**No. 20-14813**

In the

# United States Court of Appeals

## for the Eleventh Circuit

L. LIN WOOD, JR.,

*Plaintiff-Appellant*,

v.

BRAD RAFFENSPERGER, *et al.*,

*Defendants-Appellees*.

On Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division.
No. 1:20-cv-05155 — Timothy C. Batten, Sr., *Judge*



## APPELLEES' RESPONSE TO JURISIDICTIONAL QUESTION

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## CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rules 26.1-1 through 26.1-3, counsel for Defendants-Appellees hereby certify that the below is a complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this appeal.

Batten, Hon. Timothy C., Sr., United States District Court Judge for the Northern District of Georgia.

Belinfante, Joshua B., Counsel for Defendants-Appellees.

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Carr, Hon. Christopher M., Attorney General for the State of Georgia, Counsel for Defendants-Appellees.

Coppedge, Susan, Counsel for Intervenor-Defendants in the underlying case.

Democratic Congressional Campaign Committee ("DCCC"), Intervenor-Defendants in the underlying case.

Democratic Party of Georgia, Inc., Intervenor-Defendants in the underlying case.

Democratic Senatorial Campaign Committee ("DSCC"), Intervenor-Defendants in the underlying case.

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Le, Anh, State Election Board Member, Defendant-Appellee.

Lewis, Joyce Gist, Counsel for Intervenor-Defendants in the underlying case.

L. Lin Wood, P.C., Counsel for Plaintiff-Appellants.

Mashburn, Matthew, State Election Board Member, Defendant-Appellee.

McGowan, Charlene S., Counsel for Defendants-Appellees.

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Perkins Coie LLP, Counsel for Intervenor-Defendants in the underlying case.

Raffensperger, Hon. Bradford J., Secretary of State of the State of Georgia, Defendant-Appellee.

Robbins Ross Alloy Belinfante Littlefield LLC, Counsel for Defendants-Appellees.

Sparks, Adam M., Counsel for Intervenor-Defendants in the underlying case.

Sullivan, Rebecca N., State Election Board Member, Defendant-Appellee.

Webb, Bryan K., Counsel for Defendants-Appellees.

Willard, Russell D., Counsel for Defendants-Appellees.

Wood, L. Lin, Jr., *Pro Se* Plaintiff-Appellant.

Worley, David J., State Election Board Member, Defendant-Appellee.

## CORPORATE DISCLOSURE STATEMENT

Counsel for Appellees certify that Appellees are individuals, sued in their official capacities as representatives of State government entities. Counsel for Appellees further certify that no publicly traded company or corporation has an interest in the outcome of the case or appeal.

*/s/ Carey Miller*
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## INTRODUCTION

On January 29, 2021, the Court issued a Jurisdictional Question to the parties to this appeal, stating:

> "Please address whether this appeal is moot given that the January 5, 2021, election with respect to which Wood seeks relief has already occurred. *See Zinni v. ER Solutions*, 692 F.3d 1162, 1166 (11th Cir. 2012) (explaining that federal courts may not issue opinions on moot questions); *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011) (explaining that an issue is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief)."



The answer to this question is yes, the appeal pending before this Court is now moot and must be dismissed for lack of jurisdiction. This Court "'cannot turn back the clock and create a world in which' the [2021] election results are not certified." *Wood v. Raffensperger*, 981 F.3d 1307, 1317 (11th Cir. 2020) (quoting *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015)).

## BACKGROUND

Appellant L. Lin Wood, Jr., is not an unfamiliar party to this Court and the district courts of this circuit, having partaken in a flurry of litigation following the November 3, 2020 election as both a party and

counsel. *See Wood v. Raffensperger*, No. 1:20-cv-4651-SDG, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020), *aff'd* 981 F.3d 1307 (11th Cir. 2020); *see also Pearson v. Kemp*, No. 1:20-cv-4809-TCB (N.D. Ga.). Unsatisfied with the outcome of those prior cases, Wood filed the instant case on December 18, 2020, seeking "an emergency injunction halting Georgia's [then upcoming] senatorial runoff election," [Doc. 1, ¶ 9], and an order against Appellees "declaring that [the] **2020 Senatorial runoff election procedures**" are unconstitutional, and "enjoining the use of said unconstitutional procedures **in the runoff**." [Doc. 1 at p. 31] (emphasis added).



Wood sought such relief on the basis that four separate runoff election procedures infringed upon his fundamental right to vote, deprived him of equal protection under the law, and violated the Guarantee Clause of Article IV, Section 4 of the United States Constitution: (1) signature verification pursuant to O.C.G.A. § 21-2-386; (2) counties' acceptance of absentee ballots by drop box pursuant to O.C.G.A. § 21-2-382 and State Election Board Emergency Rule, Ga. Comp. R. & Regs. r. 183-1-14-.09-.14; (3) counties' early processing of absentee ballots pursuant to O.C.G.A. § 21-2-386 and State Election

Board Emergency Rule, Ga. Comp. R. & Regs r. 183-1-14-.09-.15; and (4) use of the State's Ballot-Marking Device ("BMD") voting system. *See generally* [Doc. 1]. Shortly after filing his complaint, Wood also moved for a temporary restraining order declaring that the aforementioned "**2020 Senatorial runoff procedures** of the Defendants violate Plaintiff['s] constitutional rights . . . and enjoining the use of said unconstitutional procedures **in the runoff**." [Doc. 2, p. 29] (emphasis added).

