion comes just seven days after the filing of the Plaintiffs' initial Complaint, and before any hearing has been scheduled in this matter.

III. ARGUMENT

Proposed Intervenors have an undeniable interest in this lawsuit, which seeks to substantially impair the administration of the January runoff. They are entitled to intervention as of right or, alternatively, permissive intervention.

A. Proposed Intervenors are entitled to intervene as a matter of right under O.C.G.A. § 9-11-24(a)(2).

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

First, Proposed Intervenors clearly have a direct interest in ensuring the fair and proper administration of the January runoff. Under Georgia law, " . . . the interest of the intervenor must

[2] "[W]hether a motion to intervene is timely is a decision entrusted to the sound discretion of the trial court." *Kroger v. Taylor*, 320 Ga. App. 298, 298 (2013) (quoting *Payne v. Dundee Mills, Inc.*, 235 Ga. App. 514, 515(1) (1998)). "But where intervention appears before final judgment, where the rights of the intervening parties have not been protected, and where the denial of intervention would dispose of the intervening parties' cause of action, intervention should be allowed and the failure to do so amounts to an abuse of discretion." *Id*. This request for intervention was filed only seven days after Plaintiffs filed their complaint, two business days after their amended complaint and motion for relief, and before any hearing or responsive briefing. Accordingly, it is timely.

be of such a direct and immediate character that he will either gain or lose by the direct effect of the judgment, and must be created by the claim in suit." *State Farm Mut. Auto. Ins. Co. v. Jiles*, 115 Ga. App. 193, 195 (1967). There is no question that Proposed Intervenors will "gain or lose by the direct effect of [a] judgment" in this suit that seeks to radically depart from the requirements of Georgia's observation law and prevent the continued utilization of drop boxes despite their wide popularity and ease of use. *See id*. Proposed Intervenors have encouraged their supporters to utilize drop boxes and diverted substantial resources from other mission critical efforts towards this goal. Proposed Intervenors also have a direct interest in defending and supporting access to the franchise for the hundreds of thousands of Democratic Georgia voters who intend to participate in these highly competitive special elections. *See, e.g.*, *Bay Cnty. Democratic Party v. Land*, 347 F. Supp. 2d 404, 422 (E.D. Mich. 2004) ("political parties and candidates have standing to represent the rights of voters"); *Penn. Psychiatric Soc'y v. Green Spring Health Servs., Inc*., 280 F.3d 278, 288 n.10 (3d Cir. 2002) ("candidates for public office may be able to assert the rights of voters"); *Walgren v. Bd. of Selectmen of Amherst*, 519 F.2d 1364, 1365 n.1 (1st Cir. 1975) (same).[3]

Second, there is little question that Plaintiffs' requests will impair Proposed Intervenors' interests. Plaintiffs seek to remove the ability for drop boxes—an exceedingly popular method of ballot delivery—to be utilized around the clock, as they were for the 2020 general election. *See* Am. Compl., Prayer for Relief ¶¶ 3-4. Plaintiffs further ask the Court to grant carte blanche access to poll watchers in every step in the processing and counting of ballots, even though that request

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

goes far beyond the requirements of Georgia law, will undoubtedly delay and hinder the timely administration of the January runoffs, and also serves as a potential threat to the health of election administrators during the second, increasingly more deadly wave of COVID-19. *Id.* ¶¶ 1-2. Put simply, Plaintiffs are requesting major, disruptive changes to how ballots in Georgia are cast and counted weeks before the election. The proposed limitations on drop boxes will lead to substantial confusion and potential disenfranchisement for Plaintiffs' members, who utilized them scarcely a month earlier without incident, and require Plaintiffs to divert resources to educate their members about these new restrictions on drop box availability. And allowing increased poll watcher review will increase health risks for Plaintiffs' members who serve as poll watchers while also hampering the orderly administration of the election. Disruptions in election administration will impair the interests of Proposed Intervenors' by potentially delaying the counting of votes and undermining their organizational missions of electing Democrats to the U.S. Senate.

Finally, Proposed Intervenors' interests cannot adequately be represented by the State Defendants. Defendants' stake in this lawsuit is defined solely by their statutory duties to implement the electoral process. The Secretary of State, for example, is responsible for the general administration of the state laws affecting voting as the state's chief elections officer. *See* O.C.G.A. §§ 21-2-50. 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 precisely the case here, where—because these government entities are

not institutionally designed to be advocates for any political party or its voters—they cannot adequately represent the interests of Proposed Intervenors, whose mission is just that. The public interest represented by the government Defendants is in the fair, just, and orderly administration of the election, not necessarily in the broad expansion of means of the exercise of the franchise in order to ensure that the greatest number of Proposed Intervenors' supporters are able to vote. In such circumstances, Defendants cannot adequately represent Proposed Intervenors' interests, and intervention is appropriate. *See, e.g.*, Order on Motion to Intervene, *In Re: Enforcement of Election Laws and Securing Ballots Cast or Received After 7:00 P.M. on November 3, 2020*, No. SPCV2000982-J3 (Chatham Cty. Sup. Ct. Nov. 5, 2020) (granting DPG's motion to intervene in challenge to stop counting of absentee ballots in Chatham County on basis of DPG protecting members' right to vote); *Pearson v. Kemp*, No. 1:20-cv-04809-TCB, slip op. at 1–2 (N.D. Ga. Nov. 25, 2020), ECF No. 42; *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, slip op. at 2 (N.D. Ga. Nov. 19, 2020), ECF No. 52.

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

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

Proposed Intervenors easily meet the requirements for permissive intervention. *First*, Proposed Intervenors and the existing Defendants will inevitably raise common questions of law and fact in defending this lawsuit and the elections process, including, for instance, whether

Plaintiffs have alleged any injury sufficient to invoke the Court's jurisdiction here. *Second*, given the early stage of this litigation, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. To the contrary, Proposed Intervenors are prepared to proceed in accordance with any schedule the Court establishes. Their intervention will only serve to contribute to the full development of the factual and legal issues before the Court.

