CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE	§	**IN THE DISTRICT COURT OF**
V.	§	**DALLAS COUNTY, TEXAS**
SIDNEY POWELL (File Nos. 202006349, 202006347, 202006393, 202006599, 202100006, 202100652, 202101297, 202101300, 202101301, 202103520, 202106068, 202106284, 202106181)	§	**116th JUDICIAL DISTRICT**

PETITIONER'S SECOND AMENDED RESPONSE TO RESPONDENT'S HYBRID MOTION FOR SUMMARY JUDGMENT AND RESPONDENT'S NO EVIDENCE MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE BOURESSA:

Now comes the Commission for Lawyer Discipline, Petitioner, and would respectfully show the following:

I. INTRODUCTION

This is a lawyer discipline case. The Commission for Lawyer Discipline filed suit against Respondent Sidney Powell for violations of the Texas Disciplinary Rules of Professional Conduct. Trial is set in this matter for April 24, 2023. Respondent filed *Sidney Powell's Motion for Summary Judgment Rules 3.03(a)(1); 3.03(a)(5); AND 8.03(a)(3)* on July 20, 2022. Respondent filed *Sidney Powell's No-Evidence Motion for Summary Judgment* on December 28, 2022. *Petitioner's Second Amended Response to Respondent's Hybrid Motion for Summary Judgment and Respondent's No Evidence Motion for Summary Judgment* serves as a response to both of Respondent's motions for summary judgment.

II. EVIDENCE IN SUPPORT

Petitioner includes as evidence the appendix attached to this Motion and incorporates the appendix into this Motion by reference. The appendix contains the following evidence:

1. Exhibit A: Order on Petitioner's Motion to Compel signed November 18, 2022
2. Exhibit B: The altered certificate attached to Respondent's pleading in the Georgia Election Fraud Suit as Exhibit 5
3. Exhibit C: The altered report attached to Respondent's pleading in the Georgia Election Fraud Suit as Exhibit 6
4. Exhibit D: Respondent's pleading (without exhibits) in the Georgia Election Fraud Suit wherein she calls both the report and the certificate "undated." (Page 7, ¶12.)
5. Exhibit E: Defendants' Consolidated Brief in Support of their Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Injunctive Relief in the Georgia Election Fraud Suit (without exhibits)
6. Exhibit F: Respondent's supplemental privilege log identifying communications with affiants

EVIDENTIARY OBJECTIONS TO RESPONDENT'S SUMMARY JUDGMENT EVIDENCE

Summary judgment evidence must be admissible under the rules of evidence to be considered by the trial or reviewing court. *Columbia Rio Grande Reg'l Hosp. v. Stover*, 17 S.W.3d 387 (Tex. App.-Corpus Christi 2000, no pet.) Petitioner objects and requests that this Court strike the following evidence attached to Respondent's Motion for Summary Judgment:

1) Respondent's Exhibit 1

a. Exhibit 1 is the affidavit of Harry MacDougald, Respondent's co-counsel in the Georgia Election Fraud Lawsuit.

b. ¶10 of Exhibit 1 contains inadmissible hearsay without exception under Tex. R. Evid 802 and 805 and should be struck.

c. MacDougald states in ¶12 that "to his knowledge, Ms. Powell had no

knowledge of the exhibits I attached to the complaint…" MacDougald admits he has no personal knowledge of whether or not Respondent knew of the alteration of the exhibits, or when she knew it. This statement should be struck.

d. ¶15 and ¶19 contain legal conclusions without any factual support and should be struck.

2) Respondent's Exhibit 2

a. Exhibit 2 is Respondent's own affidavit.

b. ¶ 2 and ¶ 3 should be struck as irrelevant under Tex. R. Evid. 401 and 402.

c. Respondent's statement in ¶6 that "… Exhibits '5' and '6' were not material" is legal conclusion unsupported by any facts. Legal conclusions in affidavits have no probative force.[1]

d. Respondent repeats the bare conclusory statement that she "..made a reasonable inquiry as to the exhibits attached to the complaints and relied on other counsel as to the validity of the exhibits" in ¶s 11, 13, 15, 18 and 20. These statements should be struck. Conclusory statements that are not supported by facts are not proper summary judgment evidence.[2] This is particularly true because Respondent is making a legal conclusion. She offers no specifics to support her legal conclusion that she made a "reasonable inquiry." She does not specify the individuals she spoke to. She does not specify what, if any research she undertook.

7. ARGUMENT AND AUTHORITIES

a. Respondent's Hybrid Motion

Respondent miscasts her motion as a traditional motion for summary judgment under TRCP 166a(c). Respondent's motion is based on her contention that Petitioner lacks evidence of one element (namely, that Respondent's conduct was "knowing") of Petitioner's claims under Rules

[1] *801 Nolana, Inc. v. RTC Mortg. Trust*, 944 S.W.2 751, 754. (Tex. App- Corpus Christi 1997, writ denied)
[2] *Brownlee v. Brownlee*, 665 S.W. 2d 111, 112 (Tex. 1984)

3.03(a)1), 3.03(a)(5), and 8.04a(3)[3]. Respondent also contends that her evidence conclusively negates the "knowing" element of Petitioner's claims. Thus, Respondent seeks summary judgment both on traditional and no evidence grounds.