Appellees, and Intervenor-Defendants, moved to dismiss the complaint for, *inter alia*, lack of subject matter jurisdiction and failure to state a claim, and responded to Wood's motion for interlocutory relief. [Docs. 16, 24, 25, and 26]. Following briefing, the district court dismissed the complaint and denied Wood's motion on December 28, 2020, finding that the Court lacked jurisdiction to hear the case. [Doc. 35]. On the same day, Wood appealed to this Court.[1] [Doc. 37].



[1] Appellant has also sought an Extraordinary Writ of Mandamus in the United States Supreme Court, seeking "to halt the January 5, 2021 senatorial runoff election." Emergency Petition Under Rule 20 for Writ of Mandamus at 1, *In Re L. Lin Wood, Jr.*, No. 20-887 (U.S. Jan. 4, 2021), *available at* https://www.supremecourt.gov/DocketPDF/20/20-

Since the district court's order and the appeal to this Court, however, the January 5, 2021 runoff election has come and gone. The results of the runoff election have been certified, two newly elected Senators have been sworn into office, and a State Public Service Commissioner has been sworn in for another term. Nonetheless Appellant seeks review of the district court's order dismissing his complaint and denying his motion which sought to enjoin, halt, or otherwise declare unconstitutional, the bygone election and the policies pertaining thereto. This Court's jurisdiction is more limited though—it cannot adjudge matters that do not present a live case or controversy and cannot pass on abstract questions of law.



## DISCUSSION

### I. Wood's appeal of the district court's order dismissing his complaint is moot.

#### A. The 2021 runoff election has concluded and Wood's challenge is therefore moot.

The mootness doctrine is underpinned by "[t]he Constitution's case-or-controversy limitation on federal judicial authority, Art. III, §

887/165104/20201230211038462_Emergency%20Petition%20for%20Writ%20of%20Mandamus.pdf.

2." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000). Put simply, "[w]ith regard to mootness, the Supreme Court has explained 'a federal court has no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" *Zinni v. ER Solutions, Inc.*, 692 F.3d 1162, 1166 (11th Cir. 2012) (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992)). The Supreme Court has further instructed that the controversy "must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v. Newkirk,* 422 U.S. 395, 401 (1975). As this Court noted in another appeal involving Wood, an issue becomes moot when "it no longer presents a live controversy with respect to which the court can give meaningful relief," and mootness can arise "at any stage of litigation, even if there was a live case or controversy when the lawsuit began." *Wood*, 981 F.3d at 1316 (quoting *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011)) (marks omitted).



Here, the complaint seeks only relief concerning the runoff election that has already occurred:

> Plaintiff demands an order, preliminary and permanent injunction, and declaratory judgment in their favor and against Defendants declaring that that **2020 Senatorial runoff election** procedures of the Defendants violate the guarantee clause; enjoining the use of said unconstitutional procedures in the **runoff**; declaring the **runoff election** procedures described herein defective and requiring Defendants to cure their violation.

[Doc. 1 at p. 31] (Emphasis added); *see also id.*, ¶ 89 (requesting the district court enjoin "the use of the irrational and unpredictable Dominion machines in the runoff"). Wood further reinforced that his suit is focused on the (now-concluded) runoff election in his Omnibus Response in Opposition to Defendant's Motions to Dismiss. [Doc. 33]. There, Wood sought to distinguish this case from "previous unsuccessful lawsuits challenging the November 3, 2020 election," by arguing that the instant suit sought prospective relief "concerning the [then-] upcoming January 5, 2021, senatorial run-off election." [Doc. 33 at p. 2]. Thus, even under Wood's own framing of his complaint, he seeks relief concerning procedures for an election that has now concluded, "mak[ing] it impossible for the court to grant any effectual relief whatever to a prevailing party" and requiring dismissal. *Brooks v. Ga.*

*State Bd. of Elections*, 59 F.3d 1114, 1118 (11th Cir. 1995) (internal quotation marks omitted).

Intervening mootness on appeal is not a new issue for Appellant either. Instead, perhaps the most instructive decision on the issue is this Court's decision in *Wood*. There, Wood brought claims similar to those at issue in this appeal, except that "most of his requests pertained to the 2020 election results," *Wood*, 981 F.3d at 1316–17, rather than the 2021 runoff election. Specifically, the district court had denied Wood's request to enjoin certification of the November 2020 election results and to order a new hand recount. *Id.* In the intervening time between the district court's decision and this Court's review on appeal however, "Secretary Raffensperger certified the election results on November 20. And Governor Kemp certified the slate of presidential electors later that day." *Id.* at 1317. Consequently, this Court found that Wood's requests concerning the November 2020 election results were moot, noting: "'We cannot turn back the clock and create a world in which' the 2020 election results are not certified . . . And it is not possible for us to delay certification nor meaningful to order a new

recount when the results are already final and certified" *Id.* (quoting *Fleming*, 785 F.3d 442, 445 (10th Cir. 2015)).

