No. 20-14813

In the United States Court of Appeals for the Eleventh Circuit

L. LIN WOOD, JR.,

Appellant,

v.

BRAD RAFFENSPERGER, et al.,

Appellees,

v.

DEMOCRATIC PARTY OF GEORGIA, INC. and DSCC,

Intervenors-Appellees.

INTERVENORS-APPELLEES' RESPONSE TO APPELLANT'S INITIAL BRIEF

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA
NO. 1:20-CV-5155-TCB

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rules 26.1-1 through 26.1-3, counsel for Intervenors-Appellees hereby certify that the Certificate of Interested Persons contained in the Intervenors-Appellees' Brief in Response to Jurisdictional Question is complete, except for the following interested persons who have recently appeared in this case:

1. Newkirk, Zachary, Counsel for Intervenors-Appellees.

/s/ Amanda R. Callais
Counsel for Intervenors-Appellees
Democratic Party of Georgia and
DSCC

CORPORATE DISCLOSURE STATEMENT

Counsel for Intervenors-Appellees certify that Intervenors-Appellees are two political party entities. Counsel for Intervenors-Appellees further certify that no publicly traded company or corporation has an interest in the outcome of the case or appeal.

/s/ Amanda R. Callais
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STATEMENT REGARDING ORAL ARGUMENT

This is a simple case about Article III jurisdiction, and it does not require further exploration through oral argument. To dispose with this appeal, this Court need only affirm a well-reasoned and thorough district court opinion that dismissed Appellant's case for want of standing and/or find that this case is moot, as it did just four months ago in *Wood v. Raffensperger*, 981 F.3d 1307 (11th Cir. 2020), which involved this same Plaintiff and nearly-identical claims. Intervenors-Appellees therefore submit that this case can and should be considered and disposed of on the papers. If, however, this Court determines that it would be aided by the holding of oral argument, Intervenors-Appellees would request that they be permitted to participate in the proceedings.

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STATEMENT OF JURISDICTION

This Court has no jurisdiction over this appeal because it is moot. *See, e.g.*, *Saladin v. Milledgeville*, 812 F.2d 687, 693 (11th Cir. 1987) ("A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome of the litigation, such as where interim relief or events have eradicated the effects of the alleged violation."); *see also* Intervenors-Appellees' Br. in Resp. to Jurisdictional Question ("Jurisdictional Br."). This Court also lacks jurisdiction because, as the district court correctly concluded, Plaintiff-Appellant Lin Wood lacks standing to pursue his claims.

STATEMENT OF THE ISSUES

1. Whether Wood's appeal, which challenges election practices for an election that concluded more than three months ago, is moot?

2. Whether the district court correctly found Wood lacked standing?

INTRODUCTION

This Court has been here before. Appellant Lin Wood is a Georgia voter displeased with the outcomes of the recent general and runoff elections. He has channeled that displeasure into filing multiple lawsuits seeking extraordinary relief, including injunction of the certification of elections since passed. Each of his prior efforts have been unsuccessful, and for good reason. Every court to consider his claims—including this Court—has uniformly concluded that Wood lacks standing. *See Wood v. Raffensperger*, 1:20-cv-04651-SDG, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020) (*Wood I*), *aff'd*, 981 F.3d 1307 (11th Cir. 2020) (*Wood II*); *see also Wood v. Raffensperger*, 1:20-cv-5155-TCB, 2020 WL 7706833 (N.D. Ga. Dec. 28, 2020) (*Wood III*); *see also* ECF No. 25-2, at 11–12 (transcript of proceedings in *Pearson v. Kemp*, 1:20-cv-4809-TCB finding no standing). This case is more of the same, and this appeal, like each of the others, should be similarly rejected.

Standing is not the only reason to dismiss this appeal. It is also now far too late to issue the relief requested. Specifically, Wood seeks to prevent the January runoff from proceeding under the properly promulgated rules of the Appellees. But the January runoff concluded months ago, the winners have been certified, sworn in, and seated as U.S. Senators. The law is clear that, at this point, the only body that could expel them from the U.S. Senate is the Senate itself. This Court has no power to issue any meaningful relief, rendering the case moot.

Finally, even if this Court were to find that Wood could surmount these jurisdictional hurdles, it would be improper to reach the substance of Wood's claims, because they are meritless. Intervenor-Appellees Democratic Party of Georgia, Inc. and DSCC ("Intervenors") accordingly request that this Court affirm the district court's dismissal of this case.

STATEMENT OF THE CASE

For the third time since the November 3, 2020 general election, Wood, a registered Georgia voter, challenges a Georgia election well after the election has concluded. Here, Wood contends that Georgia's January runoff would be conducted in an unconstitutional manner because Georgia's signature matching process, absentee ballot processing procedures, drop box regulations, and use of Dominion voting machines purportedly violated Wood's rights under the 14th Amendment's Equal Protection and Due Process Clauses as well as the Guarantee Clause.