IV. CONCLUSION

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

Dated: December 15, 2020.

Respectfully submitted,

/s/ Adam M. Sparks
Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Susan P. Coppedge
Georgia Bar No. 187251
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Ste. 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
coppedge@khlawfirm.com
sparks@khlawfirm.com

Marc E. Elias*
Amanda R. Callais*
John M. Geise*
PERKINS COIE LLP

700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005
Telephone: (202) 654-6200
melias@perkinscoie.com
acallais@perkinscoie.com
jgeise@perkinscoie.com
hbrewster@perkinscoie.com

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

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

EXHIBIT
B

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and the GEORGIA STATE REPUBLICAN PARTY, INC., a state political party committee, Plaintiffs, v. STATE ELECTION BOARD, an agency of the State of Georgia; BRAD RAFFENSPERGER, in his official capacities as the Secretary of State of Georgia and the Chairman of the State Election Board; REBECCA N. SULLIVAN, in her official capacity as the Vice Chair of the State Election Board; DAVID J. WORLEY, in his official capacity as a member of the State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the State Election Board; and ANH LE, in her official capacity as a member of the State Election Board, Defendants.	Civ. Act. No. 2020CV343319

[Proposed] Intervenor-Defendants' [Proposed] Answer

Proposed Intervenor-Defendants Democratic Party of Georgia, Inc. and DSCC ("Proposed Intervenors"), by and through their attorneys, submit the following Answer to Plaintiffs' First Amended Verified Complaint for Declaratory, Injunctive, and/or Mandamus Relief (the "Complaint"). Proposed Intervenors respond to the allegations in the Complaint as follows:

SUMMARY OF THE CASE

1. Paragraph 1 of the Complaint contains mere characterizations, legal contentions, and conclusion to which no response is required.

2. Paragraph 2 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provisions, Proposed Intervenors deny the allegations.

3. Proposed Intervenors deny the allegations in the first two sentences of Paragraph 3 of the Complaint. Paragraph 3 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

4. Proposed Intervenors deny that the physical transfer of the ballot from the voter or other authorized individual to the board of registrars or absentee ballot clerk must occur during the normal business hours of the elections' office. Paragraph 4 of the Complaint otherwise attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

5. Proposed Intervenors admit that the State Election Board adopted Rule 183-1-14-0.8-.14 in or around July 2020. Paragraph 5 of the Complaint otherwise attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced rule, Proposed Intervenors deny the allegations.

6. Paragraph 6 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

JURISDICTION AND VENUE

7. Proposed Intervenors deny the allegations in Paragraph 7 of the Complaint.

PARTIES

8. Proposed Intervenors admit the allegations on the first sentence of Paragraph 8 of the Complaint. Paragraph 8 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required.

9. Proposed Intervenors admit the allegations on the first sentence of Paragraph 9 of the Complaint. Paragraph 9 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required.

10. Proposed Intervenors admit that Defendants Brad Raffensperger, Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le are the members of the State Election Board. The last sentence of Paragraph 10 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations. Paragraph 10 otherwise attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

11. Proposed Intervenors admit that Defendant Brad Raffensperger is the Secretary of State of Georgia. The last sentence of Paragraph 11 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations. Paragraph 11 otherwise attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

GENERAL FACTUAL ALLEGATIONS

12. Paragraph 12 of the Complaint attempts to interpret Georgia law and thus requires no response. To the extent Plaintiffs' interpretation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

13. Paragraph 13 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

14. Paragraph 14 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

15. Paragraph 15 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

16. Proposed Intervenors deny the allegations in Paragraph 16 of the Complaint.

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 and therefore deny the same.

18. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 18 of the Complaint and therefore deny the same. Paragraph 18 otherwise attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provisions, Proposed Intervenors deny the allegations.

19. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint and therefore deny the same.

20. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint and therefore deny the same.

21. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint and therefore deny the same.

22. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint and therefore deny the same.

23. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint and therefore deny the same.

24. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint and therefore deny the same.

25. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint and therefore deny the same.

26. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint and therefore deny the same.

27. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint and therefore deny the same.

28. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint and therefore deny the same.

29. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Complaint and therefore deny the same.

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 and therefore deny the same.

31. Proposed Intervenors deny the allegations in Paragraph 31 of the Complaint.

32. Proposed Intervenors deny the allegations in Paragraph 32 of the Complaint.

33. Paragraph 33 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

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 and therefore deny the same.

35. Paragraph 35 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

36. Paragraph 36 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

37. Paragraph 37 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

38. Paragraph 38 of the Complaint attempts to interpret Rule 183-1-14-0.8-.14 and thus requires no response. To the extent Plaintiffs' interpretation differs from the text of the Rule, Proposed Intervenors deny the allegations.

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 regarding Defendants' position and therefore deny the same.

40. Paragraph 40 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

41. The first sentence of Paragraph 41 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 41 and therefore deny the same.

42. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 42 of the Complaint and therefore deny the same. Paragraph 42 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

43. Paragraph 43 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

COUNT I

44. Proposed Intervenors incorporate their responses to the foregoing paragraphs as if fully set forth herein.

45. Paragraph 45 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

46. Paragraph 46 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

47. Proposed Intervenors deny the allegations in Paragraph 47 of the Complaint.

48. Proposed Intervenors deny the allegations in Paragraph 48 of the Complaint.

49. Proposed Intervenors deny the allegations in Paragraph 49 of the Complaint.

COUNT II

50. Proposed Intervenors incorporate their responses to the foregoing paragraphs as if fully set forth herein.

51. Paragraph 51 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

52. Paragraph 52 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

53. Proposed Intervenors deny the allegations in Paragraph 53 of the Complaint.

54. Proposed Intervenors deny the allegations in Paragraph 54 of the Complaint.

55. Proposed Intervenors deny the allegations in Paragraph 55 of the Complaint.

56. Proposed Intervenors deny the allegations in Paragraph 56 of the Complaint.

57. Proposed Intervenors deny the allegations in Paragraph 57 of the Complaint.

COUNT III

58. Proposed Intervenors incorporate their responses to the foregoing paragraphs as if fully set forth herein.

59. Paragraph 59 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

60. Paragraph 60 of the Complaint attempts to interpret Georgia law and thus requires no response. To the extent Plaintiffs' interpretation differs from Georgia law, Proposed Intervenors deny the allegations.

