

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

**DAVID A. PERDUE AND ELIZABETH
GRACE LENNON,**

PETITIONERS,

v.

**RICHARD BARRON, Fulton County
Elections Director, in his individual
capacity, Fulton County Board of
Registration and Elections Board
Members MARK WINGATE,
KATHLEEN D. RUTH, AARON V.
JOHNSON, MARY CAROLE
COONEY, VERNETTA KEITH
NURIDDIN, ALEX WAN, CATHY
WOOLARD, and TERESA K.
CRAWFORD, and Fulton Board of
Commissioners ROB PITTS, LIZ
HAUSMANN, BOB ELLIS, LEE
MORRIS, NATALIE HALL, MARVIN
S. ARRINGTON, and KHADIJAH
ABDUR-RAHMAN, in their individual
capacities,**

RESPONDENTS.

CIVIL ACTION NO.: _____

**PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF FOR
INSPECTION AND EXAMINATION OF ELECTION MATERIALS**

TO THE HONORABLE COURT:

COME NOW, PETITIONERS DAVID A. PERDUE and ELIZABETH GRACE LENNON, (hereinafter collectively referred to as “Petitioners”), by and through their attorneys of record, and file this Petition for Declaratory and Injunctive Relief for Inspection and Examination of Absentee Ballots, Envelopes, and Related Election Materials (“Petition”) pursuant to Ga. Code. Ann. § 9-11-26, § 9-11-34, § 9-4-1, *et seq.* and Ga. Code. Ann. § 9-11-65, as follows:

I. QUESTIONS PRESENTED

If the right to vote means anything, it is the right of Georgia citizens, who are qualified electors, to cast their vote without unlawful government dilution, debasement, intrusion and/or interference, and to cast their vote with confidence in the policies, practices and procedures used by election officials to insure fair, honest, accurate, transparent, and equal selection of government leaders. Fulton County Board of Registration Elections Director Richard Barron and his agents including the other Respondents negligently, grossly negligently or intentionally engaged in and/or permitted multiple unlawful election acts and omissions by their failure, *inter alia*, to competently oversee the actions of the Fulton County Board of Registration and Elections employees, staff, agents, and/or contractors in the acceptance and tabulation and counting of absentee ballots, thousands of which were unlawfully marked by machines rather than legally registered Georgia voters. These acts and omissions, *inter alia*, circumvented the majority vote of the people of the State of Georgia and thereby affected the outcome of the statewide General Election on November 3, 2020 in several races including the United States Senate race of Petitioner Perdue.

Fulton County Elections Board Members and Fulton County Board of Commissioners and their agents failed in their duty of oversight of the Elections Director, who was appointed to his position by the Fulton County Board of Commissioners and Fulton County Board of Registration and Elections. Together, the Respondents' actions and inactions violated, and will continue to violate, the constitutional rights of one citizen, one vote, just as they violated the equal protection and due process rights of Senator David A. Perdue, an election candidate, and Elizabeth Grace Lennon, a voter, on November 3, 2020

This action is brought pursuant to the State of Georgia Constitution Article I, to redress the infringement of the Petitioners' rights of equal protection and due process guaranteed by the Georgia Constitution, and in the representative capacity of all Georgia voters whose rights were similarly violated. Petitioners seek transparency in government by the Fulton County Elections Director, Fulton Elections Board members and Fulton County Board of Commission members and their agents for access to the absentee ballots, absentee envelopes, and related election materials to conduct an examination to determine the extent to which null and void and counterfeit absentee ballots, and other ballots were allowed to be tabulated, counted, and included in the November 3, 2020 election results.

II. RELATED PROCEEDING

1.

This Petition and the factual and legal issues raised in this action are similar and related to Civil Action File No. 2020-CV-343938 filed before this Honorable Court on December 23, 2020, and styled *Garland Favorito, Michael Scupin, Trevor Terris, Sean Draime, Caroline Jeffords, Stacey Doan, Christopher Peck, Robbin Sotir, and Brandi Taylor v. Fulton County, Fulton County Board of Registration and Elections Board Members, Alex Wan, Mark Wingate, Kathleen Ruth, Vernetta Nuriddin, and Aaron Johnson, in their individual capacities*, Civil Action Number 2020CV343938 (the “Favorito-Jeffords Case”). Fulton County Superior Court Judge Rachelle L. Carnesale was first assigned responsibility for the Favorito-Jeffords Case. (See Order dated December 29, 2020, attached as Exhibit “1”). On January 4, 2021, the Judges of the Superior Court of Fulton County of Atlanta Judicial Circuit requested, and Flint Circuit Chief Judge Brian J. Amero agreed to conduct all matters regarding the Favorito-Jeffords Case. (See Order dated January 4, 2021, attached hereto as Exhibit “2”).

2.

Chief Judge Amero presided over the Favorito-Jeffords Case from January 4, 2021 through October 13, 2021, and he conducted multiple oral argument hearings, including evidentiary hearings, and he considered and made multiple rulings, and entered multiple Orders in the Favorito-Jeffords Case. The Favorito-Jeffords Case raised issues of fact and law similar to the legal and factual issues raised by the Petition herein. For instance, Chief Judge Amero recognized and held that Favorito-Jeffords Petitioners established a prima facie case and after an evidentiary hearing ordered the unsealing of the Fulton County absentee ballots. (See May 21, 2021 Order unsealing the ballots, attached hereto as Exhibit “3”). In addition, the Respondents here are the

same Respondents that were sued for similar unlawful actions and omissions in the Favorito-Jeffords Case.

3.

Chief Judge Amero is knowledgeable about the facts, circumstances, and the law surrounding the allegations, *inter alia*, of counterfeit ballots being tabulated, counted, and included in the certified results of the Fulton County General Election held on November 3, 2020 (“General Election”). Given Chief Judge Amero’s familiarity with the facts and law, it would be in the best interest of public judicial efficacy to appoint Chief Judge Amero to preside in this case. With Chief Judge Amero presiding over this case, public resources and valuable time would be used efficiently. Chief Judge Amero, because he previously presided over the Favorito-Jeffords Case, is familiar with the facts, law, data, and constitutional issues in question and judicial resources would be preserved by allowing Chief Judge Amero to preside in this case. In addition, allowing Chief Judge Amero to preside here would reduce the opportunity for conflicting judicial decisions and rulings concerning the Georgia Constitution and its applicability to the facts and evidence between this case and the Favorito-Jeffords Case. For these reasons, Petitioners respectfully request this Court to voluntarily recuse itself and request and appoint Chief Judge Amero to preside over this case just as the court did in the Favorito-Jeffords Case.

III. PRELIMINARY STATEMENT

4.

This action is not an election contest case. It is an action to bring transparency, fairness, honesty, and quality to Georgia elections and to hold responsible those government officials who violate the equal protection and due process rights of Petitioners (and all Georgia citizens) guaranteed by the Georgia Constitution. Petitioners seek redress under Georgia law only.

Petitioners need not, and do not, seek redress under any federal law. Petitioners (and all Georgia citizens) have a fundamental legal right to the clearly established principles of election equality, integrity, accurateness, honesty, and justice. Georgia law recognizes the clearly established principle of one-citizen, one-vote. That is the bedrock of Georgia law and the most cherished and valuable right of any Georgia citizen, including Petitioners, guaranteed by the Georgia Constitution. “The conception of political equality from the Declaration of Independence to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing - one person, one vote.” *Reynolds v. Sims*, 377 U.S. 533, 558 (1964). “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Georgia law adopts these fundamental principles. This case seeks to enforce these clearly established fundamental principles of Georgia law.

5.

“In any state-adopted electoral scheme, ‘[t]he right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.’” (*Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1404 (N.D. Ga. 2019) (quoting *Bush v. Gore*, 531 U.S. at 104–05, 121 S.Ct. 525(2000))). Thus, it is the paramount duty of all government, with respect to election justice, to ensure that one-citizen, one-vote is not violated. This foundational principle of Georgia law and its constitutional republic is at issue.

6.

In Georgia, election officials must preserve election information and such information must be transparent to the citizens if democracy and a constitutional republic are to be upheld. For these reasons, pursuant to federal law, 52 U.S.C. § 20701, “[e]very officer of election shall retain and preserve, for a period of twenty-two months from the date of any general . . . election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives . . . are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election”

7.

Furthermore, in accordance with clearly established Georgia law, “[t]he clerk, county records manager, or the office or officer designated by the clerk shall hold such ballots and other documents under seal, unless otherwise directed by the superior court, for at least 24 months Such ballots and other documents shall be preserved in the office of the clerk, county records manager, or officer designated by the clerk until the adjournment of such grand jury, and then they may be destroyed, unless otherwise provided by order of the superior court.” O.C.G.A. § 21-2-500(a). Election superintendents shall also preserve election documents for at least 24 months unless provided by law. O.C.G.A. § 21-2-73.

8.

Election records “including registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in official custody, except the contents of voting machines *shall be open to public inspection and may be inspected and copied by any elector of the county or municipality . . . at any time*” O.C.G.A.

§ 21-2-72. (Emphasis added). Additionally, “[t]he custodian shall also, upon request, if photocopying equipment is available in the building in which the records are housed, make and furnish to any member of the public copies of any of such records upon payment of the actual cost of copying the records requested.” *Id.*

9.

In the State of Georgia, *inter alia*, clearly unlawful counterfeit absentee ballots were counted and certified in the General Election conducted by Respondents, their staff, and independent contractors under their supervision and control. This unlawful conduct caused Petitioners and other qualified registered Georgia citizens to be denied their right to vote and to have their vote diluted and debased. These unlawful actions of Respondents violate the Georgia Constitution. Petitioners seek election justice under Georgia law for the unlawful acts committed by Respondents, in their individual capacities. Moreover, in their individual capacities, Respondents are not protected by any sovereign immunity where Petitioners are seeking injunctive and declarative relief “*against state officials in their individual capacities.*” *Bd. of Commissioners of Lowndes Cty. v. Mayor & Council of City of Valdosta*, 309 Ga. 899, 903, 848 S.E.2d 857, 860 (2020) (emphasis added) (citing *Lathrop v. Deal*, 301 Ga. 408, 444 (2017)).

10.

Petitioners’ fundamental rights of equal protection and due process under the Georgia State Constitution, Ga. Const. art. I, § I, ¶ II (Equal Protection) and Ga. Const. art. I, § I, ¶ I (Due Process), were unlawfully abridged by the acts and omissions of Respondents leading up to, during, and after the General Election on November 3, 2020. It is highly likely and probable that Respondents will continue to engage in these same unlawful election activities and omissions and

continue to deny and violate Petitioners' Georgia constitutional rights so long as the Respondents remain in control or supervision of future elections in Fulton County.

11.

Petitioners seek injunctive and declaratory relief against Respondents, in their individual capacities, who were either Fulton County Board of Registration and Elections (“BRE”) Board Members at the time of the November 3, 2020 General Election (“General Election”) or if they joined the BRE since the General Election and from the Fulton County Board of Commissioners (“BOC”) in their individual capacities, to show that there was irreparable harm and injury, and that harm and injury caused by Respondents will continue, if they are not held accountable for their acts and omissions that occurred during the General Election.

12.

The unlawful, erroneous, negligent, grossly negligent, willful, malicious, corrupt, deceitful, and intentional manipulation of votes by Respondents violates the principles of democracy and the foundation of the Georgia Republic and is what Georgia's founding fathers sought to prohibit when they thoughtfully crafted the Georgia Constitution to guarantee all citizens the right to one vote and the right to seek relief from the judiciary to protect their one vote from dilution, discrimination, and debasement.

13.