These claims are copycats of claims that Wood unsuccessfully pursued in two post-election challenges he brought to the November general election in *Wood I* and *Pearson v. Kemp*, No. 1:20-cv-04809-TCB (N.D. Ga. Nov. 30, 2020)—once as a plaintiff and once as an attorney representing plaintiffs. In those cases, Wood challenged all but one of the same Georgia policies on identical legal grounds, based on the same fabricated tales of rampant voter fraud and the outlandish theory that the state's Dominion voting machines were somehow corrupted by the anti-

democratic political machine of deceased Venezuelan dictator Hugo Chavez. Both were dismissed by different judges of the U.S. District Court for the Northern District of Georgia for lack of standing, among other infirmities, and those grounds for dismissal have been squarely affirmed by this Court. *Wood II*, 981 F.3d at 1313–14.

I. The Challenged Practices

A. Georgia's Signature Matching Regime

In November 2019, Intervenors were among several plaintiffs who sued Georgia's Secretary of State ("Secretary") and State Board of Elections (the "State Board"), challenging the constitutionality of Georgia's signature matching regime. *DPG v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga. 2019). After weeks of arms-length negotiations, the parties entered into a settlement agreement ("Settlement Agreement") on March 6, 2020, which was publicly filed with the court that day.

Pursuant to the Settlement Agreement, on May 1, 2020 the Secretary issued an Official Election Bulletin intended to increase uniformity in processing absentee ballot signatures statewide ("Signature Matching Bulletin"). The Signature Matching Bulletin did not modify Georgia's election laws. It simply issued statewide instructions to county elections officials to facilitate uniform application of Georgia's election laws, specifically as they related to matching signatures on

absentee ballots. The Bulletin confirmed that signatures flagged as mismatches should be reviewed by two additional registrars, deputy registrars, or absentee ballot clerks. *Wood I*, 2020 WL 6817513, at *3. It also directed counties to continue to verify absentee voters' identities by comparing signatures as required by Georgia law. *Id.*

The Signature Matching Bulletin was used in each of Georgia's subsequent elections without incident—the June 9, 2020 primary, the August 11, 2020 primary runoff, the November 3, 2020 general and special, and the January runoff and special runoff. Applying the guidance contained in the Signature Matching Bulletin, officials in Georgia rejected absentee ballots for signature mismatches at rates comparable to past elections and to those in other states. Though multiple challenges were brought to the Bulletin and the guidance it set forth in the wake of the November general election and the lead up to the January runoff—including by Wood—none were found to be meritorious and all were uniformly dismissed. *Wood I*, 2020 WL 6817513, at *3; *Pearson v. Kemp*, No. 1:20-cv-04809-TCB; *Ga. Republican Party v. Raffensperger*, No. 1:20-cv-05018-ELR (N.D. Ga. Dec. 17, 2020), *aff'd*, No. 20-14741-RR (11th Cir. Dec. 21, 2020); *J. Wood v. Raffensperger*, No. 2020-cv-342959 (Fulton Cnty. Sup. Ct. Dec. 8, 2020); *Boland v. Raffensperger*, No. 2020-cv-343018 (Fulton Cnty. Sup. Ct. Dec. 8, 2020). Indeed, as Secretary

Raffensperger himself admitted in a nationally-broadcast interview for 60 Minutes, Georgia's 2020 elections were among the most secure in the nation.[1]

B. Other Absentee Rules & Dominion Voting Machines

In the leadup to Georgia's 2020 elections, the Secretary and the State Board also adopted and promulgated two rules related to absentee ballots in response to the COVID-19 pandemic; Wood challenges each.

First, the State Board adopted Rule 183-1-14-0.7-.15 (the "Ballot Processing Rule") at its July 1 meeting and readopted it on November 23. The Ballot Processing Rule allows for the processing (but not counting) of ballots up to two weeks before election day.[2] This allowed elections officials to stage absentee ballots for prompt counting once the polls closed on election day.

Second, the State Board adopted Rule 183-1-14-0.8-.14 (the "Drop Box Rule") at its February 28, 2020 meeting and then readopted the same with minor variations at its July 1 and November 23 meetings. The Drop Box Rule permits

[1] CBS News, *Georgia official Raffensperger: "We had safe, secure, honest elections*" (Jan. 10, 2021), *available at* https://www.cbsnews.com/video/georgia-official-raffensperger-we-had-safe-secure-honest-elections.

[2] Rules of State Election Board, Rule 183-1-14-0.7-.15, *Processing Absentee Ballots Prior to Election Day*, https://www.maconbibb.us/wp-content/uploads/2020/05/SEB_Emergency_Rule_183-1-14-0.7-.15_ABSENTEE_-_PROCESSING_BALLOTS_PRIOR_TO_ELECTION_DAY.pdf.

counties to offer highly secured ballot drop boxes for the return of absentee ballots.[3] These drop boxes "shall be securely fastened to the ground or an immovable fixture" and must be subject to 24-hour monitoring. The Drop Box Rule proved extremely popular among voters in the 2020 elections, which were largely conducted by mail due to the ongoing pandemic. Tens of thousands of Georgians returned their ballots via secure drop boxes. No one, including Wood, has ever introduced evidence that the use of any drop box contributed to any alleged fraud.

