

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DONALD J. TRUMP, in his capacity as a
Candidate for President, *et al.*

Petitioners,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of Georgia, *et al.*

Respondents.

Civ. Act. No. 2020CV343255

Emergency Motion to Intervene as Defendants

Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. “Sachin” Varghese, Nikema Williams, Van Johnson, and Cathy Woolard (collectively, the “Proposed Intervenors”) seek on an emergency basis (*see* Unif. Super. Ct. R. 6.7) to participate as intervening defendants to defend their interests in protecting their established victory, the rights of Georgia voters who cast ballots in the November 3, 2020 general election, and the integrity of the election process.

Each of the Proposed Intervenors are among the slate of sixteen presidential electors nominated by the Democratic Party and certified by Governor Brian Kemp after Secretary of State Brad Raffensperger certified the election results to formally declare President-Elect Joseph R. Biden, Jr. the winner of Georgia’s presidential race. They are now empowered to and intend to cast Georgia’s electoral college votes for President-Elect Biden.

For the reasons discussed in the Memorandum of Law in support of this Motion, filed concurrently herewith as Exhibit A, the Proposed Intervenors are entitled to intervene in this case as a matter of right under O.C.G.A. § 9-11-24(a). In the alternative, the Proposed Intervenors

request permissive intervention pursuant to O.C.G.A. § 9-11-24(b). In accordance with O.C.G.A. § 9-11-24(c), the Proposed Intervenors' Proposed Answer to the Petition is attached as Exhibit B. The Proposed Intervenors also submit a Proposed Order granting their Motion to Intervene attached as Exhibit C. The Proposed Intervenors also submit their Proposed Motion to Dismiss the Petition, attached as Exhibit D, with a supporting Memorandum of Law, attached as Exhibit E.

WHEREFORE, the Proposed Intervenors respectfully request that the Court permit their intervention in the above-captioned matter on an expedited basis.

[signature block on following page]

Dated: December 8, 2020

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**Pro Hac Vice Application Forthcoming*

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Certificate of Service

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

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This 8th day of December, 2020.

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EXHIBIT A

**IN THE SUPERIOR COURT OF FULTON COUNTY
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Memorandum of Law in Support of Emergency Motion to Intervene

I. INTRODUCTION

Pursuant to O.C.G.A. §§ 9-11-24, 21-2-520, and 21-2-524, Proposed Intervenors Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. “Sachin” Varghese, Nikema Williams, and Cathy Woolard (collectively, “Proposed Intervenors”), move to immediately intervene as defendants in this action. The Proposed Intervenors respectfully request the Court hear this Motion as early in the day as possible **today, December 8**, along with Proposed Intervenors’ Motion to Dismiss filed herewith. Petitioners’ decision to wait weeks after the Governor certified the election on November 20 and until the end of the *third* count of ballots smacks of an effort to sow the groundwork for a later argument that Georgia’s electoral votes are not entitled to the benefit of the so-called “safe harbor” date under 3 U.S.C. § 5. That date is **today**. The Petition is improper and meritless on its face. Any argument that Petitioners or their allies might later make to argue that Georgia did not qualify for the “safe harbor” would be flatly wrong as a matter of law. Nevertheless, this nation—and the voters of Georgia specifically—have lived too long now suffering attacks on the integrity and outcome of their election, which although

baseless, cause real damage to our most vital democratic institutions and values. This Court should dismiss or deny the Petition straightaway to put an end to this charade and avoid setting the stage for yet another meritless and cynical attack on the results of Georgia's presidential election.

Each of the Proposed Intervenors are among the slate of sixteen presidential electors nominated by the Democratic Party and certified by Governor Brian Kemp (the "Governor") after Secretary of State Brad Raffensperger (the "Secretary") certified the election results to formally declare President-Elect Joseph R. Biden, Jr. the winner of Georgia's presidential race (collectively, the "Biden Electors"). They are now empowered to and intend to cast Georgia's electoral college votes for President-Elect Biden. Proposed Intervenors comprise fourteen of these certified Biden Electors.

President-Elect Biden won the popular vote in Georgia. The initial reported results were subsequently confirmed by a hand recount of every one of the nearly five million ballots cast in the presidential race. On November 20, the Secretary certified the results of the election. That same day, the Governor certified the slate of Democratic electors, officially appointing the Biden Electors to the Electoral College. *Seventeen days later*, and at the end of the *second recount*, Petitioner Donald J. Trump, in his capacity as a candidate for President, together with his campaign committee Donald J. Trump for President, Inc. and David J. Shafer, in his capacity as a registered voter and presidential elector pledged to Donald Trump for President, filed this Petition to "contest" Georgia's presidential election results, results which have now been confirmed by three counts. Pet. ¶¶ 6-9.

This action is prohibitively late, barred by laches, raises claims that have already been rejected by numerous courts, and is otherwise improper in numerous, fatal ways. Nevertheless, it requests that this Court unilaterally reverse the will of the millions of voters who chose President-

Elect Biden as the winner of the presidential race in Georgia. This action is one of nearly 50 that have been filed across the country by President Trump and his allies seeking relief that courts have uniformly rejected as “drastic,” “breathtaking,” and entirely “unprecedented.” *Donald J. Trump for President, Inc. v. Pennsylvania*, No. 20-3371, 2020 WL 7012522 at *1-7 (3d Cir. Nov. 27, 2020). This includes a decision issued by a federal district court here in Georgia that was affirmed by the 11th Circuit Court of Appeals mere days ago. *Wood v. Raffensperger*, No. 1:20-cv-04561-SDG, 2020 WL 6817513 at *13 (N.D. Ga. Nov. 20, 2020) (denying request to enjoin Georgia from certifying its election results, concluding that “interfer[ing] with the result of an election that has already concluded would be unprecedented and harm the public in countless ways”), *aff’d*, No. 20-14418, 2020 WL 7094866 (11th Cir. Dec. 5, 2020). As another court found in a similar decision issued just yesterday: “[T]his lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People’s faith in the democratic process and their trust in our government. Plaintiffs ask this Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters. This, the Court cannot, and will not, do.” *King v. Whitmer*, No. CV 20-13134, 2020 WL 7134198, at *13 (E.D. Mich. Dec. 7, 2020). This case is no different.

The Proposed Intervenors—who are proper defendants if this contest moves forward—should be permitted to immediately intervene to protect their own interests, the interests of the candidate they are pledged to support, and the interests of the millions of Georgians who voted for President-Elect Biden. They have a statutory right to intervene. Even without such a right, the Proposed Intervenors easily meet the standard to intervene as a matter of right or at the Court’s

discretion. They therefore request that the Court immediately grant this motion, hear their motion to dismiss, and deny the Petition.¹

II. STATEMENT OF FACTS

On November 3, 2020, Georgia's voters chose former Vice President, and now President-Elect, Biden to be the next President of the United States of America. Georgia's certified vote count confirmed that President-Elect Biden defeated Donald J. Trump by 12,670 votes. The Secretary and Governor certified the results, and the Proposed Intervenors were appointed to the Electoral College. *See* O.C.G.A. § 21-2-10; O.C.G.A. § 21-2-379.5(e); O.C.G.A. § 21-2-285(e). On November 11, the Secretary announced that a statewide hand recount of the presidential election would take place. The recount began on November 12 and concluded without issue on November 18. No significant irregularities in the original counts or the recount were reported. On November 20, the Secretary confirmed Biden's victory and certified the results of the election. The Governor then certified President-Elect Biden's slate of sixteen electors. The next day—despite a comprehensive hand recount of every single ballot having just occurred—President Trump's reelection campaign sought a *third* count of Georgia's votes. This additional recount was completed on December 2. The results were certified on the afternoon December 7. Petitioners now ask this Court to overturn the will of Georgia voters based on their speculative, kitchen-sink allegations of voting and election procedural irregularities.

Despite widespread acknowledgement that no fraud occurred, various similar lawsuits have been filed around the country in an attempt to sow confusion and cast doubt on the legitimacy of the election. Just here in Georgia there have been at least seven such suits, including two self-

¹ Another judge in this same court has already determined that Proposed Intervenors should be allowed to intervene in a similar action. *Boland v. Raffensperger*, No. 2020CV343018 (Fulton County Super. Ct.) (election contest also making similar claims to those here).

styled election “contests” that were filed weeks ago, including one by the Thomas More Society, which has since been reported to have very close ties to the President’s legal team, and two filed by L. Lin Wood, Jr.—one in which he served as the plaintiff and one in which he acted as counsel—who has urged President Trump to “declare martial law” if courts do not reverse the will of the people and deliver the election to the President.² *See, e.g., Wood v. Raffensperger*, No. 20-cv-04651, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020), *aff’d*, *Wood v. Raffensperger*, No. 20-14418, 2020 WL 7094866 (11th Cir. Dec. 5, 2020) (challenge brought by L. Lin Wood, Jr. as plaintiff, which made many claims similar to those here in which the district court found Wood lacked standing and the claims were barred by laches, the Eleventh Circuit affirmed on jurisdictional and mootness grounds); *Wood v. Kemp*, No. 2020CV342959 (Ga. Super. Ct.) (election contest brought by Thomas More Society, also making similar claims, dismissed by court from the bench on December 7, 2020); *see also Boland v. Raffensperger*, No. 2020CV343018 (Fulton County Super. Ct.) (election contest also making similar claims to those here, scheduled to be heard today at 2 p.m. on motion to dismiss); *Pearson v. Kemp*, No. 20-cv-04809 (N.D. Ga.) (challenge to election brought by L. Lin Wood, Jr. as counsel, making similar claims, dismissed from the bench yesterday, December 7, 2020, on jurisdictional and laches grounds). And these cases just represent the judicial trial of rejection of these extraordinary and meritless claims in Georgia. Around the country, over and over, courts have uniformly rejected similar attempts by

² *See* Jerry Lambe, *Lawyers Condemn Michael Flynn and Lin Wood’s ‘Breathtakingly Morally Treasonous’ Call for Trump to Declare Martial Law and Hold New Election*, Law & Crime (Dec. 2, 2020), available at <https://lawandcrime.com/2020-election/lawyers-condemn-michael-flynn-and-lin-woods-breathtakingly-morally-treasonous-call-for-trump-to-declare-martial-law-and-hold-new-election/>; *see also* Jon Swaine, et al., *Conservative nonprofit group challenging election results around the county has tie to Trump legal advisor Jenna Ellis*, Wash. Post. (Dec. 7, 2020), available at https://www.washingtonpost.com/politics/thomas-more-jenna-ellis/2020/12/07/09057432-362d-11eb-b59c-adb7153d10c2_story.html.

President Trump and his allies to seize by judicial fiat victories that the voters denied him. But as these courts have correctly recognized, “Voters, not lawyers, choose the President. Ballots, not briefs, decide elections.” *Donald J. Trump for President, Inc.* 2020 WL 7012522, at *9.

Undeterred by this string of definitive rebukes, the Trump Campaign filed this case yesterday, on the literal eve of the “safe harbor” deadline. It is immediately evident that this challenge, too, cannot succeed on its merits. But by its timing it is just as clear that the Trump Campaign is hoping that its mere filing will help lay the groundwork for future specious arguments that Georgia cannot qualify for the “safe harbor.” Make no mistake: any such argument is meritless. But by allowing this case to languish on the docket, the Court may unwittingly contribute to the further erosion of our values, adding fodder to help spur on these meritless challenges, despite no evidence that the election was anything other than the most transparent, accurate, and fraud-free in Georgia’s history. Indeed, its results have now been affirmed by two separate careful recounts of all ballots cast in the presidential election. None of the claims in the President’s new Petition arise from the second recount. All of them could have been brought either before the election or promptly after the first certification. But the Petitioners sat and waited. Their delay not only violates Georgia election law which strictly limits the time purported election challenges may be brought to a matter of days after final results are established, O.G.C.A. § 21-2-524(a), it also clearly sounds in laches. It is also continues the President’s same unabashed siege of “misinformation” embodies the “whack-a-mole” strategy his legal team has taken attempting to sow doubt about the results of the election on speculative claims.³ Even Republican election officials in Georgia have lost their patience, lamenting just as one baseless claim is debunked,

³ Justine Coleman, *GOP election official in Georgia says Trump’s false election statements ‘game of whack-a-mole’*, THE HILL (Dec. 6, 2020), <https://thehill.com/homenews/sunday-talk-shows/528948-georgia-election-official-says-trumps-false-election-statements>.

another arises,⁴ and that the continued misinformation regarding these election results could result in risks to physical safety.⁵ This Court should put an end to this circus today.

III. ARGUMENT

Georgia courts permit winning candidates to intervene in election contests challenging their victory. The Proposed Intervenors have an undeniable interest in this lawsuit, which seeks to invalidate the presidential election results and call an entirely new election.

A. The Proposed Intervenors have a statutory right to intervene.

Georgia law permits intervention as a matter of right “[w]hen a statute confers an unconditional right to intervene.” O.C.G.A. § 9-11-24(a)(1). Here, the election contest statutes provide the statutory basis for intervention. They clearly state that, in an election contest, a “defendant” means “[t]he person whose . . . election is contested.” O.C.G.A. § 21-2-520(2)(A). The statutes also require the contestant allege “[t]he name of the defendant” and “[t]he name of each person who was a candidate at such . . . election for such . . . office,” each of whom must be served by the court clerk. O.C.G.A. § 21-2-524(a)(3)-(4), (f). Those defendants and candidates “shall be deemed [] litigant[s] to such proceeding and may set up by way of answer or cross action any right of interest or claim he or she may have.” O.C.G.A. § 21-2-524(f).

Presidential candidates are not elected by the voters of Georgia; rather, Georgia’s electorate selects presidential electors who then vote for presidential candidates on behalf of the state at the Electoral College. Georgia’s Election Code states, “[a]t the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons

⁴ Sanya Mansoor, ‘It’s crazy town.’ *Georgia election official Gabriel Sterling on calling out Trump, battling misinformation, and smoking his own meat*, TIME (Dec. 4, 2020), <https://time.com/5918093/gabriel-sterling-trump-georgia/> (“Every time you knock one [claim] down, another one comes up.”).

⁵ *Id.* (“Someone’s going to get hurt, someone’s going to get shot, someone’s going to get killed. It’s not right.”).

to be known as *electors of President and Vice President* of the United States” O.C.G.A. § 21-2-10 (emphasis added). “When *presidential electors are to be elected*, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President.” O.C.G.A. § 21-2-379.5(e) (emphasis added); *see* O.C.G.A. § 21-2-285(e). The Georgia Supreme Court has confirmed that presidential elections in Georgia are actually “election[s] for presidential electors.” *Rose v. State*, 107 Ga. 697 (1899); *Franklin v. Harper*, 205 Ga. 779, 785 (1949) (describing an “election . . . for presidential electors”); *Moore v. Smith*, 140 Ga. 854 (1913) (same). The Proposed Intervenors are therefore proper “defendants” as “[t]he person[s] whose nomination or election is contested.” O.C.G.A. § 21-2-520(2)(A); *see also Williams v. Heard*, 302 Ga. 114, 115 (2017) (“[T]he court allowed [the winning candidate] to intervene in the contest action.”).

If this contest is to proceed, the Court should permit the Proposed Intervenors to exercise their statutory right to appear before the Court. Granting the Proposed Intervenors’ intervention motion per their statutory right is necessary to the fairness and validity of this contest.

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

Even absent their statutory right to intervene, the Proposed Intervenors easily meet Georgia’s traditional test for motions to intervene as of right. O.C.G.A. § 9-11-24(a)(2) provides that after timely application “anyone *shall* be permitted to intervene” in an action “[w]hen the applicant claims an interest relating to” the subject matter of the action and the applicant “is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” O.C.G.A. § 9-11-24(a)(2) (emphasis added). This is a three-part inquiry, consisting of “[1] interest,

[2] impairment resulting from an unfavorable disposition, and [3] inadequate representation.” *See Baker v. Lankford*, 306 Ga. App. 327, 329 (2010). The Proposed Intervenors satisfy each prong.

First, the Proposed Intervenors clearly have a direct interest in defending the certification of their own electoral victory from frivolous attacks. There is no question that the Proposed Intervenors will “gain or lose by the direct effect of [a] judgment” in this suit that seeks to prevent their appointment to the Electoral College in direct contravention of the decision of Georgia’s electorate. *See See State Farm Mut. Auto. Ins. Co. v. Jiles*, 115 Ga. App. 193, 195 (1967). The Proposed Intervenors also have a direct interest in defending and supporting the will of the 2,474,507 Georgia voters who supported their election. *See, e.g., Bay Cnty. Democratic Party v. Land*, 347 F. Supp. 2d 404, 422 (E.D. Mich. 2004) (“[P]olitical parties and candidates have standing to represent the rights of voters”); *Penn. Psychiatric Soc’y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 288 n.10 (3d Cir. 2002) (“[C]andidates for public office may be able to assert the rights of voters”); *Walgren v. Bd. of Selectmen of Amherst*, 519 F.2d 1364, 1365 n.1 (1st Cir. 1975) (same).⁶ *Second*, this action threatens to impair the Proposed Intervenors’ interests. Petitioners ask the Court to rescind certification of an election that has *already been certified* as a victory for the Proposed Intervenors. *Finally*, the Proposed Intervenors’ interests cannot adequately be represented by the State and County Defendants. To the extent they remain parties to the lawsuit, their stake in this lawsuit is defined solely by their statutory duties to conduct the election process and declare the results. *See* O.C.G.A. § 21-2-520(2)(C)-(D). Because the State and Counties are not institutionally designed to be advocates for electing the President-Elect or

⁶ Georgia courts regularly apply principles from federal caselaw to the scope of a party’s interest in litigation, for example, to determine whether a party’s injury is sufficient to confer standing to litigate a case. *See Feminist Women’s Health Ctr. v. Burgess*, 282 Ga. 433, 434 (2007); *Aldridge v. Ga. Hosp. & Travel Ass’n*, 251 Ga. 234, 235 (1983).

protecting individual voters' rights, they cannot adequately represent the interests of the Proposed Intervenors, whose mission is just that.