61. Paragraph 61 of the Complaint attempts to interpret Georgia law and thus requires no response. To the extent Plaintiffs' interpretation differs from Georgia law, Proposed Intervenors deny the allegations.

62. Paragraph 62 of the Complaint attempts to interpret Georgia law and thus requires no response. To the extent Plaintiffs' interpretation differs from the text of the referenced rule, Proposed Intervenors deny the allegations.

63. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 of the Complaint regarding Defendants' position and therefore deny the same.

64. The first sentence of Paragraph 64 of the Complaint attempts to interpret Georgia law and thus requires no response. To the extent Plaintiffs' interpretation differs from the text of the referenced rule, Proposed Intervenors deny the allegations. Proposed Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 64 and therefore deny the same.

65. Proposed Intervenors deny the allegations in Paragraph 65 of the Complaint.

66. Proposed Intervenors deny the allegations in Paragraph 66 of the Complaint.

67. Proposed Intervenors deny the allegations in Paragraph 67 of the Complaint.

68. Proposed Intervenors deny the allegations in Paragraph 68 of the Complaint.

69. Paragraph 69 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

70. Proposed Intervenors deny the allegations in Paragraph 70 of the Complaint.

71. Proposed Intervenors deny the allegations in Paragraph 71 of the Complaint.

COUNT IV

72. Proposed Intervenors incorporate their responses to the foregoing paragraphs as if fully set forth herein.

73. Paragraph 73 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

74. Paragraph 74 of the Complaint attempts to interpret and quote Georgia law and thus requires no response. To the extent Plaintiffs' interpretation and quotation differs from the text of the referenced statutory provision, Proposed Intervenors deny the allegations.

75. Proposed Intervenors deny the allegations in Paragraph 75 of the Complaint.

76. Paragraph 76 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

77. Proposed Intervenors deny the allegations in Paragraph 77 of the Complaint.

78. Paragraph 78 of the Complaint contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenors deny the allegations.

79. Proposed Intervenors deny the allegations in Paragraph 79 of the Complaint.

AFFIRMATIVE DEFENSES

Proposed Intervenors 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

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH 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.

PRAYER FOR RELIEF

Proposed Intervenors deny that Plaintiffs are entitled to any relief.

Dated: December 15, 2020.

Respectfully submitted,

/s/ Adam M. Sparks
Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Susan P. Coppedge
Georgia Bar No. 187251
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Ste. 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
coppedge@khlawfirm.com
sparks@khlawfirm.com

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

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

Counsel for Proposed Intervenor-Defendants

**Pro Hac Vice Application Forthcoming*

EXHIBIT

C

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and the GEORGIA STATE REPUBLICAN PARTY, INC., a state political party committee,

Plaintiffs,

v.

STATE ELECTION BOARD, an agency of the State of Georgia; BRAD RAFFENSPERGER, in his official capacities as the Secretary of State of Georgia and the Chairman of the State Election Board; REBECCA N. SULLIVAN, in her official capacity as the Vice Chair of the State Election Board; DAVID J. WORLEY, in his official capacity as a member of the State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the State Election Board; and ANH LE, in her official capacity as a member of the State Election Board,

Defendants.

Civ. Act. No. 2020CV343319

[Proposed] Intervenor-Defendants' [Proposed] Motion to Dismiss Plaintiffs' First Amended Verified Complaint

Proposed Intervenor-Defendants Democratic Party of Georgia, Inc. and DSCC ("Proposed Intervenors") respectfully move this Court to dismiss Plaintiffs' First Amended Verified Complaint for Declaratory, Injunctive, and/or Mandamus Relief. For the reasons discussed in the memorandum in support, filed concurrently herewith, Plaintiffs lack standing to bring their claims and have failed to state a claim upon which relief can be granted.

WHEREFORE, Proposed Intervenors respectfully request that the Court dismiss Plaintiffs' First Amended Verified Complaint for Declaratory, Injunctive, and/or Mandamus Relief.

Dated: December 15, 2020.

Respectfully submitted,

/s/ Adam M. Sparks
Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Susan P. Coppedge
Georgia Bar No. 187251
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Ste. 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
coppedge@khlawfirm.com
sparks@khlawfirm.com

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

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

Counsel for Proposed Intervenor-Defendants

**Pro Hac Vice Application Forthcoming*

EXHIBIT
D

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and the GEORGIA STATE REPUBLICAN PARTY, INC., a state political party committee,

Plaintiffs,

v.

STATE ELECTION BOARD, an agency of the State of Georgia; BRAD RAFFENSPERGER, in his official capacities as the Secretary of State of Georgia and the Chairman of the State Election Board; REBECCA N. SULLIVAN, in her official capacity as the Vice Chair of the State Election Board; DAVID J. WORLEY, in his official capacity as a member of the State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the State Election Board; and ANH LE, in her official capacity as a member of the State Election Board,

Defendants.