Wood also challenges Georgia's use of Dominion voting machines in the January runoff. Three months after the January runoff, no evidence of any problems in that runoff have surfaced with any of these Challenged Practices. In fact, after the January runoff, Secretary Raffensperger declared that Georgia "had safe, secure, honest elections."[4]

II. Relevant proceedings

Wood filed his complaint in this action challenging the constitutionality of the January runoff on December 18. *Wood III*, 1:20-cv-05155-TCB, ECF No. 1. That same day he filed an Emergency Motion for Injunctive Relief that attached more than a dozen exhibits of unauthenticated, hearsay evidence. *Wood III*, ECF No. 2.

[3] Rules of State Election Board, Rule 183-1-14-0.8.14, *Secure Absentee Ballot Drop Boxes*, https://sos.ga.gov/admin/files/Table%20of%20Contents%20for%20SEB%20Rule%20183-1-14-0.8-.14.pdf.

[4] CBS News, *supra* note 1.

The DSCC and the Georgia Democratic Party moved to intervene, and included with their motion a proposed motion to dismiss. The district court granted the motion to intervene and docketed the motion to dismiss. *Id.* ECF No. 14. The State defendants filed a consolidated brief in support of their motion to dismiss and Wood's motion for injunctive relief. *Id*. ECF No. 25. All briefing was completed on both motions to dismiss and the motion for injunctive relief on December 27.

The next day, the district court issued a thorough, 20-page opinion dismissing the case for lack of jurisdiction. *See id.* ECF No. 35. Relying on precedent from this Court, the district court found that Wood's complaint added up to "paradigmatic generalized grievances unconnected to Wood's individual vote." *Wood III*, 2020 WL 7706833, at *6. In other words, Wood had no concrete injury that would permit an Article III court to hear his claims. In fact, the district court found that Wood failed on all three prongs of the Supreme Court's standing doctrine as articulated in *Lujan*. *Id.* at *6 n.6. Moreover, it recognized that Wood's claims were collaterally estopped by the recent opinions of the Northern District and Eleventh Circuit involving the same parties and virtually identical claims. *Id.* at *6 n.5. The court's clerk entered judgment and closed the case. *Id.* ECF No. 36.

Wood filed his notice of appeal on December 29. *Id.* ECF No. 40. Though the January runoff was just a week away, Wood did nothing to expedite his appeal. Instead, Wood filed an emergency application for mandamus with the U.S. Supreme

Court. *Wood v. Raffensperger*, Dkt. No. 20-887. The Supreme Court took no immediate action on the petition, distributing the petition for the March 5 conference before summarily denying the application on March 8 without any written order.[5] The January runoff came and went without any additional action by Wood. On January 19, the election was certified. The next day, Senators Ossoff and Warnock were sworn in and seated, and they cast their first vote as U.S. Senators.

On January 29, 2020, this Court requested the parties brief the jurisdictional question of whether the passing of the January runoff mooted the appeal. *Wood v. Raffensperger*, No. 20-14813-RR, ECF Jan. 29, 2021. In its order, it specifically stated that "the issuance of a jurisdictional question does not stay the time for filing appellant's brief otherwise provided by 11th Cir. R. 31-1." *Id.* Nevertheless, on February 9, the date *after* Wood's brief was due, Wood filed an out-of-time motion request for an extension. Wood requested and was granted until March 10 to submit his merits brief. *Id.* ECF Feb. 18, 2021.

Wood's brief broadens the scope of this appeal well beyond the issues on which the district court dismissed the case. Rather than addressing the district court's dismissal for lack of standing, the primary reason underlying that court's opinion, Wood spends almost 10 pages arguing the *merits* of his claim. Br. at 43-51. But the

[5] *See* U.S. Supreme Court, Docket No. 20-887, https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-887.html.

district court never reached the merits, because all of Wood's claims were dismissed for lack of standing. For reasons described below, *infra* at 22–24, this Court should not entertain those merits arguments. The district court's conclusion that dismissal was proper was correct and should be affirmed.

STANDARD OF REVIEW

This Court reviews dismissals for lack of standing *de novo*, *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005) (citations omitted), but "each element of standing 'must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.'" *Fla. Pub. Int. Rsch. Grp. v. E.P.A.*, 386 F.3d 1070, 1083 (11th Cir. 2004) (quoting *Bischoff v. Osceola Cnty., Fla.*, 222 F.3d 874, 878 (11th Cir. 2000))). This Court reviews the district court's denial of a temporary restraining order for "clear abuse of discretion," *Siegel v. LePore*, 234 F.3d 1163, 1175 (11th Cir. 2000) (en banc) (per curiam); reversal is only appropriate "if the district court applies an incorrect legal standard, or applies improper procedures, or relies on clearly erroneous factfinding, or if it reaches a conclusion that is clearly unreasonable or incorrect." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1226 (11th Cir. 2005).

