

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE,)
GWINNETT COUNTY REPUBLICAN)
PARTY, and TIM FLEMING,)
)
Plaintiffs,)
)
v.)
)
DAVID HANCOCK, LORETTA)
MIRANDOLA, AMY BRAY, ALICE)
O'LENICK, and RICHARD PORTER, in their)
individual capacities,)
)
Defendants.)

Case No. 26-A-05660-10

**EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL WITH
INCORPORATED MEMORANDUM OF LAW**

Pursuant to O.C.G.A. § 9-11-62(c) and Uniform Superior Court Rule 6.7, Plaintiffs Republican National Committee ("RNC"), Gwinnett County Republican Party ("Gwinnett GOP"), and Tim Fleming (collectively, "Plaintiffs") respectfully move this Court for an emergency injunction pending appeal (the "Motion"). Early voting for the November 3, 2026, general election begins on October 13, 2026, and Georgia law requires Plaintiffs to seek this relief from the trial court in the first instance to prevent the upcoming advance voting period from mooted their appeal.

Accordingly, Plaintiffs' Motion requests an emergency injunction barring Defendants David Hancock, Loretta Mirandola, Amy Bray, Alice O'Lenick, and Richard Porter, in their individual capacities, from implementing or enforcing Gwinnett County Board of Registrations and Elections Policy BRE-603 (the "Policy") for the November 3, 2026, general election, pending resolution of Plaintiffs' appeal of this Court's October 7, 2026, Order Denying Motion for Interlocutory Injunction and Granting Motions to Dismiss (the "Order").

BACKGROUND

1. On June 18, 2026, Plaintiffs filed a Verified Petition for Declaratory and Injunctive Relief against Defendants in their individual capacities, seeking a declaration that the Policy is unlawful and a permanent injunction against its enforcement by Defendants both for the November 3, 2026, general election and, separately, for all future elections. *See* Plaintiffs' Verified Petition for Declaratory and Injunctive Relief, attached hereto as Exhibit A.

2. After finally being assigned to a judge, on August 7, 2026, Plaintiffs expeditiously moved for an interlocutory injunction barring Defendants from implementing the Policy. *See* Plaintiffs' Expedited Motion for Interlocutory Injunction, attached hereto as Exhibit B; Plaintiffs' Memorandum of Law in Support of its Emergency Motion for Interlocutory Injunction, attached hereto as Exhibit C.

3. Plaintiffs fully briefed their interlocutory motion and responded to Intervenor's and Defendants' motions to dismiss. *See* Plaintiffs' Reply in Support of Motion for Interlocutory Injunction, attached hereto as Exhibit D; Plaintiffs' Response in Opposition to the Motions to Dismiss, attached hereto as Exhibit E.

4. On October 7, 2026, the Court denied Plaintiffs' motion for an interlocutory injunction and instead granted Intervenor's and Defendants' motions to dismiss under O.C.G.A. § 9-11-12(b)(6). *See* October 7, 2026, Order Denying Motion for Interlocutory Injunction and Granting Motions to Dismiss, attached hereto as Exhibit F.

5. Plaintiffs have filed a Notice of Appeal to the Court of Appeals, appealing the Order, contemporaneously with this Motion. *See* Notice of Appeal, filed October 8, 2026, attached hereto as Exhibit G.

6. Advanced voting for the November 3, 2026, general election begins October 13, 2026.

7. As it stands, the Policy will govern the receipt of absentee-by-mail ballots for the November 3, 2026, general election, and those ballots will begin to be received on October 13, 2026.

8. Absent an injunction pending appeal, Plaintiffs' motion for interlocutory injunction will be mooted and both their motion and the verified petition as they pertain to the November 3, 2026, general election will be denied the appellate review for which they are entitled. *See* O.C.G.A. § 5-6-34(a)(4) (permitting direct appeal from orders "refusing applications for interlocutory . . . injunction"); O.C.G.A. § 5-6-34(a)(1)(B) (permitting direct appeal from a "final judgment").

LEGAL STANDARD

9. In deciding a motion for injunction pending appeal, this Court "must weigh all of the pertinent equities, including the likelihood that the appellant will prevail on the merits of his appeal, the extent to which the applicant will suffer irreparable harm in the absence of a[n] . . . injunction, the extent to which a[n] . . . injunction would harm the other parties with an interest in the proceeding, and the public interest." *Green Bull Ga. Partners, LLC v. Register*, 301 Ga. 472, 473 (2017). An "applicant need not always show that he more likely than not will prevail on appeal," considering the other equities, showing a "substantial case on the merits of his appeal" may be enough. *Id.* at 474 (cleaned up).

10. Although similar to the interlocutory injunction standard, the Georgia Supreme Court has explained that an "injunction pending appeal may be warranted [even] when an injunction pending final judgment is not." *Id.* at 475.

11. There are also "important differences in application" for a motion for injunction pending appeal, "which may . . . lead to different outcomes." *Id.* First, the likelihood of success on the merits at trial and on appeal are "not inevitably the same." Second, on appeal, irreparable harm

includes “the prospect of the appeal becoming moot and the right of appellate review being lost as a result.” *Id.* Third, any harm that exists for other parties will be “for a shorter time” than a normal interlocutory injunction before trial. *Id.*

ARGUMENT

12. This Court is empowered to issue an injunction pending appeal pursuant to O.C.G.A. § 9-11-62(c), which permits granting “an injunction during the pendency of the appeal” in a case, like this one, where “an appeal is taken from an interlocutory or final judgment . . . denying an injunction.” O.C.G.A. § 9-11-62(c).

13. The Georgia Supreme Court has explained that parties must first request this injunction pending appeal from the trial court. *Green Bull*, 301 Ga. at 473 (“Although the appellate courts also have the authority to grant a stay or injunction pending appeal, an application for such relief ordinarily ought to be directed in the first instance to the trial court.”).

14. Cases for injunctive relief are prone to being mooted during the pendency of an appeal absent an injunction pending appeal. *See Citizens to Save Paulding Cnty. v. City of Atlanta*, 236 Ga. 125, 125 (1976) (noting an injunction pending appeal could have prevented mooting the appeal). To prevent this, particularly in the election context, the Georgia Supreme Court has entrusted litigants to move expeditiously, doing “everything within their power to have their claims decided,” requiring them to “seek expedited review or emergency relief” under Court rules. *Catoosa Cnty. Rep. Party v. Henry*, 319 Ga. 794, 794 (2024).

15. Accordingly, Plaintiffs seek to preserve their right to appeal their claims. Early voting for the November 3, 2026, general election begins on October 13, 2026, and once absentee-by-mail ballots are cast under the process authorized by the Policy, they cannot be separated, let alone uncounted. Absent an injunction pending appeal, Plaintiffs will be denied the opportunity for their

appeal to be heard as to the legality of the Policy specifically as applied to the November 3, 2026, general election.¹

16. Plaintiffs do not repeat their factual showings and legal arguments already made before this Court demonstrating entitlement to injunctive relief. Instead, Plaintiffs incorporate these by reference. *See* Exhibits A–E. Plaintiffs respectfully submit that this establishes, at a minimum, a substantial case on the merits on appeal.

17. These arguments also demonstrate that the remaining equitable factors favor granting the injunction pending appeal. Every adverse finding in the Order rests on the same merits conclusion now on appeal: the Court found no irreparable injury because “the process is authorized,” found the balance of harms favored Defendants because “the practice is lawful,” and found the public interest favored Defendants because the Board’s authority was “expressly granted.” Order at 23. Because the legality of the Policy and Defendants’ authority to enforce it is exactly what is being challenged on appeal, those findings should be preserved for that review rather than treated as settled.

18. Finally, the equities on appeal further warrant granting an injunction pending appeal. *See Green Bull*, 301 Ga. at 475. Most importantly, Plaintiffs face imminent irreparable harm due to the prospect that this appeal becomes moot. *See id.* And any harm faced by Defendants from the temporary injunction will end once the November 3, 2026, general election is complete. *See id.*

¹ Plaintiffs’ motion for interlocutory injunction sought to enjoin the Policy not just for the upcoming November 3, 2026, general election but for “the November 3, 2026, general election and at elections thereafter.” Exhibit A at 1. While relevant to Plaintiffs’ motion for interlocutory injunction, the pending election has no bearing on the merits of Plaintiffs Verified Petition, claims for declaratory and permanent injunctive relief regarding the Policy going forward, and pending appeal challenging the dismissal of the Verified Petition.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court consider this Motion on an emergency basis and grant it in its entirety, issuing an injunction pending appeal that bars Defendants from enforcing the Policy during the November 3, 2026, general election until either the appeal or that election is complete, whichever comes first.

Respectfully submitted this 8th day of October, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing **EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL WITH INCORPORATED MEMORANDUM OF LAW** was filed with this Court's eFileGA e-Filing system. I further certify that on this day, I caused a true and correct copy of the foregoing to be transmitted to all counsel of record via the Court's electronic filing system.

This 8th day of October, 2026.

/s/ Thomas L. Oliver, III
Thomas L. Oliver, III

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EXHIBIT A

Verified Petition for Declaratory and Injunctive Relief

RETRIEVED FROM DEMOCRACYDOCKET.COM

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REPUBLICAN NATIONAL COMMITTEE,)
GEORGIA REPUBLICAN PARTY,)
GWINNETT COUNTY REPUBLICAN)
PARTY, and TIM FLEMING,)

Plaintiffs,)
v.)

DAVID HANCOCK, LORETTA)
MIRANDOLA, AMY BRAY, ALICE)
O'LENICK, and RICHARD PORTER in)
their individual capacities,)

Defendants.)

Case No.

26-A-05660-7

VERIFIED PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Defendants, members of the Gwinnett County Board of Registrations and Elections (the "Gwinnett County BOE" or the "Board"), violate Georgia law through an unauthorized process for returning Absentee by Mail ("ABM") ballots not countenanced by Georgia law. Georgia law permits three means of voting ABM ballots: (1) by mail to the board of registrars or absentee ballot clerk; (2) by hand delivery to the board of registrars or absentee ballot clerk; and (3) by ABM ballot drop boxes for delivery to the board of registrars or absentee ballot clerk. The Gwinnett County BOE has attempted to create a fourth voting method whereby electors may vote ABM ballots at a polling place by handing the ballot to a poll manager or assistant manager, who applies a time and date stamp and places the ballot in a "secured ballot bag" for transfer to the registrar's office at an unspecified later time. In reality, this new process is an attempt by the Gwinnett County BOE to make an end-run around Georgia law limiting the number of ABM ballot drop boxes permitted in a county and the associated safeguards mandated to ensure the integrity of ABM ballots submitted through an ABM ballot drop box. As this process violates Georgia law,

Plaintiffs seek a declaration that the process is unlawful and an injunction prohibiting Defendants from using it.

2. The Georgia Constitution provides that elections in Georgia “shall be conducted in accordance with procedures provided by law,” meaning those established by the General Assembly. Ga. Const. Art. II, § I, ¶ I.

3. The Georgia General Assembly has comprehensively occupied the field of election administration through Title 21, Chapter 2 of the Official Code of Georgia Annotated (the “Election Code”), which was amended in 2021 by the Georgia General Assembly “[t]o comprehensively revise elections and voting.” S.B. 202 (2021) at 1:1.

4. The Election Code prescribes in detail Georgia’s electoral process applicable to all 159 Georgia counties to ensure fair and transparent elections. This includes new processes implemented in 2021 addressing, *inter alia*, “absentee ballot drop boxes and the requirements therefor,” “the manner of . . . returning absentee ballots,” and “the processing and tabulation of absentee ballots.”¹

5. The Gwinnett County Board of Registrations and Elections was established by Act of the Georgia General Assembly as the body responsible for administering elections in Gwinnett County, including the receipt of ABM ballots. Ga. Laws 1988, p.4296 § 9; O.C.G.A. § 21-2-40(b). The Gwinnett County BOE possesses only those powers expressly granted to it by the General Assembly or necessarily implied therefrom. *Id.*

6. On February 21, 2024, the Gwinnett County BOE adopted Policy BRE-603, “Return of Absentee By Mail Ballots at Advance Voting or Alternate Locations” (the “Policy”), which exceeds the Board’s statutory authority by (i) directing electors to hand-deliver ABM ballots

¹ See The Election Integrity Act of 2021, S.B. 202 (2021) at 2:35-40.

to poll managers and assistant managers—persons not among those O.C.G.A. § 21-2-385(a) authorizes to receive ABM ballots; (ii) establishing “secured ballot bags” at locations without an ABM drop box that operate as de facto drop boxes beyond the cap imposed by O.C.G.A. § 21-2-382(c)(1); (iii) allowing receipt of ABM ballots without (a) the chain-of-custody safeguards required by O.C.G.A. § 21-2-382(c)(3), (b) registrar verification processes under O.C.G.A. § 21-2-386, and (c) poll-watcher access required under O.C.G.A. § 21-2-408(d); and (iv) reserving authority to designate additional registrar’s offices each election cycle without limiting those sites to the categories of buildings O.C.G.A. § 21-2-382(a) and State Election Board Rule 183-1-14-.08(2) permit.

7. This Court should grant declaratory and injunctive relief declaring the Policy unlawful and prohibiting Defendants from implementing it.

JURISDICTION

8. This Court has jurisdiction to grant declaratory and injunctive relief under O.C.G.A. §§ 9-4-2 and 9-4-3.

9. Venue is proper in this Court because all of the acts alleged in this petition were done by Defendants within Gwinnett County, Georgia.

10. Pursuant to O.C.G.A. § 21-2-32(g), upon filing, Plaintiffs will serve a copy of this Petition upon the State Election Board by statutory overnight delivery.

PARTIES

11. Plaintiff Republican National Committee (“RNC”) is a national political committee that nominates candidates whose names appear on the ballots received and counted in Gwinnett County and recruits and credentials poll watchers under O.C.G.A. § 21-2-408 to observe the receipt and processing of absentee ballots in Gwinnett County.

12. Plaintiff Georgia Republican Party (“GRP”) is a state political party affiliated with the RNC. The GRP recruits and nominates poll watchers under O.C.G.A. § 21-2-408 to observe the receipt and processing of absentee ballots in Gwinnett County.

13. Plaintiff Gwinnett County Republican Party (“Gwinnett GOP”) is a political party organized and operating in Gwinnett County, Georgia as defined by O.C.G.A. § 21-2-2(25), whose officers and members are citizens, residents, electors, and taxpayers of Gwinnett County. The Gwinnett GOP is authorized under 1988 Ga. Laws, p. 4296, *as amended*, to nominate candidates to serve on the Gwinnett County BOE. As a Gwinnett County body whose members are stakeholders in the County’s government, and whose members’ tax dollars fund the conduct of the County’s elections, the Gwinnett GOP has a cognizable interest, shared with the County’s electors and taxpayers, in enjoining the members of the Gwinnett County BOE from utilizing a Policy for receipt and processing of ABM ballots that does not comply with the Election Code.

14. Plaintiff Tim Fleming is a resident and elector of Newton County, Georgia, and a duly qualified candidate for Georgia’s Secretary of State in the general election to be conducted in Gwinnett County on November 3, 2026. As a candidate whose name will appear on the ballot in an election administered by Defendants, Tim Fleming has a direct and substantial interest in the lawful administration of absentee voting procedures by the Gwinnett County BOE, including the locations, personnel, and procedures by which ABM ballots cast for or against his candidacy are received, processed, and counted.

15. Defendants David Hancock, Loretta Mirandola, Amy Bray, Alice O’Lenick, and Richard Porter are members of the Gwinnett County BOE, which is the election superintendent for Gwinnett County. The superintendent is charged with implementing policies in compliance with applicable laws and regulations to oversee elections conducted in Gwinnett County, including

managing the process for the collection and tabulation of absentee ballots. O.C.G.A. §§ 21-2-381; 21-2-386(a)(2)(A). Defendants are sued in their individual capacities and can be served in their individual capacities at 455 Grayson Highway, Suite 200, Lawrenceville, Georgia 30046.

BACKGROUND

I. Adoption of S.B. 202

16. The Georgia Constitution vests authority over election procedures in the General Assembly, providing that “[e]lections by the people shall be by secret ballot and shall be conducted in accordance with procedures provided by law.” Ga. Const. Art. II, § I, ¶ I.

17. Rulemaking authority over matters not specifically addressed in the Election Code is conferred on the State Election Board (“SEB”), not on county boards (unless explicitly authorized). O.C.G.A. §§ 21-2-31, 21-2-33.1.

18. Prior to the COVID-19 pandemic, absentee ballot drop boxes were not authorized by the General Assembly for voters in state-wide Georgia elections.

19. Drop boxes were first authorized via a 2020 emergency rule adopted by the SEB in response to the COVID-19 pandemic. Ga. Comp. R. & Regs. 183-1-14-.08 *et seq.* That authorization expired following the January 2021 runoff election.

20. After the January 2021 runoff election, the Georgia General Assembly adopted O.C.G.A. § 21-2-382 in its current form to “allow[] the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations.” S.B. 202 at 5:113-18.

21. While the 2020 emergency rule permitted counties to use drop boxes at their discretion, S.B. 202 requires each county to provide at least one drop box for the receipt of absentee ballots but only authorizes additional drop boxes equal to “the lesser of either one drop box for every 100,000 active registered voters in the county or the number of advance voting locations in the county.” O.C.G.A. § 21-2-382(c)(1).

22. The General Assembly devised this limit along with specific chain-of-custody requirements for collection of ballots deposited in drop boxes with the intent of addressing security and oversight concerns following the 2020 elections.

II. Relevant Statutory Framework

23. O.C.G.A. § 21-2-70(7) authorizes county boards of elections and registration “[t]o make and issue such rules, regulations, and instructions, consistent with law, including the rules and regulations promulgated by the State Election Board, as [it] may deem necessary for the guidance of poll officers, custodians, and electors in primaries and elections.” They are further directed “[t]o conduct all elections in such manner as to guarantee the secrecy of the ballot and to perform such other duties as may be prescribed by law.” O.C.G.A. § 21-2-70(13).

24. O.C.G.A. § 21-2-385(a) governs the return of absentee ballots. After completing the ballot, the elector “shall then personally mail or personally deliver” the ballot “to the board of registrars or absentee ballot clerk.”

25. Under O.C.G.A. § 21-2-382(a), a county board of registrars “may establish additional registrar’s offices . . . for the purpose of receiving [ABM] ballots under Code Section 21-2-381,” “provided that any such site is a building that is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, another government building generally accessible to the public, or a building that is used as an election day polling place, notwithstanding that such building is not a government building.”

26. State Election Board Rule 183-1-14-.08(2) implements O.C.G.A. § 21-2-382(a) and provides that, in establishing additional sites for voters to receive ABM ballots, “[w]henver practicable, a branch of the county courthouse, a courthouse annex, a government service center

providing general government services, or another government building generally accessible to the public shall be utilized for such additional sites.”

27. O.C.G.A. § 21-2-382(c)(1) authorizes drop boxes as a means for absentee electors to deliver their ballots and caps the number of authorized drop boxes. A board of elections and registration “may establish additional drop boxes, subject to the limitations of this Code section, but may only establish additional drop boxes totaling the lesser of either one drop box for every 100,000 active registered voters in the county or the number of advance voting locations in the county.” *Id.*² Drop boxes must also be located at the registrar’s office or inside advance voting locations, “may be open during the hours of advance voting at that location,” and “shall be closed when the advance voting period ends.” *Id.*

28. O.C.G.A. § 21-2-382(c)(3) imposes detailed chain-of-custody requirements for drop boxes. Ballots “shall” be collected “by a team of at least two people,” each of whom must have “sworn an oath in the same form as the oath for poll officers set forth in Code Section 21-2-95,” and the team “shall complete and sign a ballot transfer form upon removing the ballots from the drop box which shall include the date, time, location, number of ballots, confirmation that the drop box was locked after the removal of the ballots, and the identity of each person collecting the ballots.”

29. Upon receipt of an ABM ballot, the registrar must record the date and time of receipt and verify that the elector’s identifying information matches the voter registration records.

² Gwinnett County, with approximately 569,000 registered voters, is permitted only five drop boxes under O.C.G.A. § 21-2-382(c)(1). *See Georgia Active Voters Report*, GA. SEC’Y OF STATE, <https://sos.ga.gov/georgia-active-voters-report> (last visited June 10, 2026). Upon information and belief, the Gwinnett County BOE has already exceeded this limit through the establishment of drop boxes at six locations. *See Advance Voting*, GWINNETT CNTY. GOV’T, <https://www.gwinnettcountry.com/government/departments/elections/voting/advance> (last visited June 10, 2026).

O.C.G.A. § 21-2-386(a)(1)(B). The registrar must also sign or initial below the voter's oath to confirm the elector was the signatory.

III. The Gwinnett County BOE's Policy

30. The Gwinnett County BOE manages voter registration and election administration in Gwinnett County, including absentee balloting procedures. O.C.G.A. §§ 21-2-40, 21-2-70; 1988 Ga. Laws, p. 4296, *as amended*. The Gwinnett County BOE's rulemaking authority under O.C.G.A. § 21-2-70(7) is expressly limited to rules "consistent with law" and directed at the "guidance of poll officers, custodians, and electors."

31. The Gwinnett County BOE currently consists of five members: David Hancock, Loretta Mirandola, Alice O'Lenick, Richard Porter, and Amy Bray.

32. On February 21, 2024, the Gwinnett County BOE adopted Policy BRE-603, a true and correct copy of which is attached hereto as **Exhibit A**.

33. The Policy establishes "standards for the return of absentee by mail ballots at advance voting locations or alternate sites established by the Board pursuant to O.C.G.A. § 21-2-382(a)."

34. Where an advance voting location already has a ballot drop box, the Policy directs that voters "utilize the drop box and no alternative will be offered." Where a location does not have a drop box, the Policy establishes a new voting process whereby electors may vote ABM ballots at polling locations that do not have an ABM ballot drop box by presenting the ballot to a poll manager or assistant manager.

35. Under that procedure, "[t]he voter shall hand deliver the ballot or authorized ballots directly to the poll manager or assistant manager who shall be responsible for applying a time and date stamp." The ballot is then "placed in a secured ballot bag with the appropriate seals,"

“recorded on the chain of custody forms at the end of the night in a separate category as a hand delivered absentee ballot,” and, once returned to the office, “stored in the ballot vaults until they are ready for processing.”

IV. The Gwinnett County BOE’s Policy Violates Georgia Law

36. Georgia law permits three means of voting ABM ballots: (1) by mail to the board of registrars or absentee ballot clerk; (2) by hand delivery to the board of registrars or absentee ballot clerk; and (3) by ABM ballot drop boxes for delivery to the board of registrars or absentee ballot clerk.