Civ. Act. No. 2020CV343319

Memorandum of Law in Support of [Proposed] Intervenor-Defendants' Motion to Dismiss Plaintiffs' First Amended Verified Complaint for Declaratory, Injunctive, and/or Mandamus Relief

TABLE OF CONTENTS

I. INTRODUCTION

Despite being held during an unprecedented global health crisis, Georgia's November 3, 2020 election was one of the most transparent elections in the State's history, and three separate counts of the ballots in the presidential election have confirmed the accuracy of the final results. Nevertheless, Plaintiffs Republican National Committee and Georgia State Republican Party, Inc. (the "Georgia Republican Party"), dissatisfied with those results (and apparently convinced, without evidence, that their fortunes might have been different had the rules been different), bring this action seeking to judicially compel Defendants—Secretary of State Brad Raffensperger (the "Secretary") and the members of the State Election Board—to grant them new rights related to poll watching and to place new limitations on the use of ballot drop boxes for the upcoming January 5, 2021 U.S. Senate runoff election. Their requests are not only novel, they are fatally flawed: Plaintiffs neither demonstrate any cognizable legal injury stemming from Defendants' conduct nor provide any indication that Defendants' conduct deviates from the law's requirements. Because Plaintiffs lack standing and fail to allege legally cognizable claims, this Court should dismiss their First Amended Verified Complaint for Declaratory, Injunctive, and/or Mandamus Relief ("Complaint") in its entirety.

II. BACKGROUND

A. Georgia will hold a runoff election on January 5, 2021, for its two U.S. Senate seats.

On November 3, 2020, Georgia held an election, with both of the state's U.S. Senate seats on the ballot. Georgia law requires that to win elected office in the state, a candidate must receive "a majority of the votes cast." O.C.G.A. § 21-2-501(a)(1). If no candidate surpasses the 50 percent threshold, the state must administer a special election runoff between the two candidates that

received the highest vote totals on the Tuesday of the ninth week following the general election. *Id*. Here, none of the candidates for either Senate seat won a majority of the vote. As a result, Georgia has scheduled a runoff election for those seats on January 5, 2021. *See* First Am. Verified Compl. for Declaratory, Injunctive, and/or Mandamus Relief ("Am. Compl.") ¶¶ 3, 8. Plaintiffs' lawsuit, which comes on the eve of that runoff election and mere days before early voting and the counting of absentee ballots is set to begin, asks this Court to overturn well-reasoned state election rules related to poll watchers and drop boxes.

B. There is no unqualified right to poll watch under Georgia law.

Whether political parties (or anyone else) have a right to engage in poll watching activities is purely a question of each state's law. Those laws generally include limitations on the right to poll watch that serve the state's compelling interests in protecting voters and election workers from disruption at the polls and preventing interference with the state's elections. Georgia is no different.

The Georgia Election Code sets forth very clear and explicit parameters governing poll watching. It allows political party committees to appoint poll watchers to observe the conduct of the election and the counting and recording of votes. *See id.* ¶¶ 2, 12–13. Poll watchers' activities, however, are subject to certain limitations. For example, poll watchers "are prohibited from talking to voters, checking electors lists, using photographic or other electronic monitoring or recording devices, using cellular telephones, or participating in any form of campaigning while they are behind the enclosed space." O.C.G.A. § 21-2-408(d); *see also* Am. Compl. ¶ 14. Poll managers are also given broad authority to "make reasonable regulations" to prevent poll watchers from "interfer[ing] with the conduct of the election" at the polling place. O.C.G.A. § 21-2-408(d). A

poll watcher who violates the statutory restrictions or the manager's reasonable regulations after being warned will be removed. *Id.* Thus, while Georgia law permits appropriately appointed poll watchers to observe designated processes, their observation rights are not unfettered.

Plaintiffs allege that their poll watchers' ability to observe election proceedings during the 2020 general election was "repeatedly abridged." Am. Compl. ¶ 16. Based on those allegations, they claim that their poll watchers' ability to observe will again be abridged during the January 5, 2021 runoff election. *See id.* ¶ 32. But rather than ask the Court to enforce existing laws related to poll watching, Plaintiffs instead ask the Court to recognize, and then enforce, an "unqualified[]" right to poll watch, claiming a statutory basis for such a right despite the statute's silence. *See id.* ¶ 15 (citing O.C.G.A. § 21-2-408(d)).

C. The State Election Board announces that county registers may establish drop boxes for mail electors.

In July 2020, the State Election Board promulgated Rule 183-1-14-0.8-.14 (the "Drop Box Rule"), which authorized county registrars "to establish one or more drop box locations as a means for absentee by mail electors to deliver their ballots to the county registrars." *Id.* ¶ 5. The Drop Box Rule limits the location of such drop boxes to "county or municipal government property generally accessible to the public," and requires each drop box location to have "adequate lighting and use a video recording device to monitor" the drop box. Ga. Comp. R. & Regs. r. 183-1-14-0.8-.14(2), (4). The Drop Box Rule also requires county registrars to retain video recordings for a specified period of time and that those recordings "be made available . . . to the public, upon request, as soon as possible or at a charge that is not cost prohibitive to the public, if there is a

charge." Ga. Comp. R. & Regs. r. 183-1-14-0.8-.14(5).[1]

Plaintiffs allege that Defendants (1) plan to allow drop boxes to operate "24 hours a day, seven days a week, including such times that are outside the regular business hours of the county elections office," and (2) do not intend to allow Plaintiffs to see "video surveillance of drop box locations in real time, or as near real time as practicable," with "no or minimal cost." Am. Compl. ¶¶ 6, 38–41. Plaintiffs claim that if the rule "is so construed," it would violate O.C.G.A. §§ 21-2-385(a) and 50-18-71(b)(1)(A). *Id.* ¶ 6. They include an affidavit that purports to show that some counties did not produce drop box surveillance video within three days of receiving a request under Georgia's open records laws after the November election or requested fees for the retrieval of the surveillance video. *Id.* ¶ 42; Ex. O.