SUMMARY OF ARGUMENT

This appeal comes in Wood's *third* failed attempt to use the federal judiciary to dismantle key portions of Georgia's electoral process. Relying on this Court's precedent in *Wood II*, where the exact same plaintiff brought virtually identical claims, the district court correctly concluded Wood lacks standing to sue. It dismissed his complaint and request for extraordinary injunctive relief that would have thrown the January runoff into turmoil. This Court should affirm that decision in its entirety. Moreover, now that the January runoff has long since passed and both Senators have been seated by the U.S. Senate, Wood's lawsuit is moot, providing an independent justification for this Court to affirm the district court's dismissal.

As this Court evaluates Wood's jurisdictional deficiencies, it will have a case of *déjà vu*. Just four months ago, this Court concluded Wood lacked standing on virtually identical claims, failing to meet the necessary "threshold jurisdictional inquiry." *Wood II*, 981 F.3d at 1313–14. Wood does not distinguish (or even acknowledge) this Court's prior decision. Instead, he offers the same generalized grievances that the Court found were insufficient to sustain his earlier action. The reasoning this Court advanced in *Wood II* controls here and this Court should affirm the district court's dismissal. Because Wood lacks standing and the case is moot, this Court does not have to and should not examine the merits of his claims. Indeed, given that the district court did not evaluate the merits of Wood's claims, Wood's

request for this Court to do so is improper, and this Court is foreclosed from reviewing them here. But even if the Court did reach the substance of Wood's claims, it would quickly find that they, too, are wholly without merit.

ARGUMENT

I. This Court lacks jurisdiction because the appeal is moot.

As Intervenors explained at length in their Jurisdictional Brief, this appeal should be dismissed because it is moot. *See* Jurisdictional Br. at 6–12. The January runoff election for Georgia's two U.S. Senate seats concluded more than three months ago. The election has been certified, Senators Warnock and Ossoff have been sworn in to the U.S. Senate, and this Court cannot prevent something that has already happened. *Id*. Though Wood attempts to make his claims forward looking in his merits brief, *see, e.g.*, Br. at 12 (claiming harm "if the challenged election procedures are employed in future elections"), his complaint only challenges "procedures utilized in connection with the January 5, 2021 Senatorial Run-off Election," Br. at 29; *see also* ECF No. 1 at 31 (seeking relief only for "2020 Senatorial runoff procedures"). Because the January Runoff and the procedures Wood challenges have long since concluded, there is nothing for this Court to resolve and, for the reasons set out fully in Intervenors' Jurisdictional Brief, Wood lacks Article III jurisdiction.

II. Wood lacks standing to pursue each of his claims.

Relying on this Court's recent decision in Wood's nearly identical case challenging the same election practices in the November general election, *Wood II*,

981 F.3d 1307, the district court correctly held Wood lacks standing to bring the claims that he alleges in this case. To establish standing, "Wood must prove (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Id*. at 1314 (quotation marks omitted); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). As this Court has explained: standing is a "threshold jurisdictional inquiry"; if Wood cannot satisfy all standing requirements, then this Court "may not decide the merits of his appeal." *Wood II*, 981 F.3d at 1313–14. This well-established doctrine requires dismissal here.

A. Wood has no standing for his equal protection claim.

The district court properly determined that Wood lacks standing to pursue his equal protection claim.

First and most fundamentally, Wood has failed to establish that he has suffered an injury in fact. This is because, just as in his previous appeal, Wood asserts only generalized grievances that are insufficient to satisfy the requirements of Article III. Once again, Wood vaguely contends that his vote was "diluted," because it was canceled out by the casting of alleged fraudulent ballots resulting from the Challenged Practices, which, in Wood's view, run contrary to state law. *Compare Wood II*, 981 F.3d at 1314 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)), *to* ECF No. 1 at ¶ 52 (alleging Challenged Practices "dilute" Wood's

voting rights). Specifically, Wood argues that the use of the Challenged Practices in the January runoff increased the number of fraudulent ballots cast, which in turn diluted the force of his purported legal vote. *See, e.g.*, ECF No. 1 ¶ 52. But this theory of alleged injury is not particularized to Wood and for this (and other) reasons is insufficient to establish standing. As this Court has explained, a vote dilution claim "requires a point of comparison" that Wood once again fails to identify in his papers here. *Wood II*, 981 F.3d at 1315. Instead, he relies on the same theory of vote dilution in the context of alleged fraudulent ballots that this Court previously found to be "a paradigmatic generalized grievance that cannot support standing." *Id.* at 1314–15 (quotation marks and citation omitted).