In accordance with their statutory rights,¹ Petitioners seek an examination and inspection by Petitioners of the Fulton County absentee ballots, absentee ballot return envelopes, the absentee ballot election reports, and other paper, electronic information, and election materials (“absentee ballots and related documentation and information”).

¹ See O.C.G.A. §§ 21-2-72, 21-2-500, 9-11-26 and 9-11-34.

14.

Petitioners submit the affidavit of Susan F. Voyles (“Voyles”), who participated in the recount of the General Election, and who noted that a large number of the absentee ballots which she personally handled and observed had never been folded and placed inside an envelope and were completed by a printer rather than a human. (See Affidavit of Voyles, attached hereto as Exhibit “4”). This unlawful and unconstitutional behavior by Respondents will continue if Respondents are not held accountable for their actions. To identify the many wrongful actions committed by the Respondents, a forensic inspection conducted by Petitioners must be allowed.

15.

Petitioner Lennon was denied the right to vote. Petitioner Lennon can prove an injury in fact that is fairly traceable to the challenged action of the Respondents and is likely to be redressed by a favorable decision. Here, Petitioner Lennon suffered a specific injury to herself when she attempted to vote in-person but was informed by Fulton County Board of Election personnel that she had previously voted by an absentee mail-in ballot, which she did not. Petitioner Lennon has shown and can show the threat of immediate electoral harm is still present; the conditions set forth by the Respondents’ combined actions will more likely than not produce a similar result in the 2022 and future elections. All controls to prevent this type of election fraud and mistake were removed improperly by the Respondents and without the safeguards afforded by Georgia Law and the Georgia Constitution. These irreparable harms will continue to harm either Petitioner Lennon, herself, or similarly situated voters in the future.

16.

The Procedures enshrined in law, code, custom, and the Georgia Constitution are there to act as guardrails to protect the voter franchise for all Georgia citizens. Through negligence, gross

negligence, willfulness, malice, corruption, intentional design, artifice, or mistake, Respondents have removed those guardrails and the electoral franchise will go off a cliff, if relief is not granted by this Court.

17.

Georgia law requires “[s]uperintendents, poll officers, and other officials engaged in the conducting of primaries and elections . . . [to] perform their duties in public.” O.C.G.A. § 21-2-406. Respondents violated this provision of Georgia law as it relates to observers during the scanning of absentee ballots for Fulton County at State Farm Arena during the General Election.

18.

Furthermore, Georgia law requires “[a]ccredited poll watchers shall be allowed to observe the process described in this rule; however, they must do so in a manner that does not interfere with poll officials.” GA R&R 183-1-12-.12(a)(9). Respondents violated this provision of Georgia law as it relates to observers during the scanning of absentee ballots for Fulton County at the State Farm Arena.

19.

Petitioners demand the production of absentee ballots and related election documentation and information, including electronically stored information, from the General Election under O.C.G.A. §§ 9-11-34 and 9-11-26 and the unsealing of the ballots and the related election documentation and information pursuant to O.C.G.A § 21-2-500(a). Georgia law gives Petitioners the right to review, inspect, and duplicate electronic and paper documents and information from the General Election. Georgia law supports transparency in Georgia elections. Petitioners demand the legal rights provided to them under Georgia law.

20.

Petitioners will establish that this inspection and examination of the absentee ballots and related election documentation and information is warranted in order to restore the trust of the citizens of Fulton County and the State of Georgia in the voting system used and employed by Fulton County and Respondents.

21.

If Respondents truly conducted a transparent, honest, fair, equitable, accurate, and reliable General Election without counterfeit absentee ballots, *then* it would be expected that Respondents would welcome the opportunity of a forensic inspection and examination by Petitioners to prove that no counterfeit ballots were included in the certified results and that Respondents lawfully conducted the General Election. For these reasons, *if* Respondents conducted a fair, honest, equal, truthful, and transparent General Election, there should be no opposition to Petitioners' request for a forensic inspection by these Petitioners. Yet, Respondents have failed and refused, and continue to fail and refuse to be transparent and to provide Petitioners access to the paper ballots and other electronically stored information about the General Election.

IV. STATEMENT OF THE PARTIES IN INTEREST

A. Petitioners

1. David A. Perdue

22.

David A. Perdue (hereinafter "Petitioner Perdue") was a U.S. Senator from Georgia from 2014 until his term ended on January 3, 2021, and he was a candidate on the Fulton County General Election ballot on November 3, 2020.

23.

Petitioner Perdue ran for re-election in the General Election against Jon Ossoff. <https://results.enr.clarityelections.com/GA/105369/web.264614/#/summary> (last visited December 9, 2021). According to the General Election results, Petitioner Perdue received 49.73% of the votes (2,462,617 votes) and Jon Ossoff received 47.95% of the votes (2,374,519 votes). Petitioner Perdue narrowly missed winning 50% of the vote in the General Election. Due to neither candidate winning the majority vote, a runoff election ensued. Petitioner Perdue demands an inspection and examination of the Fulton County absentee ballots and related documentation and information by Petitioners to determine a true and accurate count of his Senate race in the General Election. *Id.*

24.

Petitioner Perdue is concerned about the legitimacy of future elections due to the certified results of the General Election containing counterfeit ballots from Fulton County and Respondents.

25.

To ensure the legitimacy of elections in Fulton County going forward, it is essential that absentee ballots and related documentation and information from the General Election for Fulton County are produced by Respondents for review, examination, and inspection by Petitioners.

26.

Petitioner Perdue is concerned with the policies, procedures, practices, and customs of Fulton County Elections Directors and Fulton County Board of Elections and Registration and all Respondents during the General Election and going forward in future elections.

27.

As a candidate on the ballot during the General Election, Petitioner Perdue possesses the needed standing particularized injury and standing to request the unsealing of absentee ballots and

related documentation and information from the General Election in Fulton County for a forensic inspection, review, analysis, and scanning by Petitioners.

2. Elizabeth Grace Lennon

28.

Petitioner Elizabeth Grace Lennon (“Petitioner Lennon”) is a resident of Fulton County, Georgia, and was an eligible elector and was registered to vote in the General Election. On October 23, 2020, Petitioner Lennon appeared in-person to vote and she was informed by BRE staff that she already voted by absentee ballot in the General Election.

29.

Petitioner Lennon informed the BRE staff that she did not request an absentee mail-in ballot, nor did she vote via absentee mail-in ballot in the General Election.

30.

The BRE staff instructed Petitioner Lennon that she would need to sign an affidavit that she did not request an absentee ballot and that she did not vote via absentee ballot. Petitioner Lennon completed her affidavit, and she completed and submitted a provisional ballot for the General Election in Fulton County.

31.

According to Petitioner Lennon’s Georgia voter history report, Respondents permitted a fraudulent person to request an absentee ballot on October 7, 2020, using Petitioner Lennon’s name. On October 20, 2020, Fulton County BRE personnel unlawfully accepted, tabulated, and counted the fraudulent voter’s fraudulent ballot voted under Petitioner Lennon’s name. Such action by Respondents is clearly unlawful and done negligently, grossly negligently, willfully, with malice, corruption, or in intent to injure Petitioner Lennon.

32.

Petitioner Lennon is justifiably concerned that her in-person vote she submitted via the provisional ballot was not counted by Respondents, and if it was counted, she is concerned that the votes cast on the fraudulent absentee ballot by the fraudulent voter were counted and that those votes cancelled out her votes. Petitioner Lennon is justifiably concerned that the same unlawful conduct by Respondents will occur in future Fulton County elections.

33.

Petitioner Lennon intends to vote in future elections in Fulton County, Georgia, and she is justifiably greatly concerned that Fulton County will permit fraudulent persons to fraudulently vote in future elections using her name, and the names of other qualified and eligible Fulton County voters. Fulton County permitted great multitudes of fraudulent persons to fraudulently vote in the General Election using the name(s) of qualified and eligible Georgia voters.

34.

Fulton County unlawfully failed to properly verify the signature on the absentee envelope completed by the fraudulent voter with Petitioner Lennon's legal signature on file with Fulton County, resulting in an abridgement of her right to one-citizen, one-vote. During the General Election in Fulton County, Fulton County permitted fraudulent voters to vote using the absentee ballot procedures. Fulton County has a historical custom, policy, pattern, and practice of failing to properly verify signatures on absentee ballot envelopes and permitting unqualified and fraudulent voters to vote in Fulton County elections.

B. Respondents

1. Elections Director Richard Barron, in his individual capacity

35.

Fulton County Elections Director, Richard Barron (“Respondent Barron”), was or is and has been at all times relevant to this lawsuit, the Fulton County Elections Director.

36.

Respondent Barron oversaw and actively managed the General Election. Respondent Barron’s clearly unlawful conduct and omissions related to the General Election were negligent, grossly negligent, willful, knowing, malicious, wanton, and deceitful, and Respondent Barron through his action or inaction acted with utter disregard and with recklessness in failing to safeguard the sacredness of Petitioners’ Georgia constitutional rights regarding the General Election. Respondent Barron acted in a ministerial manner under Georgia law.

37.

Under O.C.G.A. § 21-2-70 (8), Respondent Barron, as Superintendent of elections in Fulton County, shall exercise the powers and duties bestowed upon him “... *to inspect systematically and thoroughly the conduct of primaries and elections in the several precincts of his or her county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.*” (Emphasis added).

38.

As the election Superintendent, Respondent Barron swore an oath affirming “that [he] will to the best of [his] ability prevent any fraud, deceit, or abuse in carrying on the same, that [he] will make a true and perfect return of such primaries and elections, and that [he] will at all times truly, impartially, and faithfully perform [his] duties in accordance with Georgia laws to the best of [his] judgment and ability.” See O.C.G.A. § 21-2-70 (15)(C). Respondent Barron, with negligence,

gross negligence, willfulness, malice, utter disregard, intention, or corruption did not comply with this provision of Georgia law. These actions caused irreparable harm and injury to Petitioners. Respondent Barron acted in a ministerial manner under Georgia law.

39.

In 2015, Respondent Barron executed a contract with Happy Faces Personnel Group, Inc. (“Happy Faces”), which the BOC approved, to provide temporary staff members for the following positions in the Department of Registration and Elections in Fulton County: 1) Elections Systems Specialist Assistant Supervisor; 2) Elections Systems Specialist; 3) Registration and Elections Assistant – Logistics; 4) Registration and Elections Assistant - Assistant Supervisor; 5) Registration and Elections Assistant – Payroll/Training; 6) Registration and Elections Specialist; 7) Registration and Elections Assistant – VEOP; 8) Registration and Elections Assistant - EV Clerk; 9) Registration and Elections Assistant - EV Assistant Manager; and 10) Registration and Elections Assistant - EV Manager. Temporary staff members, provided by Happy Faces, were instructed to report directly to Respondent Barron or his designated representative.

40.

The temporary staff members supplied by Happy Faces have continued to work for Fulton County in the Fulton County Department of Registration and Elections (“Department of Registration and Elections”) with Respondent Barron’s and the other Respondents’ approval and under Respondent Barron’s management.

41.

In the General Election, temporary workers from Happy Faces were assigned to positions in the Department of Registration and Elections during the General Election.

42.

During the General Election, Happy Faces workers and Fulton County employees, staff, and independent contractors, worked at the English Street Warehouse and State Farm Arena processing, scanning, and tabulating absentee ballots.

43.

From November 3, 2020 to November 4, 2020, several batches of absentee ballots were scanned multiple times, and those votes corrupt and erroneous totals were unlawfully included in the certified number of votes submitted by Fulton County to the Georgia Secretary of State's Office.

44.

Additionally, about 161 batches of ballots representing approximately 16,000 ballots cast were withheld by Respondents from the certified results that were submitted to the Georgia Secretary of State's Office.

45.