b. Standard of Review

The standards for determining when a summary judgment on traditional grounds is improper are well established. Respondent's motion must be denied unless the motion, and the evidence thereto, conclusively establish an affirmative defense or conclusively negate an element of the Petitioner's claims.[4] To conclusively negate an element of the Petitioner's claims, the motion for summary judgment must affirmatively demonstrate that there are no genuine issues of material fact concerning the challenged element and that Respondent is entitled to judgment as a matter of law. [5] This burden rests entirely upon the movant, Respondent.[6]

In a hybrid motion for summary judgment asserting both no evidence and traditional motions, like here, the ultimate issue is whether a fact issue exists.[7] A fact issue exists if there is more than a scintilla of probative evidence on the challenged element.[8] And the summary judgment record must be viewed "in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion"[9]

Respondent's Hybrid MSJ should be denied because it is premature. Discovery is ongoing, and Respondent has not yet complied with the Court's Order signed November 18, 2022. In the alternative, the Court should continue the submission date and require Respondent to

[3] Respondent incorrectly claims that TDRPC 8.04(a)(3) requires the Petitioner to show that Respondent acted knowingly.
[4] *See, e.g., Lear Sigler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991).
[5] *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 215-16 (Tex. 2003).
[6] *Roskey v. Tex. Health Facilities Comm'n*, 639 S.W.2d 302, 303 (Tex. 1982).
[7] *Buck v. Palmer*, 381 S.W.3d 525, 527 & n.2 (Tex. 2012)
[8] *Id.* at 527; TEX. R. CIV. P. 166a(c), (i).
[9] *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005)

comply with her discovery obligations.

A no-evidence motion for summary judgment cannot be filed until after the nonmovant (here, Petitioner) has had adequate time for discovery.[10] The Petitioner has not had adequate time to conduct discovery because of Respondent's discovery abuse. Respondent did not produce any documents until August 9, 2022, 22 days after the documents were due. Respondent's production includes thousands of documents and videos and was not organized in any fashion whatsoever. Petitioner did not receive Respondent's privilege log until October 1, 2022, 75 days after it was due. The Court granted said motion to compel in part and ordered Respondent to comply with the Court's order by December 19, 2022. See Exhibit A, the Court's Order signed November 18, 2022.

Respondent has failed to comply with the Order. For example, the Court's order in relevant part states:

IT IS ORDERED *Respondent respond to request for production number 3 and provide all communications between Respondent and any non-client Affiant exchanged prior to the entry of a final order in the litigation in which the Affiant's testimony was offered*

Respondent did not produce a single communication with any affiant in response to this Order. Instead, Respondent sent a log identifying multiple communications with individuals that Respondent purports are affiants and claimed each communication is work product privileged. See Exhibit F.

Further, Petitioner is entitled to a hearing on Respondent's claims of work-product privilege over thousands of documents. See Tex. R. Civ. P. 193.4(a).[11] Petitioner's Second Motion to Compel

[10] Tex. R. Civ. P. 166a(i);

[11] (a) *Hearing.* Any party may at any reasonable time request a hearing on an objection or claim of privilege asserted under this rule. The party making the objection or asserting the privilege must present any evidence necessary to support the objection or privilege. The evidence may be testimony presented at the hearing or affidavits served at least seven days before the hearing or at such other reasonable time as the court permits. If the court determines that an *in camera* review of some or all of the requested discovery is necessary, that material or information must be

is forthcoming. Respondent's amended privilege log contains thousands of entries. Petitioner should be afforded a reasonable amount of time to review and assemble the entries Petitioner believes should not be afforded the work-product or attorney-client privilege in order to present its Second Motion to Compel to the Court.

Respondent asks the Court to grant summary judgment based solely on self-serving and conclusory affidavits and before she complies with the Court's ruling. The Court has ruled that Petitioner is entitled to certain discovery items. These items could lead to admissible evidence that supports Petitioner's position or undercuts Respondent's position. Respondent seeks to circumvent the Court's ruling by prematurely moving for summary judgment prior to her compliance with the same.

Rule 166a(g) specifically provides that the court "may order a continuance to permit such affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." The Court should deny Respondent's hybrid motion for summary judgment for the reasons discussed *infra*. In the alternative, the Court should order a continuance as contemplated by Rule 166a(g.)

Respondent's Motion for Summary Judgment should be denied because there is more than a scintilla of evidence supporting Petitioner's claims and because there are genuine questions of material fact.

Despite Respondent's failure to comply with the Court's ruling, more than a scintilla of evidence raises a genuine issue of material fact on Respondent's challenged element. A non-movant produces more than scintilla of evidence when the evidence rises to a level that would enable

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segregated and produced to the court in a sealed wrapper within a reasonable time following the hearing.

reasonable and fair-minded people to differ in their conclusions."[12] Respondent has failed to carry her burden to show that there are no genuine issues of material fact.

i. Rule 3.03 - Candor Toward the Tribunal[13]

(a) A lawyer shall not knowingly (1) make a false statement of material fact or law to a tribunal

(a) A lawyer shall not knowingly (5) offer or use evidence that the lawyer knows to be false

Respondent incorrectly references the definition of "knowingly" from the Texas Penal Code. The correct definition of "knowingly" applied in lawyer disciplinary cases can be found in the Texas Rules of Professional Conduct: *"Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.*[14]