Notably, "Wood cannot explain how his interest in compliance with state election laws is different from that of any other person." *Id.* at 1314. As this Court has previously found, any alleged harms flowing from Wood's disagreements about the state's changes to the absentee voting process "do[] not affect Wood as an individual," but rather are shared by all voters who voted by the same method as Wood. *Wood II*, 981 F.3d at 1315. Neither this Court, nor the district court were alone in reaching this conclusion. Countless courts have found the same. *See, e.g.*, *Bognet v. Sec'y of Pa.*, 980 F.3d 336, 354 (3d Cir. 2020) ("Th[e] conceptualization of vote dilution—state actors counting ballots in violation of state election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth

Amendment."); *Moore v. Circosta*, 1:20-cv-911, 1:20cv912, 2020 WL 6063332, at *14 (M.D.N.C. Oct. 14, 2020) (holding vote-dilution theory of "not a concrete and particularized injury in fact necessary for Article III standing"); *Donald J. Trump for President, Inc. v. Cegavske*, 488 F. Supp. 3d 993, 999 (D. Nev. Sept. 18, 2020) (finding theory of vote dilution too speculative to grant plaintiff standing).

Nor can Wood's claim that he was treated disparately through "defective procedures" that the state adopted in "contravention" of the state's election laws sustain this action. Br. at 23, 28, 46. As this Court recognized in Wood's previous appeal, these allegations do not show that Wood was treated differently from similarly situated voters, a necessary requirement for an equal protection claim. *Wood II*, 981 F.3d at 1315. In addition, as a practical matter, the Challenged Practices could not possibly give rise to such a claim as they were enacted to ensure the *uniformity* of practice—a fact that even Wood acknowledges. Br. at 18 (explaining that the Settlement Agreement applies to all "County registrars and absentee ballot clerks"); *see also Wood II*, 981 F.3d at 1316 ("Georgia applied uniform rules, established before the election, to all voters."); *Wood I*, 1:20-cv-04651-SDG, ECF No. 5 at 11–12 (Wood alleging that Settlement Agreement "set[] forth different standards to be followed by the clerks and registrars in processing absentee ballots in the *State of Georgia*") (emphasis added). Just as the district court acknowledged in Wood's nearly-identical unsuccessful challenge following the 2020 general

election, "Wood does not articulate a cognizable harm that invokes the Equal Protection Clause." *Wood I*, 2020 WL 6817513, at *9. At bottom, "these complaints are generalized grievances. . . . [T]hat harm does not affect Wood as an individual—it is instead shared identically" by the millions of other Georgians who cast ballots in the January runoff election. *Wood II*, 981 F.3d at 1315. As such, any shortcomings from the Challenged Practices Wood takes issue with "do not affect Wood differently from any other person." *Id*.; *see also Bognet*, 980 F.3d at 355.

The cases Wood cites in support of his purported equal protection injuries are entirely distinguishable. Each involved plaintiffs that clearly suffered injuries in fact—not the generalized grievances Wood alleges here. In *United States v. Students Challenging Regulatory Agency Procedures* (*SCRAP*), 412 U.S. 669 (1973), for example, the Supreme Court affirmed the district court's denial of a motion to dismiss on standing grounds where the plaintiff environmental groups could show that the challenged practice would directly damage the forests, streams, and mountains the groups' members regularly used. *Id*. at 685. The allegations of direct harm to these plaintiffs as opposed to all persons was sufficient to establish "a specific and perceptible harm that distinguished them from other citizens"—the exact opposite of Wood's claims here, which would apply to any voter in the January runoff. *Id*. at 689.

Similarly, in *Cox*, this Court found that the individual voter-plaintiff suffered an injury-in-fact because the state rejected her change-of-address voter-registration form directly burdening her right to vote. *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005). In contrast, Wood cannot point to a single action that actually deprived him of his right to vote or made his voting experience more difficult.

Finally, Wood points to an out-of-circuit district court case, *Citizens for Legislative Choice v. Miller*, 993 F. Supp. 1041, 1045 (E.D. Mich. 1998), attempting to show that "as a registered voter" he automatically has standing to challenge any election practice. Br. at 36. But *Miller* does not stand for that proposition. Rather, the *Miller* court found that the plaintiffs in that case were imminently harmed because the law in question—which restricted who could be on the ballot—would directly interfere with the plaintiffs' ability to vote for their preferred candidate in the upcoming election. *Id.* at 1044–45. This is a far cry from Wood's claim here, which is merely that he disagrees with the Challenged Provisions.