37. The Policy departs from each of these methods. It directs electors to hand their ABM ballots to poll managers and assistant managers, who are not authorized recipients. Because no authorized recipient takes delivery of the ballot, the ballot is in substance deposited into a “secured ballot bag” for collection and later transfer to the registrar—the defining function of a drop box—yet the secured ballot bags do not comply with the numerical cap or the chain-of-custody safeguards the Election Code imposes on drop boxes. The Policy violates Georgia law requiring registrar verification of ABM ballots. The Policy further reserves open-ended authority to designate additional registrar’s offices without limiting those sites to the buildings the Election Code permits.

38. The Policy exceeds the Gwinnett County BOE’s statutory authority in the respects set forth below.

First Deficiency - Receipt of ABM Ballots by Unauthorized Personnel

39. Paragraph 4(a) of the Policy directs that the voter “shall hand deliver the ballot or authorized ballots directly to the poll manager or assistant manager,” thereby expanding the persons authorized to receive ABM ballots beyond “the board of registrars or absentee ballot clerk” in contravention of O.C.G.A. § 21-2-385(a).

40. The receipt of hand-delivered ABM ballots is governed by Article 10, which specifically limits the authorized recipients to “the board of registrars or absentee ballot clerk,” not poll managers or assistant managers. O.C.G.A. § 21-2-385(a).

Second Deficiency - Creation of De Facto Drop Boxes

41. Gwinnett County has approximately 569,000 registered voters and is therefore permitted only five drop boxes under O.C.G.A. § 21-2-382(c)(1). Upon information and belief, the Gwinnett County BOE has already exceeded this limit by establishing drop boxes at six locations, *see supra* n. 2.

42. Because poll managers and assistant managers are not authorized to receive ABM ballots, an elector who hands a ballot to one of them at a location without a drop box has not “personally deliver[ed]” it “to the board of registrars or absentee ballot clerk” within the meaning of O.C.G.A. § 21-2-385(a). No statutorily cognizable delivery to the registrar occurs at the moment of the handoff.

43. The ballot is instead deposited into a “secured ballot bag”—a receptacle that functions akin to an ABM ballot drop box. Like a drop box, the secured ballot bag receives and holds ABM ballots for later collection and transfer to the registrar. Secured ballot bags thus serve the same function as ABM drop boxes despite exceeding the number of drop boxes permitted by O.C.G.A. § 21-2-382(c)(1) and not complying with the requirements for drop boxes in O.C.G.A. § 21-2-382(c)(1)-(4).

44. Similar to the deposit of ABM ballots in lawfully authorized ABM drop boxes, Paragraph 4 of the Policy unlawfully permits depositing ABM ballots into secured ballot bags for later collection and transfer to the Gwinnett County BOE.

45. Under the Policy, the secured ballot bags serve as de facto ABM ballot drop boxes, and the Gwinnett County BOE may not avoid the statutory cap by renaming what is, in substance,

a drop box. The Policy is an invalid attempt to authorize ABM drop boxes beyond the statutory cap.

**Third Deficiency – Failure to Safeguard Chain of Custody, Verification Processes,
or Allow Poll Watcher Access**

46. The secured ballot bags, despite acting as collection receptacles akin to ABM drop boxes, are not subject to the chain-of-custody safeguards required by O.C.G.A. § 21-2-382(c)(3), registrar verification processes under O.C.G.A. § 21-2-386, and poll-watcher access required under O.C.G.A. § 21-2-408(d).

47. Section 21-2-382(c)(3) requires that drop-box ballots be collected by a two-person team, each of whom has sworn the poll-officer oath under O.C.G.A. § 21-2-95, and that the team “complete and sign a ballot transfer form” recording “the date, time, location, number of ballots, confirmation that the drop box was locked after the removal of the ballots, and the identity of each person collecting the ballots.” The Policy requires only that the ballots be “recorded on the chain of custody forms at the end of the night in a separate category as a hand delivered absentee ballot,” and imposes none of the statute’s other requirements—no two-person collection team, no poll-officer oath, and no statutory ballot transfer form.

48. Each of § 21-2-382(c)(3)’s requirements is set in mandatory terms: ballots “shall be collected” by a two-person team, and the team “shall complete and sign a ballot transfer form” with the requisite information. Those commands leave the Gwinnett County BOE no discretion to substitute lesser procedures of its own design. *See Mead v. Sheffield*, 278 Ga. 268, 269 (2004) (“‘Shall’ is generally construed as a word of command.” (citation omitted)); *State v. Collier*, 279 Ga. 316, 317 (2005) (noting that mandatory language in a statute “precludes any discretion on the part of the officer” acting thereunder).

49. The chain-of-custody procedures the Policy imposes on these de facto drop boxes are therefore materially less protective than those the General Assembly mandated for drop-box ballots.

50. The Policy also conflicts with O.C.G.A. § 21-2-386, which prescribes how a registrar or clerk must record and verify an ABM ballot upon receipt. O.C.G.A. § 21-2-386(a)(1)(B) mandates that, “[u]pon receipt of each ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope,” compare the elector’s identifying information against the voter registration records, confirm that the elector signed the oath, and, upon confirming a match, “certify by signing or initialing his or her name below the voter’s oath.” The Policy instead directs a poll manager or assistant manager to apply only a time and date stamp before the ballot is placed in a secured ballot bag and transported to the office for processing at a later time, displacing the verification the statute requires upon receipt.

51. The Policy further fails to ensure poll-watcher access during the receipt of ABM ballots.

52. O.C.G.A. § 21-2-408(d) entitles poll watchers to “access to polling places, advance voting locations, tabulation centers, and locations where absentee ballots are being verified, processed, adjudicated, and scanned,” and “to observe any activity conducted at the location at which they are serving.” That right encompasses the receipt of ABM ballots, the application of the time and date stamp, and the sealing of the ballot bags.

53. The Policy is silent as to poll-watcher observation of the receipt, stamping, sealing, and chain-of-custody recording it establishes. It thus fails to implement the observational right O.C.G.A. § 21-2-408(d) confers, deprives Plaintiffs of their statutory right to credential poll

watchers who can meaningfully observe the handling of ABM ballots at every stage, and deprives the public of the transparency the General Assembly mandated.

Fourth Deficiency - Open-Ended Designation of Additional Registrar's Offices

54. O.C.G.A. § 21-2-382(a) limits additional registrar's offices to enumerated categories of buildings, each governmental in character with a single carve-out for non-governmental buildings "used as an election day polling place."

55. State Election Board Rule 183-1-14-.08(2) reinforces that limitation, commanding that, "[w]henever practicable," a governmental building "shall be utilized for such additional sites." This "shall be utilized" command is mandatory and forecloses the Gwinnett County BOE's discretion to designate a non-governmental site where a qualifying governmental building is practicable, *see supra* ¶ 48.

56. The Policy reserves to the Board open-ended authority to "establish for each election cycle whether the Board will authorize additional registrar offices for the purpose of receiving absentee ballot[s] under O.C.G.A. § 21-2-382(a)," without identifying the locations to be used and without limiting those locations to the categories of buildings O.C.G.A. § 21-2-382(a) and Rule 183-1-14-.08(2) permit.

57. The Policy's failure to incorporate the statutory and regulatory constraints—or to require the use of governmental buildings "whenever practicable"—renders the Policy itself ultra vires because it purports to grant the Board unfettered discretion that the Election Code and SEB Rule do not permit.

58. The Gwinnett County BOE, through the adoption of the Policy, is violating the express powers granted to it by the General Assembly to adopt rules "consistent with law."

59. Without relief from this Court, Defendants will employ the Policy at the next primary, election, or runoff conducted in Gwinnett County, receiving hand-delivered ABM ballots

at locations and through personnel not authorized by the Election Code. The integrity of those proceedings cannot be restored once unlawfully received ballots have been commingled with lawfully received ballots, and the resulting injury to Plaintiffs is therefore imminent and irreparable.

COUNT I

Declaratory Judgment Under O.C.G.A. § 9-4-2 (Asserted Against Defendants in their Individual Capacities)

60. Plaintiffs repeat and reallege each of their prior allegations.

61. Georgia Superior Courts may issue declaratory judgments in “cases of actual controversy . . . upon petition or other appropriate pleading.” O.C.G.A. § 9-4-2(a). The statute “is to be liberally construed and administered” to “afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” O.C.G.A. § 9-4-1.

62. The Gwinnett County BOE is a creature of statute, possessing only those powers expressly granted by the General Assembly or necessarily implied therefrom, and its rulemaking authority under O.C.G.A. § 21-2-70(7) is limited to rules “consistent with law.” It has no discretion to disregard the mandatory commands of O.C.G.A. §§ 21-2-382, 21-2-385, and 21-2-386, and no authority to enlarge by local policy the locations, personnel, and procedures by which the General Assembly has provided that absentee ballots may be received.

63. The RNC, GRP, and Gwinnett GOP nominate candidates whose names appear on ballots cast and counted in Gwinnett County, recruit and credential poll watchers to observe the receipt and processing of absentee ballots, and represent electors who participate in primaries and elections conducted by the Gwinnett County BOE. Plaintiff Tim Fleming, as a candidate whose name will appear on the ballot in an election administered by Defendants under the Policy, has a direct and personal interest in ensuring that ABM ballots cast for or against his candidacy are received only through procedures authorized by the Election Code. Plaintiffs therefore have legally

protectible interests in the lawful administration of absentee voting procedures in Gwinnett County.

64. The Policy is unlawful and exceeds Defendants' authority in four primary respects.

65. **First**, Paragraph 4(a) of the Policy directs the receipt of hand-delivered ABM ballots by poll managers and assistant managers, displacing both the persons statutorily authorized to receive the ballots and the statutory poll-watcher observation guarantees and verification processes pursuant to O.C.G.A. §§ 21-2-385(a), 21-2-386, and 21-2-408(d).

66. **Second**, the Policy establishes de facto absentee ballot drop boxes in the form of "secured ballot bags" at advance voting and alternate locations without a drop box, in violation of the statutory cap imposed by O.C.G.A. § 21-2-382(c)(1).

67. **Third**, the Policy is not subject to the chain-of-custody safeguards required by O.C.G.A. § 21-2-382(c)(3), registrar verification processes under O.C.G.A. § 21-2-386, and poll-watcher access required under O.C.G.A. § 21-2-408(d).

68. **Fourth**, the Policy reserves open-ended authority to designate additional registrar's offices each election cycle without limiting those sites to the categories of buildings O.C.G.A. § 21-2-382(a) and State Election Board Rule 183-1-14-.08(2) permit.

69. An actual and justiciable controversy therefore exists between Plaintiffs and Defendants concerning the lawfulness of the Policy and the authority of the Gwinnett County BOE to receive ABM ballots under the procedures the Policy establishes.

70. A declaratory judgment is due to be entered declaring that the Policy exceeds Defendants' authority, conflicts with O.C.G.A. §§ 21-2-382, 21-2-385, and 21-2-386 and State Election Board Rule 183-1-14-.08(2), and is to be null, void, and of no force or effect.

COUNT II
Interlocutory Injunction Under O.C.G.A. § 9-11-65 (Asserted Against Defendants in their Individual Capacities)

71. Plaintiffs repeat and reallege each of their prior allegations.

72. Plaintiffs seek to maintain the status quo via an interlocutory injunction (A) barring Defendants (in their individual capacities) from implementing or enforcing the Policy at any primary, election, or runoff conducted in Gwinnett County pending this Court's final disposition of the within request for relief, and (B) requiring Defendants (in their individual capacities) to receive ABM ballots only at the locations and through the personnel and procedures authorized by the Election Code pending this Court's final disposition of the within request for relief.

73. "The purpose of [an] . . . interlocutory injunction is to preserve the status quo while a case is pending." *Slone v. Myers*, 288 Ga. App. 8, 14 (2007), *overruled on different grounds*, *Reeves v. Upson Med. Ctr.*, 315 Ga. App. 582 (2012). When deciding whether to issue an interlocutory injunction, the trial court should balance whether: "(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of [its] claims at trial; and (4) granting the [relief] will not disserve the public interest." *Bishop v. Patton*, 288 Ga. 600, 604 (2011), *disapproved upon other grounds*, *SRB Inv. Servs. LLLP v. BB&T*, 289 Ga. 1, 5 n.7 (2011), *overruled on other grounds*, *Wasserman v. Franklin Cnty.*, 320 Ga. 624 (2025).

74. All four factors are satisfied here, and Plaintiffs are entitled to injunctive relief against Defendants in their individual capacities:

A. Irreparable Injury: Absent injunctive relief, Defendants will receive ABM ballots at the next primary, election, or runoff through procedures not authorized by the Election Code. Once unlawfully received ballots are commingled with lawfully received ballots,

they cannot be segregated or invalidated without disenfranchising the electors who returned them, and the integrity of the election cannot be restored through any subsequent monetary or post-election remedy. Plaintiffs have no adequate remedy at law.

B. Substantial Likelihood of Success on the Merits: Plaintiffs are likely to prevail on the merits of their claims. The Policy authorizes the receipt of ABM ballots through personnel not authorized by O.C.G.A. § 21-2-385(a); at receptacles that operate as de facto drop boxes beyond the cap imposed by O.C.G.A. § 21-2-382(c)(1); and pursuant to chain-of-custody procedures that fall short of those required by O.C.G.A. § 21-2-382(c)(3). The Gwinnett County BOE has no statutory authority to enlarge by local policy the categories of locations, personnel, and procedures established by the General Assembly.

C. The Balance of the Equities: The threatened injury to Plaintiffs outweighs any harm an injunction would cause Defendants. Defendants have no legitimate interest in implementing an unlawful policy, and an injunction would require nothing more than that they conform their conduct to the Election Code.

D. The Public Interest: The public interest is served by assuring that the absentee voting provisions of the Election Code are implemented faithfully by the Board and that elections in Gwinnett County are conducted in accordance with procedures provided by the General Assembly.

75. An interlocutory injunction is due to be entered against Defendants in their individual capacities (A) barring Defendants from implementing or enforcing the Policy at any primary, election, or runoff conducted in Gwinnett County pending this Court's final disposition of this petition, and (B) requiring Defendants to receive ABM ballots only at the locations and through the personnel and procedures authorized by the Election Code pending this Court's final disposition of this petition.

COUNT III

Perpetual Injunction Under O.C.G.A. § 9-5-1 (Asserted Against Defendants in their Individual Capacities)

76. Plaintiffs repeat and reallege each of their prior allegations.

77. Under O.C.G.A. § 9-5-1, this Court has authority to enjoin acts that are "illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law." The Court may grant such relief at its discretion where "the evidence show[s] that the plaintiff

would suffer irreparable harm; and, in balancing the harm to the parties . . . equity demand[s] the grant of the injunction.” *City of Duluth v. Riverbrooke Props., Inc.*, 233 Ga. App. 46, 55 (1998).

78. The Policy is such an act. As set forth above, the Gwinnett County BOE is a creature of statute possessing only those powers expressly granted by the General Assembly or necessarily implied therefrom, and its rulemaking authority under O.C.G.A. § 21-2-70(7) is limited to rules “consistent with law.” The Policy exceeds that authority and conflicts with O.C.G.A. §§ 21-2-382, 21-2-385, and 21-2-386 and State Election Board Rule 183-1-14-.08(2) by authorizing the receipt of ABM ballots through personnel, at receptacles, and pursuant to chain-of-custody procedures not authorized by the Election Code.

79. Unless perpetually enjoined, Defendants will implement and enforce the Policy at each primary, election, and runoff conducted in Gwinnett County, receiving hand-delivered ABM ballots at locations and through personnel and procedures not authorized by the Election Code.

80. The resulting injury is irreparable. Once unlawfully received ballots are commingled with lawfully received ballots, they cannot be segregated or invalidated without disenfranchising the electors who returned them, and the integrity of the affected elections cannot be restored through any monetary or post-election remedy. Plaintiffs therefore have no adequate remedy at law.

81. Plaintiffs are accordingly entitled to a perpetual injunction (A) prohibiting Defendants, in their individual capacities, from implementing or enforcing the Policy at any primary, election, or runoff conducted in Gwinnett County, and (B) requiring Defendants, in their individual capacities, to receive ABM ballots only at the locations and through the personnel and procedures authorized by the Election Code.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendants and provide the following relief:

A. A declaratory judgment that Policy BRE-603, adopted by the Gwinnett County BOE on February 21, 2024, exceeds Defendants' statutory authority, conflicts with O.C.G.A. §§ 21-2-382, 21-2-385, and 21-2-386 and State Election Board Rule 183-1-14-.08(2), and is null, void, and of no force or effect;

B. An order issuing an interlocutory injunction, pending final disposition of this action, prohibiting Defendants from implementing or enforcing the Policy and directing Defendants to receive ABM ballots only at the locations and through the personnel and procedures authorized by the Election Code and SEB rules;

C. An order issuing a perpetual injunction prohibiting Defendants from implementing or enforcing the Policy and directing Defendants to receive ABM ballots only at the locations and through the personnel and procedures authorized by the Election Code and SEB rules; and

D. All other, further relief that Plaintiffs may be entitled to.

Respectfully submitted this 18th day of June, 2026.

BRADLEY ARANT BOULT CUMMINGS, LLP

/s/ Thomas L. Oliver, III

Thomas L. Oliver, III

Georgia Bar No. 745597

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Committee, Georgia Republican Party, Gwinnett
County Republican Party, and Tim Fleming*

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

REPUBLICAN NATIONAL COMMITTEE,)
GEORGIA REPUBLICAN PARTY,)
GWINNETT COUNTY REPUBLICAN)
PARTY, and TIM FLEMING,)

Plaintiff,)

v.)

DAVID HANCOCK, LORETTA)
MIRANDOLA, AMY BRAY, ALICE)
O'LENICK, and RICHARD PORTER in)
their individual capacities,)

Defendants.)

Case No. _____

VERIFICATION OF PETITION

I, Michael Ambrosini, being duly sworn, depose and say that I am authorized to give this verification on behalf of Plaintiff Republican National Committee ("RNC"); that I have read the foregoing **Petition for Declaratory and Injunctive Relief** (the "Petition"); that the information used to prepare the Petition was compiled from a variety of sources from within RNC's business, including business records maintained in the regular and ordinary course of business, as well as from publicly available sources, and with the assistance of RNC's counsel; and that the information contained therein is true and accurate. The word usage and sentence structure used in the Petition may be that of the attorney assisting in the preparation of the Petition and does not necessarily purport to be the precise language of the executing party.

[NOTARIZED SIGNATURE ON FOLLOWING PAGE]




Michael Ambrosini
Chief of Staff of the Republican National Committee

Sworn to and subscribed
Before me this 18 day
of June, 2026.

Elizabeth Pretzman
Notary Public

My commission expires:

DISTRICT OF COLUMBIA

Signed and sworn to (or affirmed) before me on

6/18/26 by Elizabeth Pretzman
Date Name of



Signature of Notarial Officer

Notary Public

My commission expires: 11/14/30



Exhibit A

Policy Number: BRE-603

**Gwinnett County
Board of Registrations and Elections
Board Policy File**

Policy Title: Return of Absentee By Mail Ballots at Advance Voting or Alternate Locations

Version: 2023-02

Effective Date: February 21, 2024

I. Authority:

The Gwinnett County Board of Registrations and Elections (hereinafter "the Board") is empowered with all the powers and duties relating to the conduct of elections as election superintendents and with the powers and duties of the board of registrars relating to the registrations of voters and absentee-balloting procedures. Ga. Laws 1988, p. 4296 (Section 9).

II. Purpose:

The purpose of this policy is to establish standards for the return of absentee by mail ballots at advance voting locations or alternate sites established by the Board pursuant to O.C.G.A §21-2-382(a).

III. Applicability and Scope:

This policy is designed to provide a simple and transparent process to ensure confidence when the Board authorizes the return of absentee by mail ballots at advance voting locations or alternate sites established by the Board pursuant to O.C.G.A §21-2-382(a).

IV. Related Documents and References:

- A. O.C.G.A. §21-2-381
- B. O.C.G.A. §21-2-382

- C. O.C.G.A. §21-2-385
- D. Ga. Comp. Rules and Regs 183-1-14-.08(2)

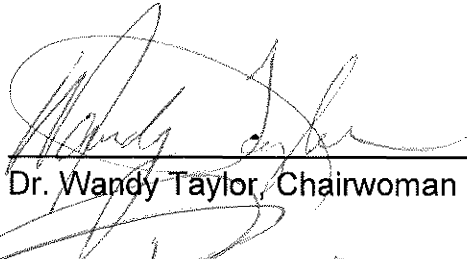
V. Policy:

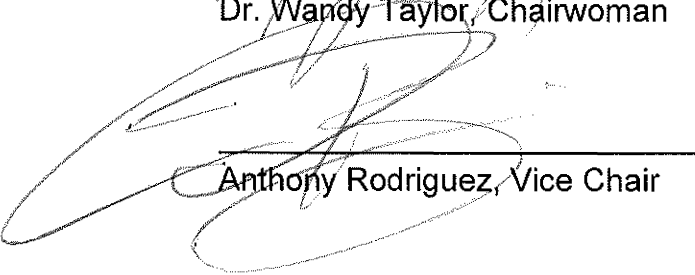
1. It is the policy of the Gwinnett County Board of Registrations and Elections to establish for each election cycle whether the Board will authorize additional registrar offices for the purpose of receiving absentee ballot under O.C.G.A. § 21-2-382(a).
2. When the Board authorizes the return of absentee ballots at additional locations, then it is important to establish strong ballot security standards.
3. If there is a ballot box drop already at the location as authorized under O.C.G.A. § 21-2-382 (c)(1) then the voters will utilize the drop box and no alternative will be offered.
4. Where the Board authorizes a location to collect hand delivered absentee ballots, then staff shall establish a secure procedure for the return of the ballot to include the following:
 - (a) The voter shall hand deliver the ballot or authorized ballots directly to the poll manager or assistant manager who shall be responsible for applying a time and date stamp.
 - (b) The ballot shall be placed in a secured ballot bag with the appropriate seals.
 - (c) The ballots shall be recorded on the chain of custody forms at the end of the night in a separate category as a hand delivered absentee ballot.
 - (d) Once returned to the office the ballots shall be stored in the ballot vaults until they are ready for processing.
5. The Board shall review this policy each election year when establishing these additional locations for the upcoming election and determine if any revisions are necessary.