III. LEGAL STANDARD

Under Georgia law, the complaining party must establish its standing to sue on the grounds asserted to invoke the court's jurisdiction. *See New Cingular Wireless PCS, LLC v. Dep't of Revenue*, 308 Ga. 729, 732 (2020). "The constitutional and procedural concept of 'standing' falls under the broad rubric of 'jurisdiction' in the general sense, and in any event, a plaintiff with standing is a prerequisite for the existence of subject matter jurisdiction." *Blackmon v. Tenet Healthsys. Spalding, Inc.*, 284 Ga. 369, 371 (2008). Establishing standing "requires showing an injury in fact that was caused by the breach of a duty owed by the defendants to the plaintiffs and that will be redressed by a favorable decision from the court.'" *New Cingular Wireless*, 308 Ga. at

[1] The full text of the Drop Box Rule is not included with Plaintiffs' complaint but can be viewed on the Secretary's website. *See 183-1-14-0.8-.14 Secure Absentee Ballot Drop Boxes*, Ga. Sec'y of State, https://sos.ga.gov/admin/uploads/SEB%20Rule%20183-1-14-0.8-.14.pdf (last visited Dec. 15, 2020).

732 (quoting *Ames v. JP Morgan Chase Bank, N.A.*, 298 Ga. 732, 738 (2016)). In addition to their own precedents, Georgia courts also look to federal courts when considering standing. *See Feminist Women's Health Ctr. v. Burgess,* 282 Ga. 433, 434 (2007) ("In the absence of our own authority, we frequently have looked to United States Supreme Court precedent concerning Article III standing to resolve issues of standing to bring a claim in Georgia's courts.").

A court should dismiss an action where a litigant fails to state a claim upon which relief can be granted. O.C.G.A. § 9-11-12(b)(6). A court may grant a motion to dismiss for failure to state a claim when:

> (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof, and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.

DeLeGal v. Burch, 273 Ga. App. 825, 826 (2005) (quoting *Bakhtiarnejad v. Cox Enters., Inc.*, 247 Ga. App. 205, 207–08 (2000)).

IV. ARGUMENT

A. Plaintiffs lack standing to bring their claims.

Here, Plaintiffs do not have standing to raise any of their claims because they have not suffered cognizable injuries that will be redressed by a favorable court decision. This Court therefore lacks jurisdiction to adjudicate Plaintiffs' claims and they should be dismissed.

1. Plaintiffs lack a sufficient injury to raise claims concerning poll watchers.

Georgia law does not confer a statutory right to observation sufficient to support Plaintiffs' standing for their poll watcher claims. Plaintiffs' poll watcher access claims—which allege that election officials will grant insufficient access to poll watchers to observe the tabulation of ballots

during the runoff election—are premised on the Georgia Republican Party's purported "statutory right to obtain, through its duly designated and credentialed poll watchers, full and effective observation of the casting, processing, recording, and tabulation of every vote." Am. Compl. ¶ 45, 51. Although statutes can convey rights sufficient for standing, *see New Cingular Wireless*, 308 Ga. at 732, they do not do so here. The *only* statutory right that Georgia's political parties have pertaining to poll watchers is simply the right to designate them. *See, e.g.*, O.C.G.A. § 21-2-408(3)(A) ("In an election or run-off election, each political party and political body *shall each be entitled to designate*, at least seven days prior to the beginning of the advance voting period for such election or run-off election, no more than two official poll watchers for each location at which advance voting is conducted . . ." (emphasis added)). That's it.

Contrary to Plaintiffs' characterization of their rights, political parties are *not* granted any other statutory rights related to poll watchers—and certainly not the right to "full and effective observation of the casting, processing, recording, and tabulation of every vote," Am. Compl. ¶ 45, 51, as the statute's limitations on poll watching make clear, *see* O.C.G.A. § 21-2-408(d). Although Plaintiffs allege insufficiencies in the access granted to individual poll watchers, in certain counties, in discrete instances, at no point do they suggest that the *Georgia Republican Party* was denied its sole statutory right regarding poll watchers—to designate them. Accordingly, they have not suffered an injury to their statutory rights.[2]

Absent explicit infringement of their organizational statutory rights, the only injury Plaintiffs are left with is the assertion that their poll workers rights to observation have been

[2] Certainly, Plaintiff Republican National Committee has suffered no injury, since Plaintiffs do not allege that it possesses any right to even designate poll watchers.

infringed under the statutes. This has three problems. *First*, Plaintiffs never allege that they are bringing such a claim. *Second*, it is county officials—*not* Defendants—who enforce the poll watcher statutes, so any such injuries are not traceable to Defendants, foreclosing Plaintiffs' standing in this case. *See New Cingular Wireless*, 308 Ga. at 732. And, *third*, the poll watcher statutes have not been violated for the reasons discussed in Section IV.B.1 *infra*, so no injury has occurred.

Moreover, O.C.G.A. § 9-6-20—the mandamus statute on which Plaintiffs rely for relief in Counts II, III, and IV, *see* Am. Compl. ¶¶ 57, 71, 79—does not salvage their standing. A mandamus action obviates the need to establish standing only "[w]here the question is one of public right and the object is to procure the enforcement of a public duty." O.C.G.A. § 9-6-24; *see also Moseley v. Sentence Rev. Panel*, 280 Ga. 646, 646 (2006). Or, in other words, "[t]he duty in question must be one which affects the general public rather than a private individual." *Adams v. Georgia Dep't of Corr.*, 274 Ga. 461, 462, 553 S.E.2d 798, 800 (2001) This does not excuse the requirement that Plaintiffs show standing in this case, which involves limited rights reserved for poll watchers and the political parties whom they represent rather than the public at large. As discussed below, it also does not rescue Plaintiffs' drop box claims, which seek inappropriate advisory opinions regarding Defendants' interpretation of the law rather than enforcement of any specific duties Defendants owe to the general public.

2. Plaintiffs seek an inappropriate advisory opinion regarding drop boxes, and lack both injury and traceability for their drop box claims.