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

Permissive intervention is appropriate “[w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” O.C.G.A. § 9-11-24(b)(2). “In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.* The Proposed Intervenors easily meet the requirements for permissive intervention. *First*, the Proposed Intervenors and the State and Counties will inevitably raise common questions of law and fact in defending this lawsuit and the elections process. *Second*, given the early stage of this litigation, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. To the contrary, the Proposed Intervenors are prepared to proceed in accordance with any schedule the Court establishes and have an interest in moving as expeditiously as possible. Their intervention will only serve to contribute to the full development of the factual and legal issues before the Court.

IV. CONCLUSION

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

Given the procedural and substantive defects in Petitioners’ case, the Proposed Intervenors request that the Court act quickly and consider ruling on the papers today, December 8, to dismiss this action and demonstrate that the claims brought here purporting to be an election challenge are improper and ineffectual.

Dated: December 8, 2020

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**[PROPOSED] INTERVENOR-DEFENDANTS' ANSWER TO PETITIONERS'
VERIFIED PETITION**

Proposed Intervenor-Defendants Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. "Sachin" Varghese, Nikema Williams, Van Johnson, and Cathy Woolard (collectively, "Intervenors") by and through their attorneys, answer the Petition as set forth below. Unless expressly admitted, each allegation in the petition is denied, and the Intervenors demand strict proof thereof.

INTRODUCTION

1. The United States Constitution sets forth the authority to regulate federal elections: "The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." U.S. Const. art. I, § 4.

ANSWER: Paragraph 1 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

2. With respect to the appointment of presidential electors, the Constitution further provides, "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a

Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in Congress.” U.S. Const. art. II, § 1.

ANSWER: Paragraph 2 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

3. In Georgia, the General Assembly is the “legislature.” *See* Ga. Const. art. III, § 1, para. I.

ANSWER: Paragraph 3 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

4. Pursuant to the legislative power vested in the Georgia General Assembly (the “Legislature”), the Legislature enacted the Georgia Election Code governing the conduct of elections in the State of Georgia. *See* O.C.G.A. §§ 21-2-1 et seq. (the “Election Code”).

ANSWER: Paragraph 4 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

5. Thus, through the Election Code, the Legislature promulgated a statutory framework for choosing the presidential electors, as directed by the Constitution.

ANSWER: Paragraph 5 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

6. In this case, Petitioners present to this Court substantial evidence that the November 3, 2020, Presidential Election in Georgia (the “Contested Election”) was not conducted in accordance with the Election Code and that the named Respondents deviated significantly and substantially from the Election Code.

ANSWER: Denied.

7. Due to significant systemic misconduct, fraud, and other irregularities occurring during the election process, many thousands of illegal votes were cast, counted, and included in the tabulations from the Contested Election for the Office of the President of the United States, thereby creating substantial doubt regarding the results of that election.

ANSWER: Denied.

8. Petitioners demonstrate that the Respondents’ repeated violations of the Election Code constituted an abandonment of the Legislature’s duly enacted framework for conducting the election and for choosing presidential electors, contrary to Georgia law and the United States Constitution.

ANSWER: Denied.

9. Petitioners bring this contest pursuant to O.C.G.A. §21-2-522.

ANSWER: The Intervenors admit that the Petitioners purport to bring a claim under O.C.G.A. § 21-2-522 but deny that Petitioners have complied with the requirements set forth under Georgia law to do so and further deny that Petitioners have established any cognizable claim for relief under that provision.

10. “Honest and fair elections must be held in the selection of the officers for the government of this republic, at all levels, or it will surely fall. If [this Court] place[s] its stamp of approval upon an election held in the manner this one [was] held, it is only a matter of a short time until unscrupulous men, taking advantage of the situation, will steal the offices from the people

and set up an intolerable, vicious, corrupt dictatorship.” *Bush v. Johnson*, 111 Ga. App. 702, 705, 143 S.E.2d 21, 23 (1965).

ANSWER: Paragraph 10 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

11. The Georgia Supreme Court has made clear that it is not incumbent upon Petitioners to show how voters casting irregular ballots would have voted had their ballots been regular. Petitioners “only [have] to show that there were enough irregular ballots to place in doubt the result.” *Mead v. Sheffield*, 278 Ga. 268, 271, 601 S.E.2d 99, 101 (2004) (citing *Howell v. Fears*, 275 Ga. 627, 628, 571 S.E.2d 392, 393 (2002)).

ANSWER: Paragraph 11 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

12. To allow Georgia’s presidential election results to stand uncontested, and its presidential electors chosen based upon election results that are erroneous, unknowable, not in accordance with the Election Code and unable to be replicated with certainty, constitutes a fraud upon Petitioners and the Citizens of Georgia, an outcome that is unlawful and must not be permitted.

ANSWER: Denied.

THE PARTIES

13. President Donald J. Trump (“President Trump”) is President of the United States of America and a natural person. He is the Republican candidate for reelection to the Presidency of the United States of America in the November 3, 2020, General Election conducted in the State of Georgia.

ANSWER: Admitted.

14. Donald J. Trump for President, Inc. is a federal candidate committee registered with, reporting to, and governed by the regulations of the Federal Election Commission, established pursuant to 52 U.S.C. §§ 30101 et seq. as the principal authorized committee of President Trump, candidate for President, which also serves as the authorized committee for the election of the Vice Presidential candidate on the same ticket as President Trump (the “Committee”). The agent designated by the Committee in the State of Georgia is Robert Sinners, Director of Election Day Operations for the State of Georgia for President Trump (collectively the “Trump Campaign”). The Trump Campaign serves as the primary organization supporting the election of presidential electors pledged to President Trump and Vice President Pence.

ANSWER: The Intervenors admit that Donald J. Trump for President, Inc. is the principal committee for the reelection of President Donald J. Trump and Vice President Michael R. Pence. The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 and, on that basis, deny the same.

15. David J. Shafer (“Elector Shafer”) is a resident of the State of Georgia and an aggrieved elector who was entitled to vote, and did vote, for President Trump in the November 3, 2020, General Election. Elector Shafer is an elector pledged to vote for President Trump at the Meeting of Electors pursuant to United States Constitution and the laws of the State of Georgia.

ANSWER: The Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. Petitioners are “Contestants” as defined by O.C.G.A. § 21-2-520(1) who are entitled to bring an election contest under O.C.G.A. § 21-2-521 (the “Election Contest”).

ANSWER: Paragraph 16 contains legal characterizations, contentions, and conclusions to which no response is required. To the extent a response is required, the Intervenors deny the same.

Further, Intervenor deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contestant.”

17. Respondent Brad Raffensperger is named in his official capacity as the Secretary of State of Georgia.¹ Secretary Raffensperger serves as the Chairperson of Georgia’s State Election Board, which promulgates and enforces rules and regulations to (i) obtain uniformity in the practices and proceedings of election officials as well as legality and purity in all primaries and general elections, and (ii) be conducive to the fair, legal, and orderly conduct of primaries and general elections. *See* O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1. Secretary Raffensperger, as Georgia’s chief elections officer, is also responsible for the administration of the Election Code. *Id.*

ANSWER: The Intervenor admit that Brad Raffensperger is the Secretary of State of Georgia with certain responsibilities as described by law. The remainder of the allegations in the paragraph include legal characterizations, contentions, and conclusions to which no response is required. To the extent a response is otherwise required, the Intervenor deny the allegations.

18. Respondents Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le in their official capacities as members of the Georgia State Election Board (the “State Election Board”), are members of the State Election Board in Georgia, responsible for “formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” O.C.G.A. § 21-2-31(2). Further, the State Election Board “promulgate[s] rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system” in Georgia. O.C.G.A. § 21-2-31(7).

¹ Secretary Raffensperger is a state official subject to suit in his official capacity because his office “imbues him with the responsibility to enforce the [election laws].” *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011).

ANSWER: The Intervenors admit that Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le are members of the State Election Board in Georgia with certain responsibilities as defined by law. To the extent Petitioners' characterization and interpretation of the cited law differs from the text of the cited statutory provisions, the Intervenors deny the allegations. To the extent a response is otherwise required, the Intervenors deny the allegations.

19. Respondent Richard L. Barron is named in his official capacity as Director of Registration and Elections for Fulton County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term "Contested Election." Otherwise, the allegations of Paragraph 19 are admitted.

20. Respondent Janine Eveler is named in her official capacity as Director of Registration and Elections for Cobb County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term "Contested Election." Otherwise, the allegations of Paragraph 20 are admitted.

21. Respondent Erica Hamilton is named in her official capacity as Director of Voter Registration and Elections for DeKalb County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 21 are admitted.

22. Respondent Kristi Royston is named in her official capacity as Elections Supervisor for Gwinnett County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 22 are admitted.

23. Respondent Russell Bridges is named in his official capacity as Elections Supervisor for Chatham County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 23 are admitted.

24. Respondent Anne Dover is named in her official capacity as Acting Director of Elections and Voter Registration for Cherokee County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 24 are admitted.

25. Respondent Shauna Dozier is named in her official capacity as Elections Director for Clayton County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 25 are admitted.

26. Respondent Mandi Smith is named in her official capacity as Director of Voter Registration and Elections for Forsyth County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 26 are admitted.

27. Respondent Ameika Pitts is named in her official capacity as Director of the Board of Elections & Registration for Henry County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 27 are admitted.

28. Respondent Lynn Bailey is named in her official capacity as Executive Director of Elections for Richmond County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 28 are admitted.

29. Respondent Debra Presswood is named in her official capacity as Registration and Election Supervisor for Houston County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 29 are admitted.

30. Respondent Vanessa Waddell is named in her official capacity as Chief Clerk of Elections for Floyd County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 30 are admitted.

31. Respondent Julianne Roberts is named in her official capacity as Supervisor of Elections and Voter Registration for Pickens County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 31 are admitted.

32. Respondent Joseph Kirk is named in his official capacity as Elections Supervisor for Bartow County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 32 are admitted.

33. Respondent Gerald McCown is named in his official capacity as Elections Supervisor for Hancock County, Georgia, and conducted the Contested Election within that county.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 33 are admitted.

34. All references to Respondents made herein include named Respondent and those election workers deputized by Respondents to act on their behalf during the Contested Election.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” The remainder of the paragraph are simply Respondents’ characterization of their legal claims to which no response is required. To the extent a response is required, Intervenors deny the allegations.

JURISDICTION AND VENUE

35. Jurisdiction is proper in this Court pursuant to O.C.G.A. § 21-2-523(a) as the Superior Court of the county where Secretary Raffensperger, the State Board of Elections, and Respondent Richard L. Barron are located. *See also Ga. Dep’t of Human Servs. v. Dougherty Cty.*, 330 Ga. App. 581, 582, 768 S.E.2d 771, 772 (2015).

ANSWER: Paragraph 35 of the Petition contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

36. Venue is proper before this Court.

ANSWER: Paragraph 36 of the Petition contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

FACTUAL BACKGROUND

The Georgia Election Code and Election Contest Provisions

37. The Election Code sets forth the manner in which the Citizens of Georgia are allowed to participate in the Legislature's duty of choosing presidential electors by specifying, inter alia, which persons are eligible to register to vote in Georgia, the circumstances and actions by which a voter cancels his or her voter registration, the procedures for voting in person and by absentee ballot, the manner in which elections are to be conducted, and the specific protocols and procedures for recounts, audits, and recanvasses. *See* O.C.G.A. §§ 21-2-1 et seq.

ANSWER: Paragraph 37 of the Petition contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

38. The Election Code in O.C.G.A. § 21-2-522 provides the means for a candidate in a federal election to contest the results of said election based on:

1. Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;

2. When the defendant is ineligible for the nomination or office in dispute;
3. When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
4. For any error in counting the votes or declaring the result of the primary or election, if such error would change the results; or
5. For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.²

ANSWER: Paragraph 38 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

39. The results of an election may be set aside when a candidate has “clearly established a violation of *election procedures* and has demonstrated that the violation has placed the result of the election in doubt.” *Martin v. Fulton Cty. Bd. of Registration & Elections*, 307 Ga. 193-94, 835 S.E.2d 245, 248 (2019) (quoting *Hunt v. Crawford*, 270 GA 7, 10, 507 S.E.2d 723 (1998) (emphasis added)).

ANSWER: Paragraph 39 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

40. The Election Code “allows elections to be contested through litigation, both as a check on the integrity of the election process and as a means of ensuring the fundamental right of citizens to vote and to have their votes counted securely.” *Martin*, 307 Ga. at 194.

² Petitioners do not contest pursuant O.C.G.A. § 21-2-522 Ground (2).

ANSWER: Paragraph 40 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

41. The Georgia Supreme Court has made clear that “it [is] not incumbent upon [Petitioners] to show *how . . . voters would have voted* if their . . . ballots had been regular. [Petitioners] only ha[ve] to show that there were enough irregular ballots to place in doubt the result.” *Mead* at 268 (emphasis added).

ANSWER: Paragraph 41 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

The Contested Election

42. On November 3, 2020, the Contested Election for electors for President of the United States took place in the State of Georgia.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 42 are admitted.

43. President Trump, former Vice President Joseph R. Biden (Mr. Biden), and Jo Jorgensen were the only candidates on the ballot for President in the Contested Election.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, Intervenors admit that President Trump, President-Elect

Biden, and Jo Jorgensen were candidates for the office of President of the United States of America in the November 2020 presidential election in Georgia.

44. The original results reported by Secretary Raffensperger for the Contested Election (the “Original Result”) consisted of a purported total of 4,995,323 votes cast, with Mr. Biden “ahead” by a margin of 12,780 votes.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” Otherwise, the allegations of Paragraph 44 are admitted.

45. The results of the subsequent Risk Limiting Audit conducted by the Secretary of State (the “Risk Limiting Audit”) included a total of 5,000,585 votes cast, with Mr. Biden “ahead” by a margin of 12,284 votes.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” The Intervenors affirmatively state that the “Risk Limiting Audit” was a hand recount of each presidential ballot in the State of Georgia. Otherwise, the allegations of Paragraph 45 are admitted.

46. On November 20, 2020, the Contested Election was declared and certified for Mr. Biden by a margin of only 12,670 votes (the “Certified Result”).³

³ The first certified number of votes.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” The Intervenors admit that Joseph R. Biden won the presidential election in Georgia by 12,670 votes as announced on November 20, 2020.

47. On November 21, 2020, President Trump and the Trump Campaign notified Secretary Raffensperger of President Trump’s request to invoke the statutory recount authorized by O.C.G.A. § 21-2-495(c) for elections in which the margin is less than one-half of one percent (the “Statutory Recount”). A true and correct copy of President Trump’s request for the Statutory Recount is attached hereto and incorporated by reference as **Exhibit 1**.

ANSWER: Admitted.

48. The Statutory Recount is ongoing as of the time of the filing of this Petition.

ANSWER: Denied.

49. On multiple occasions Secretary Raffensperger announced he does not anticipate the Statutory Recount to yield a substantial change in the results of the Contested Election.

ANSWER: The Intervenors lack sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 49 and, on that basis, deny the same.

50. On December 1, 2020, Robert Gabriel Sterling, Statewide Voting System Implementation Manager for the Secretary of State, gave a press conference to discuss the status of the ongoing Statutory Recount.

ANSWER: Admitted.

51. During his press conference, Mr. Sterling stated that at least two counties needed to recertify their vote counts as the totals reached during the Statutory Recount differed from the Certified Results.

ANSWER: The Intervenors lack sufficient information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 51 and, on that basis, deny the same.

52. As of the date of this Petition, not all of Georgia's 159 counties have certified their results from the Statutory Recount.

ANSWER: Denied.

53. Consequently, as of the date of this Petition, Secretary Raffensperger has yet to certify the results from the Statutory Recount.

ANSWER: Denied.

54. The presidential electors of the States are scheduled to meet on December 14, 2020. Therefore, this matter is ripe, and time is of the essence.

ANSWER: The Intervenors admit that the presidential electors are scheduled to meet in each state and cast their ballots on December 14, 2020. Intervenors deny that this matter is "ripe" or timely. The remaining allegations of Paragraph 54 contain legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

55. An actual controversy exists.

ANSWER: Paragraph 55 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

56. Because the outcome of the Contested Election is in doubt, Petitioners jointly and severally hereby contest Georgia's November 3, 2020, election results for President of the United States pursuant to O.C.G.A. §§ 21-2-521 and 21-2-522 et seq.