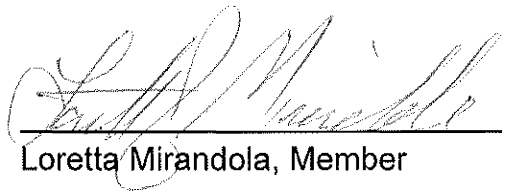
Approved, this 21 day of 2 2024.

GWINNETT COUNTY
BOARD OF REGISTRATIONS AND ELECTIONS

By:


Dr. Wandy Taylor, Chairwoman


Anthony Rodriguez, Vice Chair


Loretta Mirandola, Member

David Hancock, Member

Alice O'Lenick, Member

EXHIBIT B

Plaintiffs' Expedited Motion for Interlocutory Injunction

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IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE,
GWINNETT COUNTY REPUBLICAN
PARTY, and TIM FLEMING,

Plaintiffs,

v.

DAVID HANCOCK, LORETTA
MIRANDOLA, AMY BRAY, ALICE
O'LENICK, and RICHARD PORTER in
their individual capacities,

Defendants.

Case No.: 26-A-05660-10

PLAINTIFFS' EXPEDITED MOTION FOR INTERLOCUTORY INJUNCTION

Pursuant to Uniform Superior Court Rule 6.7 and O.C.G.A. §§ 9-4-3, 9-5-1, and 9-11-65, and in order to preserve the status quo and avoid irreparable harm, Plaintiffs Republican National Committee ("RNC"), Gwinnett County Republican Party ("Gwinnett GOP"), and Tim Fleming (collectively, "Plaintiffs") respectfully request that this Court enter an interlocutory injunction against Defendants David Hancock, Loretta Mirandola, Amy Bray, Alice O'Lenick, and Richard Porter (collectively, "Defendants") in their individual capacities.

The interlocutory injunction should (1) bar Defendants David Hancock, Loretta Mirandola, Amy Bray, Alice O'Lenick, and Richard Porter, in their individual capacities, from implementing or enforcing the Gwinnett County Board of Registration and Elections' Policy regarding the Return of Absentee By Mail Ballots at Advance Voting or Alternate Locations (the "Policy") at the November 3, 2026 general election and at elections thereafter, and (2) require Defendants to receive absentee-by-mail ballots only at the locations and through the personnel and procedures the Election Code authorizes, pending a final decision on the merits of this action.

Since filing their Verified Complaint on June 18, 2026, Plaintiffs waited fifty days for this case to be assigned to a judge, during which time seven judges recused themselves before the case was assigned to an eighth judge who has since ruled on a pending motion. With advance voting for the November 2026 general election beginning October 13, the substantial delays already incurred in bringing this matter before the Court underscore the need for immediate, expedited relief.

Plaintiffs respectfully request that this Court afford this motion expedited treatment and schedule a hearing as soon as practicable under Superior Court Rule 6.7.

Respectfully submitted this 7th day of August, 2026.

BRADLEY ARANT BOULT CUMMINGS, LLP

/s/ Thomas L. Oliver, III

Thomas L. Oliver, III

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*Counsel for Plaintiffs Republican National
Committee, Gwinnett County Republican Party, and
Tim Fleming*

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CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and correct copy of the foregoing **PLAINTIFFS' EXPEDITED MOTION FOR INTERLOCUTORY INJUNCTION** was filed with this Court's eFileGA e-Filing system. I further certify that on this day, I caused a true and correct copy of the foregoing to be transmitted to a process server for service upon Defendants.

This the 7th day of August, 2026.

/s/ Thomas L. Oliver, III
Thomas L. Oliver, III

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EXHIBIT C

Plaintiffs' Memorandum of Law in Support of its Emergency Motion for Interlocutory
Injunction

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IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE,
GWINNETT COUNTY REPUBLICAN
PARTY, and TIM FLEMING,

Plaintiffs,

v.

DAVID HANCOCK, LORETTA
MIRANDOLA, AMY BRAY, ALICE
O'LENICK, and RICHARD PORTER in
their individual capacities,

Defendants.

Case No. 26-A-05660-7

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR INTERLOCUTORY
INJUNCTION**

Georgia law provides three, and only three, means by which an elector may vote an absentee-by-mail ("ABM") ballot: by mail to the board of registrars or absentee ballot clerk; by personal delivery to the board of registrars or absentee ballot clerk; and by deposit in a lawfully established drop box. O.C.G.A. §§ 21-2-385(a), 21-2-382(c). The Gwinnett County Board of Registrations and Elections (the "Gwinnett County BOE" or the "Board") has unlawfully created a fourth. Under Policy BRE-603, which the Board adopted on February 21, 2024, an elector may vote an ABM ballot at an advance voting or alternate location that lacks a drop box by handing the ballot to a poll manager or assistant manager, who applies a date-and-time stamp and places the ballot in a "secured ballot bag" for collection and transfer to the registrar's office at an unspecified later time.

Gwinnett County's process is unauthorized at every step:

- It directs electors to hand their ABM ballots to poll managers and assistant managers—persons the Election Code does not authorize to receive a hand-delivered absentee ballot;
- It fields ballot-collection receptacles—“secured ballot bags”—that operate as de facto drop boxes beyond the number the Code permits;
- It allows those ballots to be received without the chain of custody the Code mandates for drop-box ballots, without the registrar verification the Code requires upon receipt, and without the poll-watcher observation the Code guarantees; and
- It reserves to the Board open-ended authority to designate additional registrar’s offices each election cycle, untethered to the categories of buildings the Code and the State Election Board’s rule permit.

The Gwinnett County BOE is a creature of statute with no power to rewrite the General Assembly’s commands. As the Supreme Court of Georgia reaffirmed last year, an election authority “can pass rules to implement and enforce the Election Code, but it cannot go beyond, change, or contradict the statutory scheme.” *Republican Nat’l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 804 (2025).

Plaintiffs ask the Court to declare the Policy unlawful and to enjoin its use at the November 3, 2026 general election and at elections thereafter. The Policy will govern the receipt of ABM ballots at that high-turnout election absent relief, and once ballots received through its unauthorized process are commingled with lawfully received ballots, the violation cannot be undone. Plaintiffs therefore respectfully request an interlocutory injunction preserving the Election Code’s authorized procedures pending final adjudication.

Plaintiffs respectfully request that the Court afford this motion expedited treatment and schedule a hearing as soon as practicable under Uniform Superior Court Rule 6.7.

Statement of Facts

Plaintiffs are the Republican National Committee, the Gwinnett County Republican Party, and Tim Fleming, a resident and elector of Newton County and a candidate whose name will appear on the ballots received and counted in Gwinnett County at the November 3, 2026 general election. Pet. ¶¶ 11–14. Defendants David Hancock, Loretta Mirandola, Amy Bray, Alice O’Lenick, and Richard Porter are the members of the Gwinnett County BOE—the election superintendent for Gwinnett County—and are sued in their individual capacities. *Id.* ¶ 15.

I. The Election Code’s procedures for returning and receiving absentee ballots.

The General Assembly has prescribed in detail how absentee ballots are returned and received. An elector who votes absentee “shall then personally mail or personally deliver” the ballot “to the board of registrars or absentee ballot clerk.” O.C.G.A. § 21-2-385(a). Alternatively, the elector may deposit the ballot in an ABM ballot drop box. O.C.G.A. § 21-2-382(c). S.B. 202, enacted after the 2020–21 election cycle, authorized drop boxes while capping their number and prescribing specific security procedures: a county “may . . . establish additional drop boxes” only up to “the lesser of either one drop box for every 100,000 active registered voters in the county or the number of advance voting locations in the county,” O.C.G.A. § 21-2-382(c)(1); drop-box ballots “shall be collected by a team of at least two people” who must take a poll-officer’s oath and complete a detailed ballot transfer form, O.C.G.A. § 21-2-382(c)(3); and “[a]ll drop boxes shall be closed when the advance voting period ends,” O.C.G.A. § 21-2-382(c)(1).

Georgia law likewise sets requirements for processing and verifying ABM ballots. Upon receipt of an ABM ballot, “a registrar or clerk shall write the day and hour of the receipt,” “shall . . . compare” the elector’s identifying information against the registration records, “shall . . .

confirm” the required oaths, and “shall so certify by signing or initialing.” O.C.G.A. § 21-2-386(a)(1)(B). Poll watchers are entitled to “observe any activity conducted at” advance voting locations and other sites where absentee ballots are processed. O.C.G.A. § 21-2-408(d). A county may designate “additional registrar’s offices” to receive absentee ballots, but only at a closed list of buildings: government buildings, or “a building that is used as an election day polling place.” O.C.G.A. § 21-2-382(a). And State Election Board Rule 183-1-14-.08(2) directs that, “[w]henever practicable,” a qualifying government building “shall be utilized for such additional sites.” As the county’s election superintendent, the Gwinnett County BOE’s authority to make rules reaches only measures “consistent with law.” O.C.G.A. § 21-2-70(7).

II. The Gwinnett County BOE adopts Policy BRE-603.

On February 21, 2024, the Gwinnett County BOE adopted Policy BRE-603, “Return of Absentee By Mail Ballots at Advance Voting or Alternate Locations.” Pet. ¶ 32; *see* Pet., Exhibit A (“Policy”). The Policy recites that it establishes “standards for the return of absentee by mail ballots at advance voting locations or alternate sites established by the Board pursuant to O.C.G.A. § 21-2-382(a).” Policy ¶ II. It invokes both O.C.G.A. § 21-2-382(a) and State Election Board Rule 183-1-14-.08(2) as the source of the Board’s authority to designate those sites. *Id.* ¶ IV.

III. What the Policy does.

The Policy reserves to the Board open-ended authority “to establish for each election cycle whether the Board will authorize additional registrar offices for the purpose of receiving absentee ballot[s] under O.C.G.A. § 21-2-382(a).” Policy ¶ V(1). Where a location already has a drop box, the Policy directs that voters “utilize the drop box and no alternative will be offered.” *Id.* ¶ V(3). Where a location does *not* have a drop box, the Policy creates a new process for voting ABM ballots in person. The “voter shall hand deliver the ballot or authorized ballots directly to the poll manager or assistant manager who shall be responsible for applying a time and date stamp.” *Id.*

¶ V(4)(a). The ballot is then “placed in a secured ballot bag with the appropriate seals,” “recorded on the chain of custody forms at the end of the night in a separate category as a hand delivered absentee ballot,” and, once returned to the office, “stored in the ballot vaults until they are ready for processing.” *Id.* ¶ V(4)(b)–(d). Gwinnett County has approximately 569,000 active registered voters and is therefore permitted no more than five drop boxes; upon information and belief, the Board has already established drop boxes at six locations.¹

Legal Standard

An interlocutory injunction should issue when the movant shows: (1) a substantial threat that it will suffer irreparable injury if relief is denied; (2) that the threatened injury outweighs the harm the injunction may cause the opposing party; (3) a substantial likelihood of success on the merits; and (4) that granting relief will not disserve the public interest. *Garden Hills Civic Ass’n v. MARTA*, 273 Ga. 280, 281–82 (2000). These are considerations to be weighed, not separate elements each of which the movant must independently prove. *SRB Inv. Servs. LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 5 & n.7 (2011). Among them, the first—a substantial threat of irreparable injury—is “the most important one.” *Bishop v. Patton*, 288 Ga. 600, 605 (2011), *disapproved on other grounds by SRB*, 289 Ga. 1. The touchstone is necessity: “there must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy.” *Chambers v. Peach County*, 268 Ga. 672, 673 (1997); *accord Hampton Island Founders, LLC v. Liberty Cap., LLC*, 283 Ga. 289, 293 (2008). Interlocutory injunctive

¹Gwinnett County, with approximately 569,000 active registered voters, is permitted only five drop boxes under O.C.G.A. § 21-2-382(c)(1). See Georgia Active Voters Report, Ga. Sec’y of State, <https://sos.ga.gov/georgia-active-voters-report> [perma.cc link] (last visited June 10, 2026). Upon information and belief, the Gwinnett County BOE has already exceeded this limit through the establishment of drop boxes at six locations. See Advance Voting, Gwinnett Cnty. Gov’t, <https://www.gwinnettcountry.com/government/departments/elections/voting/advance> [perma.cc link] (last visited June 10, 2026).

relief is “a stop-gap measure to prevent irreparable injury or harm to those involved in the litigation.” *See India-Am. Cultural Ass’n, Inc. v. iLink Pros., Inc.*, 296 Ga. 668, 670 (2015). The Court focuses on “whether greater harm might come from granting the injunction or denying it.” *Cotton States Mut. Ins. Co. v. Stephen Brown Ins. Agency, Inc.*, 290 Ga. App. 660, 663 (2008).

Argument

This Court should grant an interlocutory injunction to preserve the status quo of lawful election administration. Each of the four factors weighs in favor of relief.

I. Plaintiffs Are Substantially Likely to Succeed on the Merits.

A. The Gwinnett County BOE May Exercise Only the Authority the Election Code Confers and May Not Adopt Procedures That Exceed, Alter, or Conflict With That Code.

The Gwinnett County BOE serves as the election superintendent for Gwinnett County, and it possesses no authority beyond what the General Assembly has conferred. *See* O.C.G.A. §§ 21-2-40, 21-2-70; Ga. Laws 1988, p. 4296, § 9. A governmental body of this kind is “a mere creature of statute, brought into being by the legislature”; it has “no inherent powers” and “no lawful right to act except as directed by law.” *Eternal Vigilance*, 321 Ga. at 795 (quoting *New Amsterdam Cas. Co. v. McFarley*, 191 Ga. 334, 335–36 (1940)). For such an entity, “the absence of statutory authority is the absence of legal authority to act.” *Id.* (quoting *Camp v. Williams*, 314 Ga. 699, 709 (2022) (Bethel, J., concurring)). The Board may therefore act only where the Election Code, “expressly[] or by necessary implication,” authorizes it. *Id.*

The corollary is equally settled. The Board’s power to adopt rules extends only to measures consistent with the Election Code; it “can pass rules to implement and enforce the Election Code, but it cannot go beyond, change, or contradict the statutory scheme.” *Eternal Vigilance*, 321 Ga. at 804; *see also* O.C.G.A. § 21-2-70(7). Long before *Eternal Vigilance*, the Supreme Court applied the same rule to administrative bodies generally: they “are not authorized to enlarge the scope of,

or supply omissions in, a properly-enacted statute,” nor may they “change a statute by interpretation, or establish different standards within a statute that are not established by a legislative body.” *North Fulton Med. Ctr. v. Stephenson*, 269 Ga. 540, 543–44 (1998). An agency “is authorized only to take action that carries into effect those laws already passed”; it “has no . . . authority to legislate, and it certainly is not authorized to establish rules that conflict with legislation.” *Id.* at 543; *accord Dep’t of Cmty. Health v. Houston Hosps., Inc.*, 365 Ga. App. 751 (2022) (agency action invalid where taken in excess of statutory authority). Indeed, where an agency rule is “inconsistent with” the governing statute, the agency “is without authority to adopt” it, and a court may enjoin its enforcement. *Ga. Real Estate Comm’n v. Accelerated Courses in Real Estate, Inc.*, 234 Ga. 30, 32–33 (1975).

The inquiry is thus concrete. The Court measures the challenged procedure against the specific Election Code provisions the Board purports to implement. Where the procedure “sweeps more broadly than”—or otherwise departs from—those provisions, it is *ultra vires* and void. *Eternal Vigilance*, 321 Ga. at 806. And where the Code prescribes how a thing “shall” be done, the Board has no discretion to substitute a procedure of its own design: “[s]hall” is generally construed as a word of command,” and “[t]he import of the language is mandatory.” *State v. Collier*, 279 Ga. 316, 317 (2005); *accord Mead v. Sheffield*, 278 Ga. 268, 269 (2004). These principles govern the Gwinnett County BOE no less than any other election authority. *Cf. Adams v. Fulton County*, 376 Ga. App. 288, 291 (2025) (duties of a county elections board are fixed by, and confined to, the governing provisions of the Election Code). As the next four Parts show, Policy BRE-603 disregards those confines in four independent respects, each of which alone renders the Policy *ultra vires* and unenforceable.

B. The Policy Directs the Receipt of Hand-Delivered Absentee Ballots by Persons the Code Does Not Authorize.

The return of absentee ballots is governed by Article 10, which provides that, after completing the ballot, the elector “shall then personally mail or personally deliver” it “to the board of registrars or absentee ballot clerk.” O.C.G.A. § 21-2-385(a). Article 10 thus designates, specifically and exclusively, the persons authorized to receive a hand-delivered absentee ballot: the board of registrars and the absentee ballot clerk. Poll managers and assistant managers are not among them.

Paragraph V(4)(a) of the Policy nonetheless directs that the “voter shall hand deliver the ballot . . . directly to the poll manager or assistant manager.” By routing hand delivery to poll managers and assistant managers, the Policy does not implement § 21-2-385(a)’s direction that delivery be made to “the board of registrars or absentee ballot clerk”; it enlarges the statutory class of authorized recipients that the provision fixes. That is precisely the kind of action the Election Code forbids. In *Eternal Vigilance*, the State Election Board adopted a rule layering additional requirements onto the hand delivery of absentee ballots, and the Supreme Court struck it because “nowhere in OCGA § 21-2-385(a)” was any such requirement imposed; the rule “goes beyond the statute’s provisions and invents new requirements,” and what is not “consistent with” § 21-2-385(a) is “not authorized by” it. *Eternal Vigilance*, 321 Ga. at 808–09. The Policy commits the same error in the other direction: where the board there added requirements to § 21-2-385(a), the Gwinnett County BOE here removes one—the requirement that the recipient be the board of registrars or absentee ballot clerk. The statute “expressly” prescribes the terms of hand delivery, and the Board has no authority to supplement or rewrite them. *See North Fulton*, 269 Ga. at 543–44. Because § 21-2-385(a) speaks in the mandatory “shall,” the Board has no discretion to redirect delivery elsewhere. *Mead*, 278 Ga. at 269.

C. The “Secured Ballot Bags” Are De Facto Drop Boxes That Exceed the Statutory Cap.

The General Assembly authorized absentee-ballot drop boxes, but on tightly limited terms. O.C.G.A. § 21-2-382(c)(1) permits a board to “establish additional drop boxes, subject to the limitations of this Code section, but [it] may only establish additional drop boxes totaling the lesser of either one drop box for every 100,000 active registered voters in the county or the number of advance voting locations in the county.” With approximately 569,000 active registered voters, Gwinnett County may maintain no more than five drop boxes. The Board, however, has already deployed drop boxes at six locations—one beyond the cap on its face—and the Policy’s “secured ballot bags,” fielded at every advance voting and alternate location that lacks a drop box, multiply that violation many times over.

The containers are drop boxes in substance. A drop box is, in statutory terms, a secured receptacle placed inside an advance voting location “as a means for absentee by mail electors to deliver their ballots,” from which ballots are later collected by a team and transferred for processing. O.C.G.A. § 21-2-382(c)(1), (3). That is what the Policy’s “secured ballot bags” are and do: under Paragraph V(4), an elector’s ballot is placed into a sealed bag at an advance voting or alternate location, where it remains until it is collected and transferred to the registrar’s office. The intervening stamp-and-bag step does not convert that into the “personal[] . . . deliver[y]” “to the board of registrars or absentee ballot clerk” that § 21-2-385(a) requires, because—as shown in Part A.2—the poll managers who apply the stamp are not authorized to receive absentee ballots. Stripped of that invalid step, what remains is an elector’s ballot deposited into a collection receptacle for later retrieval. That is a drop box. Whether a procedure complies with the Election Code turns on what it does, not on what the Board calls it; *Eternal Vigilance* measured each challenged rule against the function of the governing statute, not its nomenclature. *See Eternal*

Vigilance, 321 Ga. at 806. The Board may not evade § 21-2-382's requirements by renaming a drop box a "secured ballot bag."

So characterized, the bags break the cap. Section 21-2-382(c)(1) fixes a hard ceiling that the statute itself "specifies," not a detail left to the Board's discretion. *Eternal Vigilance*, 321 Ga. at 810. A policy that adds collection receptacles beyond that limit does not implement § 21-2-382(c)(1); it contradicts it.

D. The Policy Discards the Chain-of-Custody, Verification, and Observation Safeguards the Code Mandates.

1. The Policy lacks the statutory chain of custody.

Even if the bags were authorized (they are not), the Policy strips away the safeguards the General Assembly made mandatory for the collection of ballots from absentee-ballot drop boxes. O.C.G.A. § 21-2-382(c)(3) requires that ballots "shall be collected by a team of at least two people," each of whom must have "sworn an oath in the same form as the oath for poll officers set forth in Code Section 21-2-95," and that the team "shall complete and sign a ballot transfer form" recording "the date, time, location, number of ballots, confirmation that the drop box was locked after the removal of the ballots, and the identity of each person collecting the ballots." The Policy requires none of this. It calls only for ballots to be "recorded on the chain of custody forms at the end of the night in a separate category," Policy ¶ V(4)(c), and omits the statute's two-person-team, poll-officer-oath, transfer-form, locking-confirmation, and collector-identity requirements. Because O.C.G.A. § 21-2-382(c)(3) commands these safeguards in the mandatory "shall," the Board has no discretion to substitute a regime of its own design that affords less protection. *See Mead*, 278 Ga. at 269; *Collier*, 279 Ga. at 317. The Policy's collection procedure is materially less protective than the one the General Assembly required.

2. The Policy has no verification upon receipt.

The Election Code prescribes a mandatory, sequenced procedure that a registrar or clerk must perform when an absentee ballot is received. “Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope,” shall “then compare” the elector’s identifying information and date of birth “with the same information contained in the elector’s voter registration records,” shall “confirm that the elector signed the oath,” and, if the information matches, “shall so certify by signing or initialing his or her name below the voter’s oath.” O.C.G.A. § 21-2-386(a)(1)(B). The Policy performs none of this at receipt. Instead, the poll manager applies only a date-and-time stamp before the ballot is placed in a secured bag and transported to the office for processing “at a later time” by a different official. O.C.G.A. § 21-2-386(a)(1)(B) does not permit the Board to substitute a stamp-now, verify-later-and-elsewhere-by-someone-else procedure for the verification the statute commands the “registrar or clerk shall” perform “[u]pon receipt of each ballot.” Because the statute speaks in the mandatory “shall,” the Board has no discretion to proceed otherwise. *Mead*, 278 Ga. at 269; *Collier*, 279 Ga. at 317. *Eternal Vigilance* is again instructive: the Court invalidated a rule that allowed officials to deviate from a clear, mandatory statutory sequence, holding the deviation “incompatible with the clear requirements” of the statute. 321 Ga. at 807–08.