Even if Wood could establish an injury that was more than a generalized grievance, as the district court recognized, his claims are too speculative to satisfy standing's concreteness requirement. *Wood III*, 2020 WL 7706833, at *4. To satisfy Article III, alleged injuries cannot be "conjectural or hypothetical," they must be "actual or imminent." *Lujan*, 504 U.S. at 560. Courts must "accept[] allegations

based on well-pleaded facts" but they "do not credit bald assertions that rest on mere supposition." *Bognet*, 980 F.3d at 362. Wood's allegations rest on the presumption that a hypothetical series of events such as manipulation of the signature-matching process, intentional mishandling of absentee ballots, abuse of ballot drop boxes, and the "exploitation of Dominion's voting machines" will happen (or must have happened, given the lateness of Wood's appeal) to negate his vote. *Wood III*, 2020 WL 7706833, at *5. But these allegations are "based solely on a chain of unknown events that may never [and, in fact, did not ever] come to pass," *Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at *33 (W.D. Pa. Oct. 10, 2020). At best, they created only highly speculative "possible future injury," *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013), and thus are insufficient to satisfy standing requirements. The district court's order should be affirmed.

B. Wood has no standing for his due process claim.

For the same reasons, Wood also lacks standing to pursue his due process claim. Wood appears to assert that his due process rights have been violated because Georgia elections officials "intentional[ly] fail[ed] to follow election law as enacted by the Georgia legislature." Br. at 48. But again, this amounts to nothing more than a complaint that Defendants did not follow Georgia election law. As the district court rightly held, this is a "paradigmatic generalized grievance[] unconnected to Wood's individual vote," meaning his due process claim does not satisfy Article III's

justiciability requirement. *Wood III*, 2020 WL 7706833, at *6; *see also Wood I*, 2020 WL 6817513, at *6 (finding no standing for Wood's similar due process arguments as "a generalized grievance"); *Nolles v. State Comm. for Reorganization of Sch. Dists.*, 524 F.3d 892, 900 (8th Cir. 2008) (no standing for voters alleging substantive due process violation against implementation of election law because voters did not allege particularized injury).

Wood's counterarguments that as a voter he "must be deemed to have standing" and that the district court's reasoning "fails to provide any protection" for him also miss the mark. Br. at 37. As this Court explained when dismissing Wood's nearly identical case in December 2020, Wood must demonstrate an "individual burden" on his right to due process. *Wood II*, 981 F.3d at 1315. Wood has not and cannot do this. He can only assert the generalized injuries that he has raised repeatedly. The district court rightly concluded Wood lacks standing on his due process claim.

C. Wood has no standing for his Guarantee Clause claim.

The district court also correctly held that Wood's Guarantee Clause claim is nonjusticiable and he does not have standing to pursue it. *Wood III*, 2020 WL 7706833, at *6. The Guarantee Clause states that the "United States shall guarantee to every State in this Union a Republican Form of Government." U.S. Const. art. IV, § 4. The Supreme Court has held for nearly two centuries that "the Guarantee Clause

does not provide the basis for a justiciable claim." *Rucho v. Common Cause*, 139 S. Ct. 2482, 2506 (2019); *Luther v. Borden*, 48 U.S. 1, 42 (1849) (explaining Congress decides whether a state has a republican form of government and "its decision . . . could not be questioned in a judicial tribunal"). Simply stated, the Guarantee Clause is non-justiciable because it makes the "'guarantee of a republican form of government to the states; the bare language of the Clause does not directly confer any rights on individuals vis-à-vis the states." *Democratic Party of Wis. v. Vos*, 966 F.3d 581, 589 (7th Cir. 2020) (quoting *Largess v. Sup. Jud. Ct. for the Commonwealth. of Mass.*, 373 F.3d 219, 225 (1st Cir. 2004)).

Even if Wood had a justiciable claim that could somehow arise under this Clause, for these same reasons it would not confer standing. This is because, if anything, it confers rights to the states, not to individuals like Wood. As such, Wood cannot claim a cognizable injury that would permit him to pursue his Guarantee Clause claim in this Court. The district court was right to dismiss this claim as well. This Court should affirm.

D. To the extent he asserts a claim under the Elections Clause, Wood also lacks standing.

In addition to the claims discussed above, in his merits brief—for the first time in this action—Wood appears to assert an Elections Clause claim, devoting several pages to arguing (incorrectly) that the Settlement Agreement somehow violates the Elections Clause. *See* Br. at 38–43. Wood did not assert a claim under the Elections

Clause in his complaint, his emergency TRO motion, or any other filing before the district court. He has therefore waived this claim, and this Court should decline to entertain it here. *See Irving v. Mazda Motor Corp.*, 136 F.3d 764, 769 (11th Cir. 1998) ("Because Plaintiff failed to make this argument in the district court, we decline to consider it here.").

But even if Wood had properly raised an Elections Clause claim, it, too, could not survive. As the Supreme Court has explained in rejecting similar alleged Election Clause injuries, these are "precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past." *Lance v. Coffin*, 549 U.S. 437, 442 (2007) (citing *Baker v. Carr*, 369 U.S. 186, 207–08 (1962)); *see also Bognet*, 980 F.3d at 352; *Wood I*, 2020 WL 6817513, at *5 (finding "a state government's failure to properly follow the Elections Clause of the Constitution," is nothing more than a generalized grievance).