Importantly, the definition of "knowingly" contained in the Rules points out that Respondent's knowledge (or lack thereof) can be inferred from circumstances. It is undisputed that Respondent attached two exhibits in her pleadings in the Georgia lawsuit that excluded the dates, even though both exhibits were actually dated. It is undisputed that Respondent specifically pointed out in her pleading that the exhibits were "undated."[15] Respondent claims that the Petitioner has no evidence of Respondent's knowledge regarding the doctored exhibits or false statements in her pleadings. Not so. The circumstances surrounding the doctored exhibits and the misrepresentation in Respondent's pleading could suggest to a reasonable-minded person that Respondent did have knowledge of the false evidence and her misrepresentation. Both exhibits were altered in the same manner, for the same result- to give credence to Respondent's conspiracy theory that Georgia "rushed through"[16] the selection and purchase of Dominion voting system. A fair-minded individual could reach the conclusion that Respondent knew about the falsity of her statement and that the exhibits were

[12] Ford Motor Co. v. Ridgway, 135 S.W.3d 598, 601 (Tex. 2004)
[13] TDRPC Rule 3.03(a)(1).
[14] TEX. DISCIPLINARY RULES PROF'L CONDUCT Terminology

intentionally altered to reflect Respondent's baseless claim.

Further, Respondent had notice of the misrepresentation on December 5, 2020, when the State defendants in the Georgia election lawsuit pointed out to the Court and to Respondent that she had attached altered documents and made a false statement in her pleadings. *See Exhibit E, pg. 8, footnote 8*. Yet, she did nothing to correct her misrepresentation and disclose the true facts as is required by the Rules. [17] This evidence (which is far more than the required "scintilla") suggests that Respondent knew of the falsity of the evidence she presented and did nothing to correct the same.

Respondent also claims that Respondent's own self-serving and conclusory affidavit regarding her own knowledge conclusively negates the "knowing" element of Petitioner's claim. Not so. If the credibility of the affiant is likely to be a dispositive factor in the resolution of the case, summary judgment is not appropriate.[18] Here, Respondent's credibility is key to the fact-finder's determination of whether 3.03(a)(1) and 3.03(a)(5) were violated by Respondent. Based on the evidence attached hereto, there exists a genuine issue of material fact as to Respondent's knowledge.

The affidavit and testimony from Respondent's co-counsels (the same co-counsels whose communications Respondent refuses to turn over in discovery) likewise do not conclusively negate the "knowing" element of Petitioner's claim. Respondent's co-counsels have no personal knowledge of what Respondent knew about the doctored exhibits, or when she knew it.

Respondent claims that for evidence to be "material" it must affect the outcome of a case. This is another incorrect statement of law. "False statement of fact to tribunal is "material" within meaning

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[15] See Ex. F, at page 8, ¶ 12

[16] See Ex. F, at page 7, ¶ 12

[17] See TDRPC 3.03(b): If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts. (c) The duties stated in paragraphs (a) and (b) continue until remedial legal measures are no longer reasonably possible.

[18] *Casso v. Brand*, 776 S.W.2d 551, 558 (Tex. 1989)

of disciplinary rule if a judge would attach importance to the representation and would be induced to act on it in making a ruling, and thus, rule encompasses false statements by a lawyer that might corrupt the course of litigation even if they are not outcome determinative." [19] The exhibits cannot be considered immaterial simply because Respondent and her co-counsel say they are. Respondent specifically pointed out in her pleading in Georgia that the exhibits are undated, and then argues to the Court that an inference can be drawn from these exhibits that supports her argument that the voting system was inadequately investigated by Georgia. It is clear Respondent intended for the factfinder to attach some importance to this detail, or at the very least, a reasonable, fair-minded person could determine that the representation was material. It would defy reason and the spirit of the Rules if the Rules only required lawyers to be candid with the Court if the lawyer's representation is outcome-determinative. There is more than a scintilla of evidence supporting Petitioner's claim that Respondent violate rule 3.03(a)(1) and Rule 3.03(a)(5).

ii. Rule 8.04. Misconduct[20]

(a) A lawyer shall not (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Respondent incorrectly states in her motion that Rule 8.04(a)(3) contains a "knowing" element. Respondent is incorrect. The Rule contains no such element. For this reason alone, Respondent's motion for summary judgment as to Rule 8.04(a)(3) should be denied. To prevail on a no-evidence motion for summary judgment, Respondent must specify the elements that she contends lack evidence.[21] Here, Respondent has specified that Petitioner has no evidence of "knowing" element, or that Respondent's affidavits and testimony from herself and her co-counsel conclusively negates this element. But Rule 8.04(a)(3) does not require the Petitioner to show that Respondent

[19] *Cohn v. Comm'n for Lawyer Discipline*, 979 S.W. 2d, 694, 696
[20] TX ST RPC Rule 8.04(a)(3).

acted knowingly.

The rules do not define "dishonesty," "deceit," or "misrepresentation." Courts have therefore given those terms their ordinary meanings and have concluded that they generally mean a "lack of honesty, probity, or integrity in principle," and a "lack of straightforwardness."[22]

When an attorney's actions lack probity, integrity, and straightforwardness, the attorney's actions are dishonest.[23] While intent to deceive would be required to establish fraudulent conduct, the same is not true of conduct "merely" involving "dishonesty, deceit, or misrepresentation."[24] Further, there is no requirement under subparagraph (a)(3) that an attorney's "dishonesty, deceit, or misrepresentation" be "material."[25]

The same evidence (which is more than a scintilla) that supports Petitioner's claim that Respondent violated TDRPC 3.03(a)(1) and TDPRC 3.03(a)(5) supports Petitioner's claim that Respondent violated TDRPC 8.04(a)(3).