Thousands of unlawful counterfeit ballots were scanned, tabulated, and included in the certified total of votes submitted by Respondents to the Georgia Secretary of State's Office as established by the sworn testimony of Voyles and photographs of absentee ballots, which ballots show no creases or folds as would be required if the ballots had been placed inside absentee ballot envelopes and mailed. Respondents' actions in this regard were ministerial.

46.

Respondent Barron has been, and continues to be, criticized by Fulton Elections Board members, other Respondents and the public for his gross mismanagement, negligence, gross

negligence, willfulness, malice, or corruption of the General Election by allowing clearly established unlawful acts and omissions to occur under his supervision.

47.

On or about February 16, 2021, in a 3-2 vote, the BRE voted to terminate Respondent Barron as Fulton County Elections Director.

48.

On March 3, 2021, the BOC refused to affirm the recommendation by the BRE to terminate Respondent Barron immediately.

2) Fulton County Board of Registration and Elections Board Members, in their individual capacities

49.

Under Georgia law, “[t]he board [Fulton County Board of Registration and Elections] shall be responsible for the registration of electors of Fulton County; the preparing, equipping, and furnishing of polling places; the counting of all ballots, both absentee and those regularly cast; and for the selection, appointment, and training of poll workers. Such poll workers shall be appointed, insofar as practicable, from a list provided to the board by the county executive committee of each political party.” *See* Fulton County, Ga., Local Const. Amend. and Local Acts, art. II, § 14-39.

50.

The Fulton County BRE shall “[w]ith regard to the preparation for the conduct and administration of elections, succeed to and exercise all duties and powers granted to and incumbent upon the probate judge under O.C.G.A. tit. 21, ch. 2 (O.C.G.A. § 21-2-1 et seq.) the ‘Georgia Election Code,’ or any other provision of law.” *See* Fulton County, Ga., Local Const. Amend. and Local Acts, art. II, § 14- 40(a)(1).

51.

Respondents are individual members of the BRE, and they have responsibility for supervision, oversight, and direction of the BRE and have responsibility for implementation of the General Election including, but not limited to, the tabulation and counting of the ballots cast by voters in the November 3, 2020 General Election.

**3) BRE Members During the General Election, in their individual capacities
(collectively, “Respondent General Election BRE Members”)**

52.

Respondent General Election BRE Members knew about the election violations that occurred and were occurring in Fulton County during the General Election by Respondent Barron, his staff, agents, and contractors. Respondent General Election BRE Members took no action to stop the clearly established unlawful actions of Barron.

53.

Respondent General Election BRE Members knew that Respondent Barron abandoned his responsibilities during the General Election and that Respondent Barron authorized the deliberate, willful, malicious, negligent, grossly negligent, or corrupt manipulation of Fulton County ballots during the General Election.

54.

Respondent General Election BRE Members knew that Respondent Barron, his staff, agents, and contractors were refusing to comply with established Georgia law with, *inter alia*, respect to the scanning, review, and tabulation of absentee ballots for the General Election and despite such knowledge, Respondent General Election BRE Members willfully, wantonly, knowingly, maliciously, negligently, or grossly negligently refused to intervene and/or prohibit the clearly unlawful behavior of Respondent Barron.

55.

Respondent General Election BRE Members knew that the tabulated ballots that the temporary staffers processed would be certified.

56.

Respondent General Election BRE Members' conduct and omissions with respect to the General Election was negligent, grossly negligent, willful, knowing, wanton, deceitful, and malicious and Respondent General Election BRE Members acted with negligent, willful, or malicious reckless disregard in failing to safeguard the sacredness of Petitioners' Georgia constitutional rights concerning the General Election.

57.

Respondent General Election BRE Members' acts and omissions were in their ministerial capacity under Georgia law.

4) Current Board Member, Mark Wingate

58.

Fulton County BRE member, Mark Wingate ("Respondent Wingate"), was a member of the BRE at the time of the General Election and he continues to remain a member of the BRE.

59.

Respondent Wingate acknowledged Respondent Barron's action or inaction during the General Election and voted to terminate Respondent Barron as Director of the Department of Registration and Elections.

5) Current Vice Chairman, Kathleen D. Ruth

60.

Fulton County BRE member, Kathleen D. Ruth (“Respondent Ruth”), was a member of the BRE at the time of the General Election and she continues to remain a member of the BRE.

61.

Respondent Ruth acknowledged Respondent Barron’s action or inaction during the General Election and voted to terminate Respondent Barron as Director of the Department of Registration and Elections.

6) Former Vice Chairman Vernetta Keith Nuriddin

62.

Former Fulton County BRE member, Vernetta Keith Nuriddin (“Respondent Nuriddin”), was a member of the BRE at the time of the General Election and she continued to remain a member of the BRE until her term expired on June 17, 2021.

63.

Respondent Nuriddin acknowledged Respondent Barron’s action or inaction during the General Election and voted to terminate Respondent Barron as Director of the Department of Registration and Elections.

7) Current Board Member, Aaron V. Johnson

64.

Fulton County BRE member, Aaron V. Johnson (“Respondent Johnson”), was a member of the BRE at the time of the General Election and he continues to remain a member of the BRE.

65.

Respondent Johnson excused Respondent Barron's action or inaction during the General Election and voted to retain Respondent Barron as Director of the Department of Registration and Elections. Respondent Johnson acted with negligence, gross negligence, willfulness, malice, or corruption in this regard.

8) Former Chairman, Mary Carole Cooney

66.

Former Fulton County BRE Chairman, Mary Carole Cooney ("Respondent Cooney"), was the chairman of the BRE at the time of the General Election until her resignation and commencement of Alex Wan's tenure as the Chairman of the BRE on or about March 11, 2021.

67.

Respondent Cooney, as the former Chairman of the BRE, was individually responsible and liable for the decisions and actions of the Department of Registration and Elections and Respondent Barron.

68.

Respondent Cooney accepted Respondent Barron's action or inaction during the General Election and voted to retain Respondent Barron as Director of the Department of Registration and Elections. Respondent Cooney acted with negligence, gross negligence, willfulness, malice, or corruption in this regard.

69.

Respondent Cooney knew that the incompetent and untrained temporary staffers provided by Happy Faces would be reviewing and approving voter signatures for absentee

ballots, despite such employees having no training to do so according to sworn testimony of former Fulton County Registration Chief, Ralph Jones. (See Ralph Jones' deposition excerpts, attached hereto as Exhibit "5," pp. 107:18-25; 119: 7-16; 120: 2-7; 121: 21-25; 122: 1-13).

70.

Temporary staffers employed by Happy Faces were improperly trained by Respondents to faithfully carry out the processing, scanning, and tabulation of ballots for the General Election.

71.

Respondent Cooney knowingly approved of the BRE's contract with Happy Faces to allow incompetent and untrained temporary staffers to work in the Department of Registration and Elections during the General Election. Respondent Cooney negligently, grossly negligently, willfully, with malice, or corruption allowed the mismanagement of the General Election by Happy Faces employees and permitted them to knowingly engage in clearly unlawful actions related to the General Election. Respondent Cooney had a personal ministerial duty to perform and failed to carry out that responsibility to ensure against the clearly negligent and improper actions of Happy Faces and its employees.

9) Fulton County Board of Registration and Elections Board Members Appointed Since the General Election, in their individual capacities (collectively, "Respondent 2021 BRE Members")

a. Former Chairman, Alex Wan

72.

Former Fulton County BRE Chairman, Alex Wan ("Respondent Wan") was the chairman of the BRE at the time of the General Election from the commencement of his tenure

as the Chairman of the BRE on March 11, 2021, until his voluntary resignation in September 2021 to run for City Council in the City of Atlanta.

73.

During BRE meetings since the commencement of his tenure as Chairman until his voluntary resignation, Respondent Wan expressed neither opposition nor concern about Respondent Barron's actions and omissions regarding the Department of Registration and Elections' use of Happy Faces since 2016 and that such contracts are renewed annually by the BOC.

10) Current Chairman, Cathy Woolard

74.

Cathy Woolard ("Respondent Woolard"), was appointed as a BRE chair following Respondent Wan's departure and she presided over her first meeting on October 1, 2021.

75.

During the October 14, 2021 BRE meeting, Respondent Woolard expressed neither opposition nor concern about Respondent Barron's actions and omissions regarding the Department of Registration and Elections' use of Happy Faces since 2016 and that such contracts are renewed annually by the BOC.

11) Current Board Member, Teresa K. Crawford

76.

Teresa K. Crawford ("Respondent Crawford") was appointed as a BRE member for a term from July 1, 2021 to June 30, 2023, to fill the vacancy of Respondent Nuriddin.

77.

During the October 14, 2021 BRE meeting, Respondent Crawford did not interject whether in opposition or with concern about Respondent Barron's actions and omissions of the Department of Registration and Elections' use of Happy Faces since 2016 and that such contracts are renewed annually by the BOC.

12) Fulton County Board of Commissioners, in their individual capacities

78.

The Fulton County Board of Commissioners "shall have exclusive jurisdiction and power over all special acts heretofore passed, and of force, relative to county matters applicable to Fulton County." *See* Fulton County, Ga., Local Const. Amend. And Local Acts, CODE § 1-111.

79.

Respondent BOC Members knew about the established election violations that occurred and were occurring in Fulton County during the General Election by the other Respondents, but Respondent BOC Members willfully, with malice, or corruption, took no action to stop the established unlawful actions.

80.

Respondent BOC Members knew that Respondent Barron abandoned his responsibilities during the Primary Election of 2020 and November 2020 General Election and that Respondent Barron authorized the deliberate manipulation of ballots during the General Election.

81.

Respondent BOC Members knew that Respondent Barron and Respondent General Election BRE Members were failing and refusing to comply with clearly established Georgia law about the scanning, review, and tabulation of absentee ballots for the General Election and despite such knowledge Respondent BOC Members negligently, willfully, maliciously, or with corruption and knowingly refused to intervene and/or prohibit the unlawful behavior of the other Respondents. In this regard, Respondent BOC Members acted in complete disregard of their lawful responsibilities.

13) Fulton County Commission Chairman, Rob Pitts

82.

Fulton County Board of Commissioners Chairman, Rob Pitts (“Respondent Pitts”), is and has been at all times relevant to this lawsuit, the Chairman of the Fulton County Board of Commissioners.

83.

The chairperson of the board of commissioners shall have the following powers and duties: (1) To preside at meetings of the board of commissioners; (2) To serve as the official spokesperson for the board of commissioners; (3) To sign all official papers and other instruments and documents on behalf of the board of commissioners as directed or authorized by ordinance, resolution, or policy of the board of commissioners; (4) To make appointments of members of the board of commissioners to committees thereof and to make appointments to other committees, boards, or public authorities as authorized by law or by ordinance, resolution, or policy of the board of commissioners; and (5) To perform such other duties as may be provided by ordinance or resolution of the board of commissioners. See Fulton County, Ga., Local Const. Amend. and Local

Acts, CODE § 1-73(c).

84.

Despite Respondent Pitts' knowledge regarding Respondent Barron's acts and omissions during the Primary and General Elections, Respondent Pitts did not vote to take affirmative steps to correct the clearly unlawful conduct of Respondent Barron related to the General Election and the incorrect certification to the Secretary of State of the results of the Risk Limiting Audit.

85.

Respondent Pitts, with full knowledge, negligently, willfully, wantonly, maliciously, or with corruption and with callous disregard permitted the other Respondents to engage in acts and omissions which violate clearly established Georgia law with respect to the conduct of the scanning, review, securing, and tabulation of absentee ballots for Fulton County during the November 2020 General Election, and other violations of Georgia election law during the General Election.

86.

By voting to allow Respondent Barron to remain as Director of the Department of Registration and Elections in March, 2021, Respondent Pitts adopted, endorsed, and conceded to the violations of the Georgia Constitutional rights of Petitioners and other registered Georgia voters.