Plaintiffs' drop box claims fail to present a live case or controversy. Rather, at best, Plaintiffs disagree with the interpretations they believe Defendants may have about the Drop Box Rule and, as a consequence, seek from this Court an advisory opinion on what the proper

interpretations should be. *See* Am. Compl. ¶¶ 63, 64. Specifically, Plaintiffs assert that they believe Defendants have taken the positions that drop boxes can be open 24 hours, and that the public is not entitled to real-time or near real-time video footage of the drop boxes, and in turn that they disagree with both of those interpretations of the law. *Id.* This disagreement, standing alone, does not give Plaintiffs standing, and any decision from this Court simply addressing Plaintiffs' academic questions regarding the law would constitute an inappropriate advisory opinion. *See Baker v. City of Marietta*, 271 Ga. 210, 214 (Ga. 1999).

That Plaintiffs raise only an illusory dispute is further illustrated by the fact that they fail to identify even a single injury from either of the interpretations they take issue with. Plaintiffs divide their drop box claims into two counts, complaining in the first (Count III) that they believe drop boxes will be open at all hours and that video footage of drop boxes will be available to the Secretary's investigative staff in real-time but not to the public or to Plaintiffs in real time, and in the second (Count IV) that the lack of real-time access to video footage of drop boxes is due to the Secretary's inappropriate training of county officials. *See* Am. Compl. ¶¶ 58–71.[3]

Plaintiffs do not explain how they are specifically injured by these purported drop box violations. For example, Plaintiffs never contend that they have asked for real-time or close to real-time video footage from any Defendants in this litigation and been denied such access. Indeed, the closest they come to such an allegation is simply a statement of their belief that county officials *will not* adequately provide video footage, attaching an affidavit which purports to demonstrate that some county officials (who are not parties here) did not provide this access to such footage to

[3] As discussed below, *see* Section IV.B.2 *infra*, neither claim involves any actual violation of Georgia law, which is separately a fatal flaw to Plaintiffs' claims here.

Donald J. Trump for President Inc. (which is not a party here) in the November election in response to public records requested under O.G.C.A. § 50-18-70. *See* Am. Compl. Ex. O. And while Plaintiffs conjecture that this failure flowed from inadequate training by the Secretary, Am. Compl. ¶¶ 75, 76, they have pleaded no facts that would even allow one to infer that any denial or delay in the provision of video footage (to the extent there was one) was a result of the Secretary's training of those or any county officials.[4] What Plaintiffs request, then, is that the Court decide that if there were a future dispute between the parties over the application of these laws, Plaintiffs would win. Any such opinion would be an "erroneous advisory opinion which rules in a party's favor as to future litigation over the subject matter." *Baker*, 271 Ga. at 214.

Even if Plaintiffs had presented a case or controversy, the generalized grievance they allege does not confer standing. Plaintiffs fail to point to any specific injury to themselves, and instead simply ask that this Court order Defendants to generally "follow the laws" (as Plaintiffs interpret them). But "a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573–574 (1992). Plaintiffs' allegation "that the law . . . has not been followed" is "precisely the kind of undifferentiated, generalized grievance about the conduct of government that [courts] have refused to countenance in the past." *Lance v. Coffman*, 549 U.S. 437, 442 (2007).

[4] And, indeed, if such a dispute did exist, Donald J. Trump for President Inc. could have raised it against the specific counties where the information was not provided as a violation of the public records statute under which it sought the surveillance video.

Plaintiffs try to paper over these standing issues (and, similarly, demonstrate that they present a justiciable controversy) by suggesting that the allegedly impermissible use of drop boxes "interfere[s] with and impair[s]" their legal rights "by creating an unlawfully structured electoral environment and by impelling Plaintiffs to divert organizational resources to the monitoring and observation of ballot drop boxes." Am. Compl. ¶ 67. This attempt at remediation is unavailing.

As an initial matter, Plaintiffs fail to explain how allowing more people to vote through the use of drop boxes creates an unlawfully structured environment for their own political party in Georgia; simply invoking the concept of an "unlawfully structured electoral environment," which Plaintiffs neither explain nor define (and for which they provide no legal authority), does not make it so. To the extent Plaintiffs use this phrase to suggest that the use of drop boxes unlawfully allows more people to vote and thereby dilutes the votes of Plaintiffs' supporters, a host of recent cases have found such an injury to be a generalized grievance too speculative to support standing. *See, e.g.*, *Bognet v. Sec'y Commonwealth of Pa.*, 980 F.3d 336, 356 (3d Cir. 2020); *Wood v. Raffensperger*, No. 1:20-CV-04651-SDG, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020), a*ff'd*, No. 20-14418, 2020 WL 7094866 (11th Cir. Dec. 5, 2020); *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) (finding plaintiffs' vote-dilution theory too speculative to confer standing); *Martel v. Condos*, No. 5:20-cv-131, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020) (concluding that plaintiffs' vote-dilution theory amounted to generalized grievance and could not confer standing); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020) (similar).

Moreover, Plaintiffs' purported decision to "divert organizational resources to the monitoring and observation of ballot drop boxes," Am. Compl. ¶ 67, does not transform this

speculative harm into an injury sufficient for standing. A plaintiff "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending," such as by spending money to combat a speculative concern. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013). Plaintiffs' choice to spend money on drop box observation does not alchemize their speculative vote-dilution harm into a concrete injury. *See Donald J. Trump for President*, 2020 WL 5626974, at *5–6. Plaintiffs therefore fail to demonstrate standing necessary to support their claim in Count III.

Finally, even if Plaintiffs had alleged that they themselves (and not third parties that are not before this Court) were denied real-time video footage of the drop boxes by a county official, their failure to establish that such an injury is traceable to the Defendants here would separately preclude Plaintiffs' standing in this litigation. Standing requires an injury that "was caused by the breach of a duty owed *by the defendants*." *New Cingular Wireless*, 308 Ga. at 732 (emphasis added). No county officials are Defendants here, so Plaintiffs' allegations regarding specific instances of county officials withholding video surveillance of drop boxes do not give them standing to proceed against the Defendants here, and their claims should be dismissed as a result.