8. CONCLUSION AND PRAYER

WHEREFORE, premises considered, Petitioner prays this Honorable Court deny Respondent's Motion for Summary Judgment in its entirety. Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Kristin V. Brady

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[21] Tex. R. Civ. P. 166a(i); *Fort Worth Osteopathic Hosp., Inc. v. Reese*, 148 S.W.3d 94, 99 (Tex. 2004.)
[22] *Olsen v. Comm'n for Lawyer Discipline*, 347 S.W. 3d 876, 882-83 (Tex. App- Dallas 2011, pet. denied).
[23] *Rosas v. Comm'n for Lawyer Discipline*, 335 S.W.3d 311, 319 (Tex. App. 2010). *See also Brown v. Comm'n for Lawyer Discipline*, 980 S.W.2d 675, 680 (Tex. App. 1998).
[24] *Eureste v. Comm'n for Lawyer Discipline*, 76 S.W.3d 184, 198 (Tex. App. 2002)
[25] *Id.*

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Rachel Craig
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was forwarded to Respondent, by and through his counsel of record, Robert H. Holmes, S. Michael McColloch, and Karen Cook, on this the January 11, 2023, pursuant to the Texas Rules of Civil Procedure.

/s/Kristin V. Brady
Kristin V. Brady

/s/Rachel Craig
Rachel Craig

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EXHIBIT
A

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CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
vs.	§	
SIDNEY POWELL (File Nos. 202006349, 202006347, 202006393, 202006599, 202100006, 202100652, 202101297, 202101300, 202101301, 202103520, 202106068, 202106284, 202106181)	§	DALLAS COUNTY, TEXAS
Defendant.	§	116th JUDICIAL DISTRICT

SIDNEY POWELL'S RESPONSE TO FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND RULE 196.4 FIRST REQUEST OF PRODUCTION OF ELECTRONIC DOCUMENTS

To: Commission for Lawyer Discipline by and through its counsel of record, Seana Willing, Kristin Brady & Rachel Craig, Office of the Chief Disciplinary Counsel State Bar of Texas, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254 via email and efileTex.gov.

Sidney Powell, pursuant to Tex.R.Civil P., Rule 196, serves her Response to the Commission's First Requests for Production of Documents and Electronic Documents.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. GENERAL OBJECTIONS TO REQUESTS. Ms. Powell objects to each Request

to the extent (i) it asks for information not requested with reasonable particularity, (ii) it seeks information that is not relevant to the subject matter of this action or not reasonably calculated to lead to the discovery of admissible evidence, or (iii) it is overly broad and unduly burdensome. Many of the requests are so broadly worded that they are impermissible fishing expeditions.

2. PRIVILEGE AND WORK PRODUCT. Ms. Powell objects to each Request to the extent it seeks information that is privileged or protected from production, including but not limited to information or documents that constitute attorney work product or trial preparation materials or that are covered by the attorney-client privilege or other applicable privileges. In response to each Request, Ms. Powell does not waive any such privilege or immunity.

3. CONFIDENTIAL OR PROPRIETARY INFORMATION. Ms. Powell objects to each Request to the extent itseeks information or documents that contain sensitive or confidential information relating to Ms. Powell or third parties, or that contain proprietary business information or commercial trade secrets, and Ms. Powell will only produce such information or documents subject to the terms of a customary protective order or confidentiality agreement.

4. PRESERVATION OF OBJECTIONS. Ms. Powell reserves all objections as to the competency, relevance, materiality, privilege and/or admissibility of evidence in any subsequent proceeding and/or trial of this or any other action for any purpose whatsoever of any documents, information or things produced in this Response.

5. PRESENT BEST KNOWLEDGE/ SUBSEQUENT DISCOVERY. This response is made to the best of Ms. Powell's present knowledge, information and belief. This response is at all times subject to such additional or different information that discovery or further investigation may disclose. Ms. Powell reserves the right to modify or supplement any and all responses herein as additional facts are ascertained or as additional documents are obtained. Ms. Powell reserves the right to make any use of, or to introduce at any hearing and/or trial, documents responsive to the Request but discovered by Ms. Powell subsequent to the date of this response.

6. DOCUMENTS AND INFORMATION NOT WITHIN CONTROL OR POSSESSION. Ms. Powell objects to all instructions, definitions and Requests to the

extent they seek documents or information not currently in Ms. Powell's possession, custody or control or refer to persons, entities or events not known to Ms. Powell, on the grounds that such instructions, definitions, or requests (i) seek to require more of Ms. Powell than any obligation imposed by law, (ii) exceed the scope of legitimate discovery, (iii) would subject Ms. Powell to unreasonable and undue annoyance, oppression, burden and expense and would seek to impose on Ms. Powell an obligation to investigate or discover information or materials from third parties or sources who are equally accessible to Third Party Plaintiff.

7. DEFINITIONS. Ms. Powell objects to Third Party Plaintiffs definitions to the extent they seek to impose obligations on Ms. Powell greater than those allowed by the Texas Rules of Civil Procedure. Ms. Powell will respond to each Request with the understanding that the aforementioned terms shall not include Ms. Powell's attorneys where such inclusion would require the production of information protected from discovery.

8. EQUALLY AVAILABLE FROM OTHER SOURCES: Ms. Powell objects to these Requests to the extent they seek information that is publicly available, or that may be obtained from another source that is more convenient, less burdensome, or less expensive, or that is solely in possession, custody or control of third parties.