87.

Respondent Pitts is legally responsible, in his individual capacity, for the willfulness, maliciousness, or corruption and indifference, deliberate acts, gross negligence, and negligence of Respondent Barron and the Department of Registration and Elections in failing to preserve and protect the clearly established Georgia Constitutional rights of Equal Protection and Due Process

of Petitioners related to the General Election.

88.

Respondent Pitts failed to support the February 2021 decision of the BRE to terminate Director of Elections Richard Barron and to terminate the contract of Happy Faces, whose personnel were actively involved, *inter alia*, in the clearly unlawful counting, tabulation, and scanning of absentee ballots at State Farm Arena during the November 2020 General Election. Respondent Pitts did not take affirmative steps to correct the clearly unlawful conduct of Respondent Barron related to the General Election and the incorrect certification to the Secretary of State of the results of the Risk Limiting Audit.

14. Fulton County Commissioner, Natalie Hall

89.

Fulton County Commissioner, Natalie Hall (“Respondent Hall”), is and has been at all times relevant to this lawsuit, a Fulton County Commissioner. Respondent Hall did not vote to take affirmative steps to correct the clearly unlawful conduct of Respondent Barron related to the General Election and the incorrect certification to the Secretary of State of the results of the Risk Limiting Audit.

90.

Respondent Hall is legally responsible, in her individual capacity, for the willfulness, maliciousness, or corruption and indifference, deliberate acts, gross negligence, and negligence of Respondent Barron and the Department of Registration and Elections in failing to preserve and protect the clearly established Georgia Constitutional rights of Equal Protection and Due Process of Petitioners related to the General Election.

91.

Respondent Hall was negligent in her ministerial duties to ensure that Respondent Barron and his staff were complying with clearly established Georgia law concerning the accurate handling of the Fulton County absentee ballots during the General Election.

92.

Respondent Hall failed to support the decision of the BRE to terminate Respondent Barron, when the BOC voted to terminate Director of Elections Richard Barron and to terminate the contract of Happy Faces, whose personnel were actively involved in the clearly unlawful counting, tabulation, and scanning of absentee ballots at State Farm Arena during the November 2020 General Election.

93.

By voting to allow Respondent Barron to remain as Director of the Department of Registration and Elections, Respondent Hall condoned, endorsed, and conceded to the violation of the Georgia constitutional rights of Petitioners.

94.

Respondent Hall negligently failed and refused to correct the clearly unlawful acts and omissions of the other Respondents which violated the clearly established lawful rights of Petitioners.

15) Fulton County Commissioner, Marvin S. Arrington, Jr.

95.

Fulton County Commissioner, Marvin S. Arrington, Jr. (“Respondent Arrington”), is and has been at all times relevant to this lawsuit, a Fulton County Commissioner. Respondent Arrington did not vote to take affirmative steps to correct the clearly unlawful conduct of

Respondent Barron related to the General Election and the incorrect certification to the Secretary of State of the results of the Risk Limiting Audit.

96.

Respondent Arrington is legally responsible, in his individual capacity, for willfulness, maliciousness, or corruption and the indifference, deliberate acts, gross negligence, and negligence of Respondent Barron and the Department of Registration and Elections in failing to preserve and protect the clearly established Georgia Constitutional rights of Equal Protection and Due Process of Petitioners related to the General Election.

97.

Respondent Arrington was negligent in his ministerial duties to ensure that Respondent Barron and his staff were complying with clearly established Georgia law concerning the accurate handling of the Fulton County absentee ballots during the General Election.

98.

Respondent Arrington failed to support the decision of the BRE to terminate Respondent Barron, when the BOC voted to terminate Director of Elections Richard Barron and to terminate the contract of Happy Faces, whose personnel were actively involved in the clearly unlawful counting, tabulation, and scanning of absentee ballots at State Farm Arena during the November 2020 General Election.

99.

By voting to allow Respondent Barron to remain as Director of the Department of Registration and Elections, Respondent Arrington condoned, endorsed, and conceded to the violation of the Georgia constitutional rights of Petitioners.

100.

Respondent Arrington negligently failed and refused to correct the clearly unlawful acts and omissions of the other Respondents which violated the clearly established lawful rights of Petitioners.

16) Fulton County Commissioner, Khadijah Abdur-Rahman

101.

Fulton County Commissioner, Khadijah Abdur-Rahman (“Respondent Abdur-Rahman”), is and has been at all times relevant to this lawsuit, a Fulton County Commissioner. Respondent Abdur-Rahman did not vote to take affirmative steps to correct the clearly unlawful conduct of Respondent Barron related to the General Election and the incorrect certification to the Secretary of State of the results of the Risk Limiting Audit.

102.

Respondent Abdur-Rahman is legally responsible, in her individual capacity, for the willfulness, maliciousness, or corruption and indifference, deliberate acts, gross negligence, and negligence of Respondent Barron and the Department of Registration and Elections in failing to preserve and protect the clearly established Georgia Constitutional rights of Equal Protection and Due Process of Petitioners related to the General Election.

103.

Respondent Abdur-Rahman was negligent in her ministerial duties to ensure that Respondent Barron and his staff were complying with clearly established Georgia law concerning the accurate handling of the Fulton County absentee ballots during the General Election.

104.

Respondent Abdur-Rahman failed to support the decision of the BRE to terminate Respondent Barron, when the BOC voted to terminate Director of Elections Richard Barron and to terminate the contract of Happy Faces, whose personnel were actively involved in the clearly unlawful counting, tabulation, and scanning of absentee ballots at State Farm Arena during the November 2020 General Election.

105.

By voting to allow Respondent Barron to remain as Director of the Department of Registration and Elections, Respondent Abdur-Rahman condoned, endorsed, and conceded to the violation of the Georgia constitutional rights of Petitioners.

106.

Respondent Abdur-Rahman negligently failed and refused to correct the clearly unlawful acts and omissions of the other Respondents which violated the clearly established lawful rights of Petitioners.

18) Fulton County Commissioner, Liz Hausmann

107.

Fulton County Commissioner, Liz Hausmann (“Respondent Hausmann”), is and has been at all times relevant to this lawsuit, a Fulton County Commissioner.

108.

Respondent Hausmann is legally responsible, in her individual capacity, for the willfulness, maliciousness or corruption and indifference, deliberate acts, gross negligence, and negligence of Respondent Barron and the Department of Registration and Elections in failing to preserve and

protect the clearly established Georgia Constitutional rights of Equal Protection and Due Process of Petitioners related to the General Election.

109.

Respondent Hausmann ratified Respondent Barron's action or inaction during the Primary, Runoff and General Elections of 2020 and voted on or about March 3, 2021 to accept the BRE's recommendation to terminate Respondent Barron as Director of the Department of Registration and Elections.

19) Fulton County Commissioner, Bob Ellis

110.

Fulton County Commissioner, Bob Ellis ("Respondent Ellis"), is and has been at all times relevant to this lawsuit, a Fulton County Commissioner.

111.

Respondent Ellis is legally responsible, in his individual capacity, for the willfulness, maliciousness or corruption and indifference, deliberate acts, gross negligence, and negligence of Respondent Barron and the Department of Registration and Elections in failing to preserve and protect the clearly established Georgia Constitutional rights of Equal Protection and Due Process of Petitioners related to the General Election.

112.

Respondent Ellis ratified Respondent Barron's action or inaction during the Primary, Runoff and General Elections of 2020 and voted on or about March 3, 2021 to accept the BRE's recommendation to terminate Respondent Barron as Director of the Department of Registration and Elections.

20) Fulton County Commissioner, Lee Morris

113.

Fulton County Commissioner, Lee Morris (“Respondent Morris”), is and has been at all times relevant to this lawsuit, a Fulton County Commissioner.

114.

Respondent Morris is legally responsible, in his individual capacity, for the willfulness, maliciousness, or corruption and indifference, deliberate acts, gross negligence, and negligence of Respondent Barron and the Department of Registration and Elections in failing to preserve and protect the clearly established Georgia Constitutional rights of Equal Protection and Due Process of Petitioners related to the General Election.

115.

Respondent Morris ratified Respondent Barron’s action or inaction during the Primary, Runoff and General Elections of 2020 and voted on or about March 3, 2021 to accept the BRE’s recommendation to terminate Respondent Barron as Director of the Department of Registration and Elections.

V. JURISDICTION

116.

Pursuant to Ga. Code Ann. § 9-4-2, jurisdiction and venue is proper in this Court as Respondents, absentee ballots and related documentation and information are located within Fulton County, Georgia.

117.

At all times pertinent to this action, the acts complained of by Respondents have occurred

in and have continued to occur in Fulton County, Georgia.

118.

This action arises under Article I, Section, I, Paragraph II of the Georgia Constitution (Equal Protection); Article I, Section I, Paragraph I of the Georgia Constitution (Due Process); Ga. Code §§ 9-4-1 to -10; and the Georgia Election Code and the rules and regulations of the Georgia State Board of Elections. For these reasons, this Court has subject matter jurisdiction over this action.

VI. NATURE OF THIS ACTION

119.

This is an action in law and equity under the Georgia Constitution for violation of Petitioners' Equal Protection and Due Process rights by Respondents. Petitioners seek only equitable, injunctive, and declaratory relief against Respondents for, *inter alia*, and primarily, violation of Petitioners' clearly established Equal Protection and Due Process rights guaranteed to them by and through the Georgia Constitution. Petitioners do not seek damages.

A. Declaratory Judgment

120.

“Georgia’s Declaratory Judgments Act is meant ‘to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.’” O.C.G.A. § 9-4-1.

121.

“[T]he respective superior courts of this state ... shall have power, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party petitioning for the declaration, whether or not further relief is or could be prayed, in any civil case in which it appears to the court that the ends of justice require that the declaration should be made; and the declaration shall have the force and effect of a final judgment or decree and be reviewable as such.”

See O.C.G.A. § 9-4-(2)(b).

122.

In Georgia, Superior Courts have the judicial power to declare rights and other legal relations of any interested party in “cases of actual controversy” under O.C.G.A. § 9-4-2 (a) and “in any civil case in which it appears to the court that the ends of justice require that the declaration should be made.” OCGA § 9-4-2 (b). “An ‘interested’ party within the context of the statute is one who ‘has a protect[a]ble interest and asserts an adverse claim on an accrued statement of facts.’” *RES-GA YPL, LLC v. Rowland*, 340 Ga. App. 713, 722, 798 S.E.2d 315, 322 (2017) (quoting *Hobgood v. Black*, 144 Ga.App. 448, 449 (2), 241 S.E.2d 60 (1978)).

B. Injunctive Relief

123.

“Equity, by a writ of injunction, may restrain proceedings in another or the same court, a threatened or existing tort, or any other act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law.” O.C.G.A. § 9-5-1.

C. Due Process

124.

The Due Process clause of the Fourteenth Amendment of the United States Constitution affords protection against the dilution, debasement, or disenfranchisement of Petitioners’ right to vote, and to participate equally as a voter and a candidate in an election, and to have their vote counted equally. Georgia law recognizes under the Georgia Constitution these same principles of the right of Petitioners to vote and to participate in elections and to have their vote and participation counted in accordance with due process of law.

125.

When an election process (or actions of election officials) reaches the point of patent and fundamental unfairness, there is a Due Process violation under the Georgia Constitution. Respondents' acts and omissions described herein are patently and fundamentally unfair in violation of Georgia law and the Due Process clause of the Georgia Constitution.

D. Equal Protection

126.

Under the Equal Protection clauses of the United States and Georgia Constitutions, the government must treat similarly situated Individuals similarly. Georgia law applies the same legal principles to Equal Protection under the Georgia Constitution.