3. The Policy has no poll-watcher observation.

O.C.G.A. § 21-2-408(d) entitles poll watchers to “access to polling places, advance voting locations, tabulation centers, and locations where absentee ballots are being verified, processed, adjudicated, and scanned,” and to “observe any activity conducted at the location at which they are serving.” That right encompasses the receipt of ABM ballots, the application of the date-and-time stamp, and the sealing of the ballot bags. The Policy is silent as to poll-watcher observation of the receipt, stamping, sealing, and chain-of-custody recording it establishes. It thus fails to

implement the observational right O.C.G.A. § 21-2-408(d) confers, deprives Plaintiffs of their statutory right to credential poll watchers who can meaningfully observe the handling of ABM ballots at every stage, and deprives the public of the transparency the General Assembly mandated. This defect compounds the unauthorized receipt process described above and bears directly on the public-interest and irreparable-harm inquiries addressed in Part B, *infra*.

E. The Policy Reserves Open-Ended Authority to Designate Additional Registrar's Offices Untethered to the Buildings the Code and SEB Rule Permit.

The Election Code is exacting about where a county may receive absentee ballots. A board “may establish additional registrar’s offices . . . for the purpose of receiving [absentee-by-mail] ballots,” but only at a closed list of buildings: a branch of the county courthouse, a courthouse annex, a government service center providing general government services, “another government building generally accessible to the public, or a building that is used as an election day polling place, notwithstanding that such building is not a government building.” O.C.G.A. § 21-2-382(a). Four of the five categories are governmental; the statute admits a non-governmental building only where it “is used as an election day polling place.” And State Election Board Rule 183-1-14-.08(2) makes the governmental preference mandatory: “[w]henever practicable,” a qualifying government building “shall be utilized for such additional sites.”

Policy BRE-603 disregards these limits. It reserves to the Board open-ended authority “to establish for each election cycle whether the Board will authorize additional registrar offices for the purpose of receiving absentee ballot[s] under O.C.G.A. § 21-2-382(a),” Policy ¶ V(1), without identifying the locations to be used and without limiting those locations to the categories of buildings § 21-2-382(a) and Rule 183-1-14-.08(2) permit, and without requiring the use of qualifying government buildings “whenever practicable.” Having claimed authority expressly under the Rule, *see* Policy ¶ IV, the Board cannot adopt a framework that omits the Rule’s

mandatory limitation. A policy that confers on the Board unfettered discretion the Code and the SEB Rule withhold is itself *ultra vires*. See *Ga. Real Estate Comm'n*, 234 Ga. 30, 32–33 (1975) (agency rule “inconsistent with” the statute is one the agency “was without authority to adopt” and may be enjoined); *North Fulton*, 269 Ga. at 543–44; *Eternal Vigilance*, 321 Ga. at 804. Because the Rule’s “shall be utilized” command is mandatory, the Board may not, by policy, license itself to choose otherwise. *Mead*, 278 Ga. at 269; *Collier*, 279 Ga. at 317.

II. The Remaining Interlocutory Factors Favor an Injunction.

A substantial likelihood of success having been shown, *see* Part A, *supra*, the remaining factors each favor relief, and the most important—a substantial threat of irreparable injury—is decisive here. See *Bishop*, 288 Ga. at 605.

A. Plaintiffs face a substantial threat of irreparable injury, and there is a vital necessity for relief.

The harm the Policy threatens cannot be undone once an election is conducted under it. The safeguards the Election Code commands operate at the moment a ballot is received and collected: verification of each ballot upon receipt by a registrar or clerk, O.C.G.A. § 21-2-386(a)(1)(B); the two-person chain of custody for collected ballots, O.C.G.A. § 21-2-382(c)(3); and poll-watcher observation of the receipt and custody of ballots, O.C.G.A. § 21-2-408(d). Once absentee ballots are received through the Policy’s unauthorized process and commingled with lawfully received ballots, the verification that never occurred, the chain of custody that was never maintained, and the observation that was never permitted cannot be reconstructed. The unlawfully received ballots cannot be identified or separated without disenfranchising the voters who cast them. The violation becomes complete and irreversible the moment the Policy operates at an election.

There is, accordingly, no adequate remedy at law. A legal remedy displaces equitable relief only where it is “as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity.” *SRB*, 289 Ga. at 6; *see* O.C.G.A. § 9-5-1. No post-election proceeding meets that standard: none can restore a verification, a custody record, or an opportunity to observe that the Policy bypassed in real time, and the only effective protection for the integrity the Code requires is a pre-election injunction.

The threat is neither speculative nor remote—the Policy is in force and, absent relief, will govern the receipt of absentee ballots at the November 3, 2026 general election. This harm is not monetary and cannot be cured by any later award. That is the “vital necessity” for which an interlocutory injunction exists. *Chambers*, 268 Ga. at 673; *Hampton Island*, 283 Ga. at 293. *See Bernocchi v. Forcucci*, 279 Ga. 460, 461 (2005) (interlocutory injunction warranted “so that one of the parties will not be damaged and left without adequate remedy”) (quotation omitted); *Ayer v. Norfolk Timber Inv., LLC*, 291 Ga. App. 409, 410 (2008) (same); *Owens v. Ink Wizard Tattoos*, 272 Ga. 728, 729 (2000) (Injunction warranted when defendant engages in acts that are “illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law.”) (quoting O.C.G.A. § 9-5-1). This is a classic irreparable injury for which Georgia law allows an interlocutory injunction.

B. The balance of the equities favors an injunction.

The threatened injury to Plaintiffs and the Gwinnett County electorate decisively outweighs any harm an injunction could cause Defendants, who have no legitimate interest in enforcing an unlawful policy. According to the Georgia Supreme Court, an interlocutory injunction is improper only “if it would operate oppressively on the defendant’s rights.” *W. Sky Fin., LLC v. State ex rel. Olens*, 300 Ga. 340, 354–55 (2016) (quotation omitted); *see also Nemchik v. Riggs*, 300 Ga. 363, 366 (2016) (holding interlocutory injunction is proper when “threatened harm” to plaintiff

outweighs harm injunction would cause defendants); *Denhardt v. Jones*, 363 Ga. App. 865, 866 (2022) (same). The circumstances here fall far short of that standard. An injunction would require nothing more than that Defendants receive absentee ballots through the three methods the Election Code authorizes and the Board already administers: mail or personal delivery to the registrars or absentee ballot clerk, and lawfully established drop boxes. The burden of compliance is therefore minimal—the Board need only adhere to the Code. Conversely, denying relief would expose Plaintiffs to the irreparable injury described above. These threatened injuries far surmount any inconvenience the Defendants might experience from the entry of an injunction. Accordingly, interlocutory injunctive relief is appropriate because the equities favor relief.

C. An injunction serves the public interest.

The public interest is served, not disserved, by an injunction. Georgia’s Constitution commands that elections “be conducted in accordance with procedures provided by law,” Ga. Const. Art. II, § I, ¶ I, and the public has a powerful interest in the faithful and uniform implementation of the Election Code, including the verification, chain-of-custody, and observation safeguards the General Assembly enacted to protect the integrity and transparency of absentee voting—safeguards the Policy discards. “What the Legislature allows *cannot* be contrary to public policy.” *NEC Techs., Inc. v. Nelson*, 267 Ga. 390, 394 (1996) (emphasis added). The General Assembly defined the public interest when it enacted S.B. 202 (2021). *See Integon Indem. Corp. v. Canal Ins. Co.*, 256 Ga. 692, 693 (1987) (“Expressions of the legislature through statutes are conclusive on the question of public policy; and courts cannot declare agreements or acts authorized by statute to be contrary to public policy.”). Ensuring that Gwinnett County receives absentee ballots through the same lawful procedures that govern the other 158 counties advances the public interest in orderly and lawful elections.

Conclusion

For these reasons, and because Plaintiffs are substantially likely to succeed on the merits, the Court should enter an interlocutory injunction restraining Defendants from implementing or enforcing Policy BRE-603 at the November 3, 2026 general election and at subsequent elections, pending final resolution of this action.

Respectfully submitted this 7th day of August, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and exact copy of the foregoing **BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR INTERLOCUTORY INJUNCTION** was filed with this Court's eFileGA e-Filing system. I further certify that on this day, I caused a true and correct copy of the foregoing to be transmitted to a process server for service upon Defendants.

This 7th day of August, 2026.

/s/ Thomas L. Oliver, III
Thomas L. Oliver, III

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EXHIBIT D

Plaintiffs' Reply in Support of Motion for Interlocutory Injunction

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IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE,)
GWINNETT COUNTY REPUBLICAN)
PARTY, and TIM FLEMING,)
)
Plaintiffs,)
)
v.)
)
DAVID HANCOCK, LORETTA)
MIRANDOLA, AMY BRAY, ALICE)
O'LENICK, and RICHARD PORTER, in their)
individual capacities,)
)
Defendants.)

Case No. 26-A-05660-10

PLAINTIFFS' REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR INTERLOCUTORY INJUNCTION

The Court should grant Plaintiffs' Motion for Interlocutory Injunction (the "Motion") and enjoin the Defendants' implementation of Gwinnett County Board of Registration & Elections' ("Gwinnett County BRE") Policy permitting absentee-by-mail ("ABM") ballots to be voted by deposit into a "secure ballot bag," which is an ABM drop box in all but name. Georgia's Election Code permits only three means by which an elector may vote an ABM ballot: by U.S. Mail delivery to the board of registrars or absentee ballot clerk; by personal delivery to the board of registrars or absentee ballot clerk; and by deposit in a lawfully established drop box. O.C.G.A. §§ 21-2-385(a), 21-2-382(c). The Policy unlawfully creates a fourth by allowing electors to vote ABM ballots through *de facto* ABM drop boxes at *any* advance voting location by handing an ABM ballot to *any* poll manager or assistant without the required statutory safeguards. The Policy is *ultra vires* and threatens imminent harm to Plaintiffs and election integrity. Defendants' and Proposed

Intervenors’¹ arguments to the contrary misconceive both the plain text of the Election Code and the framework the General Assembly established.

The Motion should be granted because Plaintiffs are substantially likely to succeed on the merits. Defendants have no authority to create *de facto* drop boxes for absentee-by-mail ballots in excess of the statutory limitations. Defendants’ and Proposed Intervenors’ attempts to justify their “secure ballot bag” drop boxes as a form of “hand delivery” to the board of registrars or absentee ballot clerk are belied by both common sense and statute. O.C.G.A. § 21-2-382(a) authorizes the designation of additional registrar’s offices for only two purposes: (1) voters applying for and receiving absentee ballots under O.C.G.A. § 21-2-381 and (2) in-person advance voting. The Policy’s purported designation of locations for in-person voting of absentee-by-mail ballots finds no support in the structure, text, or history of the statute and contravenes the scheme the General Assembly established. Even if Defendants could create additional locations for in-person-mail-in voting and evade Georgia limitations on the number of permissible drop boxes, the Policy flouts the Election Code’s strict integrity requirements. It mass-deputizes poll managers, eschews basic chain-of-custody procedures, and—at best—scatters the verification process across an unknown number of people and steps. These failures independently demand relief.

The remaining injunction factors all favor Plaintiffs. The Policy threatens mass illegal voting across Gwinnett County without proper oversight. That harm—and the illegally cast ballots—cannot be undone or uncounted. Enjoining the Policy will not jeopardize any voter’s

¹ Defendants and Proposed Intervenors (herein after referred to as “Proposed Intervenors”) both filed responses in opposition to the Motion. *See* Gwinnett County’s Response in Opposition to Plaintiffs’ Motion for Interlocutory Injunction, filed in this Court on Sept. 4, 2026 (“Def. Br.”); Motion of Proposed Intervenors DSCC and Jon Ossoff for Senate for Leave to File a Motion to Dismiss Plaintiffs’ Petition and Opposition to Plaintiffs’ Motion for Interlocutory Injunction, filed in this Court on Sept. 4, 2026, Ex. B (“Inter. Br.”). For the Court’s convenience, Plaintiffs reply to both herein.

rights: the Policy affects only absentee-by-mail ballots, which can still be *mailed* in or delivered to a drop box. And the fact that Defendants violated Georgia law before is no cause to let them do so again.

ARGUMENT

I. Plaintiffs are substantially likely to succeed on the merits because the Policy contravenes the plain text of the absentee-by-mail scheme the General Assembly established.

There is no statutory authority for the Policy. The code section that Defendants and Proposed Intervenors exclusively rely upon does not permit designating locations for *in-person* voting of absentee-by-mail ballots. In fact, it was amended expressly to *remove* authorization for designating such additional locations. This lack of statutory authority alone necessitates granting the Motion. Regardless, even if Georgia law did permit the creation of additional *bona fide* registrar's offices for electors to vote ABM ballots, Defendants cannot use the Trojan horse of "hand delivery" to a registrar's office to disguise what are plainly *ultra vires* ABM drop boxes exceeding the express limitations under Georgia law. Finally, the Policy cannot lawfully permit any and all poll managers or their assistants to receive ballots or to handle ballots without following required procedures. Each of these *ultra vires* acts independently warrants granting the Motion.

A. O.C.G.A. § 21-2-382(a) does not authorize additional locations for voting absentee-by-mail ballots in person.

Defendants and Proposed Intervenors claim that O.C.G.A. § 21-2-382(a) gives them "express statutory authority" to create additional locations for voting absentee-by-mail ballots in person. Inter. Br. at 10; Def. Br. at 4. Not so. The statute only permits the "board of registrars" to "establish additional registrar's offices or places of registration for the purpose of *receiving absentee ballots under Code Section 21-2-381* and for the purpose of advance voting under Code Section 21-2-385." O.C.G.A. § 21-2-382(a) (emphasis added). Critically, "Code Section 21-2-

381” only discusses the process by which a *voter* applies for and receives an absentee ballot. It says nothing about an elector *voting* absentee-by-mail ballots. Thus, under O.C.G.A. § 21-2-382(a) Defendants may create additional locations only for: (1) electors to apply for and receive absentee ballots or (2) conducting in-person advance voting. The statute does not permit the designation of additional locations for electors to vote absentee-by-mail ballots. In fact, it was recently amended to *remove* authorization to designate additional locations “for the purpose of voting absentee ballots under Code Section 21-2-385”—exactly what Defendants purport to do.

First, the structure of O.C.G.A. § 21-2-382(a) confirms it does not allow the designation of additional locations for electors to vote absentee-by-mail ballots. As the Georgia Supreme Court has explained “many times,” courts “do not read words in isolation, but rather in context, which includes the structure and history of the text and the broader context in which the text was enacted.” *Ultra Grp. of Companies, Inc. v. Prince & Prince, LLC*, 323 Ga. 1, 3 (2025) (citations and punctuation omitted). O.C.G.A. § 21-2-382(a) sits in Article 10 of the Election Code, which governs both absentee and advance voting. O.C.G.A. § 21-2-382(a) addresses both means of voting. It permits boards of registration and election to create “additional registrar’s offices” for two purposes: (1) “places of registration for the purpose of electors receiving absentee ballots under Code Section 21-2-381”—meaning applying for an absentee ballot—and (2) “for the purpose of advance voting under Code Section 21-2-385”—meaning electors in-person early voting. O.C.G.A. § 21-2-382(a). The statute does not permit designation of additional registrar’s offices for in-person voting of absentee-by-mail ballots. And, of course, that makes perfect sense. There is no material reason the Georgia Election Code would need to also authorize electors *present* at an advance voting location to vote *absentee-by-mail* ballots at a location where they could already vote *in person*.

Defendants and Proposed Intervenors base their argument entirely on seven words: “for the purpose of receiving absentee ballots.” Inter. Br. at 10; Def. Br. at 4. But they read those words in isolation and ignore the full statutory phrase: “additional registrar’s offices or places of registration for the purpose of receiving absentee ballots under Code Section 21-2-381.” O.C.G.A. § 21-2-382(a). Neither “places of registration” nor “under Code Section 21-2-381” have anything to do with an elector voting an absentee ballot. A “place of registration” has no connection to casting a ballot, and O.C.G.A. § 21-2-381—entitled “[a]pplication for ballot”—governs only *applying* for an absentee-by-mail ballot and an elector receiving an absentee-by-mail ballot; not a single provision in it addresses the registrar’s office “receiving” a voted ballot.² Defendants and Proposed Intervenors offer no justification for their selective reading, and this Court should “avoid a construction that makes some language mere surplusage” and instead prefer one that “make[s] all its parts harmonize and give a sensible and intelligent effect to each part.” *McIver v. State*, 314 Ga. 109, 119–20 (2022).³

Second, the history of the statute confirms it does not permit the designation of additional locations for electors to vote ABM ballots. *Ultra Grp.*, 323 Ga. at 3. O.C.G.A. § 21-2-382(a) was previously titled “[a]dditional sites for receiving absentee ballots and *voting absentee ballots*” and

² In the “extraordinary circumstances” of an open seat and applying only to “absent uniformed services voter[s],” a “valid absentee ballot shall be accepted and processed” if timely received. O.C.G.A. § 21-2-381(a)(4). To the extent that this language is an exception, it proves the rule. And neither Defendants nor Proposed Intervenors claim this as the source of the Gwinnett County BRE’s purported authority. Even so, it would not suffice to permit creating general purpose in-person-mail-in voting locations.

³ As explained below, Defendants and Proposed Intervenors also ignore that the immediately preceding version of O.C.G.A. § 21-2-382(a) expressly gave county boards discretion to establish additional locations “for the purpose of *voting absentee ballots*.” Laws 2019, Act 24, § 28, eff. April 2, 2019 (emphasis added). If “voting absentee ballots” was previously permitted by separate language, then “receiving absentee ballots” could not have meant the same thing. Reading the two phrases as synonymous would render one entirely superfluous. *See McIver*, 314 Ga. at 119.

gave discretion to “establish additional sites as additional registrar’s offices . . . for the purpose of *voting absentee ballots* under [O.C.G.A. § 21-2-385].” Laws 2019, Act 24, § 28, eff. April 2, 2019 (emphasis added). The statute was amended in 2021 to remove the authorization to designate additional locations for “voting absentee ballots.” *See* O.C.G.A. § 21-2-382(a). That change is dispositive. It is a “core principle of statutory interpretation that changes in statutory language generally indicate an intent to change the meaning of the statute.” *McIver*, 314 Ga. at 120 (citation and punctuation omitted). The General Assembly plainly chose to strip Defendants’ authority to establish additional absentee-ballot-voting locations.

In sum, O.C.G.A. § 21-2-382(a) permits the Gwinnett County BRE to establish additional locations for two purposes only: for voters to apply for and receive absentee ballots and for in-person advance voting. The Policy goes well beyond both to permit in-person voting of absentee-by-mail ballots and is necessarily invalid. *Rep. Nat’l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 795 (2025) (“[T]he absence of statutory authority is the absence of legal authority to act.” (quoting *Camp v. Williams*, 314 Ga. 699, 709 (2022) (Bethel, J., concurring))).

B. The Policy violates Georgia’s express limitations on the permissible number of ABM drop boxes.

Even if O.C.G.A. § 21-2-382(a) did allow the designation of additional locations for voting an absentee-by-mail ballot, the Policy would still be *ultra vires* because it creates additional drop boxes beyond the maximum number permitted by Georgia law. The Policy creates additional drop boxes—full stop. A drop box is a secured receptacle placed inside an advance voting location “as a means for absentee by mail electors to deliver their ballots,” from which ballots are later collected by a team and transferred for processing. O.C.G.A. § 21-2-382(c)(1). The Policy dictates that ballots received by poll managers or their assistants be “placed in a secure ballot bag.” Compl., Ex. A, Sec. V, ¶ 4(b). Neither Defendants nor Proposed Intervenors can explain the functional

difference between this “ballot bag” and a “drop box.” That is because there is none. Both sit inside advance voting locations; both contain absentee-by-mail ballots delivered by voters. The only difference is legal: one is authorized by the General Assembly; the other is not.

In response, Defendants and Proposed Intervenor continue to insist on a difference between hand-delivered ballots and a drop box. Inter. Br. at 13–15; Def. Br. at 5. This is a circular non-response. It is also betrayed by the Policy and common sense. The Policy directly treats “secure ballot bags” the same as drop boxes. It expressly creates “secure ballot bags” only at advance locations that do not have a drop box. The Policy further describes these “secure ballot bags” as an “alternative” to drop boxes for collection of “hand delivered absentee ballots.” Compl., Ex. A, Sec. V, ¶¶ 3, 4. But absentee-by-mail ballots delivered to a statutory “drop box” or the Policy’s “secure ballot bag” get there the same way: *by hand*. And both O.C.G.A. § 21-2-385(a) and O.C.G.A. § 21-2-382(c)(1) use the same verb to refer to the action being taken by the voter: “deliver.” Defendants’ and Proposed Intervenor’s distinction between delivery “by hand” and delivery to a “drop box” has no purchase in either statute. Simply put, the Policy creates an alternative “means for absentee by mail electors to deliver their ballots to the board of registrars.” See O.C.G.A. § 21-2-382(c)(1). That is the very definition of a drop box.

Given that drop boxes and ballot bags are functionally identical, Defendants offer no way in which they can avoid Georgia’s limitation simply by changing the name. At the same time the General Assembly removed Defendants’ authorization to designate additional locations for voting absentee-by-mail ballots, it also authorized Defendants to create a limited number of drop boxes for delivery of absentee-by-mail ballots. Ga. Laws 2021, p. 14. The plain design was to replace Defendants’ authority to designate additional locations for voting absentee-by-mail ballots with authority to create a strictly limited number of drop boxes—not to allow the creation of a limited

number of drop boxes while also permitting Defendants to circumvent that limitation by designating additional locations for voting absentee-by-mail ballots through an extra-statutory process functionally identical to a drop box. Gwinnett County is allowed only seven drop boxes. O.C.G.A. § 21-2-382(c)(1). But the Gwinnett County BRE admits that it plans to place “secure ballot bags” at six additional locations, Def. Br. at Ex. A, ¶¶ 3, 5, nearly doubling the statutory limit. The Gwinnett County BRE has no authority to do so.

C. Even if the Gwinnett County BRE can designate additional locations for in-person-mail-in voting, the Policy is still plainly *ultra vires*.

Finally, even if the Gwinnett County BRE could designate additional registrar’s offices under O.C.G.A. § 21-2-382(a) as places for in-person-mail-in voting and even if it could field *de facto* drop boxes beyond the statutory limit, the Policy is still invalid because it cannot permit any and all poll managers or their assistants to receive ballots—or deputize them to do so. Likewise, poll managers may not handle ballots without following required procedures. These *ultra vires* acts independently warrant granting the Motion.

i. Poll managers and assistants cannot receive hand delivered absentee-by-mail ballots.