9. RELEVANCY/MATERIALITY: Ms. Powell submits these answers without conceding the relevancy or materiality of the subject matter of any Request, and without prejudice to Ms. Powell's right to object to further discovery or to object to the admissibility of any answer at the time of hearing or trial.

10. MARSHALING EVIDENCE: Ms. Powell objects to these Requests to the extent they seek to require Ms. Powell to marshal her evidence.

11. TIME & PLACE: Ms. Powell objects to the time and place and will produce the documents at a mutually agreeable time and place.

These "General Objections and Reservation of Rights" are incorporated into each of the Answers stated below as if set forth in full. Without waiver of her general objections Ms. Powell responds as follows:

RESPONSE

Request No. 1:
All documents upon which you rely to support your defenses.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity and (ii) it is overly broad, justa fishing expedition, and unduly burdensome.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request and will produce documents that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 2:
All documents, including but not limited to, correspondence, emails, texts, notes, phone logs, message slips, or memorandums relating to any communications between you and each Plaintiff.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request that are covered by a privilege.

Request No. 3:
All documents, including but not limited to, correspondence, emails, texts, notes, phone logs, message slips, or memorandums relating to any communications between you and each Affiant.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request that are covered by a privilege.

Request No. 4:

All documents, including but not limited to, correspondence, emails, texts, notes, phone logs, message slips, or memorandums concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request.

Request No. 5:
All documents relating to your and/or your law firm's representation of any party in the Michigan Case from the commencement of the representation to the present including, but not limited to, the entire client file, any employment contracts or other writings upon which the representation was based, any documents reflecting an oral contract for representation, any documents reflecting the termination of representation, and any documents that reflect work performed by you or any employee, agent, representative, independent contractor, or affiliate of you or your law firm.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell may have documents subject to this request but will not produce documents responsive to this request that are covered by a privilege.

Request No. 6:
All documents relating to your and/or your law firm's representation of any party in the Wisconsin Case from the commencement of the representation to the present including, but not limited to, the entire client file, any employment contracts or other writings upon which the representation was based, any documents reflecting an oral contract for representation, any documents reflecting the termination of representation, and any documents that reflect work performed by you or any employee, agent, representative, independent contractor, or affiliate of you or your law firm.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for

information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request.

Request No. 7:
All documents relating to your and/or your law firm's representation of any party in the Arizona Case from the commencement of the representation to the present including, but not limited to, the entire client file, any employment contracts or other writings upon which the representation was based, any documents reflecting an oral contract for representation, any documents reflecting the termination of representation, and any documents that reflect work performed by you or any employee, agent, representative, independent contractor, or affiliate of you or your law firm.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request.

Request No. 8:
All documents relating to your and/or your law firm's representation of any party in the Georgia Case from the commencement of the representation to the present including, but not limited to, the entire client file, any employment contracts or other writings upon which the representation was based, any documents reflecting an oral contract for representation, any documents reflecting the termination of representation, and any documents that reflect work performed by you or any employee, agent, representative, independent contractor, or affiliate of you or your law firm.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this

request but will not produce documents responsive to this request.

Request No. 9:
All fee statements, billing statements, expense reports, accounting statements, and documents of any kind evidencing work you performed related to the Michigan Case.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request.

Request No. 10:
All fee statements, billing statements, expense reports, accounting statements, and documents of any kind evidencing work you performed related to the Wisconsin Case.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request.

Request No. 11:
All fee statements, billing statements, expense reports, accounting statements, and documents of any kind evidencing work you performed related to the Arizona Case.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request.

Request No. 12:
All fee statements, billing statements, expense reports, accounting statements, and

documents of any kind evidencing work you performed related to the Georgia Case.

SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents subject to this request but will not produce documents responsive to this request.

Request No. 13:
All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.01.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this request and will produce documents responsive to this request that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 14:
All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.02.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this request and will produce documents responsive to this request that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 15:
All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.03(a)(1).
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a

fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this request and after a customary protective order or confidentiality agreement is entered. documents responsive to this request that are not subject to privilege.

Request No. 16:
All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.03(a)(5).
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges
RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this request and will produce documents responsive to this request that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 17:
All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.03(c)(1).
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges
RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this request and will produce documents responsive to this request that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 18:
All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 8.04(a)(3).
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges
RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this

request and will produce documents responsive to this request that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 19:
All documents reflecting any of the following: the name, address, telephone number, and details of the information observed by any individual who was a witness or purports to be a witness or purports to have knowledge and/or information relating to the incident made the subject of this lawsuit.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges
RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this request and will produce documents responsive to this request that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 20:
For each person with knowledge of facts relevant to this lawsuit, all documents reflecting the facts of which that person has knowledge.
SPECIFIC OBJECTIONS: Ms. Powell objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this request and will produce documents responsive to this request that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 21:
All electronically stored information or electronic format of any document produced in response to these requests.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.

RESPONSE: Subject to the objections, Ms. Powell has documents responsive to this request and will produce documents responsive to this request that are not subject to privilege after a customary protective order or confidentiality agreement is entered.

Request No. 22:
All reports from expert witnesses you intend to call to testify at the trial of this case.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as it is illegitimate, asking for information covered by Rule 195.
RESPONSE: Subject to the objections, Ms. Powell will not produce documents responsive to this request.

Request No. 23:
All documents identified or referred to in your Answers to any of Petitioner's Interrogatories not provided in response to any of Petitioner's Requests for Production of Documents.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials or that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell will not produce documents responsive to this request.