ANSWER: Denied.

57. Petitioners assert that the laws of the State of Georgia governing the conduct of the Contested Election were disregarded, abandoned, ignored, altered, and otherwise violated by Respondents, jointly and severally, allowing a sufficient number of illegal votes to be included in the vote tabulations, such that the results of the Contested Election are invalid, and the declaration of the presidential election in favor of Mr. Biden must be enjoined, vacated, and nullified.

ANSWER: Denied.

**THERE WERE SYSTEMIC IRREGULARITIES AND VIOLATIONS OF THE
GEORGIA ELECTION CODE IN THE CONTESTED ELECTION**

Requirements to Legally Vote in Georgia

58. The Election Code sets forth the requirements for voting in Georgia, including the requirements that a voter must be: (1) "Registered as an elector in the manner prescribed by law; (2) A citizen of this state and of the United States; (3) At least 18 years of age on or before the date of the...election in which such person seeks to vote; (4) A resident of this state and of the county or municipality in which he or she seeks to vote; and (5) "Possessed of all other qualifications prescribed by law." O.C.G.A. § 21-2-216(a). "No person shall remain an elector longer than such person shall retain the qualifications under which such person registered." O.C.G.A. § 21-2-216(f).

ANSWER: Paragraph 58 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

59. In violation of O.C.G.A. § 21-2-216, Respondents, jointly and severally, allowed thousands of unqualified persons to register to vote and to cast their vote in the Contested Election. These illegal votes were counted in violation of Georgia law. **Exhibits 2, 3, 4, and 10** attached hereto and incorporated by reference.

ANSWER: Denied.

60. O.C.G.A. § 21-2-216(b) provides that “[n]o person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.”

ANSWER: Paragraph 60 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

61. In violation of O.C.G.A. § 21-2-216(b), Respondents, jointly and severally, allowed as many as 2,560 felons with an uncompleted sentence to register to vote and to cast their vote in the Contested Election. **Exhibit 3** attached hereto and incorporated by reference.

ANSWER: Denied.

62. In violation of Georgia law, Respondents, jointly and severally, counted these illegal votes in the Contested Election.

ANSWER: Denied.

63. “Any person who possesses the qualifications of an elector except that concerning age shall be permitted to register to vote if such person will acquire such qualification within six months after the day of registration.” O.C.G.A. § 21-2-216(c).

ANSWER: Paragraph 63 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

64. In violation of O.C.G.A. § 21-2-216(c), Respondents, jointly and severally, allowed at least 66,247 underage—and therefore ineligible—people to illegally register to vote, and subsequently illegally vote. *See Exhibit 3.*

ANSWER: Denied.

65. In violation of Georgia law, Respondents, jointly and severally, counted these illegal votes in the Contested Election.

ANSWER: Denied.

66. In order to vote in Georgia, a person must register to vote.

ANSWER: Admitted.

67. Respondents, jointly and severally, allowed at least 2,423 individuals to vote who were not listed in the State's records as having been registered to vote. *See Exhibit 3.*

ANSWER: Denied.

68. Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

69. Because determining a voter's residency is necessary to confirm he or she is a qualified voter in this state and in the county in which he or she seeks to vote, the Election Code provides rules for determining a voter's residency and when a voter's residency is deemed abandoned. *See O.C.G.A. § 21-2-217.*

ANSWER: Paragraph 69 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

70. “The residence of any person shall be held to be in that place in which such person’s habitation is fixed.” O.C.G.A. § 21-2-217(a)(1).

ANSWER: Paragraph 70 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

71. Additionally, “[t]he specific address in the county...in which a person has declared a homestead exemption...shall be deemed the person’s residence address.” O.C.G.A. § 21-2-217(a)(14).

ANSWER: Paragraph 71 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

72. A voter loses his or her Georgia and/or specific county residence if he or she: (1) “register[s] to vote or perform[s] other acts indicating a desire to change such person’s citizenship and residence;” (2) “removes to another state with the intention of making it such person’s residence;” (3) “removes to another county or municipality in this state with the intention of making it such person’s residence;” or (4) “goes into another state and while there exercises the right of a citizen by voting.” O.C.G.A. § 21-2-217(a); *see also* O.C.G.A. § 21-2-218(f) (“No person shall vote in any county or municipality other than the county or municipality of such person’s residence except [“an elector who moves from one county...to another after the fifth Monday prior to a[n]...election”] O.C.G.A. § 21-2-218(e).)

ANSWER: Paragraph 72 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

73. In violation of O.C.G.A. § 21-2-217, Respondents, jointly and severally, allowed at least 4,926 individuals to vote in Georgia who had registered to vote in another state after their Georgia voter registration date. *See Exhibit 2.*

ANSWER: Denied.

74. It is illegal to vote in the November 3, 2020, general election for president in two different states.

ANSWER: Paragraph 74 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

75. It is long established that “one man” or “one person” has only one vote.

ANSWER: Paragraph 75 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

76. In violation of O.C.G.A. § 21-2-217, Respondents, jointly and severally, allowed at least 395 individuals to vote in Georgia who also cast ballots in another state (the “Double Voters”). *See Exhibit 2.*

ANSWER: Denied.

77. The number of Double Voters is likely higher than 395, yet Respondents have the exclusive capability and access to data to determine the true number of Double Voters.

ANSWER: Denied.

78. Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

79. Despite having the exclusive ability to determine the true number of Double Voters in Contested Election, to date Respondents, jointly and severally, have failed to properly analyze and remove the Double Voters from the election totals.

ANSWER: Denied.

80. To date, and despite multiple requests, Respondents, jointly and severally, have failed to provide identifying information or coordinate with the other 49 states and U.S. Territories to adequately determine the number of Double Voters.

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 80 and, on that basis, deny the same.

81. Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

82. In violation of O.C.G.A. § 21-2-217, Respondents, jointly and severally, allowed at least 15,700 individuals to vote in Georgia who had filed a national change of address with the United States Postal Service prior to November 3, 2020. *See Exhibit 2.*

ANSWER: Denied.

83. Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

84. If a Georgia voter “who is registered to vote in another county...in this state...moves such person’s residence from that county...to another county...in this state,” that voter “shall, at the time of making application to register to vote in that county...provide such information as specified by the Secretary of State in order to notify such person’s former voting jurisdiction of the person’s application to register to vote in the new place of residence and to cancel such person’s registration in the former place of residence.” O.C.G.A. § 21-2-218(b); see also *The Democratic Party of Georgia, Inc. v. Crittenden*, Civil Action File No. 1:18-CV-05181-SCJ, Doc. 33, Supplemental Declaration of Chris Harvey, Elections Director of the Office of the Secretary of State, ¶ 11 (N.D. Ga. Nov. 13, 2018) (“If the state allowed out of county voting, there would be no practical way of knowing if a voter voted in more than one county.”).

ANSWER: Paragraph 84 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

85. In violation of O.C.G.A. § 21-2-218(b), Respondents, jointly and severally, allowed at least 40,279 individuals to vote who had moved across county lines at least 30 days prior to Election Day and who had failed to properly re-register to vote in their new county after moving. **Exhibit 4** attached hereto and incorporated by reference.

ANSWER: Denied.

86. Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

87. In violation of O.C.G.A. § 21-2-217, Respondents, jointly and severally, allowed at least 1,043 individuals to cast ballots who had illegally registered to vote using a postal office box as their habitation. *See* **Exhibit 2**.

ANSWER: Denied.

88. Respondents then, jointly and severally improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

89. A postal office box is not a residential address.

ANSWER: Paragraph 89 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

90. One cannot reside within a postal office box.

ANSWER: Admitted.

91. It is a violation of Georgia law to list a postal office box as one's voter place of habitation. *See* O.C.G.A. § 21-2-217(a)(1).

ANSWER: Paragraph 91 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

92. A person desiring "to vote at any...general election" must apply to register to vote "by the close of business on the fifth Monday...prior to the date of such...general election." O.C.G.A. § 21-2-224(a).

ANSWER: Paragraph 92 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

93. The application for registration is “deemed to have been made as of the date of the postmark affixed to such application,” or if received by the Secretary of State through the United States Postal Service, by “the close of business on the fourth Friday prior to a . . . general election.” O.C.G.A. § 21-2-224(c).

ANSWER: Paragraph 93 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

94. In violation of O.C.G.A. § 21-2-224, Respondents, jointly and severally, allowed at least 98 individuals to vote who the state records as having registered after the last day permitted under law. *See Exhibit 3.*

ANSWER: Denied.

95. Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

96. “Each elector who makes timely application for registration, is found eligible by the board of registrars and placed on the official list of electors, and is not subsequently found to be disqualified to vote shall be entitled to vote in any...election.” O.C.G.A. § 21-2-224(d).

ANSWER: Paragraph 96 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

97. Secretary Raffensperger is required to maintain and update a list of registered voters within this state.

ANSWER: Paragraph 97 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

98. On the 10th day of each month, each county is to provide to the Secretary of State a list of convicted felons, deceased persons, persons found to be non-citizens during a jury selection process, and those declared mentally incompetent. *See* O.C.G.A. § 21-2-231(a)-(b), (d).

ANSWER: Paragraph 98 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

99. In turn, any person on the Secretary of State's list of registered voters is to be removed from the registration list if the voter dies, is convicted of a felony, is declared mentally incompetent, confirms in writing a change of address outside of the county, requests his or her name be removed from the registration list, or does not vote or update his or her voter's registration through two general elections. *See* O.C.G.A. §§ 21-2-231, 21-2-232, 21-2-235.

ANSWER: Paragraph 99 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

100. Respondents, jointly and severally, did not update the voter registration list(s).

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 100 and, on that basis, deny the same.

101. In violation of O.C.G.A. § 21-2-231(a)-(b) and (d), Respondents, jointly and severally, allowed as many as 10,315 or more individuals to vote who were deceased by the time of Election Day. *See Exhibit 3.*

ANSWER: Denied.

102. Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

103. Of these individuals, 8,718 are recorded as having perished prior to the date the State records as having accepted their vote. *See Exhibit 3.*

ANSWER: Denied.

104. Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election.

ANSWER: Denied.

105. For example, Affiant Lisa Holst received three absentee mail-in ballots for her late father-in-law, Walter T. Holst, who died on May 13, 2010. **Exhibit 5** attached hereto and incorporated by reference.

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 105 and, on that basis, deny the same.

106. Voter history shows that an absentee ballot was returned for Mr. Holst on October 28, 2020.

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 106 and, on that basis, deny the same.

107. Someone deceased for 10 years should not have received three absentee ballots.

ANSWER: The Intervenors admit that deceased persons are to be removed from Georgia's voter rolls pursuant to O.C.G.A. § 21-2-231. The Intervenors deny each other or different allegation in Paragraph 107.

108. Someone deceased for 10 years should not have received any absentee ballot.

ANSWER: The Intervenors admit that deceased persons are to be removed from Georgia's voter rolls pursuant to O.C.G.A. § 21-2-231. The Intervenors deny each other or different allegation in Paragraph 108.

109. Someone deceased for 10 years should not have had any absentee ballot counted.

ANSWER: Admitted.

110. Another Affiant, Sandy Rumph, has stated that her father-in-law, who died on September 9, 2019, had his voter registration change from "deceased" to "active" 8 days *after* he passed away. **Exhibit 6** attached hereto and incorporated by reference.

ANSWER: The Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 110 and, on that basis, deny the same.

111. With his registration status change, his address was also changed online from his real address in Douglasville to an unfamiliar address in DeKalb County. *Id.*

ANSWER: The Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 111 and, on that basis, deny the same.

112. Respondents jointly and severally failed to maintain and update voter registration lists which allowed voter registration information to be changed after the death of an elector.

ANSWER: Denied.

113. Respondents jointly and severally failed to maintain and update voter registration lists which allowed absentee ballots to be used fraudulently.

ANSWER: Denied.

**RESPONDENTS COMMITTED SUBSTANTIAL VIOLATIONS OF GEORGIA LAW
WITH RESPECT TO ABSENTEE BALLOTS**

114. The Legislature has established procedures for absentee voting in the state.

ANSWER: Paragraph 114 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

115. Pursuant to O.G.C.A. 21-2-381, absentee ballots must be requested by the voter, or the voter's designee, before they can be sent out.

ANSWER: Paragraph 115 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

116. In violation of O.C.G.A. § 21-2-381, Respondent Raffensperger sent unsolicited absentee ballot applications before the 2020 primary election to all persons on the list of qualified electors, whether or not an application had been requested by the voter.

ANSWER: Denied.

117. The unlawfully sent applications allowed the recipient to check a box to request an absentee ballot for the Contested Election in advance of the period for which an absentee ballot could be requested.

ANSWER: Paragraph 117 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

118. Individuals wishing to vote absentee may apply for a mail-in ballot “**not more than 180 days prior to the date of the primary or election.**” O.C.G.A. § 21-2-381(a)(1)(A) (emphasis added).

ANSWER: Paragraph 118 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

119. In violation of O.C.G.A. § 21-2-381(a)(1)(A), Respondents, jointly and severally, allowed at least 305,701 individuals to vote who, according to State records, applied for an absentee ballot more than 180 days prior to the Contested Election. *See Exhibit 3.*

ANSWER: Denied.

120. Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

ANSWER: Denied.

121. Pursuant to O.C.G.A. § 21-2-381(b) an absentee voter must have requested an absentee ballot before such ballot is capable of being received by the voter.

ANSWER: Paragraph 121 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

122. If such applicant is eligible under the provisions of the Election Code, an absentee ballot is to be mailed to the voter.

ANSWER: Paragraph 122 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

123. In violation of O.C.G.A. § 21-2-385, Respondents, jointly and severally, allowed at least 92 individuals to vote whose absentee ballots, according to State records, were returned and accepted prior to that individual requesting an absentee ballot. *See Exhibit 3.*

ANSWER: Denied.

124. Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

ANSWER: Denied.

125. Absentee ballots may only be mailed after determining the applicant is registered and eligible to vote in the election. O.C.G.A. § 21-2-381(b)(1).

ANSWER: Paragraph 125 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

126. In violation of O.C.G.A. § 21-2-381(b)(1), Respondents, jointly and severally, allowed state election officials to mail at least 13 absentee ballots to individuals who were not yet registered to vote according to the state's records. *See Exhibit 3.*

ANSWER: Denied.

127. Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

ANSWER: Denied.

128. Pursuant to O.C.G.A. § 21-2-384(a)(2) absentee ballots may not be mailed more than 49 days prior to an election.

ANSWER: Paragraph 128 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

129. Respondents, jointly and severally, mailed at least 2,664 absentee ballots to individuals prior to the earliest date permitted by law. *See Exhibit 3.*

ANSWER: Denied.

130. Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

ANSWER: Denied.

131. According to State records, Respondents jointly and severally allowed at least 50 individuals to vote whose absentee ballots were returned and accepted prior to the earliest date that absentee ballots were permitted by law to be sent out. *See Exhibit 3.*

ANSWER: Denied.

132. Respondents then, jointly and severally improperly counted these illegal votes in the Contested Election. *Id.*

ANSWER: Denied.

133. An absentee voter's application for an absentee ballot must have been accepted by the election registrar or absentee ballot clerk in order for that individual's absentee ballot vote to be counted. O.C.G.A. § 21-2-385.

ANSWER: Paragraph 133 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

134. In violation of O.C.G.A. § 21-2-385, Respondents, jointly and severally, allowed at least 2 individuals to vote whose absentee ballot applications had been rejected, according to state records. *See Exhibit 3.*

ANSWER: Denied.

135. Respondents, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

ANSWER: Denied.

136. It is not possible for an absentee voter to have applied by mail, been issued by mail, and returned by mail an absentee ballot, and for that ballot to have accepted by election officials, all on the same day.

ANSWER: The Intervenors admit that, unless the sender selects a same day mailing option, mail will not be delivered on the same day it is posted. The Intervenors deny each other or different allegation in Paragraph 136.

137. In violation of O.C.G.A. § 21-2-384, Respondents, jointly and severally, allowed at least 217 individuals to vote whose absentee ballots, according to state records, were applied for, issued, and received all on the same day. *See Exhibit 3.*

ANSWER: Denied.

138. Respondents then, jointly and severally, improperly counted these illegal votes in the Contested Election. *Id.*

ANSWER: Denied.

**RESPONDENTS FAILED TO COMPLY WITH GEORGIA LAW PROVISIONS FOR
MATCHING SIGNATURES AND CONFIRMING VOTER IDENTITY FOR ELECTORS
SEEKING TO VOTE ABSENTEE**

139. O.C.G.A. §21-2-381(b) mandates the procedures to be followed by election officials upon receipt of an absentee ballot application:

“Upon receipt of a timely application for an absentee ballot, a registrar or absentee ballot clerk...shall determine...if the applicant is eligible to vote in the...election involved. In order to be found eligible to vote an absentee ballot by mail, the registrar or absentee ballot clerk **shall compare the identifying information on the application with the information on file in the registrar’s office and, if the application is signed by the elector, compare the signature or mark of the elector on the application with the signature or mark of the**

elector on the elector's voter registration card. In order to be found eligible to vote an absentee ballot in person...**shall show one of the forms of identification listed in Code Section 21-2-417** and the registrar or absentee ballot clerk **shall compare the identifying information on the application with the information on file in the registrar's office.**" O.C.G.A. § 21-2-381(b) (emphasis added).