The Policy purports to permit voters to “hand deliver the ballot . . . directly to the poll manager or assistant manager.” Compl., Ex. A, Sec. V, ¶ 4. This exceeds Defendants’ authority because the Policy wholly ignores the explicit and exclusive class of persons identified by statute with the authority to accept hand-delivered absentee-by-mail ballots: “the board of registrars or absentee ballot clerk.” O.C.G.A. § 21-2-385(a). Poll managers and their assistants are not among them. This attempt at circumvention is precisely the kind of action the Election Code forbids. In *Eternal Vigilance*, the State Election Board adopted a rule layering signature and photo identification requirements onto the hand delivery of absentee ballots, and the Supreme Court

struck it because “nowhere in O.C.G.A. § 21-2-385(a)” was any such requirement imposed; the rule “goes beyond the statute’s provisions and invents new requirements,” and what is not “consistent with” O.C.G.A. § 21-2-385(a) is “not authorized by” it. 321 Ga. at 808–09. The Policy commits the same error in reverse—removing statutory requirements it deems inconvenient. Who may receive absentee ballots is not left to Defendants’ discretion.

Much like their attempt to avoid the express limitations on ABM drop boxes by renaming drop boxes “secure ballot bags,” Defendants similarly try to circumvent this limitation on who may accept delivery of ABM ballots by purporting to mass-deputize poll managers and their assistants as “deputy registrars.” Def. Br. at 5, Ex. A, ¶ 5. Simply renaming poll managers as “deputy registrars” does not permit Defendants to avoid the substantive limitations of Georgia law.

O.C.G.A. § 21-2-213 authorizes the board of registrars to “appoint deputy registrars to aid them in the discharge of their duties,” but Defendants’ mass-deputization is in no way a *bona fide* appointment. By their own admission, Defendants mass-appoint poll managers solely to circumvent Georgia’s limitations on who may accept delivery of ABM ballots by renaming “poll managers” to “deputy registrars.” Defendants provide no evidence that these poll managers in fact act as deputy registrars or that they are authorized to perform any other functions of a deputy registrar. Moreover, Defendants’ reliance on mass-deputization violates the statutory process for appointing deputy registrars. O.C.G.A. § 21-2-213 requires the Gwinnett County BRE to determine “[t]he number of deputy registrars appointed to serve” and to “select persons who are reasonably representative of a cross section of significantly identifiable groups of the communities or areas where they are to serve.” *Id.* Mass-appointing every poll manager and assistant at every location, whoever and however many they may be, disregards both commands.

Moreover, Defendants fail to establish that O.C.G.A. § 21-2-213 permits even *bona fide* deputy registrars to accept delivery of ABM ballots. It sits in Article 6 of the Election Code (“Registration of Voters”)—authorizing deputy registrars to assist with voter-registration functions. An Article 6 staffing provision cannot enlarge the Article 10 class of persons who may receive absentee ballots. And even if it could, a deputized poll worker would have no greater authority than the registrars themselves—who, as shown above, cannot accept absentee-by-mail ballots in person at locations designated under O.C.G.A. § 21-2-382(a). *See supra* Sec. I.A. Proposed Intervenor’s reliance on SEB Rule 183-1-14-.02(1), which authorizes a “designee of a board of registrars” to perform advance-voting duties, Inter. Br. at 10, fares no better. That rule speaks to advance voting, not to receiving absentee-by-mail ballots—the same conflation the statute forecloses.

Proposed Intervenor’s manufactured absurdity—that Plaintiffs’ reading requires five board members to personally staff every advance voting location—is baseless. Inter. Br. at 11–12. Plaintiffs never argued as much. Proposed Intervenor conveniently ignore three things: (1) this dispute concerns absentee-by-mail ballots, not all ballots or advance voting; (2) the absentee ballot clerk may also receive them, O.C.G.A. § 21-2-385(a); and (3) drop boxes already exist for this purpose. First, absentee-by-mail ballots were designed to be mailed to the board of registrars or hand delivered to the board of registrars—not voted in person at advance voting locations for in person voting. Even still, hand delivery is permitted to “the board of registrars *or absentee ballot clerk*,” O.C.G.A. § 21-2-385(a) (emphasis added), and the Election Code requires a county the size of Gwinnett to maintain an “additional . . . absentee ballot clerk’s office.” O.C.G.A. § 21-2-382(b). Finally, the General Assembly has already addressed this concern with the statutorily authorized drop boxes, which the Gwinnett County BRE must establish “as a means for absentee by mail

electors to *deliver their ballots to the board of registrars or absentee ballot clerk.*” See O.C.G.A. § 21-2-382(c)(1) (emphasis added).

ii. The Policy violates election integrity procedures for both drop boxes and in-person absentee voting.

Both drop boxes and in person absentee voting follow strict election integrity procedures, including (1) chain of custody requirements, (2) verification procedures, and (3) observation rights. The Policy fails to adhere to any of them.

Chain of Custody. Despite attempting to fill the same purpose, the Policy fails to provide the same chain-of-custody guarantees for its “ballot bags” as those required of drop boxes. The Policy requires only that ballots are “recorded on the chain of custody forms at the end of the night in a separate category.” Compl., Ex. A, Sec. V, ¶ 4(c). This omits the drop box’s two-person team, poll-officer oath, transfer-form, locking-confirmation, and collector-identity requirements. See O.C.G.A. § 21-2-382(c)(3). Proposed Intervenors effectively concede that these requirements are not met by the Policy. They admit that it only requires a date-and-time stamp upon receipt and note that “processing continues” *after* the ballots are at the board of registrar’s office. Inter. Br. at 12–13. Whatever happens *after* the absentee ballot leaves the bag and goes to headquarters for processing has no bearing on compliance with the in-transit chain-of-custody requirements.

Defendants insist that all chain-of-custody requirements are satisfied not by the Policy but by the Gwinnett County BRE’s Standard Operating Procedure. Def. Br. at 6–7. This is irrelevant. The SOP is not being challenged here, and it is authorized by and wholly reliant upon the Policy. *Id.* at Ex. A-4. If the Policy falls, the SOP falls with it. But the SOP’s existence also undercuts Defendants’ position: it attempts to mirror the drop box chain-of-custody procedures. If ballot bags and drop boxes are not the same, as Defendants insist, it raises the question why they require the same safeguards.

Verification. The Election Code requires a detailed and immediate verification process “[u]pon receipt of each [absentee] ballot.” O.C.G.A. § 21-2-386(a)(1)(B). The Policy fails to carry it out. Defendants and Proposed Intervenors insist that verification need not be immediate. Def. Br. at 8; Inter. Br. at 12–13. They misread the statute. The initial date-and-time stamp occurs immediately “[u]pon receipt of each ballot,” followed by verification steps that “shall then” be completed. O.C.G.A. § 21-2-386(a)(1)(B). The word “then” is not decorative—it imposes sequence and timing. If the registrar or clerk cannot verify the required information, the statute mandates *prompt* notice to the elector so the ballot can be cured. *Id.* at § 21-2-386(a)(1)(C); *see also id.* at § 21-2-386(a)(1)(D) (requiring prompt notification for designation as a provisional ballot). The Policy’s end-of-day batch transfer to the main office defeats this entire scheme. *Compare id.* at § 21-2-386(a)(1)(E) (requiring lists of absentee voters to be updated), *with* O.C.G.A. § 21-2-381(a)(3) (prohibiting sending absentee ballot applications to those who already voted). The Election Code works in sync. The Policy does not.

The Policy also introduces additional people—and security vulnerabilities—into the process not contemplated by the statute. Defendants and Proposed Intervenors both admit that the date-and-time stamp is processed by the poll manager or assistant who receives the absentee-by-mail ballot and that the remaining verification is completed by another “team” at the main office. Def. Br. at 8; Inter. Br. at 12–13. The Election Code requires the entire process to be completed by the same “registrar or clerk.” O.C.G.A. § 21-2-386(a)(1)(B). Once the date-and-time stamp has been applied by “a registrar or clerk,” the remaining steps “shall then” be completed by “*the* registrar or clerk.” *Id.* (emphasis added). This shift from the indefinite “a” to the definite “the” indicates a shift from a previously unidentified person—any clerk who received the ballot—to an identified one—the one who, having started the process, finishes it. *See Lowery v. State*, 347 Ga.

App. 26, 31 (2018) (explaining the difference between indefinite and definite articles in statutory interpretation). The Gwinnett County BRE cannot introduce additional variables and security risks not permitted by the General Assembly.

Defendants and Proposed Intervenors also argue that the Policy need not rely on drop-box or mail-in procedures because it is an in-person means of voting an absentee ballot. But it also fails to comply with even the most basic verification requirement for voting an absentee ballot in person: voter identification. Before an absentee voter is “found eligible to vote an absentee ballot at the registrar’s office or absentee ballot clerk’s office,” the “registrar or absentee ballot clerk” must first verify the voter's identity. O.C.G.A. § 21-2-381(b)(1). Nowhere does the Policy require this pre-voting verification of identity.

Poll Watcher Observation. Defendants and Proposed Intervenors do not deny that poll watchers have a right to “access the polling places, advance voting locations, tabulation centers, and locations where absentee ballots are being verified, processed, adjudicated, and scanned” and to “observe any activity conducted at the location at which they are serving.” O.C.G.A. § 21-2-408(d). Proposed Intervenors dismiss this concern by arguing the Policy need not reproduce the Election Code. Inter. Br. at 15. But the issue is not one of reproduction—it is one of compliance. The Policy says nothing about protecting poll watchers’ observation rights, and Defendants’ SOP merely requires that the “secure ballot bag” be in “view of the . . . watchers.” Def. Br. at 7. Seeing a sealed bag is not observing “any activity” related to verification and processing. And given how segmented the Gwinnett County BRE has made the process—splitting receipt, transport, and verification across different people and locations—it is likely impossible for a poll watcher to exercise those rights in any meaningful way.

II. The Motion should be granted because Plaintiffs face a substantial threat of irreparable injury, the balance of equities favors an injunction, and an injunction would serve the public interest.

The remaining three factors favor an interlocutory injunction and granting the Motion. Plaintiffs (1) continue to face a substantial threat of injury to the integrity of the upcoming election, (2) this threatened injury outweighs any harm from Defendants' scrapping an illegal Policy, and (3) the public interest is served by compliance with the Election Code. *See City of Waycross v. Pierce Cty. Bd. of Comm'rs.*, 300 Ga. 109, 111 (2016) (listing all four factors). Nothing Defendants or Proposed Intervenor say changes these facts.

Substantial Threat of Injury. The Policy threatens the legal and secure conduct of the upcoming election, and these harms cannot be undone. It permits receipt of absentee-by-mail ballots at unauthorized in-person locations, *see supra* Sec. I.A, by unauthorized persons, *see supra* Sec. I.B.i, without following any of the chain-of-custody or verification procedures required of mail-in or in-person voting, *see supra* Sec. I.B.ii. Once cast, these illegal and unsecure ballots cannot be identified and separated from those legally cast. The Policy must be enjoined *before* it can be implemented in this election.

Proposed Intervenor argues that there is no injury because the Motion would change the status quo, not preserve it, since the Policy has been in effect since February 2024. Inter. Br. at 16–18.⁴ This misunderstands both the law and the status quo. While the “main purpose of an interlocutory injunction is to preserve the status quo,” *City of Waycross*, 300 Ga. at 111, Proposed Intervenor's own authority clarifies that “this does not mean that the status quo must be maintained

⁴ Defendants separately claim that there is no threatened injury because they have followed all the required security procedures. Def. Br. at 9. Even if that were true—it is not—merely following these procedures does not stop the planned illegal voting locations or unauthorized receipt of ballots by unauthorized staff.

in every case” and that courts must apply the full “standard set forth in *City of Waycross*” to determine whether it “ought to be.” *Green Bull Ga. Partners, LLC v. Register*, 301 Ga. 472, 474 n.4 (2017). Stated differently, the status quo is not the litmus test Proposed Intervenor pretend. And enjoining the Policy before the November 2026 election would preserve the status quo. Elections are discrete events, and the Policy’s own language confirms it is “to establish for each election cycle” and is reviewed “each election year.” Compl., Ex. A, Sec. V, ¶¶ 1, 5.⁵ Besides, absentee ballots have not been sent out—let alone voted—in-person early voting has not begun, and locations have only “been designated” for “the upcoming November 3, 2026 General Election.” Def. Br. at Ex. A, ¶ 3. No illegal ballots have been cast or counted under the Policy for the upcoming election. The threatened harm is in the immediate future for the November 2026 General election, not yesterday’s election.

Balance of Equities. The balance of equities clearly favors granting the Motion. On one side is the real and imminent threat of jeopardizing an election. On the other, Defendants will be required to stop applying an illegal Policy. This hardly “operate[s] oppressively on the defendant’s rights.” *W. Sky Fin., LLC v. State ex rel. Olens*, 300 Ga. 340, 354–55 (2016) (citation and punctuation omitted). Defendants and Proposed Intervenor nonetheless complain that reversing course will sow voter confusion. Def. Br. at 9–10; Inter. Br. at 18. But there is nothing to reverse. No ballots have been mailed, no early voting has begun, and no voter has relied on the Policy for this election. If there is any impact on votes, an injunction is preferable to restrain Defendants’ illegal conduct before voters rely upon the unlawful Policy. Besides, it is not a burden to *stop* doing something illegal. Finally, enjoining Defendants’ enforcement of the Policy imposes no burden on

⁵ This is also the first election cycle since *Eternal Vigilance* made clear that the limits on agency power applied as well in the election context. See 321 Ga. at 795–96.

voters: the Election Code already provides multiple options for voting an absentee-by-mail ballot, in addition to in-person early voting and voting on the day of the election.

Public Interest. Enjoining the Policy serves the public interest. The Policy violates the Election Code and exceeds Defendants’ authority. “Expressions of the legislature through statutes are *conclusive* on the question of public policy,” *Integon Indem. Corp. v. Canal Ins. Co.*, 256 Ga. 692, 693 (1987) (emphasis added), and the General Assembly spoke clearly when it enacted S.B. 202—amending the Election Code, creating the current absentee-ballot and advance-voting procedures under Article 10, and limiting county discretion. It cannot be argued that acting *ultra vires*—against the conclusive expression of public policy—is in the public interest. Proposed Intervenor suggests that county discretion under O.C.G.A. § 21-2-382(a) means Gwinnett County can go its own way. Inter. Br. at 18–19. But discretion is not a license to act outside statutory bounds, and the General Assembly’s decision to vest discretion in county boards does not waive the limits it simultaneously imposed. *Eternal Vigilance*, 321 Ga. at 795 (“[T]he absence of statutory authority is the absence of legal authority to act.” (citation and punctuation omitted)). Defendants’ and Proposed Intervenor’s remaining arguments on the public interest mirror their balance-of-equities complaints and fail for the same reasons. See Def. Br. at 10; Inter. Br. at 18–19.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’ Motion in its entirety.

Respectfully submitted this 18th day of September, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR INTERLOCUTORY INJUNCTION** was filed with this Court's eFileGA e-Filing system. I further certify that on this day, I caused a true and correct copy of the foregoing to be transmitted to all counsel of record via the Court's electronic filing system.

This 18th day of September 2026.

/s/ Thomas L. Oliver, III
Thomas L. Oliver, III

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EXHIBIT E

Plaintiffs' Response in Opposition to the Motions to Dismiss

RETRIEVED FROM DEMOCRACYDOCKET.COM

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE,)
GWINNETT COUNTY REPUBLICAN)
PARTY, and TIM FLEMING,)
)
Plaintiffs,)
)
v.)
)
DAVID HANCOCK, LORETTA)
MIRANDOLA, AMY BRAY, ALICE)
O'LENICK, and RICHARD PORTER, in their)
individual capacities,)
)
Defendants.)
_____)

Case No. 26-A-05660-10

PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' AND PROPOSED INTERVENORS' MOTIONS TO DISMISS

The Court should deny Defendants' and Proposed Intervenors' motions to dismiss (the "Motions") because the Motions misconceive both the pleaded facts and Georgia law.

First, Plaintiffs have standing. Tim Fleming, a Georgia elector and statewide candidate whose name appears on ballots administered by the Defendants, has standing based on his legal rights as a voter and as a candidate. The Republican National Convention ("RNC") and Gwinnett County Republican Party ("GCRP") have standing based on their legal rights as political parties in the nomination of candidates, the conduct of primaries, the administration of elections, and the oversight of elections. Moreover, GCRP is a member of the Gwinnett County community and thus has community stakeholder standing as well.

Second, sovereign immunity does not bar this individual-capacity action for prospective relief. Well established and longstanding Georgia law holds that sovereign immunity categorically does not apply to suits against government officials in their individual capacities seeking only

prospective relief. The recent amendment to the Georgia Constitution to provide a limited *waiver* of sovereign immunity in no way expanded the scope of sovereign immunity, and no decision of the Georgia Supreme Court has held that it does. To the contrary, the Georgia Supreme Court has reaffirmed—after the amendment—that sovereign immunity does not bar individual-capacity actions.

Third, both Plaintiffs’ claims for declaratory relief and injunctive relief are valid, legally cognizable claims. Plaintiffs seek a declaration on the lawfulness of the Policy, a discrete and concrete question appropriate for resolution via declaratory judgment. Moreover, because the Policy is *ultra vires* and would permit the unlawful voting of absentee by mail ballots by electors, all the requirements for injunctive relief are satisfied.

LEGAL STANDARD

Defendants’ and Intervenor’s Motions challenge the Petition under both O.C.G.A. § 9-11-12(b)(6) and 12(b)(1). While Plaintiffs bear the burden of establishing jurisdiction under 12(b)(1), *Stillwell v. Topa Ins. Co.*, 363 Ga. App. 126, 127 (2022), Defendants bear the “demanding” burden to show that the Petition fails to satisfy Georgia’s lenient notice-pleading standard under 12(b)(6). *AG Res. Mgmt., LLC v. Mundy, Inc.*, 376 Ga. App. 643, 643 (2025). All that is required is a “short and plain statement of the claims showing that the pleader is entitled to relief,” O.C.G.A. § 9-11-8(a)(2)(A), that gives “the defendant fair notice of the claim and a general indication of the type of litigation involved.” *AG Res. Mgmt.*, 376 Ga. App. at 643. Plaintiffs’ Petition more than satisfies this low bar. To show otherwise, Defendants must demonstrate that (1) “the allegations of the complaint disclose with certainty that the [Plaintiffs] would not be entitled to relief under any state of provable facts asserted,” and (2) that the Plaintiffs “could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of relief sought.” *Id.* (citation omitted);

Islam v. Wells Fargo Bank, N.A., 327 Ga. App. 197, 201 (2014) (limiting the trial court to these two inquiries).

In deciding these Motions, the Court must accept “as true all well-[pleaded] material allegations in the complaint and must resolve any doubts in favor of the plaintiff.” *City of Albany v. So. Ga. Rails to Trails, Inc.*, 375 Ga. App. 494, 497 (2025) (applied to a 12(b)(6) motion); *Stillwell*, 363 Ga. App. at 127 (applied to a 12(b)(1) motion). Defendants’ and Proposed Intervenor’s own “factual allegations” are immaterial, *Ikomoni v. Bank of America, N.A.*, 330 Ga. App., 776, 778 (2015), as are any “attack[s] [on] the credibility of [Plaintiffs’] allegations” or their “factual basis.” *Islam*, 327 Ga. App. at 201.

ARGUMENT

I. Plaintiffs have established standing.

Defendants’ standing challenge fails for two independent reasons. First, the Policy impacts each Plaintiff’s established legal rights, giving each standing to challenge the Policy as *ultra vires*. Second, this case concerns Defendants’ implementation of a Gwinnett County policy, so the Gwinnett County Republican Party additionally has community-stakeholder standing as a member of the Gwinnett County community. Defendants do not engage these straightforward bases for standing. Instead, they insist that Plaintiffs have done nothing more than “identify a government policy with which they disagree,” Defs.’ Mot. at 8, while ignoring how the Policy infringes upon Defendants’ legal rights.

Judicial power extends to those cases where the plaintiff “has a legal right at stake that requires adjudication to protect it.” *Republican Nat’l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 775 (2025) (quotation omitted). This can be “either [a plaintiff’s] own private right, or a public right shared by the relevant community.” *Wasserman v. Franklin Cnty.*, 320 Ga. 624, 629

(2025). In particular, “in most local government cases involving public rights, such injury need not be unique to the plaintiff when a member of the relevant community seeks relief.” *Sons of Confederate Veterans, Inc. v. Henry Cnty. Bd. of Comm’rs*, 315 Ga. 39, 49 (2022) (“SCV”).

A. All Plaintiffs have standing to protect their individual legal rights.

i. Fleming has standing to protect his legal rights as a candidate and voter.

Fleming has standing because the Policy impacts his legal rights as a candidate and a voter. First, Georgia law recognizes the—perhaps obvious—fact that candidates have a legal right to election integrity and standing to challenge unlawful election administration. A candidate has a “substantial right . . . to seek election to public office.” *Handel v. Powell*, 284 Ga. 550, 553 n.3 (2008); O.C.G.A. § 1-2-6(a)(5) (“The rights of citizens include, without limitation . . . [t]he right to hold office”); *see also* *Camp v. Williams*, 314 Ga. 699, 708 (2022) (“No one doubts that a candidate has a substantial interest in running for office.”). As a result, the Georgia Supreme Court has consistently allowed candidates standing to challenge unlawful election policies. *See, e.g.,* *Barrow v. Raffensperger*, 308 Ga. 660, 661 (2020); *Handel*, 284 Ga. at 553 n. 3; *Hammill v. Valentine*, 258 Ga. 603, 603 (1988); *Forston v. Weeks*, 232 Ga. 472, 483 (1974).

Gwinnett County’s unlawful Policy necessarily harms Fleming’s legal right as a candidate to a lawful election. Earlier this year, the United States Supreme Court explained that candidates have standing because they have “a concrete and particularized interest in the rules that govern the counting of votes in their elections.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 82 (2026). The Supreme Court’s reasoning in *Bost* accords with Georgia standing requirements. In *Eternal Vigilance*, the Georgia Supreme Court held that “the plaintiff” must “show that he has a ‘right at stake that requires adjudication to protect it,’ and ‘must assert the violation of his *own* rights.’” 321 Ga. at 775. *Bost* applied the same requirement: standing requires “a ‘personal stake’ in a case.”