Request No. 24:
All documents evidencing the diagnosis, onset, extent, prognosis, and treatment (including, but not limited to, treatment programs and medications) for depression or any other medical condition that you contend contributed to the actions that form the bases of this Disciplinary Proceeding.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as: (i) it asks for information not requested with reasonable particularity; (ii) it is overly broad, just a fishing expedition, and unduly burdensome; and (iii) materials that are covered by the attorney-client privilege or work product privileges.
RESPONSE: Subject to the objections, Ms. Powell has no documents responsive to this request.

Respectfully submitted,
HOLMES LAWYER, PLLC

By: */s/ Robert H. Holmes*
Robert H. Holmes
State Bar No. 09908400
19 St. Laurent Place
Dallas, Texas 75225
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6060 N. Central Expressway
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and

KAREN COOK, PLLC
Karen Cook
State Bar No. 12696860

6060 N. Central Expressway
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Dallas, Texas 75206
Tel: 214-643-6054
Fax: 214-295-9556
Email: karen@karencooklaw.com

COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on July 14, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

Automated Certificate of eService

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Robert Holmes on behalf of Robert Holmes
Bar No. 9908400
rhholmes@swbell.net
Envelope ID: 66325965
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	7/14/2022 1:45:53 PM	SENT
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Rachel Craig		rachel.craig@texasbar.com	7/14/2022 1:45:53 PM	SENT

From: no-reply@efilingmail.tylertech.cloud
To: Brittany Paynton
Subject: Notification of Service for Case: DC-22-02562, COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL for filing Service Only, Envelope Number: 66325965
Date: Thursday, July 14, 2022 1:46:51 PM

Notification of Service

Case Number: DC-22-02562
Case Style: COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL
Envelope Number: 66325965

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Filing Details	
Case Number	DC-22-02562
Case Style	COMMISSION FOR LAWYER DSICIPLINE vs. SIDNEY POWELL
Date/Time Submitted	7/14/2022 1:45 PM CST
Filing Type	Service Only
Filing Description	Response to Interrogs
Filed By	Robert Holmes
Service Contacts	Other Service Contacts not associated with a party on the case: Kristin Brady (kristin.brady@texasbar.com) S. Michael McColloch (smm@mccolloch-law.com) Brittany Paynton (brittany.paynton@texasbar.com) Karen Cook (karen@karencooklaw.com) Robert Holmes (rhholmes@swbell.net) Rachel Craig (rachel.craig@texasbar.com)

EXHIBIT B

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CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
vs.	§	
SIDNEY POWELL (File Nos. 202006349, 202006347, 202006393, 202006599, 202100006, 202100652, 202101297, 202101300, 202101301, 202103520, 202106068, 202106284, 202106181)	§	DALLAS COUNTY, TEXAS
Defendant.	§	116th JUDICIAL DISTRICT

SIDNEY POWELL'S RESPONSE TO INTERROGATORIES

To: Commission for Lawyer Discipline by and through its counsel of record, Seana Willing, Kristin Brady & Rachel Craig, Office of the Chief Disciplinary Counsel State Bar of Texas, 14651 Dallas Parkway, Suite 925, Dallas, Texas 75254 via email and efileTex.gov.

SIDNEY POWELL'S RESPONSE TO INTERROGATORIES

Sidney Powell, pursuant to Tex.R.Civil P., Rule 197, serves her Response to Interrogatories.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. GENERAL OBJECTIONS TO INTERROGATORIES. Ms. Powell objects to each interrogatory to the extent (i) it asks for information not requested with reasonable particularity, (ii) it seeks information that is not relevant to the subject matter of this action or not reasonably calculated to lead to the discovery of admissible evidence,

or (iii) it is overly broad and unduly burdensome. Most of the Interrogatories are so broadly worded that they are impermissible fishing expeditions.

2. PRIVILEGE AND WORK PRODUCT. Ms. Powell objects to each interrogatory to the extent it seeks information that is privileged or protected, including but not limited to information or documents that constitute attorney work product or trial preparation materials or that are covered by the attorney-client privilege or other applicable privileges. In response to each Interrogatory, Ms. Powell does not waive any such privilege or immunity.

3. CONFIDENTIAL OR PROPRIETARY INFORMATION. Ms. Powell objects to each Interrogatory to the extent it seeks information that contain sensitive or confidential information relating to Ms. Powell or third parties, or that contain proprietary business information or commercial trade secrets, and Ms. Powell will only provide such information subject to the terms of a customary protective order or confidentiality agreement.

4. PRESERVATION OF OBJECTIONS. Ms. Powell reserves all objections as to the competency, relevance, materiality, privilege and/or admissibility of evidence in any subsequent proceeding and/or trial of this or any other action for any purpose whatsoever of any information provided in this Response.

5. PRESENT BEST KNOWLEDGE/ SUBSEQUENT DISCOVERY. This response is made to the best of Ms. Powell's present knowledge, information and belief. This response is at all times subject to such additional or different information that discovery or further investigation may disclose. Ms. Powell reserves the right to modify or supplement any and all responses herein as additional facts are ascertained. Ms. Powell reserves the right to make any use of, or to introduce at any hearing and/or trial, information responsive to the Interrogatory but discovered by Ms. Powell subsequent to the date of this response.