ANSWER: Paragraph 139 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

140. O.C.G.A. § 21-2-386(a)(1)(B) mandates the procedures to be followed by election officials upon receipt of an absentee ballot:

Upon receipt of each [absentee] 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 oath with the information on file in his or her office, shall compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application,** and shall, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct. O.C.G.A. § 21-2-386(a)(1)(B) (emphasis added).

ANSWER: Paragraph 140 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

141. O.C.G.A. § 21-2-386(a)(1)(C) mandates the procedures to be followed by election officials with respect to defective absentee ballots:

If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or

information so furnished does not conform with that on file in the registrar’s or clerk’s office, or if the elector is otherwise found disqualified to vote, the registrar or clerk *shall* write across the face of the envelope “Rejected,” giving the reason therefor. The board of registrars or absentee ballot clerk *shall* promptly **notify the elector of such rejection**, a copy of which notification *shall* be retained in the files of the board of registrars or absentee ballot clerk for at least one year. O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added).

ANSWER: Paragraph 141 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

RESPONDENT RAFFENSPERGER DISREGARDED THE ELECTION CODE BY FIAT AND INSTRUCTED THE RESPONDENT COUNTIES TO DO LIKEWISE

142. On March 6, 2020, Respondents Raffensperger and the State Election Board entered into a “Compromise and Settlement Agreement and Release” (the “Consent Decree”) in litigation filed by the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively the “Democrat Party Agencies”).⁴ A true and correct copy of the Consent Decree is attached hereto and incorporated by reference as **Exhibit 7**.

ANSWER: The Intervenors admit that a Compromise Settlement Agreement was reached between the political party committees and Brad Raffensperger, Rebecca N. Sullivan, David J.

⁴ See *Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-05028-WMR, Doc. 56-1, Joint Notice of Settlement as to State Defendants, Att. A, Compromise Settlement Agreement and Release (N.D. Ga. Mar. 6, 2020).

Worley, Seth Harp, and Anh Le on March 6, 2020. The Intervenors deny each other or different allegation in Paragraph 142.

143. The litigation was one of more than one hundred lawsuits nationwide filed by Democrats and partisan affiliates of the Democratic Party to seeking to rewrite the duly enacted election laws of the states. **Exhibit 8** attached hereto and incorporated by reference.

ANSWER: Denied.

144. Without legislative authority, Respondents unlawfully adopted standards to be followed by the clerks and registrars in processing absentee ballots inconsistent with the election code.

ANSWER: Denied.

145. The Consent Decree exceeded Respondents' authority under the Georgia Constitution. *See* Ga. Const. art. III, §1; **Exhibit 15** attached hereto and incorporated by reference; *see also* O.C.G.A. § 21-2-31 (providing that the State Election Board shall “formulate, adopt, and promulgate such rules and regulations, consistent with the law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections” (emphasis added)).

ANSWER: Denied.

146. The Consent Decree changed the plain language of the statute for receiving and processing absentee ballot applications and ballots.

ANSWER: Denied.

147. The Consent Decree increased the burden on election officials to conduct the mandatory signature verification process by adding additional, cumbersome steps.

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 147 and, on that basis, deny the same.

148. For example, the Consent Decree tripled the number of personnel required for an absentee ballot application or ballot to be rejected for signature mismatch.

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 148 and, on that basis, deny the same.

149. The unlawful Consent Decree further violated the Election Code by purporting to allow election officials to match signatures on absentee ballot envelopes against the application, rather than the voter file as required by O.C.G.A. §§ 21-2-381, 21-2-385.

ANSWER: Denied.

**RESPONDENTS DID NOT CONDUCT MEANINGFUL VERIFICATION OF
ABSENTEE BALLOT APPLICANT AND VOTER IDENTITIES**

150. Notwithstanding the unlawful changes made by the Consent Decree, the mandatory signature verification and voter identification requirements were not altogether eliminated.

ANSWER: Paragraph 150 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, Intervenors admit that the Consent Decree did not change Georgia statutory election law in any way, including as it relates to signature verification and voter identification requirements. To the extent a response is required to any other allegations in Paragraph 150, Intervenors deny the same.

151. Despite the legal requirement for signature matching and voter identity verification, Respondents failed to ensure that such obligations were followed by election officials. **Exhibit 9** attached hereto and incorporated by reference.

ANSWER: Denied.

152. According to state records, an unprecedented 1,768,972 absentee ballots were mailed out in the Contested Election. **Exhibit 10** attached hereto and incorporated by reference.

ANSWER: The Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 152 and, on that basis, deny the same.

153. Of the total number of absentee ballots mailed out in the Contested Election, 1,317,000 were returned (i.e., either accepted, spoiled, or rejected). *Id.*

ANSWER: The Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 153 and, on that basis, deny the same.

154. The number of absentee ballots returned in the Contested Election represents a greater than 500% increase over the 2016 General Election and a greater than 400% increase over the 2018 General Election. *Id.*

ANSWER: Admitted.

155. The state received over a million more ballots in the Contested Election than the 2016 and 2018 General Elections. *Id.*

ANSWER: Denied.

156. The number of returned absentee ballots that were rejected in the Contested Election was 4,471, yielding a 0.34% rejection rate. *Id.*

ANSWER: Denied.

157. The number of returned absentee ballots that were rejected in the 2016 General Election was 6,059, yielding a 2.90% rejection rate. *Id.*

ANSWER: Denied.

158. The number of returned absentee ballots that were rejected in the 2018 General Election was 7,889, yielding a 3.46% rejection rate. *Id.*

ANSWER: Denied.

159. Stated differently, the percentage of rejected ballots fell to 0.34% in 2020 from 2.9% in 2016 and 3.46% in 2018, despite a nearly sixfold increase in the number of ballots returned to the state for processing.

ANSWER: Denied.

160. The explosion in the number of absentee ballots received, counted, and included in the tabulations for the Contested Election, with the simultaneous precipitous drop in the percentage of absentee ballots rejected, demonstrates there was little or no proper review and confirmation of the eligibility and identity of absentee voters during the Contested Election.

ANSWER: Denied.

161. Had the statutory procedure for signature matching, voter identity and eligibility verification been followed in the Contested Election, Georgia's historical absentee ballot rejection rate of 2.90-3.46% applied to the 2020 absentee ballot returned and processed, between 38,250 and 45,626 ballots should have been rejected in the Contested Election. *See Exhibit 10.*

ANSWER: Denied.

RESPONDENTS VIOLATED GEORGIANS' FUNDAMENTAL RIGHT TO A TRANSPARENT AND OPEN ELECTION

162. A fair, honest, and transparent vote count is a cornerstone of democratic elections. INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, INTERNATIONAL ELECTORAL STANDARDS, GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK OF ELECTIONS (2002).

ANSWER: To the extent Petitioners reference the cited standards, the document speaks for itself. The Intervenors deny any other or different allegation in Paragraph 162.

163. All citizens, including Georgians, have rights under the United States Constitution to the full, free, and accurate elections built upon transparency and verifiability. *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S. Ct. 5, 7 (2006) (per curiam).

ANSWER: Paragraph 163 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

164. Citizens are entitled—and deserve—to vote in a transparent system that is designed to protect against vote dilution. *Bush v. Gore*, 531 U.S. 98, 104-05, 121 S. Ct. 525, 529-30 (2000); *Anderson v. United States*, 417 U.S. 211, 227 (1974); see also *Baker v. Carr*, 369 U.S. 186, 208, 82 S. Ct. 691, 705 (1962).

ANSWER: Paragraph 164 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

165. This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny. INTERNATIONAL ELECTORAL STANDARDS at 77.

ANSWER: To the extent Petitioners reference the cited standards, the document speaks for itself. The Intervenors deny each other or different allegation in Paragraph 165.

166. The importance of watchers and representatives serving as an important check in elections is recognized internationally. *Id.*

ANSWER: To the extent Petitioners reference the cited standards, the document speaks for itself. The Intervenors deny each other or different allegation in Paragraph 166.

167. Georgia law recognizes “the fundamental right of citizens to vote *and to have their votes counted accurately.*” *Martin* at 194 (emphasis added).

ANSWER: Paragraph 167 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

168. The right to have one’s vote counted accurately infers a right to a free, accurate, public, and transparent election, which is reflected throughout Georgia election law. *Cf. Ellis v. Johnson*, 263 Ga. 514, 516, 435 S.E.2d 923, 925 (1993) (“Of particular importance is that the General Assembly has provided the public with the right to examine . . . the actual counting of the ballots, . . . and the computation and canvassing of returns”).

ANSWER: Paragraph 168 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

169. Georgia law requires “[s]uperintendents, poll officers, and other officials engaged in the conducting of primaries and elections . . . shall perform their duties in public.” O.C.G.A. §21-2- 406.

ANSWER: Paragraph 169 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

170. Each political party who has nominated a candidate “shall be entitled to designate . . . state- wide poll watchers.” O.C.G.A. § 21-2-408 (b)(2).

ANSWER: Paragraph 170 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

171. Poll watchers “may be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes.” O.C.G.A. § 21-2-408 (d).

ANSWER: Paragraph 171 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

172. “All proceedings at the tabulating center and precincts shall be open to the view of the public.” O.C.G.A, § 21-2-483(b).

ANSWER: Paragraph 172 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

173. Under O.C.G.A. § 21-2-493, “[t]he superintendent shall, at or before 12:00 noon on the day following the primary or election, at his or her office or at some other convenient **public place** at the county seat or in the municipality, of which **due notice of shall have been given** as provided by Code Section 21-2-492, **publicly commence** the computation and canvassing of returns and continue the same from the day until completed.” (Emphasis added.)

ANSWER: Paragraph 173 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

174. During the tabulation of votes cast during an election, vote review panels are to convene to attempt to determine a voter's intent when that intent is unclear from the ballot, consisting of equal Republican and Democratic representation. *See* O.C.G.A. § 21-2-483(g)(2).

ANSWER: Paragraph 174 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

175. The activities of the vote review panel are required to be open to the view of the public. *See* O.C.G.A. § 21-2-483(a).

ANSWER: Paragraph 175 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

176. Moreover, Respondent Raffensperger declared that for the Risk Limiting Audit:

Per the instructions given to counties as they conduct their audit triggered full hand recounts, **designated monitors will be given complete access to observe the process from the beginning.** While the audit triggered recount **must be open to the public and media, designated monitors will be able to observe more closely.** The general public and the press will be restricted to a public viewing area. **Designated monitors will be able to watch the recount while standing close to the elections' workers conducting the recount.**

Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county **Beyond being able to watch to ensure the recount is conducted fairly and securely,** the two-person audit boards conducting the hand recount call out the votes as

they are recounted, **providing monitors and the public an additional way to keep tabs on the process.**⁵

ANSWER: To the extent Petitioners quote and reference the statement linked to in the footnote to Paragraph 176, the document speaks for itself. The Intervenors deny each other or different allegation in Paragraph 176.

177. Respondents, jointly and severally, violated Petitioners' fundamental right to a free, accurate, public, and transparent election under the Constitution of the State of Georgia in the Contested Election and the Risk Limiting Audit. *See* composite Affidavit Appendix attached hereto and incorporated by reference as **Exhibit 17**.

ANSWER: Denied.

178. Respondents, jointly and severally, violated provisions of the Georgia Election Code mandating meaningful public oversight of the conduct of the election and the counting and recording of votes in the Contested Election and the Risk Limiting Audit. *Id.*

ANSWER: Denied.

179. Respondents, jointly and severally, failed to adhere to Respondent Raffensperger's own guidelines promising a free, accurate, public, and transparent process in the Risk Limiting Audit. *Id.*

ANSWER: Denied.

⁵ Office of Secretary of State Brad Raffensperger, *Monitors Closely Observing Audit-Triggered Full Hand Recount: Transparency is Built Into Process* (Nov. 17, 2020), https://sos.ga.gov/index.php/elections/monitors_closely_observing_audit_triggered_full_hand_recount_transparency_is_built_into_process.

**RESPONDENTS HAVE ADMITTED MISCONDUCT, FRAUD, AND WIDESPREAD
IRREGULARITIES COMMITTED BY MULTIPLE COUNTIES**

180. The Secretary of State has admitted that multiple county election boards, supervisors, employees, election officials and their agents failed to follow the Election Code and State Election Board Rules and Regulations.⁶

ANSWER: Denied.

181. The Secretary of State has called The Fulton County Registration and Elections Board and its agents' ("Fulton County Elections Officials") job performance prior to and through the Election Contest "dysfunctional."

ANSWER: Denied.

182. The Secretary of State and members of his staff have repeatedly criticized the actions, poor judgment, and misconduct of Fulton County Elections Officials.

ANSWER: Admitted.

183. Fulton County Elections Officials' performance in the 2020 primary elections was so dysfunctional that it was fined \$50,000 and subject to remedial measures.

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 180 and, on that basis, deny the same.

184. Describing Respondent Barron's Fulton County Elections in the Election Contest, Secretary Raffensperger stated, "Us and our office, and I think the rest of the state, is getting a

⁶ Note: These are samples and not an exhaustive list of the Secretary of State's admissions of Respondents' failures and violations of Georgia law.

little tired of always having to wait on Fulton County and always having to put up with [Fulton County Elections Officials'] dysfunction."

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 184 and, on that basis, deny the same.

185. The Secretary of State's agent, Mr. Sterling, said initial findings from an independent monitor allegedly show "generally bad management" with Fulton's absentee ballots.⁷

ANSWER: To the extent Petitioners reference the article cited in the footnote to Paragraph 185, the document speaks for itself. The Intervenors deny each other or different allegation in Paragraph 185.

Fulton County Elections' Deception and Fraud

186. The Secretary of State's Office claims it is currently investigating an incident where Fulton County election officials fraudulently stated there was a "flood" and "a pipe burst," which was later revealed to be a "leaky" toilet.

ANSWER: The Intervenors deny that Fulton County officials made any fraudulent statements regarding a plumbing issue. The Intervenors lack knowledge or information sufficient to form a belief as to each other or different allegation in Paragraph 186 and, on that basis, deny the same.

⁷ Ben Brasch, *Georgia Opens 2 Investigations Into Fulton's Elections Operations*, The Atlanta Journal-Constitution (Nov. 17, 2020), <https://www.ajc.com/news/atlanta-news/georgia-opens-2-investigations-into-fultons-elections-operations/EVCBN4ZJTZELPDHMH63POL3RKQ/>.

187. At approximately 10:00 p.m. on November 3, 2020, Fulton County Election Officials, who were handling and scanning thousands of ballots at the State Farm Arena, instructed Republican poll watchers and the press that they were finished working for the day and that the Republican poll watchers and the press were to leave. The Fulton County Elections Officials further stated that they would restart their work at approximately 8:00 a.m. on November 4, 2020.

ANSWER: Denied.

188. The Fulton County Election Officials lied.

ANSWER: Denied.

189. Deliberate misinformation was used to instruct Republican poll watchers and members of the press to leave the premises for the night at approximately 10:00 p.m. on November 3, 2020. **Exhibits 12, 13, and 14** attached hereto and incorporated by reference.

ANSWER: Denied.

190. After Fulton County Elections Officials **lied and defrauded** the Republican poll watchers and members of the press, whereby in reasonable reliance the Republican poll watchers and members of the press left the State Farm Arena (where they had been observing the ballots being processed), without public transparency Fulton County Elections Officials continued to process, handle, and transfer many thousands of ballots. *See* **Exhibit 14**.

ANSWER: Denied.

191. Fulton County Elections Officials' fraudulent statements not only defrauded the Republican poll watchers and the press, but also deprived every single Fulton County voter, Georgian, American, and Petitioners of the opportunity for a transparent election process and have thereby placed the Election Contest in doubt.

ANSWER: Denied.

Spalding County Elections & Voter Registration Supervisor and Her Agents' Failures

192. Respondent Raffensperger has called for the resignation of the Spalding County Elections and Voter Registration Supervisor, who has, as of this filing, resigned.⁸

ANSWER: To the extent Petitioners reference the article cited in the footnote to Paragraph 192, the document speaks for itself. The Intervenors lack knowledge and information sufficient to form a belief as to the remainder of the allegations in Paragraph 192 and, on that basis, deny the same.

193. Respondent Raffensperger cited “serious management issues and poor decision-making” by Election Supervisor Marcia Ridley during the Contested Election.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.” The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 193 and, on that basis, deny the same.

Floyd County Elections & Voter Registration Supervisor and Her Agents’ Failures

194. Respondent Raffensperger has called for the resignation of the Executive Director of the Floyd County Board of Registrations and Elections for his failure to follow proper election protocols.⁹

⁸ David Wickert, *Georgia Officials Call for Spalding Election Director to Resign*, The Atlanta Journal-Constitution (Nov. 17, 2020), <https://www.ajc.com/politics/election/georgia-officials-call-for-spalding-election-director-to-resign/YYUISCBSV5FTHDZPM3N5RJVV6A/>.