607 U.S. at 76. In *Bost*, in a challenge to the application of election rules, the answer was “obvious”: as “a candidate for office,” the plaintiff had standing. *Id.* For these same reasons, the Georgia Supreme Court has already held that a candidate has standing to challenge the receipt of illegal votes. *Hammill*, 258 Ga. at 603. Here, Fleming has a direct interest in the lawful receipt and counting of the votes cast in his race. Defendants ignore Fleming’s standing as a candidate and do not address these longstanding authorities.

Second, Fleming has standing to protect his legal rights as a voter. Just last year, the Georgia Supreme Court in *Eternal Vigilance* reaffirmed that the legal “right to vote” affords voters standing to challenge unlawful election administration and policies. 321 Ga. at 786. The Court held that voter standing permitted a voter to challenge a wide variety of allegedly unlawful election policies, including rules that: (1) “election board members are permitted to examine all election-related documentation before certifying results”; (2) “family members or caregivers provide photo identification when dropping off an absentee ballot of another voter at certain ballot drop-off locations”; and (3) “absentee drop boxes at early voting locations be under video surveillance outside of voting hours.” *Id.* And the Court allowed the voters to challenge each of those rules without requiring any evidence that their own ballots would be examined, that they would rely on a family member or caregiver to submit a ballot, or that they would use an absentee drop box subject to surveillance. *Id.* Fleming, as a Georgia elector, thus has standing to challenge the Policy, and Defendants’ contention that Plaintiffs identify no violation of “their own legal rights,” Defs.’ Mot. at 8, cannot be squared with *Eternal Vigilance*.

ii. The GCRP and RNC have standing to protect their legal rights as political parties.

The GCRP and RNC have standing to challenge the Policy because it impacts their rights as political parties in a partisan election. These rights are not merely a policy interest, as

Defendants argue, but are legal rights afforded by Georgia Law. At the outset, political parties' legal right to recognition as a statutory political party under Georgia election law depends on the political party's gubernatorial or presidential candidate receiving at least 20 percent of the total vote cast. O.C.G.A. § 21-2-2(25). Moreover, political parties have the legal right to nominate candidates for public office and inclusion on a ballot. O.C.G.A. § 21-2-151(a); O.C.G.A. § 21-2-2(21); O.C.G.A. § 21-2-5(a). Political parties are not akin to non-partisan non-profits that merely have a general interest in the election of candidates who align with their viewpoints. Political parties put forward candidates for election and are directly associated with partisan candidates—political parties are literally included on Georgia ballots with their partisan candidates. Political parties likewise make “substitute nominations” to fill ballot vacancies—a direct hand in constituting Georgia ballots. O.C.G.A. § 21-2-134.

Political parties not only have legal rights concerning voting that are injured by the Policy, they also have legal rights in the conduct of the election itself that are directly violated by the Policy. Under Georgia law, political party primaries in Gwinnett County are conducted by the Defendants using the same rules and regulations applicable to a general election, including the Policy. O.C.G.A. § 21-2-151(b). Thus, the Policy directly violates the political parties' right to a lawful primary process to select their own candidates. Political parties likewise have the statutory right to appoint poll watchers to observe the receipt and processing of absentee by mail ballots. O.C.G.A. § 21-2-408. Each of these legal rights is injured by the Policy's *ultra vires* creation of illegal methods for voting absentee by mail ballots.

Defendants rely on *Eternal Vigilance*, but *Eternal Vigilance* overruled only Georgia's prior adoption of federal associational standing whereby an association sues on behalf of its members. *Eternal Vigilance* **did not** hold that an organization cannot have standing. Rather, it explicitly

recognized that an organization has “standing ‘in its own right if it meets the same standing test applicable to individuals.’” *Eternal Vigilance*, 321 Ga. at 777 (quoting *Black Voters Matter Fund, Inc. v. Kemp*, 313 Ga. 375, 382 (2022)). Similarly, *Eternal Vigilance* only criticized federal “diversion of resources” standing because it allowed standing based on abstract harm “without any grounding in a plaintiff’s own rights.” *Id.* It reaffirmed organizations’ standing to bring claims for harm to “an organization’s legal rights.” *Id.* This case challenges an injury to the RNC and GCRP’s own legal rights under Georgia law, not an attempt to vindicate the rights of its members or to address abstract “harm” like a diversion of resources. *See id.* at 775–79.

B. The GCRP has community stakeholder standing.

The GCRP additionally has standing as a stakeholder in the Gwinnett County community to challenge unlawful action by Defendants, members of the Gwinnett County local government. As the Georgia Supreme Court explained in *SCV*, “Georgia has long recognized that members of a community . . . may be injured when their local government fails to follow the law.” 315 Ga. at 39–40. A local government’s violation of its duty to follow the law “constitutes an injury that our case law has recognized as conferring standing to those community stakeholders, even if the plaintiff suffered no individualized injury.” *Id.* “[M]embership in the community provides the necessary standing to bring a cause of action to ensure a local government follows the law.” *Id.* at 61; *Cobb County v. Floam*, 319 Ga. 89, 91 (2024).

The Court’s “determination of whether a plaintiff — be it an individual or an organization — has community-stakeholder standing turns on whether that plaintiff belongs to that relevant community.” *DeKalb Cnty. Republican Party, Inc. v. Raffensperger*, 376 Ga. App. 757, 766 (2025). The GCRP, as a political party organized and operating in Gwinnett County, is a member of the Gwinnett County community and has an interest in the lawful administration of elections there.

Defendants' own cited authority confirms the point. While *Eternal Vigilance* rejected application of community-stakeholder standing to suits against the state itself, it reaffirmed community-stakeholder standing in suits against local governments: "stakeholders have a legal right for the local government to fulfill that [legal] duty," and the "violation of that right gives standing to a stakeholder, even if the stakeholder . . . neither faces nor has suffered any individual injury." 321 Ga. at 781 (citing *SCV*, 315 Ga. at 53). This suit challenges Defendants' unlawful application of a local county policy, so the individualized injury or individual legal right requirement that governs suits against the State does not apply. Defendants' reliance on *Wasserman* is therefore misplaced, as this is a suit against members of a local government by a community stakeholder, the exact category in which the *SCV* court held no individualized injury is required. 315 Ga. at 63-65.

II. Sovereign immunity does not bar this case or any of Plaintiffs' claims.

Plaintiffs have brought an individual-capacity action for prospective relief. As a matter of black letter law, "sovereign immunity does not bar suits for injunctive and declaratory 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 (2020). And it never has: "sovereign immunity has never barred most individual-capacity claims against state employees and officials for prospective injunctive and declaratory relief based on allegations that those defendants are acting beyond their legal authority." *Id.* at 899.

These precedents control this case. Plaintiffs allege that the Board is a creature of statute possessing only the powers the General Assembly granted, that its rulemaking authority under O.C.G.A. § 21-2-70(7) extends only to rules "consistent with law," and that Defendants, in their individual capacities, exceeded that authority in specific ways. Pet. ¶¶ 5, 62, 64–68. The relief sought is wholly declaratory and prospective: an order barring Defendants from implementing or

enforcing the Policy and requiring them to receive ABM ballots only as the Election Code permits. Pet. ¶¶ 72, 75, 81. No damages are sought nor is any claim alleged against any government entity or any Defendant in their official capacity. Defendants cannot avoid this clear principle by trying to unilaterally replead Plaintiffs' suit as an official capacity claim or one pursuant to Article I, Section II, Paragraph V's ("Paragraph V") waiver of sovereign immunity.

Defendants' contrary reading rests on a single quote ripped from its context. They lift a line from a footnote in *Lovell*—that failure to name the proper government defendant “is fatal to their actions regardless of the capacities in which the defendants are sued”—and treat it as a categorical bar on individual-capacity suits. Defs.' Mot. at 8. It is not. That footnote addressed only actions brought under Paragraph V's waiver, which by its terms must proceed “exclusively against the state and in the name of the State of Georgia.” *Lovell v. Raffensperger*, 318 Ga. 48, 53 n.2 (2024) (quoting *State v. SASS Grp., LLC*, 315 Ga. 893, 897 (2023)). An individual-capacity claim is barred in that context for the same reason an official-capacity claim is: neither is brought “exclusively” against the government. That has nothing to do with whether individual-capacity claims survive outside Paragraph V. They do. The line here is simple. *Lathrop* and *Lowndes County* hold that individual-capacity claims for prospective relief are not barred. *SASS Grp.* and *Lovell* hold that a plaintiff cannot mix Paragraph V claims with claims outside it. Plaintiffs invoke no Paragraph V waiver and bring only individual-capacity claims. Neither *SASS Grp.* nor *Lovell* touches this case.

A. This is an individual-capacity action in substance as well as in form.

Defendants cannot evade Georgia's longstanding authorization of individual-capacity claims by attempting to unilaterally replead Plaintiffs' claims as official-capacity claims. Indeed, an individual capacity claim is fundamentally a claim against government “employees and officials

. . . based on allegations that those defendants are acting beyond their legal authority.” *Lowndes*, 309 Ga. at 899.

Every individual-capacity action challenges *ultra vires* conduct undertaken under color of office. Every remedy in such an action operates on the defendant’s *ultra vires* behavior; that is what makes the relief prospective and useful. If alleging that an official exceeded the authority of his office converted a suit into an official-capacity suit, *Lathrop v. Deal*’s reaffirmation of “prospective remedies . . . against state officers in their individual capacities,” 301 Ga. 408, 444 (2017), would describe an empty set, and *Lowndes County*’s holding that immunity “has never barred most individual-capacity claims . . . based on allegations that those defendants are acting beyond their legal authority,” 309 Ga. at 899, would be a nullity.

What Plaintiffs seek is an order directed at these Defendants’ conduct: that they not enforce the Policy and that they receive absentee-by-mail ballots only as Georgia law permits. Pet. ¶¶ 72, 75, 81; Prayer ¶¶ B, C. That is relief against persons, enforceable against persons; exactly the type of claim *Lathrop* and *Lowndes County* authorize and preserve. Besides, Plaintiffs neither seek nor require relief against Gwinnett County. The Court can grant complete relief by declaring that Defendants lack authority to implement the Policy and enjoining them from doing so.

B. Paragraph V’s exclusivity requirement governs only actions filed under it, and this is not one.

Similarly, Defendants and Proposed Intervenors cannot unilaterally convert Plaintiffs’ claims into an action under Paragraph V and then argue that Plaintiffs fail to comply with Paragraph V. Paragraph V only applies to claims brought under it. Paragraph V created a limited waiver of sovereign immunity for superior-court actions seeking declaratory relief from acts of the State or a county that are “outside the scope of lawful authority or in violation of the laws or the

Constitution of this state or the Constitution of the United States.” Ga. Const. Art. 1, § 2, ¶ V(b)(1).

But it also conditioned actions relying upon that waiver:

Actions filed pursuant to this Paragraph against this state or any agency, authority, branch, board, bureau, commission, department, office, or public corporation of this state or officer or employee thereof shall be brought exclusively against the state and in the name of the State of Georgia. *Actions filed pursuant to this Paragraph* against any county, consolidated government, or municipality of the state or officer or employee thereof shall be brought exclusively against such county, consolidated government, or municipality and in the name of such county, consolidated government, or municipality. *Actions filed pursuant to this Paragraph* naming as a defendant any individual, officer, or entity other than as expressly authorized under this Paragraph shall be dismissed.

Id. at ¶V(b)(2) (emphasis added). Three times Paragraph V makes clear that its limitations only apply to “[a]ctions filed pursuant to this Paragraph.” *Id.* The exclusivity requirement is a term that applies only to the new waiver Paragraph V creates, not a freestanding restriction on who may be sued in Georgia’s superior courts.

Paragraph V is explicitly clear that its exclusivity requirement applies only to actions relying upon Paragraph V’s new waiver. The Court of Appeals has reached the same inescapable conclusion: “by its plain language, Paragraph V’s exclusivity requirement only governs actions that are ‘filed *pursuant to this Paragraph*.’” *Garner v. Clayton Cty.*, 378 Ga. App. 618, 623 (2026) (citation omitted). And an action is filed “pursuant” to Paragraph V when the action relies on it. *Id.* (distinguishing *Lovell*, 318 Ga. at 50 where “appellants cited Paragraph V as authority”). Where “no similar reliance exists”, Paragraph V does not govern. *Id.* at 624.

Plaintiffs do not invoke Paragraph V or rely on its waiver of sovereign immunity. Paragraph V appears nowhere in the Petition. Plaintiffs plead jurisdiction under O.C.G.A. §§ 9-4-2 and 9-4-3, Pet. ¶ 8, and the only constitutional provision the Petition invokes is Article II, Section I, Paragraph I, cited for the proposition that elections must follow the procedures the General Assembly provides. Pet. ¶¶ 2, 16. Gwinnett County is not a defendant, no relief is sought against

it, Plaintiffs have never contended that Paragraph V waives its immunity, and each count is “Asserted Against Defendants in their Individual Capacities.” *See, gen.* Pet. Because no sovereign immunity applies to this individual-capacity suit, Plaintiffs have no need for Paragraph V’s waiver and do not rely on it.

Defendants’ and Proposed Intervenors’ reliance on *Lovell* and *SASS Group* is also misplaced. Unlike in *Lovell*, where the plaintiffs affirmatively asserted Paragraph V’s waiver of sovereign immunity, 318 Ga. at 49–50 & n. 1, Plaintiffs here affirmatively disclaim it. *See Garner*, 378 Ga. App. at 624. *Lovell* decided only the question of “naming as a defendant a state actor in his *official* capacity,” 318 Ga. at 51 (emphasis added), and reserved resolving the unraised question of individual capacity standing, *id.* at 52 n.2. The same is true of *State v. SASS Group, LLC*, (“*SASS Grp.*”), which again involved the application of Paragraph V, which is not at issue here. 315 Ga. 893 (2023). Far from extending Paragraph V’s exclusivity requirement to individual capacity suits or implying that Paragraph V somehow barred individual capacity suits, the Court explicitly found that a plaintiff “could pursue ‘prospective remedies . . . against state officers in their individual capacities.’” *Id.* at 903 (quoting *Lathrop*, 301 Ga. at 444).

C. Paragraph V did not displace the individual-capacity suits.

Defendants’ real argument is that Paragraph V magically upended longstanding law that sovereign immunity does not apply to individual capacity claims without ever referencing individual capacity claims or the scope of sovereign immunity. Nonsense.

Defendants cite *Lovell* for the proposition that failure to name the local government is “fatal . . . regardless of the capacities in which the defendants are sued.” Defs.’ Mot. at 7-8. But that consequence flowed from Paragraph V, which the *Lovell* plaintiffs invoked. It does not apply to a suit, like this one, that disclaims Paragraph V. *See Garner*, 378 Ga. App. at 623. *Lovell* did not

hold that sovereign immunity independently bars an individual-capacity claim for prospective relief brought outside Paragraph V, and to the extent Defendants read its footnote 2 that broadly, the footnote only addressed a Paragraph V suit and had no occasion to decide the question.

To be sure, the Georgia Supreme Court has already rejected the notion that sovereign immunity applies to a suit brought outside Paragraph V. Before Paragraph V took effect, the Court reaffirmed that sovereign immunity “has never barred most individual-capacity claims . . . based on allegations that those defendants are acting beyond their legal authority,” *Lowndes County*, 309 Ga. at 899, and expressly reserved any opinion on how the proposed amendment would bear on that rule, *id.* at 910 n.8. Since then, the Court has confirmed that a plaintiff “could pursue prospective remedies . . . against state officers in their individual capacities.” *SASS Grp.*, 315 Ga. at 903.

And in *Warbler Investments, LLC v. City of Social Circle*, the Court held that Paragraph V’s naming requirement did not displace ordinary procedures, reasoning that “[r]epeals by implication are not favored under Georgia law” and that, “[a]bsent any language in Paragraph V in irreconcilable conflict with th[e] established procedure, it remains undisturbed and available.” 321 Ga. 125, 133 (2025). That reasoning applies with even greater force to a longstanding constitutional-immunity doctrine the Court reaffirmed in *Lowndes County* the same year Paragraph V went into effect. Paragraph V’s text nowhere mentions individual-capacity claims and nowhere purports to limit them.

This reading does not render Paragraph V’s exclusivity meaningless. It forecloses joinder of individual defendants in a Paragraph V action and requires plaintiffs who want what Paragraph V uniquely offers—a declaratory judgment binding the county itself—to take it on Paragraph V’s terms, forgoing interlocutory relief and any fee award. *See* Ga. Const. art. I, § II, ¶¶ V(b)(1), (b)(4).

Paragraph V offers a trade with real costs and benefits on each side; it does not compel anyone to accept it. A waiver, by its nature, is permissive: Paragraph V says sovereign immunity “is hereby waived,” *id.* ¶ V(b)(1), not that claims against county officials may be brought only under it.

The availability of individual-capacity claims for relief is confirmed by the fact that the Paragraph V waiver is permissive. *Fourth*, a waiver is permissive. Paragraph V says sovereign immunity “is hereby waived.” *Id.* at ¶ V(b)(1). Nothing in its text provides that claims against county officials may *only* be brought under it, and Defendants identify no such language. Their argument requires reading a permissive grant as an exclusive channel, but *Warbler* closed that door.

III. Defendants and Proposed Intervenors have failed to carry their burden to dismiss Plaintiffs’ Petition on the merits.

Knowing they cannot defeat Plaintiffs’ Petition on jurisdictional grounds, Defendants and Proposed Intervenors turn to attacking it on the merits. They, however, fail to satisfy their “demanding” burden on a 12(b)(6) motion to dismiss. *AG Res. Mgmt.*, 376 Ga. App. at 643. Plaintiffs raise proper claims for declaratory and injunctive relief, and their challenge to the Policy cannot be dismissed. The Motions should be denied.

A. Plaintiffs have properly pled a claim for declaratory relief.

As a threshold matter, the Declaratory Judgment Act “is to be liberally construed and administered.” O.C.G.A. § 9-4-1. The Declaratory Judgment Act’s stated purpose is 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, and it authorizes relief in cases of actual controversy, O.C.G.A. § 9-4-2(a). Plaintiffs set out the uncertainty and insecurity with respect to their rights, status, and other legal relations by the Defendants’ adoption of the Policy; the Defendants simply won’t accept those allegations as true. *See* Pet. ¶¶ 11, 13-14, 53, 59, 63.

Defendants argue that Plaintiffs' claims involve Defendants' own conduct, not Plaintiffs'. This argument mischaracterizes the Petition and attempt to narrowly pigeon hole Plaintiffs' relief in an unworkable manner. Plaintiffs seek a declaration before the next election concerning the legality of a Policy that directly governs their election-related conduct and direct interests. Plaintiffs' present statutory rights, the deployment and credentialing of poll watchers, advice to voters on how to cast votes, and the lawful receipt and counting of ballots at the next election all weigh in the balance of the disposition of this claim. How to proceed with such action is directly tied to this Policy and the relief sought in the Complaint, not speculation about a hypothetical future regulation. Defendants' cited cases involved either a lack of actual uncertainty that is simply not the case here, *Floam*, 319 Ga. at 89, or a poor-uncertainty fit, *Hughes v. Gwinnett County*, 375 Ga. App. 774 (2025). Neither applies here. Indeed, the Georgia Court of Appeals recently distinguished both cases on the same grounds. *See Gwinnett County v. State*, 377 Ga. App. 595, 598 (2025). The Petition therefore presents an actual controversy suitable for declaratory relief.

B. Defendants and Proposed Intervenors have failed to prove Plaintiffs' challenge to the Policy must be dismissed.

Plaintiffs' Petition challenges Defendants' authority to enact and execute the Policy as ultra vires and inconsistent with the law and seeks to enjoin them. In response, Defendants and Proposed Intervenors make a series of arguments that misconstrue the Petition, cherry pick the law, and ignore the standard on a motion to dismiss. The Court should reject each of these arguments and deny the Motions on the merits.¹

¹ Defendants' and Proposed Intervenors' merits arguments mirror—often word-for-word—their arguments in response to Plaintiffs' Expedited Motion for Interlocutory Injunction. *See* Plaintiffs' Expedited Motion for Interlocutory Injunction, filed in this Court on Aug. 7, 2026. Plaintiffs have responded to these identical arguments in full in reply in support of their motion. *See* Plaintiffs' Reply in Support of Plaintiffs' Motion for Interlocutory Injunction, filed contemporaneously

As an initial matter, Defendants and Proposed Intervenors claim that O.C.G.A. § 21-2-382(a) “expressly authorizes” the Gwinnett County BRE to create additional locations for voting absentee-by-mail ballots in person. Defs.’ Mot. at 5; Inters.’ Mot. at 14. Not so. The statute only permits the “board of registrars” to “establish additional registrar’s offices or places of registration for the purpose of *receiving absentee ballots under Code Section 21-2-381* and for the purpose of advance voting under Code Section 21-2-385.” O.C.G.A. § 21-2-382(a) (emphasis added).. Critically, “Code Section 21-2-381” only discusses the process by which a *voter* applies for and receives an absentee ballot. *See, gen., id.* at § 21-2-381. It says nothing about an elector *voting* absentee ballots or ABM ballots. *Id.* And “advanced voting” in “Code Section 21-2-385” is a period—the period for in-person early voting—not a method of casting a ballot. *See* O.C.G.A. § 21-2-385(d)–(e). Thus, under O.C.G.A. § 21-2-382(a) Gwinnett County BRE may create additional locations only for: (1) electors to apply for and receive absentee ballots or (2) conduct in-person advance voting. The statute does not permit the designation of additional locations for electors to vote ABM ballots. In fact, it was recently amended to *remove* a provision allowing a board of registrars to designate additional locations “for the purpose of voting absentee ballots under Code Section 21-2-385”—exactly what Defendants purport to do. *See* Laws 2019, Act 24, § 28, eff. April 2, 2019. Defendants’ reliance on the statutes “notwithstanding” clause is also of no help. *See* Defs.’ Mot. at 5-6 Plaintiffs do not dispute that the Gwinnett County BRE can create additional registrars offices, but the Policy does them for an invalid purpose.