127.

The Georgia Constitution states that a paramount duty of government shall be to ensure the protection of persons and property, and that in discharging that duty, no person shall be denied equal protection of the laws. The Georgia equal protection clause, which is construed to comply with its federal counterpart, requires that the State treat similarly situated individuals similarly. Voting is a fundamental right and restrictions and interference with that fundamental right are tested under the standard of strict judicial scrutiny.

VII. STATEMENT OF FACTS

A. Background Information

128.

Respondents have engaged in, and continue to engage in, negligent hiring, firing, supervising, and training of their employees, staff, and independent contractors regarding the policies, procedures, practices, and customs related to the handling and processing of ballots,

specifically, absentee mail-in ballots in Fulton County elections.

129.

During the General Election, Respondents failed to follow state law by not ensuring full visibility in the ballot processing area in the State Farm Arena while absentee ballots were being scanned and tabulated.

130.

Respondents allowed a skirted table to be brought into the ballot processing area, which obstructed the observers' view of what was under the table.

131.

Respondents allowed the scanning of absentee ballots to continue at State Farm Arena after observers and the media were told by Respondents and their agents that the processing of absentee ballots and tabulation of same had ceased at approximately 10:35 PM on November 3, 2020 after Department of Registration and Elections employee(s) falsely announced that the tabulation and counting of absentee ballots would recommence on the morning of November 4, 2020 due to "a water main break at State Farm Arena. Petitioners show that this announcement was false and was designed to cause poll watchers and the media to leave the room so that improper multiple scanning and tabulation of absentee ballots could be conducted. Petitioners show that at least 36 batches of ballots were scanned and tabulated multiple times by Respondents' employees and third-party contractors on that occasion, thus diluting the vote of Petitioners and other similarly situated legally cast ballots by voters in Fulton County and throughout the State of Georgia.

132.

Respondents' failure to properly manage and oversee the ballot processing procedures during the General Election also occurred during the Fulton County risk limiting audit.

Respondents' actions and omissions during the General Election and the risk limiting audit were done with negligence, willfulness, malice, or corruption.

133.

Respondent Barron breached his clearly established legal duties to properly hire, train, supervise, and monitor the scanning and tabulation of absentee ballots at State Farm Arena, which made it possible for fraudulent ballots to be inserted, counted, tabulated, and certified in the General Election.

134.

All Respondents breached their legal duties under Georgia's election laws by failing to ensure that the risk limiting audit was complete as said audit shows, on its face, that 36 batches were counted multiple times, totaling approximately 161 sequential batch numbers are missing.

135.

There were several discrepancies between the number of ballots reported in the Secretary of State's risk limiting audit and the number of scanned ballot images that were produced by Fulton County to Petitioners in the Favorito-Jeffords case. (*See* April 16, 2021 Order to Produce the Scanned Ballot Images, attached hereto as Exhibit "6").

136.

Included in Respondents' scanned ballot images were thousands of images of ballots being scanned and tabulated two and three times.

137.

A forensic inspection by Petitioners is warranted and must occur to determine the extent of the introduction of counterfeit ballots which were inserted, counted, tabulated, and certified in the General Election and the effect on the outcome of the election of Petitioner Perdue. Corrective

action cannot occur without a forensic inspection of the absentee ballots, absentee envelopes, and other election information by Petitioners. Without such forensic inspection by Petitioners and discovery of the extent of the willfulness, malice, corruption, or fraud and of those responsible therefor, it is likely that those conducting future elections in Fulton will continue to engage in either negligent, grossly negligent, willful, malicious, or corrupt conduct which will abridge the constitutional rights of these Petitioners and similarly situated Georgia voters. Only the judiciary can shed light upon the truth of what occurred and is the only branch of government which can restore the public trust in one-citizen-one-vote in Georgia. A declaratory judgment is mandated here because the ends of justice require that the declaration should be made to such fundamental rights of all Georgians to know that their vote is sacrosanct.

138.

Respondents negligently oversaw and managed the ballot processing for the November 2020 General Election. Respondents permitted fraudulent persons to cast fraudulent votes during the General Election and permitted and reported an improper and inaccurate total vote count for the races in the General Election. Respondents acted with negligence, gross negligence, dereliction of duty, callous disregard, willfulness, malice, or corruption for their responsibilities to ensure fair, honest, accurate, transparent, and reliable election results in the General Election.

139.

The unsupervised continued employment of the same individuals or firms, without accountability for the past actions and omissions, who mismanaged the General Election by allowing the duplicative scanning and tabulation of no less than 36 batches of absentee ballots, allowance of the injection of counterfeit ballots completed by a printer, and the false certification of the risk limiting audit which shows on its face approximately 161 sequentially missing batches

totaling approximately 16,000 votes must be investigated through a forensic inspection of the absentee ballots and absentee envelopes, and counterfeit ballots must be identified so that guardrails can be put in place to ensure that this misconduct can be prevented from occurring again in future elections.

140.

Fulton's risk limiting audit reveals approximately 161 missing batches of ballots which were unlawfully withheld by Respondents from the certified results submitted to the Georgia Secretary of State's Office.

141.

Based upon sworn testimony of Voyles in her affidavit attached hereto, and as shown in the photographs attached to her affidavit, she observed, and held in her hands, large numbers of unlawful counterfeit ballots during the risk limiting audit. According to Voyles, it was obvious that these were counterfeit due to the fact that large numbers of ballots were pristine, had no evidence that these had been creased and folded and used in the absentee vote process, there were no markings on the ballots to show which precinct they had come from, and appeared to have been filled out with a ballot marking device due to the unusually uniform in the manner in which they had been filled out. Virtually all ballots in a batch had votes for the same candidates and had been filled out identically on both sides, including all candidates and referendums. Voyles observed that all the ballots were identical with how the circles were filled in. These clearly were counterfeit ballots which were scanned, tabulated, and included by Respondents in the certified total of votes submitted to the Georgia Secretary of State's Office.

142.

Respondent Barron has been, and continues to be, rightfully scrutinized for his willful, malicious, or corrupt and wanton mismanagement of the General Election by allowing clearly established unlawful acts to occur as described herein which acts and omissions violate the clearly established legal rights of Petitioners under Georgia law, and resulted in improper calculation, tabulation, and reporting of the results of the races in the General Election.

143.

Following Respondent Barron's clearly unlawful leadership of the General Election, on or about February 16, 2021, in a 3-2 vote, the BRE voted to terminate Respondent Barron as Fulton County Elections Director due to his failures and gross mismanagement resulting in unlawful actions of those under his supervision and control.

144.

Despite Respondent Barron's mismanagement and numerous failures as set out herein, on about February 16, 2021 the BOC refused to affirm the recommendation by the BRE to terminate Respondent Barron.

145.

Ralph Jones actively participated in and oversaw the scanning and tabulation of absentee ballots at State Farm Arena from November 3, 2020 to November 4, 2020, during the General Election.

146.

Ralph Jones worked alongside and managed Fulton County employees and employees of Happy Faces in the scanning and tabulation of absentee mail-in ballots at the State Farm Arena from November 3, 2020 to November 4, 2020, as detailed herein.

147.

From November 3, 2020 to November 4, 2020, 36 batches of absentee ballots were scanned multiple times by employees of Respondents, including Ralph Jones, and Happy Faces, and those vote totals were included in the certified number of votes submitted to the Georgia Secretary of State's Office.

148.

From approximately 11:00 PM on November 3, 2020 to approximately 1:00 AM on November 4, 2020, Ralph Jones condoned the scanning of multiple batches of the same ballots multiple times at the State Farm Arena with no poll watchers present, all of which violated Georgia law.

149.

Fulton County employees and Happy Faces employees who were designated to scan and tabulate absentee ballots at State Farm Arena on November 3, 2020 to November 4, 2020, negligently, willfully, and knowingly scanned selected batches of ballots multiple times in an open and obvious manner in the presence of Ralph Jones and in violation of clearly established Georgia law.

150.

Ralph Jones negligently, willfully, knowingly, maliciously or with corruption engaged in clearly established unlawful actions of the scanning and tabulation of absentee ballots at State Farm Arena from November 3, 2020 to November 4, 2020, when he permitted Fulton employees and Happy Faces employees to scan and tabulate selective batches of ballots multiple times. Petitioners show that certain of these batches were most probably counterfeit ballots fitting the description of Voyles in her affidavit. The scanned ballot images which Fulton produced in

response to the April 2020 Order of Judge Brian Amero do not have adequate dots per inch resolution to perform a forensic evaluation, but the originals of the absentee ballots and the originals of the absentee envelopes will unequivocally establish which ballots are legitimate and which are counterfeit when inspected by expert document examiners using microscopes to analyze the markings thereon retained by Petitioners.

151.

Ralph Jones and the five individuals who were conducting the scanning under his direction and control during the late-night hours of November 3 and 4, 2020, collectively engaged in conduct which diminished the vote of Petitioners by improperly scanning selected batches taken from containers stored under tables, and scanned those batches as many as 36 times, all outside the presence of poll watchers as required by Georgia law.

152.

The multiple scanning of ballots is a clearly established violation of Georgia law.

153.

According to sworn testimony of Ralph Jones, neither formal training classes nor any signature matching classes were provided to any of the individuals tasked with examining voters' signatures on the outer envelopes of the absentee ballots to determine the validity of the voter and the ballot. (See Ex. 5).

B. Contractual Relationship with Happy Faces

154.

In 2020, BRE and BOC used Happy Faces employees to process, scan, and tabulate ballots, including on November 3 - 4, 2020 at State Farm Arena.

155.

BRE members have been seeking the approval of the BOC for temporary staff members to assist with the Department of Registration and Elections since at least 2015.

156.

BOC members have negligently, or with willfulness, malice, or corruption voted and approved the contract bids for Happy Faces to provide expert staffing services, such as signature verification of absentee balloting, to the Department of Registration and Elections without any proof that the staffers provided by Happy Faces had any qualifications or specialized training as handwriting experts.

157.

According to the approved contracts, approximately 250 temporary staff members have been provided by Happy Faces to the Department of Registration and Elections. Respondents knew that the temporary staff provided by Happy Faces was not qualified to work or participate in the Department of Registration and Elections and was not qualified to comply with the requirements of Georgia law with respect to the General Election of November 2020 and for future elections.

158.

Since 2016, the BOC approved contracts with Happy Faces have ranged from \$6.9M to \$7M every election cycle.

159.

Under the terms of the contracts, temporary staff members provided by Happy Faces are instructed to report directly to Respondent Barron or his designated representative(s).

160.

During the General Election of November 2020, temporary workers from Happy Faces were assigned to positions in the Department of Registration and Elections, specifically at the English Street Ballot Warehouse and State Farm Arena for processing, scanning, and tabulating ballots.

161.

Respondent BRE Members and Respondent BOC Members will continue to contract with Happy Faces for temporary staffing purposes in future elections, just as they have done since at least 2015, unless enjoined or other relief is granted by the Court. Petitioners show that the failures and improper scanning of ballots multiple times by Happy Faces staffers will likely be repeated in future elections unless Petitioners are provided access to inspect the absentee ballots and envelopes to ascertain the extent of the improper certification of the vote totals from the November 2020 General Election.

162.

Happy Faces has a long-standing contractual/business relationship with Fulton County, dating back to 1999, for providing temporary staffing services in various Fulton County departments. Respondent BOC Members, however, have negligently and intentionally failed to establish standards which constitute best practices for the performance of Happy Faces to provide temporary staffing personnel who are competent to comply with the Georgia election code and the requirements of Georgia law with respect to the conduct of the November 2020 General Election and future elections.

163.