Just as in Wood's earlier appeal to this Court, the action sought to be enjoined by his complaint has already transpired. The 2021 runoff election has concluded and the results are already final and certified. Accordingly, the procedures for that concluded, final, and certified election cannot now be enjoined a month after the fact. "This Court cannot prevent what has already occurred." *De La Fuente v. Kemp*, 679 F. App'x 932, 933 (11th Cir. 2017).



B. No exception to the mootness doctrine applies.

While mootness deprives this Court of jurisdiction, there are three exceptions to the doctrine of mootness recognized in this Circuit: 1) where an issue is capable of repetition yet avoiding review; 2) where an appellant has taken all necessary steps to perfect the appeal and preserve the status quo before the dispute becomes moot; and 3) where the order appealed will have possible collateral legal consequences. *Nat'l Broad. Co. v. Commc'ns Workers of Am.*, 860 F.2d 1022, 1023 (11th Cir. 1988). None of these exceptions are applicable here.

Wood's challenge here is not capable of repetition, yet evading review. This "narrow" exception applies only in "exceptional situations" when "(1) there [is] a reasonable expectation or a demonstrated probability that the *same* controversy will recur involving the same complaining party, and (2) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration." *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001) (alteration and emphasis in original). Wood can make no such showing here; his complaint is specific to the January 5, 2021 runoff election which simply will not recur. Nonetheless, to the extent the challenged practices recur in a future election—no guarantee considering the unique circumstances of conducting an election during a pandemic and given that two of the challenged practices were promulgated by emergency rule, the duration of which cannot exceed 120 days, *see* O.C.G.A. § 50-13-4(b)—nothing would prevent commencement and resolution of new litigation concerning upcoming elections in 2022 or 2024. Nor can Wood demonstrate he is likely to seek another statewide election be halted

dead in its tracks.[2] *See Wood*, 981 F.3d at 1317–18 (noting that there is no "reasonable expectation" that Wood would seek to delay certification again in the future).

The remaining two exceptions to mootness are also inapposite. First, Wood has not taken "all necessary steps to perfect the appeal and preserve the status quo." *Nat'l Broad. Co.*, 860 F.2d at 1023. Instead, this appeal has languished for more than a month without Wood seeking an injunction pending appeal of the district court's order or otherwise expedited briefing on the merits prior to the runoff election.[3]



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[2] Making it even more unlikely that this controversy will "recur involving the same complaining party," *Ashcroft*, 273 F.3d at 1336, Wood informed a local news station that he is now "domiciled in South Carolina" and "changed [his] residency to South Carolina [on February 1, 2021]." *See* Justin Gray, *EXCLUSIVE: Attorney Lin Wood under investigation over whether he voted illegally in November, officials say*, WSBTV (Feb. 2, 2021), *available at* https://www.wsbtv.com /news/politics/exclusive-attorney-lin-wood-under-investigation-over-whether-he-voted-illegally-november-officials-say/ FIMPMEJHFFFBBA66O5P5QEY25E/. And, of course, if Wood lacked standing to bring this action as a Georgia voter, he certainly lacks standing to challenge Georgia election procedures as a non-resident.

[3] Further, Wood failed to file his brief before the deadline prescribed by this Court's rules. *See* Appellant's Motion for Extension of Time. Not only does this demonstrate Wood's failure to perfect his appeal and preserve the status quo, it also provides an alternative basis for dismissal. 11th Cir. r. 42-2.

But even if he had, this exception "is an extremely narrow one that has been limited primarily to criminal defendants who seek to challenge their convictions notwithstanding that they have been released from custody." *Ethredge v. Hall*, 996 F.2d 1173, 1176–77 (11th Cir. 1993). Second, Wood cannot demonstrate that the district court's order dismissing his complaint and denying his motion for interlocutory relief "will have dangerous collateral consequences if not reversed." *Brooks*, 59 F.3d at 1121. The district court's order pertains only to Wood's standing to pursue the claims in his complaint, it makes no broad, sweeping ruling on other matters that could possibly spawn dangerous collateral consequences.



## CONCLUSION

For the foregoing reasons, Appellees respectfully submit that this appeal is moot and must be dismissed. The election Wood sought to halt has already occurred. The controversy no longer exists. And the appeal does not fall within any of recognized exception to the mootness doctrine.

Respectfully submitted this 12th day of February, 2021,

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## CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 2,132 words as counted by the word-processing system used to prepare the document.

This 12th day of February, 2021.

*/s/ Carey Miller*
Carey Miller

**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2021, I electronically filed the foregoing **APPELLEES' RESPONSE TO JURISDICTIONAL QUESTION** through the Court's CM/ECF system, which will send a Notice of Electronic Filing to all participants who are registered CM/ECF users.

*/s/ Carey Miller*
Carey Miller