III. This Court should not reach the merits of Wood's claims which are, in any event, devoid of merit. [6]

Though the district court did not address the merits of Wood's claims in its order, Wood spends more than 20 pages of his brief repeating the substance of his

[6] To the extent Wood is asking this Court to grant his motion for a temporary restraining order on its own, this Court should reject this extraordinary request. *See* Br. at 30–31. As this Court has recognized, it "do[es] not ordinarily have jurisdiction over TRO rulings." *Pearson v. Kemp*, 831 F. App'x 467, 471 (11th Cir. 2020) (citing *McDougald v. Jenson*, 786 F.2d 1465, 1472 (11th Cir. 1986)). None of the factors

claims in an apparent attempt to get this Court to do so in the first instance. This Court should decline for several reasons. *See Wood II*, 981 F.3d at 1313–14.

As an initial matter, "[i]t is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below." *Singleton v. Wulff*, 428 U.S. 106, 120 (1976); *see also Baumann v. Savers Fed. Sav. & Loan Ass'n*, 934 F.2d 1506, 1512 (11th Cir. 1991). Further, this Court has repeatedly found that "[b]ecause [it] can dispose of this case on standing grounds alone, [it] needn't—and won't—address either mootness or the merits." *Gardner v. Mutz*, 962 F.3d 1329, 1338 (11th Cir. 2020); *see also Fla. Ass'n of Med. Equip. Dealers, Med-Health Care v. Apfel*, 194 F.3d 1227, 1230 (11th Cir. 1999) (declining to reach merits of appeal because plaintiff-appellant lacked standing). Notwithstanding, even if this Court were to address Wood's substantive arguments—they are without merit.

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that might justify the truly rare circumstance where the Court my nevertheless do so are present here. *See, e.g.*, *Thornburgh v. Am. Coll. Of Obstetricians & Gynecologists*, 476 U.S. 747, 755–56 (1986), *overruled on other grounds* 505 U.S. 833 (reaching merits where there was (1) "an unusually complete factual and legal presentation from which to address the important constitutional issues at stake"; and (2) three recent decisions from the same circuit on related issues which "aided" the Court). As this Court has recognized, "[m]ere expediency does not warrant this Court reaching the merits of Plaintiffs' claims in the absence of the necessary evidence by which to do so." *Id*. Indeed, even the case that Wood relies on for this proposition rejected a similar request. *See Siegel*, 241 F.3d at 1171 n.4. To the extent Wood is seeking a decision on the merits, this Court should decline the invitation.

To succeed on his request for extraordinary relief, Wood bears the burden of establishing "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *Schiavo*, 403 F.3d at 1225–26. Wood fails at each one of these four necessary elements and, in fact, did not bother to address three of them.

A. Wood has not shown he would succeed on the merits of each of his claims.

If Wood cannot demonstrate an injury-in-fact required for Article III standing, as the district court concluded, *see supra* at 13–22, then he certainly cannot succeed on the merits of his claims in support of imposing extraordinary injunctive relief.

Wood cannot succeed on the merits of his equal protection claim because he alleges nothing showing any disparate treatment of voters. As explained in the preceding pages, this Court has recognized an equal protection claim based on disparate impact requires allegations that similarly situated voters are treated differently. *Supra* at 16–17; *see also Wood II*, 981 F.3d at 1315, *Wood I*, 2020 WL 6817513, at *8; *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012) (equal protection applies when state classifies voters in disparate ways). But, as explained, Wood's disparate impact claims are simply that the Settlement Agreement "created an arbitrary, disparate, and ad hoc" ballot-processing procedures that violated

Georgia election law. Br. at 47. This does not establish that he or anyone was treated differently from similarly situated voters because of the Challenged Provisions.

Wood also argues the Settlement Agreement somehow imposes burdens on voting rights, but fails to explain how. He does not cite any evidence that the Agreement disenfranchised any voter (including himself), created any obstacles to voting, or resulted in any lawfully cast ballot not being counted, all of which are allegations critical to any claim asserting a burden on the right to vote. Br. at 45; *see also Wood I*, 2020 WL 6817513, at *9–10 (noting "insubstantial evidence" to support Wood's argument that Challenged Practices burden Wood's ability to cast ballot); *Bognet*, 980 F.3d at 361 (rejecting plaintiffs' claim "without a showing of . . . at least some burden on Plaintiffs' own voting rights"). This is precisely what the district court in *Wood I* found to be fatal to Wood's identical challenge to the November general election procedures. *Wood I*, 2020 WL 6817513, at *9 (explaining the processes Wood complained about "did not burden Wood's ability to cast his ballot at all."). So too here.

Wood's due process claim, which invokes elements of both substantive and procedural due process, is likewise meritless. Notably, Wood fails to acknowledge (let alone distinguish) that the district court previously concluded—and this Court affirmed—Wood's allegations of "fundamental unfairness" and "speculat[ion] as to wide-spread impropriety" were no more than "'garden variety' election dispute[s]."