⁹ Jeffrey Martin, *Georgia Secretary of State Calls for Resignation of County Election Director After 2,600 Ballots Discovered* (Nov. 16, 2020), <https://www.newsweek.com/georgia-secretary-state-calls-resignation-county-election-director-after-2600-ballots-discovered-1547874>.

ANSWER: To the extent Petitioners reference the article cited in the footnote to Paragraph 194, the document speaks for itself. The Intervenors deny each other or different allegation in Paragraph 194.

**RESPONDENTS CONSPIRED TO DISREGARD THE ELECTION CODE AND TO
SUBSTITUTE THEIR OWN UNLAWFUL EDICTS**

195. In violation of O.C.G.A. § 21-2-386 et seq. the State Board of Election promulgated a rule that authorized county election board to begin processing absentee ballots on the third Monday preceding the election, provided they give the Secretary of State and the public notice of such intention to begin processing absentee ballots.

ANSWER: Denied.

196. Failure to follow the process directed by the statute is a derogation of the Election Code and denies voters the ability to cancel their absentee ballot up until Election Day.

ANSWER: Denied.

197. Respondents, jointly and severally, were complicit in conspiring to violate and violating the Election Code.

ANSWER: Denied.

198. As a direct and proximate result of Respondents multiple, continued, and flagrant disregard of the Election Code, the outcome of the Contested Election is not capable of being known with certainty.

ANSWER: Denied.

199. Petitioners incorporate by reference and reallege all prior paragraphs of this Petition and the paragraphs in the Counts below as though set forth fully herein.

ANSWER: The Intervenors incorporate the responses to the foregoing paragraphs as if fully set forth herein. To the extent any allegation has been left unresponded to, Intervenors deny those allegations.

200. Despite Respondents receiving substantial funding from the Center for Technology and Civic Life (CTCL), Respondents failed to use such funds to train the election workers regarding signature verification, the proper procedures for matching signatures, and how to comply fully with the Election Code. **Exhibit 11** attached hereto and incorporated by reference.

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 200 and, on that basis, deny the same.

201. Due to the lack of uniform guidance and training, the signature verification and voter identity confirmation was performed poorly or not at all in some counties and served as virtually no check against improper voting. *See Exhibit 9.*

ANSWER: Denied.

RESPONDENT SECRETARY OF STATE MUST ALLOW AND CONDUCT AN AUDIT OF THE SIGNATURES ON ABSENTEE BALLOT APPLICATIONS AND ABSENTEE BALLOTS IN ORDER TO DETERMINE WHETHER THE SIGNATURES WERE PROPERLY MATCHED PRIOR TO BEING COUNTED AND INCLUDED IN THE TABULATIONS

202. The data regarding the statistically tiny rejection rate of absentee ballots cast and counted in the Contested Election gives rise to sufficient concerns that there were irregularities that should be reviewed and investigated.

ANSWER: Denied.

203. Petitioners have brought these concerns about the signature matching and voter verification process to the attention of Respondent Raffensperger on five separate occasions since the Contested Election, requesting that the Secretary conduct an audit of the signatures on the absentee ballot applications and absentee ballots, via Letter on November 10, 2020; Letter on November 12, 2020; Letter on November 23, 2020; Email on November 23, 2020, and again via Letter on November 30, 2020. **Exhibit 18** attached hereto and incorporated by reference.

ANSWER: To the extent Petitioners reference the documents in Exhibit 18, the documents speak for themselves. The Intervenors deny each other or different allegation in Paragraph 203.

204. The Secretary of State is obligated by law to “to permit the public inspection or copying, in accordance with this chapter, of any return, petition, certificate, paper, account, contract, report, or any other document or record in his or her custody.” O.G.C.A. § 21-2-586(a).

ANSWER: Paragraph 204 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

205. Failure to comply with any such request by the Secretary of State or an employee of his or her office shall [constitute] a misdemeanor.” O.G.C.A. § 21-2-586(a).

ANSWER: Paragraph 205 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

206. The Secretary of State’s refusal on five separate occasions to comply with requests to produce the signatures used to request absentee ballots and to confirm the identities of those individuals requesting such ballots in the contested election is a violation of O.G.C.A. § 21-2-586(a).

ANSWER: Denied.

207. In order for the Secretary of State to comply with O.G.C.A. § 21-2-586(a), professional handwriting experts recommend a minimum of Ten Thousand (10,000) absentee ballot signatures be professionally evaluated. **Exhibit 16** attached hereto and incorporated by reference.

ANSWER: The Intervenors deny that the affiant in Exhibit 16 is an expert qualified to opine on compliance with O.G.C.A. § 21-2-586(a). Further, to the extent the Petitioners reference the affidavit in Exhibit 16 in Paragraph 207, the document speaks for itself. The Intervenors deny any other or different allegation in Paragraph 207.

208. Petitioners respectfully request that the Court order the production of the records of the absentee ballot applications and absentee ballots, for purposes of conducting an audit of the signatures on absentee ballot applications and absentee ballots cast in the Contested Election.

ANSWER: The Intervenors admit that Petitioners seek the relief requested in Paragraph 208, but they deny that Petitioners have stated any cognizable claim entitling them to such relief. Further, Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the term “Contested Election.”

**THERE ARE MYRIAD REPORTS OF IRREGULARITIES AND VIOLATIONS OF
THE ELECTION CODE DURING THE CONTESTED ELECTION**

209. Petitioners have received hundreds of incident reports regarding problems, irregularities, and violations of the Election Code during the Contested Election.

ANSWER: Intervenors deny that Petitioners have placed the results of the November 3, 2020 presidential election in Georgia appropriately under contest here and reject the use of the

term “Contested Election.” The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 209 and, on that basis, deny the same.

210. From those reports, Petitioners have attached affidavits from dozens of Citizens of Georgia, sworn under penalty of perjury, attesting to myriad violations of law committed by Respondents during the Contested Election. *See Exhibit 17.*

ANSWER: Denied.

211. The affidavits are attached to this Petition as an Appendix, with details of the multiple violations of law. *Id.*

ANSWER: The Intervenors admit that Petitioners have attached affidavits to their Petition. The Intervenors deny that any of these affidavits demonstrate or prove any violations of law or any other or different allegation in Paragraph 211.

212. Also included in the Appendix are sworn declarations from data experts who have conducted detailed analysis of irregularities in the State’s voter records. *See Exhibits 2, 3, 4, and 10.*

ANSWER: The Intervenors admit that Petitioners have attached declarations at these exhibit numbers. The Intervenors deny the remainder of the allegations in this paragraph including that these declarations were prepared by experts.

COUNTS

COUNT I:

ELECTION CONTEST

O.C.G.A. § 21-2-521 *et seq.*

213. Petitioners incorporate by reference and re-allege paragraphs 1 through 212 this Petition as set forth herein verbatim.

ANSWER: The Intervenors incorporate the responses to the foregoing paragraphs as if fully set forth herein.

214. Respondents, jointly and severally, have violated the Constitution of the State of Georgia.

ANSWER: Denied.

215. Respondents, jointly and severally, have violated the laws of the State of Georgia.

ANSWER: Denied.

216. Respondents, jointly and severally, have violated the Election Code.

ANSWER: Denied.

217. Respondents, jointly and severally, have violated State Election Board Rules and Regulations.

ANSWER: Denied.

218. Respondents, jointly and severally, have violated the basic tenants of an open, free, and fair election.

ANSWER: Denied.

219. Respondents, jointly and severally, have failed in their duties to their constituents, the people of the State of Georgia, and the entire American democratic process.

ANSWER: Denied.

220. The Contested Election has been timely and appropriately contested per O.C.G.A. § 21-2- 522 et seq.

ANSWER: Denied.

221. As a direct and proximate result of Respondents' actions, the Contested Election is fraught with misconduct, fraud, and irregularities.

ANSWER: Denied.

222. Due to the actions and failures of Respondents, many thousands of illegal votes were accepted, cast, and counted in the Contested Election, and legal votes were rejected.

ANSWER: Denied.

223. The fraud, misconduct, and irregularities that occurred under the "supervision" of Respondents are sufficient to change the purported results of the Contested Election.

ANSWER: Denied.

224. The fraud, misconduct, and irregularities that occurred under the "supervision" of Respondents are sufficient to place the Contested Election in doubt.

ANSWER: Denied.

225. Respondents' misconduct is sufficient to change the purported results in the Contested Election in President Trump's favor.

ANSWER: Denied.

226. Respondents' misconduct is sufficient to place the purported Contested Election results in doubt.

ANSWER: Denied.

227. Respondents, jointly and severally, erred in counting the votes in the Contested Election.

ANSWER: Denied.

228. Respondents' error in counting the votes in the Contested Election would change the result in President Trump's favor.

ANSWER: Denied.

229. Respondents, jointly and severally, erred in declaring the Contested Election results in favor of Mr. Biden.

ANSWER: Denied.

230. Respondents' systemic negligent, intentional, willful, and reckless violations of the Georgia Constitution, Georgia law, as well as the fundamental premise of a free and fair election created such error and irregularities at every stage of the Contested Election—from registration through certification and every component in between—that the outcome of the Contested Election is in doubt.

ANSWER: Denied.

231. As a result, there is substantial doubt as to the outcome of the Contested Election, and the Contested Election and any certification associated therewith shall be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with

Georgia law or, in the alternative, that such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia.¹⁰ See O.C.G.A. § 21-2-522.

ANSWER: Denied.

COUNT II:

VIOLATIONS OF THE GEORGIA CONSTITUTION'S EQUAL PROTECTION PROVISION

232. Petitioners incorporate by reference and re-allege paragraphs 1 through 212 f this Petition as set forth herein verbatim.

ANSWER: The Intervenors incorporate the responses to the foregoing paragraphs as if fully set forth herein.

233. The Constitution of the State of Georgia provides, “Protection and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.” Ga. Const. art. I, § I, para. II.

ANSWER: Paragraph 233 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

234. Under Georgia’s Equal Protection Clause, “the government is required to treat similarly situated individuals in a similar manner.” *State v. Jackson*, 271 GA 5 (1999), *Favorito v. Handel*, 285 Ga. 795, 798 (2009) (citation and quotations omitted). See **Exhibit 15**.

¹⁰ In the event this Court enjoins, vacates, and nullifies the Contested Election, the Legislature shall direct the manner of choosing presidential electors. U.S. art II, § 1; *see also Bush v. Gore*, 531 U.S. 98.

ANSWER: Paragraph 234 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

235. This requires establishing a uniform procedure for all counties to conduct absentee voting, advance voting, and Election Day in-person voting.

ANSWER: Paragraph 235 contains legal characterizations, contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

236. Respondents, jointly and severally, failed to establish such uniform procedure for the verification of signatures of absentee ballots.

ANSWER: Denied.

237. Respondents, jointly and severally, failed to establish a uniform level of scrutiny for signature matching.

ANSWER: Denied.

238. Respondents, jointly and severally, failed to train those who would be conducting signature verification on how to do so.

ANSWER: Denied.

239. The burdens of applying for and voting an absentee ballot were different in various counties throughout the State of Georgia.

ANSWER: Denied.

240. Electors voting via by absentee mail-in ballot were not required to provide identification, other than a matching signature.

ANSWER: Denied.

241. Electors voting in person were required to show photo identification and verify the voter's identity.

ANSWER: The Intervenors admit that voters who vote in person are generally required to provide a photo verification pursuant to O.C.G.A. § 21-2-417(a). The remainder of the allegations in Paragraph 241 are denied.

242. The burdens of applying for and voting via absentee mail-in ballot were different from those for absentee in person.

ANSWER: The Intervenors admit that there are different procedures for voters who vote absentee by mail and those who vote absentee in person. The Intervenors deny any other or different allegation in Paragraph 242.

243. Georgia voters were treated differently depending on how they voted (i.e., whether by mail or in person), where they voted, when they voted, and for whom they voted.

ANSWER: Denied.

244. An elector in one county casting a ballot would not have his or her ballot treated in a similar manner as a voter in a different county.

ANSWER: Denied.

245. Electors in the same county would not have their ballots treated in a similar manner as electors at different precincts.

ANSWER: Denied.

246. Electors in the same precinct would not have their ballots treated in a similar manner whose votes were tabulated using different tabulators.

ANSWER: Denied.

247. Respondents, jointly and severally, failed to establish uniform procedures for treating similarly situated electors similarly.

ANSWER: Denied.

248. Respondents' systemic failure to even attempt uniformity across the state is a flagrant violation of the Constitution of the State of Georgia.

ANSWER: Denied.

249. Such a violation of the rights of the Citizens of Georgia constitutes misconduct and irregularity by election officials sufficient to change or place in doubt the result of the Contested Election.

ANSWER: Denied.

250. As a result, there is substantial doubt as to the outcome of the Contested Election, and the Contested Election and any certification associated therewith should be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with Georgia law or such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia. *See* O.C.G.A. § 21-2-522.

ANSWER: Denied.

COUNT III:

VIOLATIONS OF THE GEORGIA CONSTITUTION’S DUE PROCESS PROVISIONS

251. Petitioners incorporate by reference and re-allege paragraphs 1 through 212 of this Petition and Count II as set forth herein verbatim.

ANSWER: The Intervenors incorporate the responses to the foregoing paragraphs as if fully incorporated herein.

252. Pursuant to the Constitution of the State of Georgia, “No person shall be deprived of life, liberty, or property except by due process of law.” Ga. Const. art. I, § I, para. I.

ANSWER: Paragraph 252 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

253. Moreover, “All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.” Ga. Const. art. I, § 1, para. VII.

ANSWER: Paragraph 253 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

254. The right to vote is a fundamental right.

ANSWER: Admitted.

255. When a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest.

Old S. Duck Tours v. Mayor & Aldermen of City of Savannah, 272 Ga. 869, 872, 535 S.E.2d 751, 754 (2000).

ANSWER: Paragraph 255 contains legal characterizations, contentions, conclusions, and opinions to which no response is required.

256. By allowing illegal ballots to be cast and counted, Respondents diluted the votes of qualified Georgia electors.

ANSWER: Denied.

257. By allowing illegal ballots to be cast and counted, Respondents, by and through their misconduct, allowed the disenfranchisement of qualified Georgia electors.

ANSWER: Denied.

258. Respondents, jointly and severally, violated the Due Process protections of qualified Georgia Electors guaranteed by the Georgia State Constitution.

ANSWER: Denied.

259. As a result, there is substantial doubt as to the outcome of the Contested Election and any certification associated therewith should be enjoined, vacated, and nullified and either a new presidential election be immediately ordered that complies with Georgia law or such other just and equitable relief is obtained so as to comport with the Constitution of the State of Georgia.

ANSWER: Denied.

COUNT IV:

DECLARATORY JUDGMENT AND RELIEF

260. Petitioners incorporate by reference and re-allege paragraphs 1 through 259 of this Petition as set forth herein verbatim.

ANSWER: The Intervenors incorporate the responses to the foregoing paragraphs as if fully set forth herein.

261. This claim is an action for a declaratory judgment pursuant to O.C.G.A. §§ 9-4-1 et seq.

ANSWER: The Intervenors admit that the Petitioners seek a declaratory judgment but deny that Petitioners have stated a cognizable claim entitling them to such relief.

262. An actual controversy is ripe and exists between Petitioners and Respondents with regard to the misconduct, fraud, and irregularities occurring in the Contested Election, specifically including but not limited to:

- a. The illegal and improper inclusion of unqualified voters on Georgia's voter list;
- b. allowing ineligible voters to vote illegally in the Contested Election;
- c. whether the Contested Election results are invalid;
- d. whether the Consent Decree is unauthorized under Georgia law such that it is null and void, and unlawfully interfered with the proper administration of the Election Code;
- e. whether the results of the Contested Election are null and void

ANSWER: Denied.

263. It is necessary and proper that the rights and status amongst the parties hereto be declared.

ANSWER: Denied.

264. This Honorable Court is a Court of Equity and therefore endowed with the authority to hear and the power to grant declaratory relief.

ANSWER: Denied.

265. As a result of the systemic misconduct, fraud, irregularities, violations of Georgia law, and errors occurring in the Contested Election and consequently in order to cure and avoid said uncertainty, Petitioners seek the entry of a declaratory judgment providing that:

- a. ineligible and unqualified individuals are unlawfully included on Georgia's voter role;
- b. unregistered, unqualified, and otherwise ineligible voters cast their votes during the Contested Election;
- c. the Consent Decree is unauthorized under Georgia law and is therefore null and void; and
- d. the results of the Contested Election are null and void.

ANSWER: The Intervenors admit that the Petitioners seek the relief described in Paragraph 265 but deny that Petitioners have stated a cognizable claim entitling them to such relief or that the Court has the power to order it. The Intervenors deny each other or different allegation in Paragraph 265.

COUNT V:

REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

266. Petitioners incorporate by reference and re-allege paragraphs 1 through 265 of this Petition as set forth herein verbatim.

ANSWER: The Intervenors incorporate the responses to the foregoing paragraphs as if fully set forth herein.