6. INFORMATION NOT WITHIN CONTROL OR POSSESSION. Ms. Powell objects to all instructions, definitions and interrogatories to the extent they seek information not currently known to Ms. Powell, on the grounds that such instructions, definitions, or interrogatory (i) seek to require more of Ms. Powell than any obligation imposed by law, (ii) exceed the scope of legitimate discovery, (iii) would subject Ms. Powell to unreasonable and undue annoyance, oppression, burden and

expense and would seek to impose on Ms. Powell an obligation to investigate or discover information or materials from third parties or sources who are equally accessible to Third Party Plaintiff.

7. DEFINITIONS. Ms. Powell objects to Plaintiff's definitions to the extent they seek to impose obligations on Ms. Powell greater than those allowed by the Texas Rules of Civil Procedure. Ms. Powell will respond to each Interrogatory with the understanding that the aforementioned terms shall not include Ms. Powell's attorneys where such inclusion would require the production of information protected from discovery.

8. EQUALLY AVAILABLE FROM OTHER SOURCES: Ms. Powell objects to these interrogatory to the extent they seek information that is publicly available, or that may be obtained from another source that is more convenient, less burdensome, or less expensive, or that is solely in possession, custody or control of third parties.

9. RELEVANCY/MATERIALITY: Ms. Powell submits these answers without conceding the relevancy or materiality of the subject matter of any Interrogatory, and without prejudice to Ms. Powell's right to object to further discovery or to object to the admissibility of any answer at the time of hearing or trial.

10. MARSHALING EVIDENCE: Ms. Powell objects to these Interrogatories to the extent they seek to require Ms. Powell to marshal her evidence.

These "General Objections and Reservation of Rights" are incorporated into each of the Answers stated below as if set forth in full. Without waiver of her general objections Ms. Powell responds as follows:

RESPONSE

1. Please identify all persons whom you will call to testify at trial and detail the substance of his/her testimony.
SPECIFIC OBJECTION: This interrogatory seeks information in advance of completion of discovery; therefore, Ms. Powell cannot identify all persons whom she will call to testify at trial or detail the substance of his/her testimony.
RESPONSE: Without waiver of her objections, at this time, Ms. Powell responds as follows:

A. Legal Team

1. Sidney Powell
2911 Turtle Creek Blvd
Suite 300
Dallas, Texas 75219
sidney@federalappeals.com
Defendant, knowledge from apex position of election fraud suits, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

2. Howard Kleinhendler
369 Lexington Avenue
12th Floor
New York, NY 10017
howard@kleinhendler.com
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

4. Julia Haller
1225 19th St NW #320
Washington, DC 20036
Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

5. Brandon Johnson
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

6. Emily Newman
Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

7. Lin Wood

P.O. Box 52584
Atlanta, GA 30305-0584
(404) 891-1402
Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

8. Scott Hagerstrom
222 West Genesse
Lansing, MI 48933
(517) 763-7499
scotthagerstrom@yahoo.com
Local Counsel Member of election fraud suits legal team, expected to testify about her role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

9. Gregory J. Rohl
411850 West 11 Mile Road
Suite 110
Novi, MI 48375
(248) 380-9404
gregoryrohl@yahoo.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

10. Harry W. MacDougald
Caldwell, Propst & Deloach, LLP
Two Ravinia Drive, Suite 1600
Atlanta, GA 30346
(404) 843-1956
hmacdougald@cpdlawyers.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

11. Alexander Kolodin

Kolodin Law Group, PLLC
3443 N. Central Ave. Ste 1009
Phoenix, AZ 85012
(602) 730-2985
Alexander.kolodin@kolodinlaw.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

12. Christopher Viskovic
Kolodin Law Group, PLLC
Central Ave. Ste 1009
Phoenix, AZ 85012
(602) 730-2985
Alexander.kolodin@kolodinlaw.com
Local Counsel Member of election fraud suits legal team, expected to testify about his role in the Election Fraud Suits, the factual and legal basis supporting the filing of the Election Fraud Suits.

B. Other Potential Witnesses:

1. Phil Waldron
contact information unknown
cyber-security expert

2. J. Alex Halderman
Campus mail: EECS/CSE
4717 Beyster Bldg
Ann Arbor MI 48109-2121
734-647-1806
E-Mail: jhalderm@umich.edu
cyber-security expert

3. Andrew Appel, Ph.D.
209 Computer Science
Princeton, NJ 08544
(609) 258-4627

E-Mail: appel@cs.princeton.edu
cyber-security expert

4. Merritt, Joshua
Allied Security Operations Group
817-899-6510
joshua.merritt210@gmail.com
affiant, cyber-security expert

2. Please describe the terms of any contract, whether oral or written, between you and/or your law firm and each Plaintiff in the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Based on the objection Ms. Powell will not respond.

3. For all amounts of money you received on behalf of or concerning the Election Fraud Suits, please state the amount of money received date the money was received, entity or individual from which the money was received, name of the financial institution into which the money was deposited, the account number, and the date of the deposit.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell responds she received no legal fees.

4. Please identify any and all communications you had with each Plaintiff, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

5. Please identify any and all communications you had with each co-counsel concerning the Election Fraud Suits, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade

the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

6. Beginning in November 2020, please identify any and all communications you had with an election official: please list the name of the individual, date, time, location and substance of each communication, whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

7. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Donald Trump concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege, the attorney-client privilege and the executive privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

8. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Rudy Guliani concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

9. Please list the date, time, location and substance of each communication, whether oral or written or via mobile device, you had with Eric Herschmann concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant.
RESPONSE: Without waiving her objections, Ms. Powell responds she had communications with Eric Herschmann on the night of December 18, 2020 in the Oval Office of the White House concerning the proof Ms. Powell had to support the allegations in the Election Fraud Suits.