Plainly then, to get around this limitation, the Policy creates de facto drop boxes. A drop box is a secured receptacle placed inside an advance voting location “as a means for absentee by

herewith. In addition to the below, for the Court’s convenience, Plaintiffs incorporate these same arguments here in full.

mail electors to deliver their ballots,” from which ballots are later collected by a team and transferred for processing. O.C.G.A. § 21-2-382(c)(1). The Policy dictates that ballots received by poll managers or their assistants be “placed in a secure ballot bag.” Compl., Ex. A, Sec. V, ¶ 4(b). Neither Defendants nor Proposed Intervenors can explain the functional difference between this “ballot bag” and a “drop box.” That is because there is none. Both sit inside advanced voting locations; both contain absentee-by-mail ballots delivered by voters. Simply put, the Policy creates an alternative “means for absentee by mail electors to deliver their ballots to the board of registrars.” See O.C.G.A. § 21-2-383(c)(1). That is the very definition of a drop box. And the Policy exceeds the number Gwinnett County is permitted. *Id.*

The Policy’s attempts to get around these limitations by mass-authorizing poll managers and their assistants only compounds the problem. The Election Code authorizes an explicit and exclusive class of persons to accept hand-delivered absentee-by-mail ballots: “the board of registrars or absentee ballot clerk.” O.C.G.A. § 21-2-385(a). Poll managers and their assistants are not among them. This attempt at circumvention is precisely the kind of action the Election Code forbids. In *Eternal Vigilance*, the State Election Board adopted a rule layering signature and photo identification requirements onto the hand delivery of absentee ballots, and the Supreme Court struck it because “nowhere in O.C.G.A. § 21-2-385(a)” was any such requirement imposed; the rule “goes beyond the statute’s provisions and invents new requirements,” and what is not “consistent with” O.C.G.A. § 21-2-385(a) is “not authorized by” it. 321 Ga. at 808–09. The Policy commits the same error in reverse—removing statutory requirements it deems inconvenient. Who may receive absentee ballots is not within the Gwinnett County BRE’s discretion.

Defendants and Proposed Intervenors also maintain that they follow all ballot verification and poll—watcher-observation requirements. Inters.’ Mot. at 12–13; Defs.’ Mot. at 6–7. They are

incorrect. Defendants and Proposed Intervenors wrongly insist that the verification need not be immediate or done by the same person. *See id.* They misread the statute. The initial date-and-time stamp occurs immediately “[u]pon receipt of each ballot,” followed by verification steps that “shall then” be completed. O.C.G.A. § 21-2-386(a)(1)(B). The word “then” is not decorative—it imposes sequence and urgency. And the same person who begins the verification process must finish it; once the date-and-time stamp has been applied by “*a* registrar or clerk,” the remaining steps “shall then” be completed by “*the* registrar or clerk.” *Id.* (emphasis added). This shift from the indefinite “a” to the definite “the” is also not ornamental: it indicates a shift from an unspecified person to a specific one. *See Lowery v. State*, 347 Ga. App. 26, 31 (2018) (explaining the difference between indefinite and definite articles in statutory interpretation). The Policy’s carving up of the verification process is also what makes poll-watcher observation required under O.C.G.A. § 21-2-408(d) all but impossible. And at bottom, the questions of Defendants’ compliance with the Election Code, including restrictions on location selection or chain-of-custody, verification, and poll-watcher-observation, requirements are factual disputes, which are inherently not ground for dismissal. Both as a matter of law and fact, Defendants and Proposed Intervenors have therefore failed to carry their heavy burden to show that Plaintiffs could prove no set of facts entitling them to relief, and the Motions should be denied.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants and Proposed Intervenors’ Motions to Dismiss in their entirety.

Respectfully submitted this ____ day of September, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on this day, a true and exact copy of the foregoing **PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' AND PROPOSED INTERVENORS' MOTIONS TO DISMISS** was filed with this Court's eFileGA e-Filing system. I further certify that on this day, I caused a true and correct copy of the foregoing to be transmitted to all counsel of record via the Court's electronic filing system.

This ____ day of _____, 2026.

/s/ Thomas L. Oliver, III
Thomas L. Oliver, III

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EXHIBIT F

October 7, 2026 Order Denying Motion for Interlocutory Injunction and Granting
Motions to Dismiss

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IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE,
GWINNETT COUNTY REPUBLICAN
PARTY, and TIM FLEMING,

Plaintiffs,

v.

DAVID HANCOCK, LORETTA
MIRANDOLA, AMY BRAY, ALICE
O'LENICK, and RICHARD PORTER,
in their individual capacities,

Defendants,

DSCC and JON OSSOFF FOR SENATE,

Intervenor-Defendants.

Civil Action No. 26-A-05660-10

**ORDER DENYING MOTION FOR INTERLOCUTORY INJUNCTION
AND GRANTING MOTIONS TO DISMISS**

This case concerns whether the Gwinnett County Board of Registrations and Elections (the "Board") may designate certain advance voting locations as additional registrar's offices at which voters may hand-deliver their completed absentee-by-mail ("ABM") ballots. Counsel for all parties presented their case well and raised important considerations. Plaintiffs Republican National Committee ("RNC"), Gwinnett County Republican Party ("Gwinnett GOP"), and Tim Fleming contend that the Board's Policy BRE-603 (the "Policy") exceeds the Board's statutory authority. Gwinnett Defendants, the five members of the Board sued in their individual capacities, and Intervenor-Defendants DSCC and Jon Ossoff for Senate ("Intervenors") contend that the Election Code expressly authorizes the practice.

Statutory and Regulatory Background

Georgia has allowed no-excuse absentee voting for more than two decades. *See* Ga. L. 2005, p. 53 (H.B. 244); O.C.G.A. § 21-2-381 *et seq.* Absentee voting occurs in two forms: by mail and in-person during the statutory advance-voting period (“advance voting”). *See* O.C.G.A. § 21-2-385.

Georgia’s election code provides detailed absentee-voting procedures. To vote absentee, either in person or via ABM ballot, an elector must submit an application pursuant to O.C.G.A. § 21-2-381(a). Electors may apply online, by mail, or in person at a registrar’s office. *Id.* A voter that requests an absentee ballot in person at a registrar’s office during the advance-voting period may cast a ballot at the office through advance voting. *Id.* § 21-2-381(b)(2).

In-person absentee voting occurs only at designated advance-voting sites during the advance-voting period prescribed by law. *Id.* § 21-2-385(d). Since 2019, all advance voting has occurred via electronic ballot marker. Georgia Voting Systems Technology Act, Ga. L. 2019, p. 7 (codified at O.C.G.A. § 21-2-300(a)(2)) (“[A]ll federal, state, and county general primaries and general elections . . . shall be conducted with the use of scanning ballots marked by electronic ballot markers and tabulated by using ballot scanners for voting at the polls and for absentee ballots cast in person.”).

A voter may return an ABM ballot in any one of three ways: (1) by mail, O.C.G.A. § 21-2-385(a); (2) via personal delivery (by the voter or another authorized individual) to a board of registrars, *id.*; or (3) into a statutorily authorized drop box at an advance-voting site, *id.* § 21-2-382(c)(1).

This case centers on the county boards’ statutory authority to create “additional registrar’s offices” for two enumerated purposes: “receiving absentee ballots” and “advance voting.” *Id.* § 21-

2-382(a). The only limit on this authority is that “any such site” must be “a building that is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, another government building generally accessible to the public, or a building that is used as an election day polling place, notwithstanding that such building is not a government building.” *Id.*

The operative language in Section 21-2-382(a) arose out of the General Assembly’s comprehensive amendments to the election code via S.B. 202, enacted in 2021. *See* Election Integrity Act of 2021, Ga. L. 2021, p. 14 (originating as S.B. 202).¹ The previous version of Section 21-2-382(a) identified the two purposes for “additional registrar’s offices” as “receiving absentee ballots” and “voting absentee ballots.” Ga. L. 2019, Act No. 24, § 28, eff. Apr. 2, 2019. The 2021 amendment rephrased only the second purpose, replacing the phrase “voting absentee ballots” with “advance voting.” *See* S.B. 202, Ga. L. 2021, Act No. 9. This change is consistent with other changes throughout the code making clear that in-person absentee voting means “advance voting.” *See, e.g., id.* § 25 (revising O.C.G.A. § 21-2-381(a)(1)(A)); *id.* § 41 (revising O.C.G.A. § 21-2-493).

Motions

Three motions are before the Court: Plaintiffs’ Expedited Motion for Interlocutory Injunction, Gwinnett Defendants’ Motion to Dismiss, and Intervenor’s Motion to Dismiss. The Court heard argument on all three motions on September 28, 2026, and invited the parties to submit proposed findings of fact and conclusions of law. Having considered the Verified Petition and its exhibit, the briefing, the evidence submitted in connection with the motion for interlocutory

¹ Available at Georgia General Assembly, S.B. 202 <https://www.legis.ga.gov/legislation/59827> (last visited Oct. 5, 2026).

injunction, the exhibits admitted at the hearing, and the arguments of counsel, the Court concludes that at least one plaintiff has adequately alleged standing; that sovereign immunity does not bar this individual-capacity action for prospective relief; and that the Election Code authorizes the Board to establish additional registrar's offices for the purpose of receiving hand-delivered absentee ballots in the manner the Policy describes. Accordingly, the Motion for Interlocutory Injunction is **DENIED**, and the Motions to Dismiss are **GRANTED** for failure to state a claim upon which relief may be granted.

FINDINGS OF FACT

For purposes of the Motions to Dismiss, the Court accepts as true the well-pleaded factual allegations of the Petition, but not its legal conclusions. *Trop, Inc. v. City of Brookhaven*, 296 Ga. 85, 87 (2014). For purposes of the Motion for Interlocutory Injunction, the Court also considers the Affidavit of Kelvin Williams ("Williams Aff.") and its Exhibits A-1 through A-7, which Gwinnett Defendants filed with their response to the motion; the Court finds the affidavit credible and the exhibits authentic.² The findings below are drawn from those sources as indicated.

A. The Parties

1. The RNC is a national political committee that allegedly nominates candidates whose names appear on the ballot and recruits and credentials poll watchers. Pet. ¶ 11.

2. The Gwinnett GOP is a political party organized and operating in Gwinnett County whose officers and members are citizens, residents, electors, and taxpayers of Gwinnett County,

² There are two primary motions considered in this order with disparate criteria. The Court has not considered the affidavit or its exhibits in ruling on merits of the Motions to Dismiss. *See* O.C.G.A. § 9-11-12(b).

and which is authorized by local law to nominate members of the Board. Pet. ¶ 13 (citing Ga. L. 1988, p. 4296).

3. Tim Fleming is a resident and elector of Newton County and a qualified candidate for Secretary of State in the November 3, 2026 general election, in which his name will appear on ballots cast in Gwinnett County. Pet. ¶ 14.

4. Gwinnett Defendants David Hancock, Loretta Mirandola, Amy Bray, Alice O’Lenick, and Richard Porter are the members of the Board, which serves as both the election superintendent and the board of registrars for Gwinnett County. Pet. ¶¶ 5, 15, 31; Pet. Ex. A § I (citing Ga. L. 1988, p. 4296, § 9). Plaintiffs sue Gwinnett Defendants only in their individual capacities and seek only declaratory and prospective injunctive relief. Pet. ¶ 15 & Counts I–III.

B. Policy BRE-603

5. On February 21, 2024, the Board adopted Policy BRE-603, “Return of Absentee By Mail Ballots at Advance Voting or Alternate Locations.” Pet. ¶¶ 6, 32; Pet. Ex. A.

6. The Policy’s stated purpose is “to establish standards for the return of absentee by mail ballots at advance voting locations or alternate sites established by the Board pursuant to O.C.G.A. § 21-2-382(a).” BRE-603, § II. The Policy lists as “Related Documents and References” O.C.G.A. §§ 21-2-381, 21-2-382, and 21-2-385, and State Election Board Rule 183-1-14-.08(2), with the express goal of “provid[ing]” a simple and transparent process to ensure confidence” when the Boad authorizes ABM ballot returns at such additional sites. *Id.* § IV.

7. The Policy provides that the Board will determine “for each election cycle whether the Board will authorize additional registrar offices for the purpose of receiving absentee ballot[s] under O.C.G.A. § 21-2-382(a).” *Id.* § V(1). Where a location already has a drop box authorized

under O.C.G.A. § 21-2-382(c)(1), “the voters will utilize the drop box and no alternative will be offered.” *Id.* § V(3).

8. Where the Board authorizes a location to collect hand-delivered absentee ballots, the Policy directs that “staff shall establish a secure procedure for the return of the ballot to include the following”:

- (a) the voter hands the ballot “directly to the poll manager or assistant manager who shall be responsible for applying a time and date stamp”;
- (b) the ballot is “placed in a secured ballot bag with the appropriate seals”;
- (c) the ballots are “recorded on the chain of custody forms at the end of the night in a separate category as a hand delivered absentee ballot”; and (d) “[o]nce returned to the office the ballots shall be stored in the ballot vaults until they are ready for processing.” *Id.* § V(4)(a)–(d).

C. The Board’s Designations and Implementing Procedures (Interlocutory Injunction Record)

9. The Board has designated advance voting locations without drop boxes as additional registrar’s offices for receiving absentee ballots in the 2022 general election, the 2024 primary and general elections, and the May 2026 primary. Williams Aff. ¶ 4.

10. For the November 3, 2026 general election, the Board has designated thirteen advance voting locations. Seven will have drop boxes. The remaining six have been designated as additional registrar’s offices for the purpose of receiving absentee ballots pursuant to O.C.G.A. § 21-2-382(a). Williams Aff. ¶ 3.

11. The six designated locations are the Bogan Park Community Recreation Center, Collins Hill Library Branch, Five Forks Library Branch, Gwinnett County Fire Station #30,

Rhodes Jordan Park Community Recreation Center, and Shorty Howell Park Activity Building. Each is a government service center providing general government services or a government building generally accessible to the public. *Id.* ¶ 5.

12. All advance voting poll managers and assistant managers are trained on the Board's Standard Operating Procedure for accepting ABM ballots at advance voting locations without a drop box (the "SOP") and, after that training, are sworn as deputy registrars using an oath that tracks O.C.G.A. § 21-2-214(d). *Id.* ¶¶ 6, 12; Exs. A-5, A-7.

13. Under the SOP, the ABM ballot container at each designated location is verified empty and sealed before the polls open each day, with the seal number recorded on a transfer form. Ex. A-5 ¶ 2. A poll official confirms that the individual intends to return an already-voted ABM ballot rather than vote in person. *Id.* ¶¶ 3–4. The poll manager or assistant manager accepts the ballot and records the date, time, and his or her initials on the oath envelope, and the individual returning the ballot completes a "Ballot Returned by" label with his or her name, signature, and relationship to the voter. *Id.* ¶¶ 5–6. The sealed container is kept "in a secure location within the enclosed space and within view of the voters, monitors, watchers, or other individuals." *Id.* ¶ 7; Williams Aff. ¶ 8.

14. At the close of each day, the poll manager or assistant manager verifies the seal number, counts the ballots, records the count, and secures the ballots in a sealed transport bag whose seal number is also recorded. Ex. A-5 ¶¶ 9–12. The poll manager and one designee travel together to deliver the ballots to the main elections office, where office staff verify the seal and count and secure the ballots in a locked vault for processing. *Id.* ¶¶ 13–16; Ex. A-6; Williams Aff. ¶¶ 9–10.

15. This process closely mirrors the handling of ABM ballots hand-delivered to the main elections office, where election staff at the front desk receive the ballot, mark the time and day of receipt and the person who received it, and store it securely until processing staff retrieve it. Williams Aff. ¶ 11.

CONCLUSIONS OF LAW

I. Legal Standards

A. Motion to dismiss. A motion to dismiss under O.C.G.A. § 9-11-12(b)(6) should be granted where “(1) the allegations in the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought.” *Atlanta Metro Leasing v. City of Atlanta*, 353 Ga. App. 785, 786 (2020) (citation omitted). The Court construes the pleadings in the light most favorable to the plaintiff, but it need not accept as true “legal conclusion[s] [that are] couched as fact.” *Mabra v. SF, Inc.*, 316 Ga. App. 62, 65 (2012). An exhibit to a pleading is part of the pleading for all purposes. O.C.G.A. § 9-11-10(c).

B. Interlocutory injunction. In deciding whether to grant an interlocutory injunction, the Court considers whether (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits; and (4) granting the injunction will not disserve the public interest. *City of Waycross v. Pierce Cnty. Bd. of Comm’rs*, 300 Ga. 109, 111 (2016). These factors are balanced rather than applied as rigid elements. *Id.* at

111-12. The power to grant an interlocutory injunction “shall be prudently and cautiously exercised and, except in clear and urgent cases, should not be resorted to.” O.C.G.A. § 9-5-8.

II. Standing

Georgia courts may exercise judicial power only where the plaintiff “has a legal right at stake that requires adjudication to protect it.” *Republican Nat’l Comm. v. Eternal Vigilance Action, Inc.*, 321 Ga. 771, 775 (2025) (citation omitted). The right may be “either [the plaintiff’s] own private right, or a public right shared by the relevant community.” *Wasserman v. Franklin Cnty.*, 320 Ga. 624, 629 (2025).

A. Tim Fleming. Fleming is a qualified candidate for statewide office whose name will appear on the November 3, 2026 ballot in Gwinnett County, and he alleges a direct interest in the procedures by which ABM ballots cast for or against his candidacy are received, processed, and counted. Pet. ¶¶ 14, 63. The Supreme Court of Georgia has recognized that a candidate has a “substantial right . . . to seek election to public office.” *Handel v. Powell*, 284 Ga. 550, 553 n.3 (2008). Accepting the Petition’s allegations as true, Fleming meets the standard set forth in *Eternal Vigilance* to establish standing.

B. Gwinnett GOP. “Georgia has long recognized that members of a community . . . may be injured when their local government fails to follow the law,” and such an injury confers standing on community stakeholders “even if the plaintiff suffered no individualized injury.” *Sons of Confederate Veterans v. Henry Cnty. Bd. of Comm’rs*, 315 Ga. 39, 39–40 (2022). The Supreme Court reaffirmed that principle for suits against local governments in *Eternal Vigilance*, 321 Ga. at 781. The question here is whether the Gwinnett GOP belongs to the relevant community to which the Board owes a legal duty. *DeKalb Cnty. Republican Party, Inc. v. Raffensperger*, 376 Ga. App. 757, 766 (2025) (community-stakeholder standing “turns on whether that plaintiff

belongs to that relevant community”). The Gwinnett GOP alleges that it is organized and operates in Gwinnett County, that its members are Gwinnett County electors and taxpayers, and that it is authorized by local law to nominate members of the Board. Pet. ¶ 13. Those allegations are sufficient to establish that the Gwinnett GOP is a member of the relevant community with a cognizable interest in whether the Board complies with the Election Code. Therefore, the Gwinnett GOP has sufficiently established standing.

C. **RNC.** Because Fleming and the Gwinnett GOP have standing, the Court need not decide whether the RNC has standing in its own right.

III. Sovereign Immunity

Gwinnett Defendants contend that Article I, Section II, Paragraph V of the Georgia Constitution (“Paragraph V”) requires that this action be brought exclusively against Gwinnett County and that the Petition must therefore be dismissed. Because sovereign immunity bears on the Court’s jurisdiction, the Court addresses it first.

A. Individual-capacity claims for prospective relief

This case involves claims brought only against the individual members of the Gwinnett County Board of Registrations and Elections in their individual capacities, alleging that Board approval of the Policy is an action contrary to law. In *Board of Commissioners of Lowndes County v. Mayor & Council of Valdosta*, 309 Ga. 899 (2020), the Supreme Court of Georgia reiterated that “sovereign immunity has never barred most individual-capacity claims against state employees and officials for prospective injunctive and declaratory relief based on allegations that those defendants are acting beyond their legal authority.” *Id.* at 899. The Court explained that the doctrine, as it existed at common law and as preserved by the Georgia Constitution, “generally

was inapplicable ... in cases in which state officers in their individual capacities were alleged to have acted without legal authority, even if they acted under color of their offices.” *Id.* at 902 (quoting *Lathrop v. Deal*, 301 Ga. 408, 414 (2017)). Such a suit “is not against the state, but against an individual stripped of his official character.” *Id.* at 903–904 (citation and emphasis omitted).

The *Lowndes County* decision notes in Footnote 8 that the language that is now Paragraph V was to go before the voters later in the same year the *Lowndes County* case was decided. The Supreme Court noted that it “express[ed] no opinion about the proper answer to the sovereign immunity questions answered [in the case] in the event the proposed amendment becomes effective.” *Id.* at 910 n.8. But given the Supreme Court’s previous direction that individual capacity claims do not require a waiver of sovereign immunity, this Court cannot find that the language of Paragraph V requires a different result. By its terms, Paragraph V’s exclusivity requirement applies only to “[a]ctions filed pursuant to this Paragraph.” Ga. Const. art. I, § II, ¶ V(b)(2). An action is filed pursuant to Paragraph V when the plaintiff tries “to avail [itself] of Paragraph V’s waiver of sovereign immunity in any way.” *State v. SASS Grp., LLC*, 315 Ga. 893, 897 (2023) (punctuation omitted). In the current case, Plaintiffs expressly state that they do not bring their action pursuant to Paragraph V and do not invoke any waiver of sovereign immunity. Therefore, Paragraph V is not implicated, and Plaintiffs’ claims are not barred by sovereign immunity.

Proceeding only against defendants in their individual capacities raises questions about the type of relief that Plaintiffs could obtain if they were entitled to relief and who or what this Court could enjoin. The *Lowndes County* decision states that “injunctions run by operation of law not only to the parties, but also to ‘their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice of the order by personal service or otherwise.’” *Id.* at 909 (quoting *Lathrop*, 301 Ga. at 444 n.32 and O.C.G.A.

§9-11-65(d)). Under that principle, claims brought only against government officials in their individual capacities can have the effect of binding official government action. That principle may raise practical questions about the scope of relief available in an individual-capacity action, but the Court need not resolve them today because even though Plaintiffs' claims are not barred by sovereign immunity, they are not entitled to any relief.

IV. The Merits

The substantive question presented in this case is straightforward—does Georgia's Election Code allow the Board to establish additional locations where voters can hand-deliver their absentee-by-mail ballots? O.C.G.A. 1-3-1 provides guidance on statutory construction. It provides in relevant sections:

- (a) In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy. Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence or clause is without meaning as it stands.
- (b) In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.

Therefore, in answering that question, the Court gives the statutory text “its plain and ordinary meaning,” views it “in the context in which it appears,” and reads it “in its most natural and reasonable way, as an ordinary speaker of the English language would.” *Deal v. Coleman*, 294 Ga. 170, 172–73 (2013) (citations and punctuation omitted).

A. Section 21-2-382(a) authorizes additional registrar's offices for the purpose of receiving absentee ballots.

Section 21-2-382(a) provides in relevant part:

Any other provisions of this chapter to the contrary notwithstanding, the board of registrars may establish additional registrar's offices or places of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of advance voting under Code Section 21-2-385, provided that any such site is a building that is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, another government building generally accessible to the public, or a building that is used as an election day polling place, notwithstanding that such building is not a government building.