B. Plaintiffs have failed to state a claim upon which relief can be granted.

Even if Plaintiffs could overcome the jurisdictional hurdles described above—and they cannot—their complaint must still be dismissed because Plaintiffs have failed to state a claim upon which relief can be granted. *See* O.C.G.A. § 9-11-12(b)(6); *DeLaGal*, 273 Ga. App. at 825.

1. Plaintiffs' poll watcher claims fail as a matter of law.

Counts I and II ask this Court to create, and then enforce, an expansive right to poll watching that has no basis in Georgia law and, as such, requires dismissal. *See* Am. Compl. ¶¶ 44–

57. Relying upon O.C.G.A. §§ 21-2-408(d), 21-2-408(b)(2)-(3), and 21-2-483(b), Plaintiffs claim that political party-appointed poll watchers have the right "to fully and effectively observe 'the conduct of the election and the counting and recording of votes,'" and that this right will be infringed. Am. Compl. ¶¶ 3, 13 (quoting O.C.G.A. § 21-2-408(d)). But these statutes do *not* create the carte blanche observation right that Plaintiffs assert. Instead, the law makes clear that poll watchers have a limited role in the electoral process, and that the Georgia General Assembly was concerned with narrowing—*not expanding*—poll watcher activities.

For example, Plaintiffs selectively quote parts of § 21-2-408(d), which they argue gives poll watchers an "unqualified[]" right to observe every facet of the election from any distance they like. *See* Am. Compl. ¶¶ 3, 14–16. But that section reads, in pertinent part:

> Notwithstanding any other provisions of this chapter, a poll watcher ***may*** be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes. ***Such poll watcher shall in no way interfere with the conduct of the election, and the poll manager may make reasonable regulations to avoid such interference. Without in any way limiting the authority of poll managers, poll watchers are prohibited from talking to voters, checking electors lists, using photographic or other electronic monitoring or recording devices, using cellular telephones, or participating in any form of campaigning while they are behind the enclosed space***. If a poll watcher persists in interfering with the conduct of the election or in violating any of the provisions of this Code section after being duly warned by the poll manager or superintendent, he or she may be removed by such official. Any infraction or irregularities observed by poll watchers shall be reported directly to the superintendent, not to the poll manager. . . .

O.C.G.A. § 21-2-408(d) (emphases added). The plain and ordinary meaning of the statute is that poll watchers' activities are limited to avoid interference with the conduct of the election while poll managers maintain broad authority to regulate poll watcher activity "to avoid such interference." *Id.*; *see also Deal v. Coleman*, 294 Ga. 170, 172 (2013) (noting that courts "must afford the statutory text its 'plain and ordinary meaning'" (quoting *City of Atlanta v. City of*

College Park, 292 Ga. 741, 744 (2013))). Nothing in the statute can possibly be read to create an "unqualified[]" right to poll watch.[5]

Plaintiffs try to overcome the plain language of the statute by combining parts of the second and third sentences of § 21-2-408(d) to argue that poll managers' broad authority to implement reasonable regulations to prevent poll worker interference (second sentence) is limited to only the specific, enumerated prohibitions listed in the third sentence: "talking to voters, checking electors lists, using photographic or other electronic monitoring or recording devices, using cellular telephones, or participating in any form of campaigning while they are behind the enclosed space." *See* Am. Compl. ¶¶ 14–15. But this ignores the express, prefatory language at the beginning of the third sentence that these enumerated prohibitions are set out by statute "[w]ithout in any way limiting the authority of poll managers" to set their own regulations. And it also ignores the basic structure of the statute and its separation of poll manager *authority* from poll watcher *restrictions*. It is a fundamental principle of statutory interpretation "that the General Assembly meant what it said and said what it meant." *Deal*, 294 Ga. at 172 (quoting *Arby's Rest. Grp., Inc. v. McRae*, 292 Ga. 243, 245 (2012)). Plaintiffs' illogical reading of the statute would require the Court to ignore this principle, rendering superfluous the plain language granting poll managers broad authority, in direct contradiction of Georgia law. *See Berryhill v. Ga. Cmty. Support & Sols., Inc.*, 281 Ga. 439,

[5] Nor do Plaintiffs explain why O.C.G.A. § 21-2-408(b) or § 21-2-483 entitles them to the relief they seek; nothing in those statutes suggests that poll watchers are entitled to "unqualified[]" access to all election proceedings. *See* O.C.G.A. § 21-2-408 (entitling a poll watch to "observ[e] the conduct of the election and the counting and recording of votes," but prohibiting them from "interfer[ing] with the conduct of the election" and granting poll managers the authority to "make reasonable regulations to avoid such interference"); O.C.G.A. § 21-2-483 (requiring only that "[a]ll proceedings at the [ballot] tabulating center and precincts shall be open to the view of the public").

441 (2006) ("Courts should give a sensible and intelligent effect to every part of a statute and not render any language superfluous."). It should therefore be rejected.

Plaintiffs also offer no support for their claim that, if election officials use any sort of "non-uniform practices and procedures" during the January 5, 2021 runoff election, then they would violate "the statutory right of duly credentialed poll watchers . . . to fully and effectively observe the processing and tabulation of ballots." Am. Compl. ¶ 32. Nor can they. The poll watcher statute specifically contemplates variances between polling places and authorizes poll managers to "make reasonable regulations" for the locations they manage. O.C.G.A. § 21-2-408(d). This flexibility is a key part of the statutory scheme because different polling locations are configured differently and have different needs. Poll managers must be able to "make reasonable regulations" to address the needs of the location they manage and as such, strict uniformity is simply not required.