267. Petitioners seek an emergency temporary restraining order, as well as preliminary and permanent injunctive relief per O.C.G.A. § 9-11-65, to:

- a. Order expedited discovery and strict compliance with all open records requests;
- b. Order Respondents to respond to this Petition within 3 days;
- c. Require Respondents to immediately fulfill their obligations under the Election Code to properly maintain and update Georgia's list of registered voters to remove ineligible voters;
- d. Prevent Respondents from allowing unqualified, unregistered, and otherwise ineligible individuals from voting in Georgia elections, including but not limited to the upcoming January 5, 2021 run-off¹¹;
- e. Require an immediate audit of the signatures on absentee ballot applications and ballots as described in Exhibit 16;
- f. Enjoin and restrain Respondents from taking any further actions or to further enforce the Consent Decree;
- g. Prevent the certification of the results of the Contested Election;
- h. Enjoin the Secretary of State from appointing the Electors to the Electoral College;
- i. **Order a new Presidential Election to occur at the earliest opportune time;** and
- j. For such other relief that this Court deems just and proper under the circumstances.

ANSWER: The Intervenors admit that Petitioners seek the relief described in Paragraph 267 but deny that Petitioners have stated any cognizable claim entitling them to such relief or that this Court has the power to order it. The Intervenors deny each other or different allegation in Paragraph 267.

268. In the absence of an emergency temporary restraining order and preliminary and permanent injunctions, Petitioners (and the Citizens of Georgia and the United States) will suffer irreparable harm for which there is no adequate remedy at law, while injunctive relief will cause no harm to Respondents.

ANSWER: Denied.

¹¹ To the extent ineligible voters have already voted absentee for the January 5, 2021, runoff, those votes should be put into a provisional status.

269. Immediate and irreparable injury, loss, or damage will result to the Petitioners (as well as the Citizens of Georgia and the United States) if the requested emergency injunctive relief is not granted.

ANSWER: Denied.

270. There will be immediate and irreparable damage to the Citizens of Georgia by allowing an illegal, improper, fraudulent, error-ridden presidential election to be certified, thereby improperly appointing Georgia's electors for Mr. Biden even though the Contested Election is in doubt.

ANSWER: Denied.

271. There will be irreparable damage to the Citizens of Georgia through their loss of confidence in the integrity of the election process by virtue of the illegal votes included in the tabulations of the Contested Election, which outweighs any potential harm to Respondents.

ANSWER: Denied.

272. Granting the requested relief will not disserve the public interest.

ANSWER: Denied.

273. Petitioners will be irreparably injured in the event the prayed for injunctive relief is not granted.

ANSWER: Denied.

274. It is further in the public interest to grant Petitioner's request for emergency injunctive relief so that Georgia voters can have confidence that the January 5, 2021, Senate election is conducted in accordance with the Election Code.

ANSWER: Denied.

275. As early as possible, notice to Respondents of Petitioners' motion for emergency injunctive relief will be made via email and / or telephone.

ANSWER: The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 275 and, on that basis, deny the same.

276. Petitioners are further entitled to the injunctive relief sought herein because there is a substantial likelihood of success on the merits.

ANSWER: Denied.

277. The damage to Petitioners is not readily compensable by money.

ANSWER: The Intervenors deny that Respondents have caused any damages to Petitioners and deny each other or different allegation in Paragraph 277.

278. The balance of equities favors entry of a temporary restraining order and injunctive relief against Respondents and would not be adverse to any legitimate public interest.

ANSWER: Denied.

PRAYER FOR RELIEF

The Intervenors deny that Petitioners are entitled to any of the requested relief set forth in the prayer for relief section of Petitioners' Petition.

AFFIRMATIVE DEFENSES

The Intervenors assert the following affirmative defenses without accepting any burdens regarding them:

FIRST AFFIRMATIVE DEFENSE

Petitioners' claims are barred in whole or in part because this Court lacks jurisdiction to adjudicate Petitioners' claims.

SECOND AFFIRMATIVE DEFENSE

Petitioners lack standing to assert their claims.

THIRD AFFIRMATIVE DEFENSE

Petitioners' Petition fails, in whole or in part, to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Petitioners' claims are barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

One or more of Petitioners are improper parties to an election contest under O.C.G.A. § 21-2-521.

SIXTH AFFIRMATIVE DEFENSE

One or more of Petitioners' claims are in excess of the appropriate grounds of an election contest under O.C.G.A. § 21-2-522.

SEVENTH AFFIRMATIVE DEFENSE

Petitioners' Petition is an untimely election contest under O.C.G.A. § 21-2-524(a).

The Intervenors reserve the right to assert any further defenses that may become evident during the pendency of this matter.

PROPOSED INTERVENORS' REQUEST FOR RELIEF

Having answered Petitioners' Petition, the Intervenors request that the Court:

1. Deny Petitioners are entitled to any relief;
2. Immediately dismiss Petitioners' Petition with prejudice;
3. Award the Intervenors their costs and attorneys' fees incurred in defending against Petitioners' claims in accordance with O.C.G.A. § 9-15-14; and
4. Grant such other and further relief as this Court deems just and proper.

Dated: December 8, 2020

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Counsel for Proposed Intervenor-Defendants

**Pro Hac Vice Application Forthcoming*

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

DONALD J. TRUMP, in his capacity as a
Candidate for President, *et al.*,

Petitioners,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of Georgia, *et al.*,

Respondents.

Civ. Act. No. 2020CV343255

Certificate of Service

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

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This 8 day of December, 2020.

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EXHIBIT C

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

DONALD J. TRUMP, in his capacity as a
Candidate for President, *et al.*

Petitioners,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of Georgia, *et al.*

Respondents.

Civ. Act. No. 2020CV343255

[Proposed] Order Granting Emergency Motion to Intervene

Upon consideration of the Emergency Motion to Intervene by Proposed Intervenor-Defendants, the Court having considered the Motion, the Memorandum of Law in support thereof, and any opposition thereto, it is hereby ORDERED that the Motion is GRANTED.

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

IT IS SO ORDERED, this 8th day of December, 2020.

The Honorable Constance C. Russell
Judge, Fulton County Superior Court

Prepared by:

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EXHIBIT D

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DONALD J. TRUMP, in his capacity as a
Candidate for President, *et al.*,

Petitioners,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of Georgia, *et al.*,

Respondents.

Civ. Act. No. 2020CV343255

[Proposed] Intervenor-Defendants' Motion to Dismiss Petition for Election Contest

Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. "Sachin" Varghese, Nikema Williams, and Cathy Woolard (collectively, the "Proposed Intervenors") move to dismiss Petitioners Donald J. Trump, Donald J. Trump for President, Inc. and David J. Shafer's Election Contest.

For the reasons discussed in the Memorandum of Law in support filed concurrently herewith, the Proposed Intervenors move to dismiss the Petition immediately and with prejudice.

WHEREFORE, the Proposed Intervenors respectfully request that the Court grant their Motion to Dismiss Petitioners' Petition in the above-captioned matter.

Dated: December 8, 2020

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**Pro Hac Vice Application Forthcoming*

**IN THE SUPERIOR COURT OF FULTON COUNTY
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DONALD J. TRUMP, in his capacity as a
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BRAD RAFFENSPERGER, in his official
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Respondents.

Civ. Act. No. 2020CV343018

Certificate of Service

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

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This 8th day of December, 2020.

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EXHIBIT E

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

DONALD J. TRUMP, in his capacity as a
Candidate for President, *et al.*,

Petitioners,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of Georgia, *et al.*,

Respondents.

Civ. Act. No. 2020CV343255

**Memorandum of Law in Support of [Proposed] Intervenor-Defendants’ Motion to Dismiss
Petitioners’ Verified Petition**

I. INTRODUCTION

Litigants have transformed the post-election judicial landscape in Georgia into a veritable prairie for a seemingly interminable game of “whack-a-mole.”¹ Every time a frivolous election contest gets thrown out, another one just like it pops up. The latest petitioners in this drawn-out game—but a game with very dangerous consequences for the most basic principles of our democracy—are Donald Trump, in his capacity as a candidate for President, Donald J. Trump for President, Inc., and David J. Shafer, in his capacity as a registered voter and presidential elector pledged to Donald Trump for President. Like those before them, Petitioners engage in statutory and constitutional acrobatics in service of extraordinary goals: declaration, delay, decertification, and ultimately an election do-over. This show must end. Petitioners’ claims come much too late

¹ See Sanya Mansoor, *‘It’s crazy town.’ Georgia election official Gabriel Sterling on calling out Trump, battling misinformation, and smoking his own meat*, TIME (Dec. 4, 2020), <https://time.com/5918093/gabriel-sterling-trump-georgia/> (quoting a Republican elections official in Georgia as saying that continually debunking newly-raised, baseless claims was “the most annoying game of whack-a-mole you can imagine.”).

and are barred by the doctrine of laches. The election contest they seek is not permitted by Georgia law. And their factual and legal allegations are facially inadequate. The Petition should be dismissed with prejudice.

II. BACKGROUND

A. Electors pledged to President-elect Biden win the November 3 election in Georgia.

On November 3, 2020, Georgia voters chose Joseph R. Biden, Jr. as the next President of the United States and the rightful recipient of the state's 16 electoral college votes. Georgia then undertook a statewide full hand recount of all votes cast, which arrived at the same result.² That first recount began on November 12 and concluded without issue on November 18. No significant irregularities in the original counts or the recount were reported. On November 20, Secretary of State Brad Raffensperger (the "Secretary") officially certified the election, confirming that President-Elect Biden defeated President Trump by 12,670 votes, and Governor Brian Kemp (the "Governor") certified the Biden Electors, appointing them to the Electoral College.³ The next day, on November 21, President Trump's campaign demanded yet another recount, which resulted in the ballots being counted a third time, this time by machine.⁴ This second recount was completed

² *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Nov. 19, 2020), available at https://sos.ga.gov/index.php/elections/historic_first_statewide_audit_of_paper_ballots_upholds_result_of_presidential_race.

³ Kate Brumback, *Georgia Officials Certify Election Results Showing Biden Win*, NPR (Nov. 20, 2020), available at <https://apnews.com/article/georgia-certify-election-joe-biden-ea8f867d740f3d7d42d0a55c1aef9e69>.

⁴ Stephen Fowler, *Trump Requests Georgia Recount, Meaning 5 Million Votes Will Be Tabulated a 3rd Time*, NPR (Nov. 22, 2020), available at <https://www.npr.org/sections/biden-transition-updates/2020/11/22/937739336/trump-requests-georgia-recount-meaning-5-million-votes-will-be-tabulated-a-3rd-t>.

on December 2, confirming yet again that Georgia has selected Joseph R. Biden for President. The results were certified on December 7.⁵

B. Petitioners file this Petition.

In this Petition, Petitioners purport to bring a “contest” to the Georgia election results, as provided for in state law. Petitioners initially attempted to file this action on December 4, before the second recount had been completed and certified, but their Petition was rejected for filing deficiencies. They refiled it on December 7. Notably, the allegations in the Petition are not oriented toward the second recount. All of their allegations are ones that could have—and should have—been brought either within five days after the first certification of the election, O.C.G.A. § 21-2-524, or even months *before* the election took place. Petitioners identify no reason for their extraordinary delay.

The Petition is filed against the Secretary, members of the State Election Board (the “SEB”), and county election officials and seeks nothing less than a judicial decree to overturn the will of the Georgia electorate, as now confirmed in three separate counts. It does so based on allegations that have roundly been rejected by other courts, including the contention that a *March 2020* Consent Decree entered in the Northern District of Georgia and other rules and guidance promulgated by the Secretary and SEB months before the election were unconstitutional, as well as a myriad of other allegations—none of which have any legitimate bearing in plausible fact—that some number of ballots were counted in violation of Georgia law.

⁵ *Secretary of State certifies election, Kraken case dismissed*, Office of the Secretary of State, (Dec. 7, 2020), https://sos.ga.gov/index.php/elections/secretary_of_state_certifies_election_kraken_case_dismissed.

C. This suit is the latest in a string of unsuccessful lawsuits challenging Georgia election procedures *after* the election.

This action is the latest in a string of unsuccessful attempts by Petitioners and their allies to unilaterally reverse the will of voters in several different jurisdictions across the country. It is the *seventh* such action in Georgia alone. Many of these lawsuits have raised the same or highly similar claims that Petitioners purport to raise again. For example, in *Lin Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6694033 (N.D. Ga. Nov. 13, 2020), the plaintiff raised virtually identical constitutional challenges to the March 2020 Consent Decree as Petitioners raise here. The district court denied plaintiff’s motion for a temporary restraining order for multiple reasons, including that its legal claims were not meritorious. *See* Opinion and Order, *Lin Wood v. Raffensperger*, No. 20-cv-04651, 2020 WL 6817513, at *12 (N.D. Ga. Nov. 20, 2020).⁶ This weekend, the Eleventh Circuit affirmed dismissal on standing and mootness grounds. *Lin Wood v. Raffensperger*, No. 20-14418, 2020 WL 7094866, at *6 (11th Cir. Dec. 5, 2020). Just yesterday, another federal district court in Georgia dismissed yet *another*, similar action on standing and laches grounds. *Pearson v. Kemp*, No. 20-cv-4809-TCB (N.D. Ga. Dec. 7, 2020) (Oral Ruling), and a judge in this district ruled from the bench to dismiss an elections contest that also made arguments similar to those at issue here, *John Wood v. Raffensperger*, No. 2020CV342959 (Super. Ct. Ga. Dec. 7, 2020) (Oral Ruling). A third contest filed weeks ago remains pending in this court, but is scheduled to be heard today on a motion to dismiss. *Boland v. Raffensperger*, No. 2020CV343018 (Super. Ct. Ga.). In other words, nearly all of the claims at issue in this case have

⁶ That plaintiff also sought to prevent the certification of the election results, which the Court called an “extraordinary remedy. . . [that] would breed confusion, undermine the public’s trust in the election, and potentially disenfranchise of over one million Georgia voters.” *Id.* It explained that “interfer[ing] with the result of an election that has already concluded would be unprecedented and harm the public in countless ways.” *Id.*

been raised by other plaintiffs and petitioners weeks ago, and even in those cases, courts have not only found them to be without merit, but also *too late*. *Lin Wood*, 2020 WL 7094866, at *6; *Pearson* (Oral Ruling); *John Wood* (Oral Ruling).

III. LEGAL STANDARD

An election contest “vests in trial courts broad authority to manage the proceeding” to “balance[] citizens’ franchise against the need to finalize election results, which, in turn, facilitates the orderly and peaceful transition of power that is a hallmark of our government.” *Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193, 194 (2019). An election may be contested for misconduct, fraud, irregularity, or illegal votes only where the error “is sufficient to change or place in doubt the result.” O.C.G.A. § 21-2-522. Under Georgia law, an action can be dismissed because the litigant failed to state a claim upon which relief can be granted. O.C.G.A. § 9-11-12(b); *see, e.g., DeLaGal v. Burch*, 273 Ga. App. 825 (2005).

IV. ARGUMENT

The Petition is untimely, barred by laches, and outside the scope of Georgia’s election contest statute. The Petition also fails to state a claim upon which relief can be granted and requests relief that cannot be granted.

A. The Petition is untimely.

Petitioners’ claims are time-barred and fail on their face. Petitioners claim to lodge an election contest regarding certified election results. As stated by the Petitioners themselves, the Petition purports to contest “Certified Results” *from November 20, 2020*, *see* Pet. ¶ 46 (defining the “Certified Results” purportedly contested as being certified on November 20, 2020), and indeed, all of their claims are ones which could have—and should have—been brought immediately after the November 20th certification, or even months before the election. As a result, their Petition is untimely and must be dismissed on those grounds alone.

Georgia law limits the filing of petitions to contest an election to a period of “within five days after the official consolidation of the returns” or five days following certification “following recount.” O.C.G.A. § 21-2-524(a). Here, Petitioners themselves have labeled the results of November 20, 2020 as the “Certified Results” of the presidential election. As this Petition was submitted more than five days after these “Certified Results,” it is untimely by Petitioners’ own admission. The allegations in the Petition also uniformly require this result. The issues purportedly contested here arose from the “Certified Results” of November 20, or events that occurred months before the election. None of Petitioners’ complaints relate to the second machine recount at all. This Petition is therefore *too* late, both to contest events that occurred months before the election, but also to bring claims that clearly arose as of the first certification. To hold otherwise would be to conclude the General Assembly meant to create a system where any candidate in a close election could demand a recount and wait to contest the first count and certification, unduly delaying finality and in the case of a presidential election laying the groundwork for (in this case, clearly specious) claims that the state has not met the federal safe harbor deadline which ensures that Congress must count the state’s electoral college votes. *See* 3 U.S.C. § 5. That would be an absurd result and would flatly conflict with the General Assembly’s decision to impose a strict 5-day jurisdictional deadline on the initiation of such contests, a deadline that was clearly intended to bring finality to the state’s election results, and in the case of presidential elections, protect the state’s strong interest in meeting the safe harbor deadline.

B. The Petition is barred by laches.

All of the Petition’s counts are also separately and independently barred by the equitable doctrine of laches. Under Georgia law, laches may bar a complaint when (1) the lapse of time and (2) the claimant’s neglect in asserting rights (3) prejudiced the adverse party. *Waller v. Golden*, 288 Ga. 595, 597 (2011). All three elements are satisfied here.