There is no indication by the Respondent BOC Members that they intend to terminate any contractual and/or business relationships with Happy Faces even though employees of Happy Faces participated in violations of clearly established Georgia law with respect to the General Election, including the multiple scanning of batches of ballots without the oversight of poll watchers.

164.

Respondent BOC Members renewed a contractual relationship with Happy Faces in mid-2021, thereby posing a real risk that Petitioners and other similarly situated Georgia voters' right to one-citizen one-vote will be abridged in future elections.

165.

Respondent BOC Members and Respondent BRE Members have made an individual decision to retain Happy Faces to conduct and implement Fulton County elections in the future. The decision was ministerial in nature.

166.

Respondent BOC Members negligently failed to establish the qualifications of all staff hired by Happy Faces to faithfully perform the duties and responsibilities required by Georgia law for the conduct of elections.

167.

The actions of Happy Faces were ministerial in nature. The acts and omissions of Happy Faces staff members as described herein, violated Petitioners' Equal Protection and Due Process rights under the Georgia Constitution and all Respondents are responsible for the acts and omissions of such staff members.

168.

As a result of these acts and omissions of Respondents, ballots were counted by Respondents, their staff, contractors, and agents, resulting in an invalid and erroneous certification by Respondents of the election results from the November 2020 General Election including the results of the Senate race of Petitioner Perdue.

169.

Respondents failed to conduct appropriate screening and background checks regarding the qualifications of the temporary staff members of Happy Faces to work as election workers in the General Election.

C. Susan F. Voyles' Eyewitness Testimony

170.

Voyles has served as a poll manager for twenty years in Fulton County, and she personally observed, as a hand count auditor during the risk limiting audit in Fulton County, Georgia, held on November 14, 2020 fabricated absentee ballots. Voyles' affidavit details how the suspect ballots were marked with a ballot marking device and the ballots appeared to have never "been used in the absentee process" as there were no obvious folds. (*See* Susan F. Voyles' Affidavit ("Voyles Aff."), attached hereto as Exhibit "4").

171.

Voyles accepted the assignment to work as an auditor for the BRE during the Georgia Secretary of State risk limiting audit, which was scheduled to occur from Saturday, November 14 to Wednesday, November 18, 2020 from 7:00 AM to 5:00 PM each day. (Voyles Aff. Ex. 4, ¶ 3). The BRE retained employees to work as auditors who "had no election experience in counting votes or reviewing election ballots." *Id.* ¶ 4.

172.

The training for the audit consisted of a five-minute video with subtitles, but it did not address any procedures about “what an auditor should do if he or she saw matters of concern” and Voyles “did not see any helpful written materials on that issue” nor were they provided information “on how to interpret spoiled ballots or other discrepancies.” (Voyles Aff. Ex. 4, ¶¶ 5, 11). Following the training, Voyles, along with all auditors, executed an oath avowing to conduct an impartial and fair audit. *Id.* ¶ 5.

173.

BRE did not have any standardized operating procedures in effect for the audit. (Voyles Aff. Ex. 4, ¶ 7). On each table where the auditors sat to count the ballots, signs were taped to the table to indicate where ballots for Trump, Biden, and Jorgensen should be placed as well as “blank” ballots. *Id.* ¶ 9. During the hand count, “[t]he procedure was for one person to pick up the ballot and state the vote out loud, and the other was to confirm that selection and place the ballot in the appropriate location,” and “to compare the number with the original number from the opening tally sheet.” *Id.* ¶¶ 9-10.

174.

There were concerns about the chain of custody of the ballots. For example, Voyles’ audit team was “given a cardboard box that contained only absentee ballots [that] was taped shut with packing tape with the seal of the Secretary of State. But the seal was blank, signed by no one, and no information had been supplied. There were no markings indicating the provenance of the box.” (Voyles Aff. Ex. 4, ¶ 12).

175.

Inside this box of ballots, the ballots were “soiled in appearance” and “dirty” “[h]owever, one batch . . . was pristine. There was a difference in the texture of the paper . . . There was a difference in the feel. These ballots appeared to be those used as test ballots, which are used to ensure that the Dominion ballot marking devices are marking properly.” (Voyles Aff. Ex. 4, ¶ 14). Voyles’ identity in a photograph taken of her handling and inspecting the “pristine” ballot is attached. *Id.* ¶ 14. (Photograph of Voyles holding the pristine ballot during the risk limiting audit on November 14, 2020, at the World Congress Center Voyles Aff. Ex. 4, p.1). The two other photographs were taken of other auditors handling and inspecting the “pristine” ballots on November 14, 2020, at the World Congress Center. (Voyles Aff. Ex. 4, pp. 2-3). The “pristine” absentee ballots appeared that “[t]here was no indication they have ever been used in the absentee process.” (Voyles Aff. Ex. 4, ¶ 15).

176.

Voyles avers that “[t]he most glaring issue was that the ballots had been preprinted and that every office on all 107 ballots . . . had been filled out identically on both sides—meaning that all votes were for the same candidates, the same referendums, and they were identical in how the circles were filled-in.” (Voyles Aff. Ex. 4, ¶ 16).

177.

Voyles personally observed as a hand count auditor what she believes were fabricated absentee ballots which had been inserted into the tabulated ballot totals.

178.

On December 3, 2020, Voyles testified about her election concerns before a Georgia Senate Committee, and on December 10, 2020, Voyles testified about her election concerns before a Georgia House Committee.

179.

On December 17, 2020, Voyles received a termination notice from her poll manager services from Fulton County, Georgia, clearly in retaliation for her outspoken public statements about the fabricated ballots she handled and observed.

180.

Respondents had a duty to investigate the election concerns raised by Voyles in accordance with their oath to “prevent any fraud, deceit or abuse” when conducting an election. *See* Ga. Code Ann. § 21-2-70(15)(B). Respondents, their staff, contractors, and agents conducted no such investigation, the failure to do so constitutes an abdication of their duties under Georgia law.

D. Petitioners’ Forensic Accountant’s Findings Evidencing Major and Material Discrepancies in Absentee Mail-In Ballots Scanned Images

181.

In the Favorito-Jeffords Case, Petitioners’ Forensic Accountant testified on May 21, 2021, before Chief Judge Amero concerning his preliminary findings. (*See* Petitioners’ Forensic Accountant’s May 21, 2021, testimony, attached hereto as Exhibit “7”). Petitioners’ Forensic Accountant reviewed the risk-limiting audit the Georgia Secretary of State’s Office filed online in connection with the General Election. (May 21, 2021 HT 28: 22-24). Petitioners’ Forensic Accountant explained a risk-limiting audit was conducted which was a recount, a retabulation of the vote based on the Fulton County batches from the November election. (May 21, 2021 HT 29: 1-2). Petitioners’ Forensic Accountant testified that he also received a second set of data that

contained “the images of the batches that were produced by the Dominion software” (May 21, 2021 HT 29: 3-4).

182.

Petitioners’ Forensic Accountant identified “sequence breaks” in the images of the batches of ballots. (May 21, 2021 HT 36: 15-24). Petitioners’ Forensic Accountant explained that in relation to batches, there might be “batches number 1 through 5, and then the next batch in the data is batch number 25.” He explained that his job, as a forensic accountant, is to determine what happened to the missing batches of ballots. (May 21, 2021 HT 36-37: 25-4).

183.

Petitioners’ Forensic Accountant testified that after reviewing the data from the Secretary of State’s Office, “[t]here were 161 batches that were missing by virtue of these sequence breaks” (May 21, 2021 HT 37: 5-10).

184.

Petitioners’ Forensic Accountant identified batches of ballots that were scanned more than one time based on the scanner number and the batch number. (May 21, 2021 HT 38: 6-11). This action by Respondents resulted in vote suppression and vote enhancement as a matter of law.

185.

Petitioners’ Forensic Accountant explained that “. . . there was the same scanner, batch, and identical number of votes. We identified nine batches. When there was the same scanner batch number but a different number of votes -- in other words, they scanned it twice and came up with two different counts, there were 15 batches.” (May 21, 2021 HT 38: 11-16). He also identified “where there was a different scanner and a different batch, but they were the same identical votes for all three candidates” which totals “29 batches . . . that appear to have been counted twice.”

(May 21, 2021 HT 38: 17-22).). This action by Respondents resulted in vote suppression and vote enhancement as a matter of law.

186.

Petitioners' Forensic Accountant testified that there are approximately 161 missing batches. (May 21, 2021 HT 40: 20-22). He explained that "the only way to do a proper reconciliation of these amounts is to go back to the individual [original] unique ballots, and the only way to do that is to find a unique identifier on the original envelope and the original ballot, the hard-copy ballots." (May 21, 2021 HT 40: 12-17).

187.

According to Petitioners' Forensic Accountant, the return mail envelopes that contained the absentee ballots are needed for inspection because "there should also be a one-to-one correlation between the envelopes and the [original] ballots" and according to "[Ralph] Jones' testimony, . . . there is a tracking stamp that is sprayed . . . onto the envelope to identify when it was received, and it gives it a unique identifier." (May 21, 2021 HT 40-41: 20-1).

188.

Petitioners' Forensic Accountant testified that physical inspection of the ballots is necessary and essential, "[b]ecause that's the original evidence and that's the best evidence, and it also fits in with the foundational basics of accounting as I mentioned: completeness, existence, and accuracy." (May 21, 2021 HT 42: 7-15).

189.

In sum, if viewed from a forensic examination of the absentee ballots and related documentation and information, there is ample prima facia evidence of a violation of Petitioners' constitutional rights of equal protection and due process under the Georgia Constitution which

warrants, justifies and requires that these Petitioners be afforded the opportunity to inspect the ballots, envelopes, and related election documents.

E. Respondents' Fiduciary Duty

190.

Pursuant to O.C.G.A. § 21-2-408, Scanners (i.e. workers hired to scan absentee ballots), supplied by Fulton County and Happy Faces, under the supervision and control of Respondents, had a duty to stop processing ballots after Respondent Barron, his staff, employees, agents, or contractors, informed poll watchers that ballot processing was stopping for the night on November 3, 2020 due to a “water main break at State Farm Arena”. Respondents failed to do so. The announcement of a “water main break” was made by a Fulton Election employee and was false and designed to clear the room of poll watchers. This scheme worked, as the poll watchers and the media left immediately and were not present to witness the scanning of batches of ballots by the Scanners.

191.

Under O.C.G.A. §§ 21-2-492 and 21-2-493, the Respondents had a duty to give notice to the observers before resuming the ballot processing, but Respondents, their staff, contractors, and agents failed to give the notice to neutral observers as required by Georgia law.

192.

Respondents, by and through their staff, contractors, and agents acted in a negligent or in a willful, malicious, or corrupt and wanton disregard of the constitutional rights of Petitioners by their failure to perform the accurate and legal duties and responsibilities required of them under Georgia law. Such conduct injured and harmed Petitioners in a constitutionally impermissible manner.

193.

Respondents, their staff, contractors, and agents breached their duty owed to Petitioners by failing to properly implement the statutory provisions of the Georgia Election Code and in failing to comply with the Georgia Constitution.

194.

The Respondents breached their duty owed to Petitioners by negligent, willful, malicious, or corrupt failure to properly supervise implementation of the provisions of the Georgia Election Code.

195.

Respondent BOC Members have responsibility for supervision, oversight, and direction of the BRE and have responsibility for implementation of the November 2020 General Election including, but not limited to, the accurate and legal tabulation of the ballots cast by voters in the November 2020 General Election in Fulton County.

196.

As a result of these negligent, grossly negligent, intentional, willful, malicious, or corrupt acts and omissions of Respondents as described herein, ballots were accepted, reviewed, tabulated, and counted by Respondents, their staff, contractors, and agents, which resulted in false, misleading, deceptive, invalid, and erroneous certification by Respondents of the election results from the November 2020 General Election, including the election results for the United States Senate race of Petitioner Perdue.