Without any statutory hook, Plaintiffs' allegations boil down to a policy-driven complaint that their poll watchers were not given limitless access to observe election proceedings in the November 3 election and, more fundamentally, that they would prefer more access going forward. From there, they ask the Court to enter declaratory relief as to rights that do not exist in Georgia law, and to order the Secretary to "prepare and disseminate" training and guidance on those imaginary rights before the start of early voting for the runoff election. Am. Compl. ¶¶ 44–57. But Plaintiffs do not have a legal claim that can survive a motion to dismiss. To the extent Plaintiffs want to change the laws, their remedy is with the Georgia General Assembly—not with this Court. *See Commonwealth Inv. Co. v. Frye*, 219 Ga. 498, 499 (1963) ("The arguments in this case cause us to feel that an emphatic statement should be made by this court that the legislature, and not the courts, are empowered by the Constitution to decide public policy, and to implement that policy

by enacting laws; and the courts are bound to follow such laws if constitutional."). Their poll watcher claims should therefore be dismissed.

2. Plaintiffs' drop box claims fail as a matter of law.

Plaintiffs' drop box claims should also be dismissed because they rest on a fundamentally flawed interpretation of Georgia law and seek relief against state officials where none is warranted. Specifically, Counts III and IV ask the Court to restrict the availability of drop boxes in Georgia before the January runoff election – that is, right now – by (1) prohibiting after-hours use of drop boxes, and (2) declaring that Plaintiffs are entitled to view drop box surveillance videos "in real time, or as near real time as practicable," and at "no or minimal cost." *Id.* ¶¶ 6, 41. But Georgia law does not support either request.

As a threshold matter, there is no authority under Georgia law—nor do Plaintiffs provide any—supporting Plaintiffs' request to limit the availability of drop boxes to "regular business hours." *Id.* ¶ 6. Indeed, the only citation they provide is to a statute requiring voters to return absentee ballots by mail or by "personally deliver[ing]" them to the board of registrars or absentee ballot clerk, O.C.G.A. § 21-2-385(a), asserting that the statute "necessarily implies that the physical transfer from the voter . . . to the board of registrars or absentee ballot clerk must occur during" normal business hours. Am. Compl. ¶ 4; *see id.* ¶¶ 36–40. But this is nonsensical. Indeed, postal boxes—one of the specific return methods referenced in this statutory section—are open twenty-four hours a day, seven days a week, and voters can and do put ballots in the mail outside of normal business hours. Further, since the Drop Box Rule requires "continuous" surveillance recording at all drop box locations, it plainly contemplates that drop boxes will be available outside of normal business hours. Ga. Comp. R. & Regs. r. 183-1-14-0.8-.14(4). There is simply no legal

authority, let alone logical justification, for Plaintiffs' request to limit the hours of operation for drop boxes.

Plaintiffs' video surveillance claims (Count IV) fare no better. Plaintiffs inexplicably argue that the Drop Box Rule would violate their rights under Georgia's open records laws. *See* Am. Compl. ¶ 6; O.C.G.A. § 50-18-71(b)(1)(A). However, even a cursory glance at the Drop Box Rule and the Open Records Act quickly disposes of this argument. Plaintiffs first allege that the public will not have access to surveillance footage video "in real time or near real time," in violation of the open records statute. Am. Compl. ¶ 41. But the Drop Box Rule states that videos "shall be made available . . . to the public, upon request, *as soon as possible*." Ga. Comp. R. & Regs. r. 183-1-14-0.8-.14(5) (emphasis added). This comports with the Open Records Act, which allows an official who receives a request for a public record up to three business days "to determine whether or not the record or records requested are subject to access under this article and to permit inspection and copying." O.C.G.A. § 50-18-70. Plaintiffs also allege that the videos will not be made available to the public "at no or minimal cost." Am. Compl. ¶ 41. But the Drop Box Rule requires videos to be made available either at no charge or "at a charge that is not cost prohibitive to the public." Ga. Comp. R. & Regs. r. 183-1-14-0.8-.14(5).

The Open Records Act, meanwhile, allows public officials to charge a reasonable fee "for search, retrieval, and other direct administrative costs for complying with [an open records] request." O.C.G.A. § 50-18-71. Plaintiffs offer no basis for their speculation that *Defendants* will violate Georgia law in their administration of the Drop Box Rule, which, indeed would be particularly difficult given that as alleged it is the counties that possess the video footage. *See* Am. Compl. ¶ 76. And to the extent any *county* official violates Georgia's open records laws in the

future, Plaintiffs can seek relief through the normal channels. *See* O.C.G.A. § 50-18-73(a) ("The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article."). They have failed to state a claim for relief, and their drop box claims should be dismissed.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' complaint.

Dated: December 15, 2020.

Respectfully submitted,

/s/ Adam M. Sparks
Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Susan P. Coppedge
Georgia Bar No. 187251
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Ste. 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
coppedge@khlawfirm.com
sparks@khlawfirm.com

Marc E. Elias*
Amanda R. Callais*
John M. Geise*
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005

Telephone: (202) 654-6200
melias@perkinscoie.com
acallais@perkinscoie.com
jgeise@perkinscoie.com
hbrewster@perkinscoie.com

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

Counsel for Proposed Intervenor-Defendants

**Pro Hac Vice Application Forthcoming*

EXHIBIT
E

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE, a national political party committee; and the GEORGIA STATE REPUBLICAN PARTY, INC., a state political party committee, Plaintiffs, v. STATE ELECTION BOARD, an agency of the State of Georgia; BRAD RAFFENSPERGER, in his official capacities as the Secretary of State of Georgia and the Chairman of the State Election Board; REBECCA N. SULLIVAN, in her official capacity as the Vice Chair of the State Election Board; DAVID J. WORLEY, in his official capacity as a member of the State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the State Election Board; and ANH LE, in her official capacity as a member of the State Election Board, Defendants.	Civ. Act. No. 2020CV343319

[Proposed] Order Granting Motion to Intervene

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

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

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

Judge Kimberly Esmond Adams
Superior Court of Fulton County

Prepared by:

/s/ Adam M. Sparks
Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Susan P. Coppedge
Georgia Bar No. 187251
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Ste. 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
coppedge@khlawfirm.com
sparks@khlawfirm.com

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

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

Counsel for Proposed Intervenor-Defendants

**Pro Hac Vice Application Forthcoming*