First, Petitioners' delay is considerable and patently unreasonable. Petitioners challenge the validity of the presidential election based on events that occurred *at the very latest* in the initial count of the election results in the week immediately following the November 3, 2020 election date, and in many cases based on procedures that were in place long before the election even began, upon which elections officials and voters alike relied. As other courts considering similar challenges to Georgia's election results have properly found, these challenges come far too late. For example, the March 2020 Consent Decree that Petitioners now challenge as a basis for overturning the results of the election was entered six months before election day, and Petitioners did not seek to intervene or challenge it before it was finalized. *See Lin Wood v. Raffensperger*, 2020 WL 6817513, at *3. In rejecting a virtually identical challenge to the Consent Decree, Judge Grimberg recently concluded the plaintiff's claims were barred by laches because the plaintiff "could have, and should have, filed his constitutional challenge much sooner than he did, and certainly not two weeks after the General Election." *Id.* at *7. As in *Lin Wood*, Petitioners' claims here "were ripe the moment the parties executed" the Consent Decree and did not depend on the outcome of the election. *Id.* *Wood*, of course, was much more timely than the Petitioners here, who waited another three weeks longer than *Wood* to bring the same challenge.

Second, Petitioners' neglect in asserting their rights is notable. This is true not only of Petitioners' challenge to the now nine-month old Consent Decree and the rules and guidance that the Secretary and the Board promulgated as a result (also well before the election), but of Petitioners' other claims, too. For example, Petitioners claim there were widespread irregularities regarding the purported registration of voters who were felons or underage, had a post office box, or missed the deadline, but voter registration for the election ended on October 5, *two months before* Petitioners filed this Petition. O.C.G.A. § 21-2-224(a). Petitioners also allege anomalies as

to the maintenance of the voter file to account for changes of address, residency, felony status, and deaths. Removing ineligible voters, however, must be complete prior to the election. *See* 52 U.S.C. § 20507(c)(2)(A). In fact, federal law prohibits the removal of voters within 90 days of an election. *See id.*; *see also* 52 U.S.C. § 20507(c)(2)(A). Likewise, all of Petitioners' claims regarding absentee voting procedures necessarily occurred prior to the election, as voters must request and elections officials must issue absentee ballots before the election, and voters must return absentee ballots no later than election day. O.C.G.A. §§ 21-2-381(a)(1)(A), 21-2-384(a)(2), 21-2-386(a)(1)(F). The same is true for Petitioners' allegations regarding signature matching—any training on this procedure occurred before election day and elections officials began signature matching upon receipt of absentee ballots that were issued as early as September 15. O.C.G.A. §§ 21-2-386(a)(1)(B), 21-2-381(a)(1)(A). Indeed, Petitioners *admit* they have brought their concerns to the Secretary on multiple occasions. Pet. ¶ 203. Petitioners were thus free at any time to bring them to this Court, but instead they sat on those claims, in the months leading up to the election, through the election, and until after the ballots had been counted three separate times, only to file their Petition the day before the safe harbor deadline.⁷

Third, Petitioners' unjustifiable delay has prejudiced not only elections officials, but millions of Georgia voters, who dutifully cast their votes according to the rules and practices that Petitioners could have challenged prior to the election. Courts regularly find that even pre-election challenges that are brought too close to an election are barred. Here, Petitioners waited until the election and then much more. This Court should find that laches firmly bars this action. *See, e.g.*,

⁷ The same is true for Petitioners' allegations regarding the enactment of SEB Rule 183-1-14-0.7-.15, their ability to monitor the vote count, and alleged misconduct of election officials. All of these events occurred before or close to election day, and they should have been raised by Petitioners weeks ago.

King v. Whitmer, No. CV 20-13134, 2020 WL 7134198, at *7 (E.D. Mich. Dec. 7, 2020) (finding plaintiffs “showed no diligence” in asserting their claims when they waited more than 21 days after the 2020 General Election to assert their claims); *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (“In the context of elections . . . any claim against a state electoral procedure must be expressed expeditiously” because, “[a]s time passes, the state’s interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made.”).

That these claims are raised in the context of an election contest does not alter the required result. Typically, a contest is brought to challenge some alleged error or impropriety in the election that could not reasonably have been predicted before the election. *See, e.g., McIntosh Cnty. Bd. of Elections v. Deverger*, 282 Ga. 566 (2007) (successful contest where original election was decided by four votes and challenger identified four votes that were erroneously rejected); *Whittington v. Mathis*, 253 Ga. 653 (1985) (successful contest where original election was decided by two votes and challenger identified four voters wrongfully turned away from voting because of poll worker error). Here, by contrast, the bases of Petitioners’ contest were well-known long before or close to the election. By the time Petitioners filed this action, the election had been over for four weeks, and more than 5 million Georgians had voted. Petitioners had an affirmative obligation to air their concerns before or immediately after the election to avoid precisely these after-the-fact, could-have should-have complaints about what election officials might have done differently.

As federal courts have held, “the law imposes the duty on parties having grievances . . . to bring the grievances forward for pre-election adjudication.” *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973). “[T]he failure to require prompt pre-election action in such circumstances as a prerequisite to post-election relief,” the court explained, “may permit, if not encourage, parties who could raise a claim ‘to lay by and gamble upon receiving a favorable decision of the electorate’

and then, upon losing, seek to undo the ballot results in a court action.” *Id.* Numerous courts have likewise denied extraordinary relief in election-related cases due to laches or similar considerations.⁸ As the Pennsylvania Supreme Court said recently in rejecting a similar post-election challenge, “The want of due diligence demonstrated in this matter is unmistakable.” *Kelly v. Commonwealth*, No. 68 MAP 2020, 2020 WL 7018314, at *1 (Pa. Nov. 28, 2020).

C. The Petition fails to state a claim upon which relief can be granted.

Even if the Petition were properly brought under O.C.G.A. § 21-2-521 (and for the reasons discussed above, it cannot), it must independently be dismissed because it fails to state a claim upon which relief can be granted.

1. Petitioners’ election contest claim fails.

“[T]he setting aside of an election in which the people have chosen their representative is a drastic remedy,” it “should not be undertaken lightly, but instead should be reserved for cases in which a person challenging an election has clearly established a violation of election procedures and has demonstrated that the violation has placed the result of the election in doubt.” *Martin v. Fulton Cty. Bd. of Registration & Elections*, 307 Ga. 193, 222 (2019) (citation omitted).

Georgia Code limits grounds for an election contest to five areas:

⁸ See, e.g., *Clark v. Reddick*, 791 N.W.2d 292, 294-296 (Minn. 2010); see also *Nader v. Keith*, 385 F.3d 729, 736 (7th Cir. 2004) (“It would be inequitable to order preliminary relief in a suit filed so gratuitously late in the campaign season.”); *Fulani*, 917 F.2d at 1031 (denying relief where plaintiffs’ delay risked “interfer[ing] with the rights of other Indiana citizens, in particular the absentee voters”); *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) (laches barred claims where candidate waited two weeks to file suit and preliminary election preparations were complete); *McCarthy v. Briscoe*, 539 F.2d 1353, 1354-1355 (5th Cir. 1976) (denying emergency injunctive relief where election would be disrupted by lawsuit filed in July seeking ballot access in November election); *Navarro v. Neal*, 904 F. Supp. 2d 812, 816 (N.D. Ill. 2012) (“By waiting so long to bring this action, plaintiffs ‘created a situation in which any remedial order would throw the state’s preparations for the election into turmoil.’”), *aff’d*, 716 F.3d 425 (7th Cir. 2013); *State ex rel. Schwartz v. Brown*, 197 N.E.2d 801 (Ohio 1964) (dismissing mandamus complaint to place candidate on ballot after ballot form was certified).

1. Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;
2. When the defendant is ineligible for the nomination or office in dispute;
3. When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
4. For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or
5. For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

O.C.G.A. § 21-2-522.

In an election contest, Georgia courts “must presume that the results of an election contest are valid.” *Middleton v. Smith*, 273 Ga. 202, 203 (2000). When illegal voting has been alleged, the petitioner must show both: “(1) that electors voted *in the particular contest being challenged* and (2) *a sufficient number* of them were not qualified to vote.” *McIntosh Ct. Bd. of Elections v. Deverger*, 282 Ga. 566, 567 (2007) (first emphasis in original); *see also Miller v. Kilpatrick*, 140 Ga. App. 193, 193 (1976) (reversing trial court order of new election where 10 total illegal votes were insufficient to change or place in doubt the result of the election). Notably, “it is not sufficient to show irregularities which simply erode confidence in the outcome of the election. Elections cannot be overturned on the basis of mere speculation or an appearance of impropriety in the election procedures.” *Middleton v. Smith*, 273 Ga. 202, 203 (2000).

The Petition at issue here repeatedly fails to meet these standards. Even the charges that are arguably within the election contest statute cannot withstand even the slightest scrutiny and should be dismissed.

Petitioners’ unsupported allegations that ineligible individuals may have voted: Petitioners’ allegations regarding supposed ineligible voters are comprised of hundreds of pages of meaningless documents that do not cast doubt on the election results. These allegations are based on reports of three “experts,” none of whom are qualified or present credible evidence.

First, Petitioners claim 15,700 people illegally voted because they filed a national change of address with the United States Postal Service’s (“USPS”) National Change of Address database (“NCOA”), that 4,926 voters were registered in another state, that 395 voters voted in Georgia and in another state, and that 1,043 voters improperly registered to vote using a post office box for their physical address. Pet. ¶¶ 73, 76, 82, 87. These allegations are based on the affidavit of Matthew Braynard, who formerly worked for the Trump Campaign and has a Bachelor of Business Administration and a Master of Fine Arts in “Writing.” Pet. Ex. 2 ¶ 7. Braynard is not qualified to opine on these topics, he does not follow standard methodology in the relevant scientific field, his analysis is prone to false matches, and his conclusions are unsubstantiated. Braynard has never been qualified as an expert in these (or any other) topics or fields by a court of law and courts have appropriately looked askance at his work, with one recently noting skepticism of another challenge to the election that relied on Braynard’s work, observing that it rested “almost entirely on the unsworn expert report of a former campaign employee that offers statistical estimates based on call center samples and social media research.” *Wisconsin Voters All. v. Wisconsin Elections Comm’n*, No. 2020AP1930-OA, at *2 (Wis. Dec. 4, 2020) (Hagedorn, J., concurring).

Braynard aside, Petitioners’ allegations are themselves baseless. Regarding the voters who filed a change of address, the publicly-available NCOA database is notoriously unreliable, which is why the NVRA allows states to rely on change-of-address information for list maintenance only if the information is supplied by USPS through one of its NCOA licensees. *See* 52 U.S.C. § 20507(c)-(d). There are many legitimate reasons a person may change his address without impacting their eligibility to vote, including to forward their mail out of state (a not uncommon situation as Americans have temporarily relocated during the pandemic in order to care for or be near loved ones). *See* O.C.G.A. §§ 21-2-216(e), 21-2-217(a)(2), 21-2-217(a)(9), 21-2-217(a)(11);

52 U.S.C. § 20302(a)(1). Petitioners' allegations also crucially make no mention of if or when any voter is alleged to have actually moved, information necessary for any threshold determination of voter eligibility because it is impossible to deduce from NCOA data why a voter filed a change of address with the USPS. The same is true for voters who may have at some point registered to vote in another state. Petitioners' "matching" of voters across states is likely largely the result of a faulty matching process, and nothing more. In fact, Petitioners admit they have neither the capability nor the access to data to determine an accurate number of double voters. Pet. ¶ 77. Or they are due to simple record keeping errors, or delays in list maintenance in those other states. This is also the most likely explanation for any voters whose registration reflects a post office box as their physical address and for which voters should not be punished. *cf. Holton v. Hollingsworth*, 270 Ga. 591, 592-93 (1999) ("Where an officer conducting an election makes an error 'since the voter has no power over the officer, the officer's blunder will not disenfranchise the voter'").

Second, Petitioners allege 2,560 felons registered and voted illegally, that 66,247 underage Georgians registered and voted, that 2,423 unregistered voters voted, that 98 voters registered after the deadline, and that 10,315 voters were deceased when they voted. Pet. ¶¶ 61, 64, 67. These allegations are based on the affidavit of Bryan Geels, who claims to have reached his conclusions by analyzing various copies of Georgia's voter file. Pet. Ex. 3. Geels, however, does not adequately explain how he reached his conclusions about these discrepancies. His inaccurate conclusory statements are not supported by exhibits or other information that demonstrate that the anomalies equate to illegal votes, as opposed to record keeping errors, faulty data entry or data matching, or other errors in analysis and *not* the result of unlawful voting. Petitioners identify no reason to presume that this would be any different.

Finally, Petitioners allege 40,279 voters moved across county lines. Pet. ¶ 85. This allegation is based on the affidavit of Mark Alan Davis. Pet. Ex. 4. He claims to have identified the voters “who moved across county lines more than thirty days before the election but then cast a ballot in their old county of residence.” *Id.* ¶ 25. Davis himself admits “if those were all temporary relocations, they are eligible.” *Id.* ¶ 26. But he does not “think” these relocations were temporary. *Id.* Davis’s conclusions are based on nothing more than his own beliefs. He presents no evidence that these county-line relocations equated to illegal votes that could alter the election.

Petitioners’ allegations regarding anomalies in the absentee ballot process: Petitioners’ allegations about so-called anomalies in the absentee ballot process *fail to allege that a single invalid ballot was cast*. At worst, they identify small-scale administrative errors, none of which cast doubt on the elections’ validity or results. For example, they allege that some voters requested, received, or returned absentee ballots earlier than state law contemplates. *See* Pet. ¶¶ 119, 129, 131. But Petitioners do not allege that any of these individuals were ineligible to vote or explain why their votes must be canceled if election officials acted prematurely. Likewise, Petitioners say that 92 individuals returned an absentee ballot before requesting one, *id.* ¶ 123, and 217 individuals applied for, issued, and received an absentee ballot on the same day, *id.* ¶ 137. Petitioners say that such an event is “not possible.” *Id.* ¶ 136. But this supposed paradox suggests simply that a data entry error occurred. Exaggerating minor recordkeeping errors does not support a claim for fraud or illegality at all, let alone sufficient for an election contest.

From here, the nits become virtually microscopic. Petitioners identify 13 absentee ballots that were allegedly mailed to individuals who were “not yet” registered to vote, *id.* ¶ 126, stopping conspicuously short of alleging that any unregistered voter cast a ballot. And finally, they allegedly identify two individuals who they contend voted despite their absentee ballot applications having

been rejected, without any indication of why the application was rejected or whether the individuals were eligible to vote. *Id.* ¶ 134. *Two votes* out of nearly five million. To even include such an allegation reveals a fundamental misunderstanding of the election contest statute, which reserves the extraordinary remedy of disturbing certified results only for the most serious and substantial allegations that are sufficient to change or place in doubt the result of an election. Petitioners have identified none.

Petitioners’ challenges to signature verification procedures: Petitioners’ untimely challenge to the processing procedures for absentee ballots agreed to in the Consent Decree has no basis in law. They assert the signature-matching process made it more difficult to reject absentee ballots and is inconsistent with Georgia’s election code. Pet. ¶¶ 142-161. All of these arguments have already been rejected in court.

Assuming *arguendo* that the rejection rate for signature issues was lower for this election than for previous elections, that would not support an allegation of impropriety, and certainly not with the precision that could allow this court to conclude that illegal votes were received “sufficient to change or place in doubt the result” of the election. O.C.G.A. § 21-2-522(3). In fact, given the policy changes required by the Consent Decree, fewer rejections should have been expected—not because illegal votes are somehow evading review, but because subjecting signatures to verification by more than one official and permitting voters to cure suspected errors should reduce the number of *lawful* ballots that are improperly thrown out. Petitioners have alleged no more than that the election was conducted just as it should have been. Petitioners admit this. Pet. ¶ 148 (“[T]he Consent Decree tripled the number of personnel required for an absentee ballot application or ballot to be rejected for signature mismatch.”).

It is also not true that the Consent Decree represented some kind of impermissible legislative action by the Secretary. As the court in *Lin Wood* explained when it rejected this exact argument, “State legislatures—such as the Georgia General Assembly—possess the authority to delegate their authority over elections to state officials.” 2020 WL 6817513, *10 (collecting cases). The General Assembly has empowered the Secretary as “the state’s chief election official,” O.C.G.A. § 21-2-50(b), and made it the duty of the Secretary and the SEB to “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(2). The Consent Decree “is a manifestation of Secretary Raffensperger’s statutorily granted authority. It does not override or rewrite state law. It simply adds an additional safeguard to ensure election security by having more than one individual review an absentee ballot’s information and signature for accuracy before the ballot is rejected.” 2020 WL 6817513, at *10. Taking at face value the argument that any policy reached by the Secretary and the SEB is unlawful unless it is a verbatim recitation of the statutory code “renders O.C.G.A. § 21-2-31(2) superfluous. This carefully reasoned and persuasive opinion reveals the terminal flaws with Count II of the Petition now before this Court.