197.

For the reasons stated above, Petitioners demand that Respondents produce and permit Petitioners' to examine, inspect, duplicate, and evaluate the following: the originals of all mail-in paper absentee ballots, absentee voter return envelopes, and other

election materials from the November 2020 General Election, including all electronically stored information about the General Election and electronic images of the electronic devices used by Respondents for the General Election.

VIII. CLAIMS OF RELIEF

COUNT I

DEPRIVATION OF EQUAL PROTECTION RIGHTS

198.

Petitioners incorporate all previous paragraphs of this Petition. Petitioners state this cause of action against Respondents in their individual capacities for purposes of seeking declaratory, mandamus, and injunctive relief.

199.

The Constitution of the State of Georgia provides, “[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.” Ga. Const. art. I, § I, ¶ II.

200.

Petitioners do not assert any claim under the United States Constitution or federal law. However, the Georgia Supreme Court has interpreted the Georgia Constitution as providing the same rights and remedies available to Georgia citizens under the United States Constitution.

201.

Petitioners show that the Georgia Supreme Court has held that “[b]ecause the protection provided in the Equal Protection Clause of the United States Constitution is coextensive with that provided in Art. I, Sec. I, Par. II of the Georgia Constitution of 1983, we apply them as one.” *Nodvin v. State Bar of Ga.*, 273 Ga. 559-560 (2) (544 S.E.2d 142) (2001); *See also Grissom v.*

Gleason, 262 Ga. 374, 376 (2) (418 S.E.2d 27) (1992).

202.

Petitioners assert that “[u]nder the equal protection clauses of the United States and Georgia Constitutions, the government is required to treat 'similarly situated individuals in a similar manner.'” *Nichols v. Gross*, 282 Ga. 811, 812 (653 S.E.2d 747) (2007).

203.

The Georgia Supreme Court has held, “[t]he Georgia Constitution states that a paramount duty of government shall be to ensure the protection of persons and property, and that in discharging that duty, ‘no person shall be denied equal protection of the laws.’ The Georgia equal protection clause, which is construed to be consistent with its federal counterpart, requires that the State treat similarly situated individuals in a similar manner.” *City of Atlanta v. Watson*, 267 Ga. 185, 187 (1996). If the government action in question “operates to the disadvantage of a suspect class or impede the exercise of a fundamental right, it is tested under a standard of strict judicial scrutiny.” *Id.*

204.

Petitioners aver that it is the longstanding law of the land that “[t]he political franchise of voting ... [t]hough not regarded strictly as a natural right, but as a privilege merely conceded by society, according to its will, under certain conditions, nevertheless it is regarded as a fundamental political right” *Yick v. Hopkins*, 118 U.S. 356, 370 (1886).

205.

The United States Supreme Court held that “generally ... the particular provisions of an act of legislation establishing means for ascertaining the qualifications of those entitled to vote ...

was always open to inquiry, as a judicial question.” *Yick v. Hopkins*, 118 U.S. 356, 371, 6 S. Ct. 1064, 1071, 30 L. Ed. 220 (1886); *See Daggett v. Hudson*, 43 Ohio St. 548, 3 N.E. 538 (1885).

206.

Petitioners show that “[i]t must be remembered that ‘the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.’” *Bush v. Gore*, 531 U.S. 98, 105 (2000) (citing *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)).

207.

Petitioners further show that “[u]ndoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds v. Sims*, 377 U.S. 533, 583 (1964).

208.

Thus, treating similarly situated individuals similarly requires abiding by the statutory processes enacted by the Georgia General Assembly and the rules promulgated by the State Election Board for the uniform application of policies, procedures, practices, and customs throughout the county and the state of Georgia when processing, tabulating, and counting election ballots.

209.

By and through the actions of Respondents as described herein, in their individual capacity, and through the acts of their employees, contractors, and agents, Respondents have negligently, willfully, wantonly, outwardly, maliciously or corruptly and unapologetically acted with

malfesance and violated the Equal Protection rights of Petitioners under the Georgia Constitution and Georgia law when they, *inter alia*, negligently, intentionally, willfully, maliciously, or corruptly performed and/or allowed the unlawful and unconstitutional manipulation of the ballots in the General Election in Fulton County.

210.

Respondents, jointly and severally, by and through their own acts, and through the acts of their employees, contractors, and agents, failed to implement and ensure such uniform procedure with visibility and transparency.

211.

The failure to perform ballot processing in accordance with Georgia law created two classes of voters that had two different standards applied to their absentee votes. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless this Court grants the relief requested by Petitioners herein.

212.

Here, the Respondents have diminished the value of Fulton County voter's legally cast votes by strategically disregarding Georgia law.

The Systemic Violation of Petitioners' Equal Protection Rights

213.

Respondents, their staff, contractors, and agents treated Georgia voters differently depending on when and where their ballots were processed. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections.

214.

Respondents, and their employees, contractors, and agents, jointly and severally, chose not to follow clearly established Georgia law or the clearly established State Election Board (“SEB”) rules, therefore similarly situated electors in Fulton County experienced disenfranchisement, dilution, debasement, and corruption of their vote in the General Election. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections. Also, similarly situated electors in other counties of Georgia were also subject to disenfranchisement, dilution, debasement, and corruption of their vote in the General Election.

215.

The disparity in the handling and processing of absentee ballots caused registered voters, such as Petitioner Lennon, and similarly situated voters, to be deprived of their vote. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections.

216.

Respondents’ blatant disregard of their legal responsibility for ensuring that their employees, staff and contractors comply with state law and the State Election Board rules and regulations signifies their acquiescence to and promotion of allowing bad actors to steal the votes of registered voters like Petitioner Lennon by allowing bad actors to unlawfully request, receive, and vote absentee ballots by stealing the identity of other law-abiding voters. This unlawful activity was guaranteed to result because of the delegation of the duty to verify signatures to totally untrained individuals. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections.

217.

Respondents, their staff, contractors, and agents committed election manipulation while processing ballots at State Farm Arena between 11:02 PM on November 3, 2020 and 12:51 AM on November 4, 2020. This conduct violated Petitioners' Equal Protection rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections.

218.

As a result, there is a substantial likelihood that fabricated ballots, of the type described by Susan Voyles' affidavit, were introduced into the ballot processing at State Farm Arena. This conduct violated Petitioners' Equal Protection rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents described more fully herein, and their employees, contractors, and agents will occur in future elections.

219.

Respondents' systemic failure to provide and ensure uniformity across Fulton County, and its failure to properly perform the risk limiting audit, is a negligent, willful, knowing, direct and flagrant violation of the Constitution of the State of Georgia. This conduct violated Petitioners' Equal Protection rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

COUNT II:

Declaratory Judgment for Violation of Due Process Claim

220.

Petitioners incorporate by reference all of the foregoing paragraphs and further allege as follows:

221.

Petitioners show that “all citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.” Ga. Const. art. I, § 1, ¶ VII. Under the Constitution of the State of Georgia, “[n]o person shall be deprived of life, liberty, or property except by due process of law.” Ga. Const. art. I, § I, ¶ I. “The Supreme Court has interpreted this clause to provide two distinct guarantees: substantive due process and procedural due process.” *DeKalb Stone, Inc. v. Cnty. of DeKalb, Ga.*, 106 F.3d 956,959 (11th Cir. 1997) (citing *Zinermon v. Burch*, 494 U.S. 113, 125 (1990)). This is the same interpretation provided to the Georgia Constitution.

222.

Petitioners show that the right to vote is a fundamental right, as is the right to have each and every vote treated equally with all other votes cast by all voters in the state. The Georgia Supreme Court and courts interpreting Georgia law have interpreted the Georgia Constitution guarantee of Due Process to be coextensive with interpreting the Due Process clause of the United States Constitution. Petitioners do not make any claim arising under the Due Process clause of the United States Constitution. Petitioners only claim a violation of the Due Process clause of the Georgia Constitution.

223.

Petitioners show that the right to vote is a liberty interest protected by the Due Process clause of the Georgia Constitution.

224.

Petitioner Lennon's right to vote—her liberty to vote—which is protected by the Due Process clause of the Georgia Constitution, was violated by the Respondents and their employees and agents, when Petitioner Lennon attempted to vote in person, and was informed that an absentee ballot had been requested and voted in her name. Petitioner Lennon shows that such act constituted a fraudulent vote which occurred due to the failures of the Respondent to properly verify her signature by the use of untrained individuals and to safeguard her identity. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

225.

Respondents' failure to implement the Georgia Election Code, Title 21, and Respondents' failure to implement policies, procedures, practices, and customs that guarantee the protection to Petitioner Lennon afforded under the Due Process clause of the Georgia Constitution, caused Petitioner Lennon's vote to be diminished and of no value because the bad actor who cast an absentee ballot in her name cancelled out her vote. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections.

226.

The Respondents have failed to show and cannot show that these failures set forth in this legal action complied with Georgia Law during the General Election. This conduct violated

Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

Substantive Due Process Violated at the State Farm Arena

227.

Respondents, jointly and severally, violated the Due Process protections of qualified Georgia Electors guaranteed by the Georgia State Constitution during the scanning of counterfeit ballots and multiple scans of batches of ballots at State Farm Arena. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

228.

The Respondents negligently, willfully, maliciously, or corruptly and purposefully manipulated the election results when they failed to abide by state law when processing the absentee ballots at State Farm Arena. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

229.

Petitioners show that fabricated, unlawful absentee ballots were introduced and tabulated multiple times during the ballot processing at State Farm Arena. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

230.

The Respondents have failed to show and cannot show that the failures set forth in this legal action complied with Georgia Law during the General Election. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

231.

The Respondents neglected to implement necessary safeguards and best practices during the General Election of November 2020 to ensure that only valid absentee ballots, and not counterfeit ballots, were processed, scanned, tabulated, and certified in the final vote count. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

232.

Respondent Barron and Ralph Jones negligently and knowingly failed to ensure that the ballot processing procedures in place in Fulton County comported with Georgia law and with the Rules and Regulations promulgated by the State Elections Board. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

233.

Respondent Barron and Ralph Jones consciously allowed election personnel to process the ballots, including signature verification and scanning, without proper oversight, qualifications, and training to ensure complete compliance with Georgia law. This conduct violated Petitioners'

Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

234.

Respondent Barron and Ralph Jones possessed knowledge that the temporary election workers from Happy Faces did not have the proper training to verify signature or how to process, scan and handle the absentee ballots in accordance with Georgia law in the General Election. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

235.

Respondent Barron and Ralph Jones knew that by employing temporary staff from Happy Faces to assist with the General Election, there would be no assurance the chain of custody of absentee ballots would or could be maintained, as required by Georgia law. Petitioners show that Fulton Elections Division printed some 20,000 additional absentee ballots in late October 2020, and cannot establish the chain of custody of those absentee ballots and whether some or all were mailed out to voters. This failure to account for the chain of custody of these 20,000 absentee ballots raises serious concerns that these could have been filled out with a printer, rather than a human, and tabulated in violation of the law. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

236.

The decision to accept or reject a ballot would, could, and did rest on the shoulders of temporary staffers who were unskilled and untrained in election processes and protocols. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that Respondents and their employees and agents will fail to properly select qualified and properly trained employees and/or temporary staffers who are well-versed and educated in election law and ballot processing in future elections unless the relief requested by Petitioners herein is granted.

237.

Petitioners show that the individuals operating the five scanners used to tabulate the votes intentionally scanned certain selected batches of ballots multiple times at State Farm Arena during the General Election from November 3 - 4, 2020 and omitted approximately 16,000 ballots in the risk limiting audit, thereby depriving voters of their right to vote, as their ballots were not scanned, tabulated, and included in the certified results for Fulton County. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that Respondents, their staff, contractors, and agents will permit the same unlawful actions to occur in future elections unless the relief requested by Petitioners herein is granted.