O.C.G.A. § 21-2-382(a). The sentence has a single subject of the action, "the board of registrars"; a single verb, "may establish"; and a single object, "additional registrar's offices or places of registration." It then states two purposes for which such offices may be established: the single subjection of the action remains "the board of registrars: and the verb is "receiving" as set forth in this portion, "for the purpose of receiving absentee ballots under Code Section 21-2-381" and in the second portion, the verb is "advance voting," "for the purpose of advance voting under Code Section 21-2-385." Read naturally, the first purpose clause clearly describes what the board of registrars may do at the offices it establishes: receive absentee ballots. The plain meaning of this sentence names no other actor other than the board of registrars who might be the one "receiving."

Plaintiffs read the first purpose clause to mean that additional registrar's offices may be established only so that *voters* may apply for and receive blank absentee ballots, because the clause cross-references O.C.G.A. § 21-2-381, which governs absentee ballot applications. Pls.' Reply in Supp. of Mot. for Interlocutory Inj. ("Pls.' Reply") at 3–5. In their reply brief, Plaintiffs described the statute as authorizing "places of registration for the purpose of electors receiving absentee ballots under Code Section 21-2-381." *Id.* at 4. The word "electors" does not appear in the statute. Plaintiffs' counsel candidly acknowledged the inadvertent error at the hearing, Hr'g Tr. 47:17–

48:8, and the Court does not suggest that it was anything but inadvertent. The Court notes it only because it illustrates what Plaintiffs’ reading requires: an actor whom the General Assembly did not include in the statute actually doing the action allowed by statute. Courts may not supply words the legislature omitted. *See Wilson v. Inthachak*, 372 Ga. App. 341, 346 (2024).

Several features of the statutory context confirm the plain reading. The identical purpose clause appears in the very next subsection. Section 21-2-382(b) provides that, in counties of 550,000 or more, courthouse branches and annexes “shall be an additional registrar’s or absentee ballot clerk’s office or place of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of advance voting under Code Section 21-2-385.” O.C.G.A. § 21-2-382(b). Plaintiffs themselves rely on subsection (b) as an office at which voted ABM ballots may be hand-delivered: “hand delivery is permitted to ‘the board of registrars or absentee ballot clerk,’ ... and the Election Code requires a county the size of Gwinnett to maintain an ‘additional . . . absentee ballot clerk’s office.’” Pls.’ Reply at 10 (quoting O.C.G.A. §§ 21-2-385(a), 21-2-382(b)). Identical words in adjacent subsections of the same Code section are presumed to carry the same meaning. *See Lathrop*, 301 Ga. at 442. If “for the purpose of receiving absentee ballots under Code Section 21-2-381” describes a location to which voted absentee ballots may be hand-delivered in subsection (b), it describes the same thing in subsection (a).³

³The reference in subsection (b) to an “absentee ballot clerk’s office” does not alter this analysis. That language describes the kind of office, not its purpose, and the purpose clause in the two subsections is identical. Moreover, O.C.G.A. § 21-2-385(a) authorizes delivery to “the board of registrars *or* absentee ballot clerk” (emphasis supplied), so a registrar’s office is no less a proper place of delivery than an absentee ballot clerk’s office. The absentee ballot clerk is, in any event, an office appointed by municipalities. O.C.G.A. § 21-2-380.1.

The cross-reference to O.C.G.A. § 21-2-381 does not compel a different result. Every ABM ballot a board receives was issued on an application under Code Section 21-2-381, which is the statutory basis for the ballot's issuance. *See* O.C.G.A. § 21-2-381(a)(1)(A). The reference therefore identifies the ballots that may be received — absentee ballots issued under the application process — rather than converting “receiving absentee ballots” into “receiving absentee ballot applications” or “electors receiving absentee ballots,” both phrases that the General Assembly did not use. Even accepting that the cross-reference may be imprecise, it cannot override the plain meaning of the operative words, and Plaintiffs’ alternative reading would require the Court to add words to the statute.

The legislative history on which Plaintiffs rely does not support their reading. Before 2021, the statute authorized additional registrar’s offices “for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of voting absentee ballots under Code Section 21-2-385.” O.C.G.A. § 21-2-382 (2020). The Election Integrity Act of 2021 (“SB 202”) substituted “advance voting” for “voting absentee ballots” in the second clause and added subsection (c), which authorizes drop boxes. Ga. L. 2021, p. 14, § 26; Hr’g Ex. P-2. The first clause — “for the purpose of receiving absentee ballots under Code Section 21-2-381” — was carried forward unchanged.⁴ The change to the second purpose clause does not signal that the General Assembly withdrew authority to receive absentee ballots at additional offices.

Plaintiffs argue that the Election Code does not contemplate “voting” ABM ballots at advance voting locations. But the Election Code distinguishes between voting an ABM ballot and

⁴At the hearing, Plaintiffs suggested that SB 202 added the phrase “under Code Section 21-2-381” to the first purpose clause. Hr’g Tr. 42:12–19. Exhibit P-2, admitted at the hearing, shows that the phrase was already present in the pre-2021 version of the law. O.C.G.A. § 21-2-382 (2020).

returning it. Under O.C.G.A. § 21-2-385(a), the elector first “shall vote his or her absentee ballot, then fold the ballot and enclose and securely seal the same in the envelope,” complete the oath, and only “then personally mail or personally deliver same to the board of registrars or absentee ballot clerk.” No ABM ballot is voted at the locations the Policy addresses; ballots are returned there. The Policy is therefore not a means of “voting” ABM ballots in person, and the 2021 amendment to the second purpose clause has no bearing on it.

The Court accordingly concludes that O.C.G.A. § 21-2-382(a) authorizes the board of registrars to establish additional registrar’s offices, in qualifying buildings, for the purpose of receiving absentee ballots, which means receiving hand-delivered ABM ballots.

B. Delivery to the board’s sworn deputy registrars at an additional registrar’s office is delivery to the board of registrars.

Plaintiffs next contend that, even if additional registrar’s offices may receive ABM ballots, the Policy unlawfully directs voters to deliver ballots to poll managers and assistant managers, who are not “the board of registrars or absentee ballot clerk.” Pet. ¶¶ 39–40; Pls.’ Reply at 8–10. The Court disagrees.

Section 21-2-385(a) requires that the elector “personally mail or personally deliver” the ballot “to the board of registrars or absentee ballot clerk.” Plaintiffs urge an interpretation that, based on this language, only the members of the Board could accept a hand-delivered ballot, but they later disclaim that result. Pls.’ Reply at 10. The surrounding statutory scheme forecloses that reading. The same phrase appears in the drop box provision, which describes a drop box as “a means for absentee by mail electors to deliver their ballots to the board of registrars or absentee ballot clerk.” O.C.G.A. § 21-2-382(c)(1). A ballot placed in a drop box is “deliver[ed] ... to the board of registrars” even though no board member ever touches it. *Id.* § 21-2-382(c)(1), (3). The

General Assembly thus plainly contemplated that delivery “to the board of registrars” may be accomplished through means and persons the board designates. That is consistent with the background principle that a public official named in a statute generally “is not legally required to personally carry out every one of the duties listed in that statute but ... may appoint appropriate staff to assist him or her in doing so.” *State v. Fed. Def. Program, Inc.*, 315 Ga. 319, 338 (2022).

The Election Code also expressly authorizes the board to act through deputies. “The board of registrars in each county may appoint deputy registrars to aid them in the discharge of their duties,” and “[t]he number of deputy registrars appointed to serve shall be determined by the board of registrars.” O.C.G.A. § 21-2-213(a). Deputy registrars may serve “for the purpose of registering voters and performing other duties as may be required.” *Id.* § 21-2-213(b). Each deputy registrar must swear to “faithfully and impartially discharge ... the duties imposed upon me by law as (deputy) registrar.” *Id.* § 21-2-214(d). The Election Code expressly assigns deputy registrars a role in handling ABM ballots. *See id.* § 21-2-386(a)(2)(A) (requiring that “registrars, deputy registrars, or absentee ballot clerks” be present while verified ABM ballots are unsealed, opened, and scanned). Plaintiffs’ contention that because deputy registrars are appointed under Article 6 of the Election Code, which deals with voter registration, they may perform only voter-registration functions, Pls.’ Reply at 10, cannot be reconciled with this text.

Nothing in O.C.G.A. § 21-2-213 caps the number of deputy registrars or prohibits the board from appointing its advance voting poll managers to that role. The Petition does not allege that the persons who receive ballots under the Policy are unrepresentative of the community or otherwise ineligible to serve. Plaintiffs’ argument that the appointments disregard the cross-section requirement of Section 21-2-213(a), raised for the first time in reply, is not supported by any factual allegations in the Petition or any other evidence. *See* Pls.’ Reply at 9.

For purposes of the Motions to Dismiss, it is enough that the Policy, on its face, provides for receipt of ABM ballots by the Board’s personnel at additional registrar’s offices the Board has established under O.C.G.A. § 21-2-382(a), and that the Election Code authorizes the Board to discharge that function through deputies it appoints. Plaintiffs challenge the Policy on its face, and a facial challenge fails unless “no set of circumstances exists under which [the Policy] would be valid.” *Ga. Dep’t of Hum. Servs. v. Steiner*, 303 Ga. 890, 899 (2018). For purposes of the Motion for Interlocutory Injunction, the record further establishes that the poll managers and assistant managers who receive ballots under the Policy are trained and sworn deputy registrars. *Williams Aff.* ¶¶ 6, 12; Ex. A-7.

Eternal Vigilance does not require a different result. There, the Supreme Court invalidated State Election Board rules that imposed requirements on hand delivery of absentee ballots that appeared nowhere in Section 21-2-385(a). 321 Ga. at 808–09. Here, by contrast, the Board has neither added to nor subtracted from the statutory requirements; it has exercised two powers the General Assembly expressly conferred— the power to establish additional registrar’s offices for receiving absentee ballots, O.C.G.A. § 21-2-382(a), and the power to appoint deputy registrars, *id.* § 21-2-213(a).

C. The Policy does not create drop boxes.

Plaintiffs contend that the “secured ballot bag” in which received ballots are stored is a de facto drop box, so that the Policy evades the statutory cap on drop boxes and the chain-of-custody requirements that apply to them. Pet. ¶¶ 41–49; Pls.’ Reply at 6–8. Section 21-2-382(c)(1) requires each board to establish at least one drop box and permits it to “establish additional drop boxes” up to “the lesser of either one drop box for every 100,000 active registered voters in the county or the

number of advance voting locations in the county.” Section 21-2-382(c)(3) prescribes collection procedures for “ballots deposited at each drop box.”

A drop box and an additional registrar’s office are distinct statutory mechanisms. A drop box is a receptacle into which the voter deposits a ballot without any official taking delivery of it, and the ballot remains there until a collection team removes it. O.C.G.A. § 21-2-382(c)(1)–(4). Under the Policy, by contrast, the voter hands the ballot to the Board’s personnel at a registrar’s office the Board has established, and that person takes delivery and records the time and date of receipt. BRE-603 § V(4)(a). That the ballot is then stored in a sealed container pending transport does not transform the transaction into a drop-box deposit. Every office that receives ballots must store them somewhere; the Election Code itself requires that received ballots be kept “safely, unopened, and stored in a manner that will prevent tampering and unauthorized access.” O.C.G.A. § 21-2-386(a)(1)(A). If secure storage after hand delivery created a drop box, then the secure storage of ballots hand-delivered to the main elections office would do the same — a result no party suggests. *See Williams Aff.* ¶ 11. Plaintiffs’ theory also depends on the premise, rejected above, that the persons receiving ballots under the Policy are not authorized to do so. Pet. ¶¶ 37, 42.

Because the Policy does not establish drop boxes, neither the numerical limit in Section 21-2-382(c)(1) nor the drop-box collection procedures in Section 21-2-382(c)(3) apply to it. And to the extent any provision of subsection (c) were thought to conflict with the Board’s authority under subsection (a), subsection (a) controls by its own terms by beginning with, “[a]ny other provisions of this chapter to the contrary notwithstanding.” O.C.G.A. § 21-2-382(a).

D. The Policy is consistent with the Election Code’s verification, poll-watcher, and location requirements.

Verification. Section 21-2-386(a)(1)(B) provides: “Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare” the identifying information on the envelope with the voter’s registration records, confirm the required oaths, and certify the ballot. Plaintiffs contend that “then” requires the comparison to occur immediately upon receipt and that the same individual who records receipt must complete every step. Pls.’ Reply at 12–13. The text does not bear either reading. “Then” establishes the order of the steps, not a deadline for completing them. When the General Assembly intended immediacy, it said so: in the Code section that governs drop boxes, for example, the collection team “shall then *immediately* transfer the ballots.” O.C.G.A. § 21-2-382(c)(3) (emphasis supplied). The omission of that word from Section 21-2-386(a)(1)(B) is presumed to be intentional. *See AMG, LLC v. Ga. Dep’t of Transp.*, 372 Ga. App. 160, 165 (2024). Nor does the shift from “a registrar or clerk” to “the registrar or clerk” require that a single individual perform every step; read in context, the provision assigns the steps to the registrar’s office, which may act through its deputies and staff. The Policy requires the first step — recording the date and time of receipt — at the point of delivery and leaves the remaining steps to be performed when the ballots are processed, exactly as occurs with ballots delivered by mail, by drop box, or by hand at the main elections office. *See* O.C.G.A. § 21-2-382(c)(3) (drop-box ballots processed “in the same manner as absentee ballots returned by mail”); BRE-603 § V(4)(a); Williams Aff. ¶ 11.

Poll watchers. Section 21-2-408(d) entitles poll watchers to access “advance voting locations ... and locations where absentee ballots are being verified, processed, adjudicated, and scanned,” and to “observe any activity conducted at the location at which they are serving.” Under

the Policy, ballots are received at advance voting locations and verified at the elections office; poll watchers have statutory access to both. The Petition alleges only that the Policy is “silent” as to poll-watcher observation. Pet. ¶ 53. It does not allege that any watcher has been or will be denied access. The Policy’s silence does not displace a statutory right that indisputably applies, O.C.G.A. § 21-2-408(d), and the record reflects that the sealed container is kept within view of watchers. Ex. A-5 ¶ 7.

Locations. Section 21-2-382(a) limits additional registrar’s offices to specified categories of buildings, and State Election Board Rule 183-1-14-.08(2) provides that “[w]henver practicable,” a government building “shall be utilized for such additional sites.” Pet. ¶ 26. The Policy expressly invokes both provisions as its authority. Pet. Ex. A §§ II, IV. The Petition does not allege that any location the Board has designated or will designate fails to satisfy them; it alleges only that the Policy does not restate them. Pet. ¶¶ 56–57. A policy that implements a statute need not reproduce every limitation the statute imposes in order to be lawful, and Plaintiffs’ contention that the Board will disregard those limitations is speculative. On the interlocutory injunction record, each of the six designated locations is a government building. Williams Aff. ¶ 5.

V. The Motions to Dismiss

Each of Plaintiffs’ claims rests on the premise that the Policy exceeds the Board’s statutory authority. Pet. ¶¶ 62–68, 70, 74(B), 78. Accepting the Petition’s well-pleaded factual allegations as true, and considering the Policy attached as Exhibit A, the Court concludes as a matter of law that the Election Code authorizes the Board to establish additional registrar’s offices for the purpose of receiving absentee ballots; that delivery of ABM ballots to the Board’s personnel at those offices is delivery to the board of registrars; that the Policy does not create drop boxes; and

that the Policy is not facially inconsistent with the Election Code's verification, poll-watcher, or location requirements. Because the dispositive questions are ones of statutory construction, no evidence Plaintiffs could introduce within the framework of the Petition would entitle them to the declaration or injunctions they seek. *See Atlanta Metro Leasing*, 353 Ga. App. at 786. Plaintiffs' contention that the Williams Affidavit creates factual disputes precluding dismissal is misplaced, because the Court has not relied on the affidavit in ruling on the Motions to Dismiss. Counts I, II, and III therefore fail to state a claim upon which relief can be granted.

The Court concludes that the Georgia Election Code expressly authorizes the Gwinnett BRE, its members, and their agents to receive ABM ballots in the manner described in the Policy. Plaintiffs' claims fail as a matter of law.

Because Plaintiffs' claims are deficient as a matter of law, there is no "state of provable facts" under which Plaintiffs can prevail. *Penny*, 282 Ga. App. at 590, 639 S.E.2d at 562. They have therefore failed to state a claim upon which relief can be granted.

For the same reason, Plaintiffs necessarily cannot show a likelihood of success on the merits for purposes of an interlocutory injunction.

VI. The Motion for Interlocutory Injunction

Likelihood of success. For the reasons stated in Part IV, Plaintiffs have not shown a substantial likelihood of success on the merits. That conclusion holds on the fuller interlocutory injunction record, which establishes that the persons receiving ballots under the Policy are sworn deputy registrars, that the designated locations are government buildings, and that the Board's implementing procedures record receipt, maintain chain of custody, and keep the ballots within view of poll watchers. Williams Aff. ¶¶ 5–12; Exs. A-5 to A-7.

Irreparable injury. Plaintiffs’ asserted injury is that ballots received through an unauthorized process cannot later be segregated from lawfully received ballots. Pet. ¶ 59; Br. in Supp. of Pls.’ Mot. for Interlocutory Inj. at 13–14. Because the Court has concluded that the process is authorized, that injury does not arise. Plaintiffs have not identified any ineligible voter, improperly handled ballot, or other concrete harm resulting from the Policy in the several elections in which it has been used. *See Williams Aff.* ¶ 4.

Balance of harms and status quo. The purpose of an interlocutory injunction is generally to preserve the status quo, which “is defined by the reality of the existing status and relationships between the parties.” *Hampton Island Founders, LLC v. Liberty Cap., LLC*, 283 Ga. 289, 293 (2008) (citation omitted). The Board has designated advance voting locations without drop boxes as additional registrar’s offices since the 2022 general election and has done so under the Policy in each election since its adoption in February 2024. *Williams Aff.* ¶ 4; Exs. A-1 to A-4. The requested injunction would alter that practice shortly before advance voting begins, *see Pls.’ Mot. for Interlocutory Inj.* at 2, requiring the Board to change established procedures and to communicate those changes to election workers and voters. The Court recognizes Plaintiffs’ point that a practice should not be continued merely because it is longstanding if it is unlawful. But having concluded that the practice is lawful, the Court finds that the harm an injunction would cause to the Board’s administration of the election and to voters who have used this method of return outweighs any harm to Plaintiffs from its continuation.

Public interest. The public interest is served by elections conducted in accordance with the procedures the General Assembly has provided. Ga. Const. art. II, § I, ¶ I. Because the Policy implements authority the General Assembly expressly granted, enjoining it would not serve that

interest. See *NEC Techs., Inc. v. Nelson*, 267 Ga. 390, 394 (1996) (“What the Legislature allows cannot be contrary to public policy.”).

Balancing these considerations, and mindful that the power to grant interlocutory injunctive relief is to be exercised “prudently and cautiously,” O.C.G.A. § 9-5-8, the Court concludes that Plaintiffs are not entitled to an interlocutory injunction.

ORDER

For the foregoing reasons, it is hereby **ORDERED** as follows:

1. Plaintiffs’ Expedited Motion for Interlocutory Injunction is **DENIED**.
2. Gwinnett Defendants’ Motion to Dismiss and Intervenor-Defendants’ Motion to

Dismiss are **GRANTED** pursuant to O.C.G.A. § 9-11-12(b)(6) for failure to state a claim upon which relief can be granted.

3. Plaintiffs’ Verified Petition for Declaratory and Injunctive Relief is **DISMISSED**.

SO ORDERED this 7TH day of October, 2026.



HON. WARREN DAVIS
Judge, Superior Court of Gwinnett County

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FILING AND DISTRIBUTION – E-FILING

Pursuant to O.C.G.A. 15-6-21, the foregoing Order/Judgment shall be immediately E-filed with the Clerk of Court and a ‘stamped filed’ copy shall be distributed by the following method(s) to the below listed counsel/ parties:

☒] by E-filing service copies to all listed counsel, parties and service contacts:

Thomas Lee Oliver, Attorney for Plaintiffs
Kurtis Anderson, Attorney for Plaintiffs
Justin Gunter, Attorney for Plaintiffs
C. Ryan Germany, Attorney for Defendants
Adam Sparks, Attorney for Intervenor
Julianna Astarita, Attorney for Intervenor
Rahul Garabadu, Attorney for Intervenor
Uzoma Nkwonta, Attorney for Intervenor
Nicole Wittstein, Attorney for Intervenor

So Ordered, this 10/7/2026



Warren Davis, Judge,
Gwinnett Superior Court

EXHIBIT G

Notice of Appeal, filed October 8, 2026

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

REPUBLICAN NATIONAL COMMITTEE,)
GWINNETT COUNTY REPUBLICAN)
PARTY, and TIM FLEMING,)
)
Plaintiffs,)
)
v.)
)
DAVID HANCOCK, LORETTA)
MIRANDOLA, AMY BRAY, ALICE)
O'LENICK, and RICHARD PORTER, in their)
individual capacities,)
)
Defendants.)

Case No. 26-A-05660-10

NOTICE OF APPEAL

Plaintiffs Republican National Committee (“RNC”), Gwinnett County Republican Party (“Gwinnett GOP”), and Tim Fleming (collectively, “Plaintiffs”) hereby appeals to the Georgia Court of Appeals from court’s October 7, 2026, Order Denying Motion for Interlocutory Injunction and Granting Motions to Dismiss (the “Order”).

The Order is directly appealable pursuant to both O.C.G.A. § 5-6-34(a)(4) and O.C.G.A. § 5-6-34(a)(1)(B).

Pursuant to Uniform Superior Court Rule 6.7, contemporaneously herewith, Plaintiffs have also filed an Emergency Motion for Injunction Pending Appeal.

The Georgia Court of Appeals has jurisdiction over this matter because is not reserved to the exclusive jurisdiction of the Supreme Court *See* Ga. Const. Art. VI, § 5, ¶ III.

The Clerk will please omit nothing from the record on appeal. A transcript of proceedings will be filed for inclusion in the record on appeal.

Respectfully submitted this 8th day of October, 2026.

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Tim Fleming*

CERTIFICATE OF SERVICE

I hereby certify that on this day the foregoing **NOTICE OF APPEAL** was filed with this Court's eFileGA e-Filing system. I further certify that on this day, I caused a true and correct copy of the foregoing to be transmitted to all counsel of record via the Court's electronic filing system.

This 8th day of October, 2026.

/s/ Thomas L. Oliver, III
Thomas L. Oliver, III

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