Wood I, 2020 WL 6817513, at *12, *aff'd*, 981 F.3d 1307. Wood's challenge here is based on identical evidence and cannot rise to constitutional violations. Consequently, this deficiency is fatal to establish a viable substantive due process claim. *See Serpenfoot v. Rome City Comm'n*, 426 F. App'x 884, 887 (11th Cir. 2011) ("[Plaintiff's] allegations show, at most, a single instance of vote dilution and not an election process that has 'reached the point of patent and fundamental unfairness' indicative of a due process violation.") (quoting *Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir. 1995)).

Wood is likewise unlikely to succeed on his procedural due process claim, which requires the court to ask "whether there exists a liberty or property interest which has been interfered with by the State" and "whether the procedures attendant upon that deprivation were constitutionally sufficient." *Ky. Dep't of Corrs. v. Thompson*, 490 U.S. 454, 460 (1989). Wood fails to identify what specific liberty or property interest he is seeking to protect. Nor can he. Wood has no liberty or property interest in enforcing state election procedures where his voting rights are not affected in any way. His already-rejected arguments fall far short of such extreme circumstances. If this Court even reaches the merits, it must decline Wood's effort to "federalize every jot and tittle of state election law" into a Due Process Clause violation. *Donald J. Trump for President, Inc. v. Sec'y of Pa.*, 830 F. App'x 377, 388 (3d Cir. 2020).

Wood's vague assertion that the Elections Clause prevented the Settlement Agreement must fail because, in addition to his waiver of this argument as well as lack of standing, *see supra* at 21–22, it is based on an incorrect understanding of the structure and purpose of the Clause. *See* Br. at 38–43. "[T]he Framers understood the Elections Clause as a grant of authority [to Congress] to issue procedural regulations," *not* to "evade important constitutional restraints," such as the right to vote. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833–34 (1995). And, as the Sixth Circuit has recognized, "while States can regulate elections [under the Elections Clause], they must be careful not to unduly burden the right to vote when doing so." *Mays v. LaRose*, 951 F.3d 775, 783 (6th Cir. 2020). Wood cherry-picking *state* law cases on the *state*'s nondelegation doctrine, Br. at 38–40, is wholly inapposite for his *federal* claims brought in *federal* court and his argument based on the *federal* constitution. *United States v. Clay*, 355 F.3d 1281, 1283 (11th Cir. 2004) (explaining state law is "irrelevant" during federal proceedings under federal law).

Finally, Wood's Guarantee Clause fails because it is non-justiciable. *See supra* at 20–21.

B. Wood is unable to satisfy any of the other necessary *Winter* factors.

Even if this Court determines that Wood's claims are not moot, Wood has standing, *and* he is likely to succeed on the merits of his claims, Wood *still* cannot satisfy the remaining three required *Winter* factors.

First, Wood does not even acknowledge these factors in his brief, let alone argue them. He has waived these arguments, and this Court cannot rule on them. *See, e.g.*, *APA Excelsior III L.P. v. Premiere Techs., Inc.*, 476 F.3d 1261, 1269 (11th Cir. 2007) ("[W]e do not consider [arguments] not raised in a party's initial brief . . ."). For this reason alone, his request for preliminary relief must fail.

Second, even if this Court could consider the remaining *Winter* factors, Wood does not satisfy them. Wood will not suffer irreparable harm in the absence of an injunction because he does not allege any burden or deprivation on his right to vote. *See, e.g.*, *supra* at 25. To the extent Wood is arguing his suspicions of fraud injure him, courts have rejected that rationale for irreparable harm because these worries are entirely speculative—including from this exact plaintiff in a nearly identical challenge. *See, e.g.*, *Wood I*, 2020 WL 6817513, at *9–10, *12 (upholding Challenged Practices and finding Wood could not show irreparable harm), *aff'd*, 981 F.3d 1307.

Third, the balance of the equities do not favor Wood. He challenges procedures used in an election held more than three months ago. That election's winners have already been seated and are representing Georgia in the U.S. Senate, conducting committee hearings, casting votes, and providing constituent services. Wood's requests a remand to the district court so it can order sweeping relief to change rules for an election that has long since passed. The equities do not favor

such disruptive and belated relief. The public will not be served by long-belated changes to election rules that will result in lawful votes being cast aside. *See, e.g.*, *Scott v. Roberts*, 612 F.3d 1279, 1296 (11th Cir. 2010) ("[R]equir[ing] the state to . . . discard ballots already cast" would be against public interest); *Bognet*, 980 F.3d at 342 (explaining it is "indisputable in our democratic process: that the lawfully cast vote of every citizen must count).

IV. CONCLUSION

Wood fails at every step of his appeal—the case is moot, he lacks standing, and his claims are meritless. For these reasons, as detailed above, Intervenors request this Court affirm the district court's judgment.

Dated: April 9, 2021

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 6,652 words as counted by the word-processing system used to prepare the document.

Respectfully submitted on April 9, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted this April 9, 2021.

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