Finally, Petitioners make cursory allegations that Respondents did not properly train election workers to conduct signature matching and assert that the Court must order the Secretary to produce requested signature sets to ensure the Secretary’s compliance with O.C.G.A. § 21-2-586(a). Pet. ¶¶ 201, 202-08. Neither argument supports an election contest here. First, assuming Petitioners’ conclusory allegations are true, a lack of training does not somehow equate to illegal voting. Next, Petitioners’ allegations regarding the Secretary’s lack of response to their requests for signature sets do not support the order of an audit in this purported election contest. Petitioners assert that the Court must order such an audit so that the Secretary complies with O.C.G.A. § 21-

2-586(a). Pet. ¶¶ 207-08. But section 21-2-586(a) is a *penal* statute, making the Secretary’s refusal “to permit the public inspection or copying” of certain election records under certain circumstances a misdemeanor offense. O.C.G.A. § 21-2-586(a). The Secretary’s alleged non-compliance with this statute is a matter for law enforcement, not the Court.

Petitioners’ allegations regarding an alleged lack of transparency, purported admissions by elections officials of misconduct, and SEB rulemaking: None of these are actionable claims under Georgia’s election contest statute. *See* O.C.G.A. § 21-2-522. On this ground alone, the claims should be dismissed. Even so, Petitioners cannot state a claim from these unsupported charges, as Petitioners plead no facts to bring these claims beyond mere speculation. *Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193-94, 835 S.E.2d 245, 248 (2019). There is *no evidence* that any of these actions, if true, changed a single vote, let alone an election. Indeed, the Petition *does not even allege* as much.

Specifically, regarding the purported lack of transparency during vote counting, Petitioners plead *no facts* to support this allegation, let alone how this claim falls within O.C.G.A. § 21-2-522. Perhaps Petitioners lament a lack of unfettered access to watch vote counts. But this theory falls flat. *See Lin Wood*, 2020 WL 6817513 (finding no “right to unrestrained observation or monitoring of vote counting, recounting, or auditing.”).⁹ Regarding comments made by the Secretary and certain alleged actions of county elections officials, the Petition does not allege that any of these events resulted in illegal votes that could place in doubt the results of the election. *See* Pet. ¶¶ 162-79. Petitioners also take issue with Respondents’ so-called conspiracy to substitute their own will for that of the people through the SEB’s public notice and comment rulemaking. *See* Pet. ¶¶ 195-

⁹ There is also no constitutional right to observe election activities. *Harris v. Conradi*, 675 F.2d 1212, 1216 n.10 (11th Cir. 1982); *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 385 (Pa. 2020).

201. Aside from not meeting any of the § 21-2-522 categories, Petitioners fail to plead facts that demonstrate a single vote impacted by this rule, let alone enough votes to change the election. Instead, Petitioners put forward mere conclusions requiring speculation.

Regardless, Petitioners, cannot show that the purported lack of transparency, alleged admissions, and rulemaking, in isolation or in combination, placed the election in doubt. Any arguments to the contrary are wholly speculative. *See Martin*, 307 Ga. At 193-94, (2019).

Petitioners request unprecedented, sweeping relief and go so far as to seek a new election. A remedy so extreme cannot rest on the rampant speculation and “technical violations” Petitioners allege. *Middletown v. Smith*, 273 Ga. 202, 202-03 (2000) (holding that a sheriff campaigning within 150 feet of a polling place precinct in violation of O.C.G.A. § 21-2-414 did not warrant invalidating entire election); *Irvin v. Gregory*, 86 Ga. 605, 610 (1891) (“To suffer this election to be overthrown upon so slight a ground as the casual omission of one insertion of the notice in the newspaper would be to sacrifice substance to mere form.”); *DeLeGal v. Burch*, 273 Ga. App. 825, 829 (2005) (noting that post-election challenges should be “of a character to obstruct the free and intelligent casting of the vote, or the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of the election, or that its omission shall render it void.” (quoting *Robinson v. State*, 82 Ga. App. 584, 588 (1950))).

2. Petitioners’ constitutional claims fail.

To the extent Petitioners intend to raise any of their constitutional claims independently from their election contest, they independently fail, first, because they lack standing to pursue them, and second because they fail to state a cognizable claim as a matter of law.

Plaintiffs lack standing. Plaintiffs have no standing to pursue their constitutional claims because they have not suffered an injury in fact sufficient to do so. Federal case law is instructive here. *See Feminist Women’s Health Ctr. v. Burgess*, 282 Ga. 433, 434 (2007) (collecting Georgia cases that look to federal law to resolve issues of standing). When the injury alleged “is that the law . . . has not been followed,” it is “the kind of undifferentiated, generalized grievance about the conduct of government” that is not an injury for standing purposes. *Dillard v. Chilton Cty. Comm’n*, 495 F.3d 1324, 1332-33 (11th Cir. 2007) (citing *Lance v. Coffman*, 549 U.S. 437 (2007)). This is precisely the case here, where Petitioners’ recurring grievance is that election authorities allegedly did not follow the law. *See Lin Wood*, 2020 WL 6817513, at *4-6 (finding individual Georgia voter lacked standing to challenge results of 2020 election under the Elections Clause, Electors Clause, Equal Protection Clause, and Due Process Clause based on a “generalized grievance regarding a state government’s failure to properly follow” the law).

Petitioners fail to state a cognizable equal protection claim. Even if Petitioners had standing, the Petition fails to state a claim that elections officials violated voters’ equal-protection rights under the Georgia Constitution. Georgia’s Equal Protection Clause is “substantially equivalent” to the federal clause and provides a cause of action if the State treats the claimant differently than those similarly situated. *Henry v. State*, 263 Ga. 417, 417, 418 (1993); *see also Am. Subcontractors Ass’n, Ga. Chapter, Inc. v. City of Atlanta*, 259 Ga. 14, 20 (1989) (relying on federal equal protection cases to analyze “equal protection under our state constitution”). Unless the claimant is being treated differently in regard to a fundamental right or because of a suspect classification (such as race or nationality), the challenged state action will survive an equal-protection challenge if it “bears a rational relationship to a legitimate government interest.” *Henry*, 263 Ga. at 418. None of Petitioners’ allegations establish such unlawful treatment.

The Petition alleges that non-uniform treatment of voters and signature matching, absentee ballot, and voter identification procedures violated the Georgia Constitution and therefore placed in doubt the results of the election. Pet. ¶¶ 232–50. But the Petition does not allege that any voters were treated differently because of a suspect classification or that different treatment caused a deprivation of a fundamental right. Instead, Petitioners allege that Georgia electors who voted by mail were treated differently than Georgia electors who voted in person. Pet. ¶¶ 240-243. But common sense dictates that an accommodation available to all Georgia voters—i.e., the ability to vote by mail—does not divide voters into different classes. The General Assembly has provided that *every Georgia voter* may vote by absentee ballot. O.C.G.A. § 21-2-380. This provision does not divide Georgians between a class of in-person voters and a class of mail-in voters. Rather, every voter self-determines which method of casting a ballot is preferable. Voters cannot survey the menu of voting options the State has provided, choose the option that suits their taste, and then cry discrimination when other voters choose differently.

Reaching for another way to identify the requisite classification, Petitioners vaguely claim that voters in some counties and precincts were treated differently than voters in other counties and precincts. Pet. ¶¶ 239, 244-46. But Petitioners do not muster *a single allegation* suggesting what differences existed, and the only possible difference they suggest between counties is that “[d]ue to the lack of uniform guidance and training, the signature verification and voter identity confirmation was performed poorly or not at all in some counties and served as virtually no check against improper voting.” Pet. ¶ 201. This is insufficient. *See, e.g., Brown v. Wetherington*, 250 Ga. 682, 685 (1983) (“[Appellants] argue that appellees’ petition contained only conclusory allegations which were insufficient to put them on notice of the specific charges against them, and that the trial court erred in denying their motion to dismiss on this ground. We agree.”).

Even if election administration differed across counties, that does not state a constitutional violation. “[C]ounties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state.” *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at *44 (W.D. Pa. Oct. 10, 2020) (collecting cases). The Election Code and Consent Decree provide specific guidance for signature verification. “Reasonable county-to-county variation is not discrimination.” *Pennsylvania*, 2020 WL 7012522, at *7. Even when boards of elections “vary . . . considerably” in how they decide to reject ballots, those local differences do not violate equal protection. *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 635–36 (6th Cir. 2016); *see also Wexler v. Anderson*, 452 F.3d 1226, 1231–33 (11th Cir. 2006) (recognizing equal protection lets different counties use different voting systems).

Moreover, Petitioners’ requested relief, the de-certification of election results and the calling of an *entirely new election*, is not tailored to redress the speculative claims of injury put forward in the Petition. *King v. Whitmer*, No. CV 20-13134, 2020 WL 7134198, at *9 (E.D. Mich. Dec. 7, 2020). Put differently, Petitioners’ allegations “do not entitle them to seek their requested remedy because the harm of having one’s vote invalidated or diluted is not remedied by denying millions of others *their* right to vote.” *Id.* (emphasis in original).

An equal protection violation “requires more than variation from county to county. It requires unequal treatment of similarly situated parties.” *Donald J. Trump for President, Inc. v. Pennsylvania*, No. 20-3371, 2020 WL 7012522, at *6 (3d Cir. Nov. 27, 2020). Here, Petitioners never plead that any Respondent treated the Trump and Biden campaigns or voters differently. *See id.* Because the Petition fails to allege specific facts demonstrating that any Georgia voter—let alone any of the Petitioners—was deprived of a fundamental right that was granted to those similarly situated, Petitioners fail to adequately state an equal protection claim.

Petitioners fail to state a cognizable due process claim. None of Petitioners’ allegations support even the inference that their (or any other Georgia voter’s) due process rights were violated in the 2020 general election. Under Georgia’s due process clause, when a petitioner alleges that government action infringes a fundamental right, the government’s action is permissible if it is “narrowly tailored to serve a compelling government interest.” *Old South Duck Tours v. Mayor & Aldermen of City of Savannah*, 272 Ga. 869, 872 (2000). Because the “due process guarantees” of the U.S. and Georgia Constitutions are “substantively identical,” cases analyzing substantive due process claims under the United States Constitution are instructive in interpreting the due process guarantees provided by the Georgia Constitution. *See Cherokee Cty. v. Greater Atlanta Homebuilders Ass’n, Inc.*, 255 Ga. App. 764, 767 n.1 (2002); *State v. Holland*, 308 Ga. 412, 413 n.3 (2020).

Substantive due process claims involving voting rights demand “strict[] proof.” *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-966, 2020 WL 5997680, at *51 (W.D. Pa. Oct. 10, 2020) (citing *Nolles v. State Comm. for Reorganization of Sch. Dists.*, 524 F.3d 892, 898 (8th Cir. 2008)). “Only in extraordinary circumstances will a challenge to a state election rise to the level of a constitutional deprivation.” *Curry v. Baker*, 802 F.2d 1302, 1314 (11th Cir. 1986). “[A]n election is a denial of substantive due process [only] if it is conducted in a manner that is fundamentally unfair.” *Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998). To implicate substantive due process, the situation “must go well beyond the ordinary dispute over the counting and marking of ballots.” *Curry*, 802 F.2d at 1315.

The Petition alleges that allowing illegal ballots to be cast and counted diluted the votes and allowed disenfranchisement of qualified electors, which placed in doubt the outcome of the election. Pet. 251–59. But, even taking the Petitioners’ non-conclusory allegations as true,

Petitioners allege that certain ballots should not have been counted but were—the very definition of an “ordinary dispute over the counting and marking of ballots,” which does not give rise to a cognizable substantive due process claim. *Curry*, 802 F.2d at 1315; *Lin Wood*, 2020 WL 6817513, at *12. Nor does the Petition allege specific facts regarding how illegal ballots disenfranchised qualified voters or caused meaningful dilution. This is not enough. *See Brown*, 250 Ga. at 685.

D. Even if the Petition stated a claim, the requested relief cannot be granted.

This Court is not empowered to grant the relief requested because the relief Petitioners seek, Pet. 62-63, would violate state and federal law, including: (1) federal and state constitutional law regarding the selection of electors, (2) constitutional protection of the fundamental right to vote, (3) the Due Process Clause, and (3) the First Amendment. *See Glisson v. Glob. Sec. Servs., LLC*, 653 S.E.2d 85, 86 (2007) (“Abuse [of discretion] results if a trial judge awards injunctive relief . . . contrary to the law and equity.”); *Attaway v. Republic Servs. of Ga., LLP*, 558 S.E.2d 846, 847 (2002) (same).

First, the U.S. Constitution empowers state legislatures to choose the “Manner” of appointing presidential electors, U.S. Const. art. II, § 1, cl. 2, pursuant to their lawmaking authority. Under that provision, the Georgia General Assembly has chosen to appoint electors according to popular vote, who are certified by the Governor through a certificate of ascertainment. *See O.C.G.A § 21-2-499(b)*. Because the legislature has determined that the “Manner” of appointing presidential electors is by popular vote on election day, the U.S. Constitution’s Electors Clause requires that the presidential election be conducted in accordance with that chosen “Manner.” *See Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam) (“When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental.”). Neither Petitioners nor this Court can upend this process by replacing the State’s duly selected “Manner” of choosing electors with a different one. Congress has also provided that

electors “shall be appointed in each State, on the Tuesday next after the first Monday in November, in every fourth year,” i.e., on election day. 3 U.S.C. § 1. Georgia held its election on election day. But granting Petitioners’ relief now would violate that directive, as Georgia’s electors would be chosen after election day.

Second, the relief Petitioners seek would violate Georgians’ fundamental right to vote under the U.S. and Georgia constitutions under their equal protection, due process, and free speech and association clauses by disenfranchising millions of Georgians. *See Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (“There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted.”); Ga. Const. art. II, § 1, ¶ II (right-to-vote provision).

Similarly, substituting a different slate of electors for the Biden-Harris slate chosen by a majority of Georgia voters would violate the equal-protection rights of all such voters who chose the winning slate. Presidential electors are chosen by popular vote in Georgia, as they are in every other state. *See* O.C.G.A. § 21-2-10. Because Georgia has chosen to empower its citizens to choose its presidential electors at the ballot box, the Equal Protection Clause forbids “later arbitrary and disparate treatment . . . valu[ing] one person’s vote over that of another.” *Bush*, 531 U.S. at 104-05; *see also Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966) (“[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause.”). Disregarding Georgians’ popular vote would flout that principle, arbitrarily and disparately favoring Trump-Pence voters and violating the rights of Biden-Harris voters to equal protection. There is no rational or non-arbitrary reason—let alone a compelling reason—to impose that disparate treatment.

Third, Petitioners’ proposal that the Court invalidate millions of ballots lawfully cast under the rules in place at the time, with no opportunity to cure, would violate voters’ due process rights. Such an “application of [a] new . . . rule to nullify previously acceptable” election procedures, “without prior notice,” is quintessentially “unfair and violate[s] due process.” *Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1971); *see also, e.g., Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1054 (D.N.D. 2020) (holding plaintiffs likely to succeed on procedural due process claim because signature-matching requirement failed “to provide affected voters with notice and an opportunity to cure a signature discrepancy before a ballot is rejected”).

And it is beyond question that invalidating ballots after the election because of election officials’ alleged errors would be fundamentally unfair, infringing affected voters’ right to substantive due process. *See, e.g., Holton*, 270 Ga. at 592-93 (holding voter cannot be disenfranchised because of mistake made by election officer); *Malone v. Tison*, 248 Ga. 209, 214 (1981) (same); *Roe v. Alabama*, 43 F.3d 574, 580-81 (11th Cir. 1995) (“If . . . the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause may be indicated.” (internal quotation marks omitted)).

Moreover, through this action, Petitioners attempt to unilaterally reverse the will of the millions of voters who chose President-Elect Biden as the winner of the presidential race in Georgia. This type of court-ordered disenfranchisement should not be countenanced, especially in cases such as this that are premised on speculative harms. *See Lin Wood*, 2020 WL 6817513, at *12 (calling invalidation of election results an “extreme remedy” that would undermine public trust in the electoral system); *see also Wisconsin Voters Alliance*, No. 2020AP1930-OA (Wis. Dec. 4, 2020) (Hagedorn, J., concurring) (“Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election. Once the door is opened to judicial

invalidation of presidential election results, it will be awfully hard to close that door again.”); *Pearson v. Kemp*, No. 20-cv-4809-TCB (N.D. Ga. Dec. 7, 2020) (Oral Ruling) (noting that “In their complaint, the plaintiffs essentially ask the court for perhaps the most extraordinary relief ever sought in any federal court in connection with an election. They want this court to substitute its judgment for that of 2.5 million Georgia voters who voted for Joe Biden, and this I am unwilling to do.”).

V. CONCLUSION

For the foregoing reasons, the Court should dismiss Petitioners’ Verified Petition with prejudice.

Dated: December 8, 2020

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**Pro Hac Vice Application Forthcoming*

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

DONALD J. TRUMP, in his capacity as a
Candidate for President, *et al.*,

Petitioners,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of Georgia, *et al.*,

Respondents.

Civ. Act. No. 2020CV343255

Certificate of Service

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

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