238.

The individuals operating scanners at State Farm Arena during the late-night hours of November 3 - 4, 2020 violated election laws by manipulating the election by treating voters' ballots differently when they scanned numerous batches of ballots multiple times. This action violated the one-citizen one-vote right of thousands of Georgia voters located in Fulton as well as all other Georgia counties. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that Respondents, their staff, contractors, and agents will permit the

same unlawful actions to occur in future elections unless the relief requested by Petitioners herein is granted.

239.

Respondents and their employees, contractors, and agents created an environment where the State Farm Arena Scanners were allowed to deprive Petitioners, and voters all across Georgia, of their constitutional right of one-citizen, one-vote. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

240.

By allowing counterfeit ballot processing without insuring signatures were legitimate, by scanning and tabulating ballots which had been printed rather than filled out by human hand, and by scanning batches of ballots multiple times, and by making false and misleading representations of the certified vote in the risk limiting audit, Respondents, by and through their own actions and omissions did negligently, willfully, maliciously and/or with corrupt motives supervise their employees and agents which resulted in the disenfranchisement and dilution of the votes of qualified Georgia voters in Fulton County and all other Georgia counties, including Petitioners. Respondents' actions, as described herein, resulted in an improper and erroneous tabulation of the vote totals for the Senate race for Petitioner Perdue. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. Petitioner Perdue has legal standing to the requested relief sought in the matter. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

241.

The Respondents, by and through their own actions or omissions, allowed the debasement, disenfranchisement, and dilution of the votes of qualified Georgia voters across the state, including Petitioners. Such actions by Respondents resulted in an improper count and tabulation of the votes for the Senate race of Petitioner Perdue. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

242.

Respondents, their employees, and their agents utterly failed to protect the interests or fundamental rights of all Georgia voters, inclusive of Petitioners' rights. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

243.

Respondent BRE Members acted with negligence, willfulness, malice, or corruption in the conduct of the General Election and thereby violated the due process rights of the voters of Fulton County and all Georgia counties, inclusive of Petitioners' rights, when they continued to seek approval of contracts for temporary staffers to work in the Department of Registration and Elections, knowing that the temporary staffers lacked the necessary training to work in the Department of Registration and Elections. This conduct violated Petitioners' Due Process rights under the Georgia Constitution.

244.

Respondent BRE Members neglected their duties which they owed to Petitioners when they failed to appropriately manage and set best practices for its Elections Director, Respondent Barron and its Elections Registrations Director Ralph Jones, including their employees and their agents. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, and contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

245.

Through their own negligence, Respondent BRE Members permitted Respondent Barron and Registrations Director Ralph Jones, and their agents, and the State Farm Arena Ballot Scanners, to increase and decrease the vote shares of candidates based on their own discretion—which is clearly unlawful. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

246.

Respondent BRE Members control election officials and they have the authority to reprimand and/or instruct Respondent Barron, their employees, and their agents to abide by Georgia law and the Rules and Regulations promulgated by the SEB. However, the Respondent BRE Members failed to establish best practices for the administrators who reported to the Board. This conduct violated Petitioners' Due Process rights under the Georgia Constitution.

247.

Respondent BRE Members permitted the deprivation of Petitioners' (and similarly situated voters in Georgia) Georgia constitutional right of one-citizen, one-vote by acquiescing to

Respondent Barron, Ralph Jones, and the State Farm Arena Ballot Scanners' improper manner of processing, scanning, and tabulation of absentee mail-in ballots. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

248.

Through the continued usage of Happy Faces and/or other temporary staff members provided to the Department of Registration and Elections, there exists a systemic failure and lack of clearly established best practices and safeguards approved by the BRE Members. One glaring example is the failure to ensure that the persons deciding whether a voter's signature is authentic is delegated to temporary staffers who have no training to do so, resulting in the high probability of acceptance of fraudulent absentee ballots. This process rests on the shoulders of countless seasonal temporary staffers working in the Department of Registration and Elections every election cycle since 2015. This conduct violated Petitioners' Due Process rights under the Georgia Constitution. It is probable that the same unlawful actions by Respondents, their staff, contractors, and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

249.

All the Respondents, jointly and severally, participated in one or more negligent, willful, malicious, wanton, deliberate and/or corrupt acts, or failure to act, resulting in the violations of Petitioner Lennon's fundamental right to vote protected by the Due Process clause of the Georgia Constitution.

COUNT III

Equitable Relief

250.

Petitioners incorporate by reference all of the foregoing paragraphs and further allege as follows:

251.

Respondents, acting by and through themselves, their managers, agents and their employees, failed the Petitioners and voters in Fulton County during the General Election through their negligent hiring, firing, and training of their employees and agents. It is probable that the same unlawful actions by Respondents and their employees and agents will occur in future elections unless the relief requested by Petitioners herein is granted.

252.

A forensic inspection of the absentee ballots, absentee voter return envelopes, and related election information and documentation is warranted and necessary to restore transparency in government, integrity, and confidence in the election system.

COUNT IV

Injunctive Relief

253.

Petitioners incorporate by reference all of the foregoing paragraphs and further allege as follows:

254.

“Equity, by a writ of injunction, may restrain proceedings in another or the same court, a threatened or existing tort, or any other act of a private individual or corporation which is illegal

or contrary to equity and good conscience and for which no adequate remedy is provided at law.”
O.C.G.A. § 9-5-1.

255.

Without an injunction, Petitioners will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to Respondents.

256.

Immediate and irreparable injury, loss, or damage will result to Petitioners if the requested injunctive relief is not granted because immediate access to the absentee ballots, followed by a thorough forensic examination of each ballot by highly qualified document examiners, will serve to restore the public’s confidence in the state’s election process.

257.

Petitioners show that it is a basic tenet of a free republic that the counting and tabulation of fraudulent ballots cannot be allowed to stand unchallenged.

258.

Granting the requested relief will not disserve the public interest.

259.

The Petitioners are entitled to the temporary and permanent injunctive relief sought herein because there is a substantial likelihood of success on the merits.

260.

The damage to Petitioners is not readily compensable by money and no other remedy at law exists.

261.

Petitioners show that the balance of equities favors entry of temporary and permanent injunctive relief against Respondents would not be averse to any legitimate public interest.

262.

The Petitioners seek to have the Court ensure, by an appropriate Order, the safe-keeping and non-spoliation of all original absentee ballots, absentee envelopes and all other related election information from the November 2020 election until such time that Petitioners may cause to be conducted a forensic inspection by qualified independent document examiners and experts who shall determine which absentee ballots are original and which are counterfeit, if any.

Petitioners request such other and further relief, at law and in equity, which the Court deems necessary to ensure an accurate certification of the risk limiting audit to the Georgia Secretary of State, given that the current certification is plagued with demonstrable errors. Petitioners show that this forensic inspection will have the resulting benefit of ensuring that Fulton County implements the necessary changes, safeguards and best practices to ensure that future elections are conducted in strict accordance with Georgia law.

263.

A sizable segment of the population of Georgia is aware of the improprieties and failures of Fulton County associated with the General Election of 2020. It is the objective of these Petitioners to conduct a forensic examination and inspection of the absentee ballots, absentee mail-in envelopes and related election information and documentation in order to answer the question, once and for all, whether there was corruption and in the end to restore the public confidence in the principle of one-citizen one-vote, The public's faith and trust in this core principle is essential to the future of Georgia and the Republic. Petitioners respectfully show that a forensic inspection

is the only adequate remedy. Respondents have been knowledgeable about the gross inaccuracy of the risk limiting audit since the hearing of May 21, 2021, when the gapping holes of the risk limiting audit were presented in Court and were not rebutted by counsel for Fulton County. Upon learning of this information, the Respondents have done nothing to reconcile the gross inaccuracies of the risk limiting audit or to recertify the vote. Instead, Respondents have by their actions demonstrated an intention to continue to allow the same failures to be repeated in future elections by the BOC's decision to renew and extend the contract with the staffing company which played a role in the problems which plagued the General Election of 2020.

264.

Petitioners do not seek to overturn or contest the General Election of 2020—but rather to present uncontroverted evidence to this Court of an accurate account of legal, not counterfeit, absentee ballots, and to play a role in fashioning a remedy in order to prevent the harm and injury from occurring in the future. Without the opportunity to conduct a forensic inspection of the absentee ballots and related documentation and information, the same wrongdoings will be committed, the same incompetent actors will be involved, and there will be no justice for Petitioners or the citizens of Georgia.

265.

This Court possesses the statutory authority to unseal the ballots, as Judge Brian Amero ordered on May 21, 2021. Petitioners respectfully request that this Court exercise its authority and permit the unsealing of the ballots for a forensic inspection conducted by Petitioners' using well-respected and accomplished experts.

PRAYER FOR RELIEF

WHEREFORE, THE PETITIONERS respectfully pray that this Court:

- a) **ISSUES** and **EFFECTUATES** service;
- b) **CONDUCTS** an evidentiary hearing on the temporary injunction requested by Petitioners;
- c) **DECLARES** that the Respondents have violated the Georgia Constitution Equal Protection Clause;
- d) **DECLARES** that the Respondents have violated the Georgia Constitution Due Process Clause;
- e) **ISSUES** a temporary and permanent injunction preventing the spoliation, removal, alteration, destruction or tampering with all election absentee ballots, envelopes, and documents and information including the 20,000 absentee paper ballots printed by Fulton County but not voted, chain of custody documents relating all aspects of absentee ballot printing and mailout to requesting voters, and the receipt, signature verification and tabulation of same, together with any other injunctive relief deemed necessary by the Court;
- f) **ORDERS** to unseal absentee ballots, absentee ballot return envelopes, the absentee ballot election reports, and other paper and electronic information election materials from the General Election and to permit Petitioners to review, examine, inspect, and duplicate such materials including electronic images of electronic drives used by Respondents in the General Election;
- g) **ORDERS** Respondents to terminate all employees, agents, and contractors shown to have had knowledge of or acquiesced in the improper acts described herein;

h) **GRANTS** Petitioners request for this case to remain active through the 2022 statewide elections in order for the Court to supervise the 2022 elections in Fulton County;

i) Upon completion of the forensic examination, based upon the evidence, enter an Order commanding Respondents to certify the correct vote total to the Secretary of State.

j) **GRANTS** Petitioners' attorney fees for having to prosecute this civil action; **AND**, **GRANTS** other relief, both general and special, at law and in equity, that the Court **DEEMS** just and proper.

Respectfully submitted this 9th day of December, 2021.

CHEELEY LAW GROUP, LLC

/s/ Robert D. Cheeley

Robert D. Cheeley

GA Bar No. 122727

2500 Old Milton Parkway, Suite 200

Alpharetta, Georgia 30009

T: (770) 814-7001

F: (678) 559-0273

bob@cheeleylawgroup.com

/s/ Wm. Charles Bundren

Wm. Charles Bundren, Esq.

Pro Hac Vice Motion to be Submitted

Texas State Bar No. 03343200

BUNDREN LAW GROUP, PLLC

2591 Dallas Parkway, Suite 300

Frisco, Texas 75034

T: (214) 808-3555

charles@bundrenlaw.net

/s/ Preston Haliburton

Preston Haliburton

HALIBURTON LAW FIRM

Georgia Bar No. 142222

310 A Newnan Street, Suite A

Carrollton, Georgia 30117

T: (404) 237-8246

prestonhaliburton@gmail.com

Counsel for Petitioners,

*David A. Perdue and Elizabeth Grace
Lennon*

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