10. Beginning in August 2020, please identify all meetings or communications you had in The White House or with someone in The White House concerning any mention of election fraud, by explaining in detail: the method of communication of each communication, the date of the communications, the substance of the

communication, who was present when the communications occurred, and if the communications were in writing or were reduced to writing.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege, the attorney-client privilege and the executive privilege.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

11. Beginning in November 2020, please identify any and all communications you had with each Affiant, by explaining in detail: the name of the individual; date, time, location and substance of each communication; whether oral or written or via mobile device.
SPECIFIC OBJECTIONS: The interrogatory seeks the irrelevant and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell responds other team members communicated directly with the Affiants upon which she relied.

12. Please detail any and all work performed and tasks completed by you concerning the Election Fraud Suits.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell responds she acted in the role of lead lawyer on a litigation team with other team members performing the research, drafting and filing duties. In addition local counsel was engaged in each state in which a suit was filed who handled the final duties of filing the complaints and attaching the exhibits to the complaints.

13. Please identify all attorneys, paralegals, assistants, and individuals who assisted you with the Election Fraud Suits.
RESPONSE: See response to Interrogatory # 1 §A.

14. Beginning in November 2020, please list the amount of money defendingtherepublic.org has raised.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as it is just a fishing expedition.
RESPONSE: Subject to the objections, Ms. Powell will not respond.

15. Please describe your relationship to or ownership status of

sidneypowell2024.com.
RESPONSE: Ms. Powell has none.

16. Please describe your compliance with the Sanctions Order and include in your response, what fees have been paid, the date the fees were paid, continuing legal education completed, date such continuing legal education was completed.
SPECIFIC OBJECTIONS: The request seeks the irrelevant. Ms. Powell further objects to this Request as it is just a fishing expedition.
RESPONSE: Without waiving her objections, Ms. Powell responds the sanctions order has been appealed to the Sixth Circuit Court of Appeals, *King et al. v. Whitmer, et al*, Case No. 21-1786, United States Court of Appeals, Sixth Circuit, which remains pending before that court. Ms. Powell timely completed the cle requirement as shown in Exhibit "A" attached hereto.

17. If you contend that any professional misconduct alleged in this matter resulted from or was exacerbated by any physical or mental condition, disease, defect, or illness, state the following:

a. the nature and extent of the physical or mental condition, disease, defect or illness;
b. when the physical or mental condition, disease, defect, or illness first manifested;
c. each and every physician, psychiatrist, psychologist, counselor or other practitioner of the healing arts, who has diagnosed the physical or mental condition, disease, defect or illness or from whom you have sought treatment for the physical or mental condition, disease, defect or illness;
d. whether or not the physical or mental condition, disease, defect, or illness is now cured, in remission or otherwise under control or the present status of the condition and treatment thereof.
RESPONSE: Not applicable, Ms. Powell does not content the professional misconduct alleged in this matter resulted from or was exacerbated by any physical or mental condition, disease, defect, or illness.

18. Please set forth the factual basis for your contention that you did not violate Rule 3.01 of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a

Motion and her Live Answer and responds generally as follows:
(i) Reliance on First Amendment "Petition Clause" – anyone who believes they have been aggrieved by another party may engage a lawyer to file suit on their behalf to seek redress. U.S. Const. amend. I. under *NAACP v. Button*, 371 U.S. 415, 429 (1963); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972); and *Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961).
(ii) Reliance on sworn statements under *Healey v. Chelsea Resources, Ltd.*, 947 F.2d 611, 625-26 (2nd Cir. 1991).
(iii) The non-frivolous basis for alleging serious election-law violations justifying relief under *Bush v. Gore*, 531 U.S. 98 (2000) and *McDonald v. Smith*, 472 U.S. 479, 482, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985).
(iv) The right to file a complaint seeking redress of grievances on behalf of public official clients or others without fear of judicial reprisal applies no matter the ultimate truth or falsity, good or bad faith, of a client's statements, at least so long as the attorney does not suborn the statements under *California Motor Transport*, 404 U.S. 508 and *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, dissenting).
(v) The right to file a pleading if there is ". . . from the advocate's point of view . . . arguable grounds existed to support a reasonable belief that the case . . . [of the] possibility of obtaining a favorable result" from the advocates point of view. *Gray v. Turner*, 807 S.W.2d 818, 823 (Tex.App.–Amarillo 1991, no writ); *Ambrose v. Mack*, 800 S.W.2d 380, 383 (Tex.App.–Corpus Christi 1990, no writ).
(vi) Ms. Powell attached affidavits and exhibits to the complaints supporting the allegations in each of the Election Fraud Suits to wit: (i) 29 to the Petition in the Georgia Case; (ii) 30 to the Petition in the Michigan Case; (iii) 19 to the Petition in the Wisconsin Case; and (iv) 31 to the Petition in the Arizona Case. Ms. Powell had the undeniable right to rely on these exhibits. *Healey*, 947 F.2d at 625-26

19. Please set forth the factual basis for your contention that you did not violate Rule 3.02 of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds generally as follows:
(i) All the Election Fraud Suits were dismissed within 11 days of filing except for the Michigan Case which remained pending by Judge parker for the sole purpose to allow the City of Detroit, a non-party, to intervene for the sole purpose of seeking sanctions.

(ii) There is a right to appeal the adverse rulings to the highest court available – without being subject to sanctions or grievances. Appeals from final judgments are a matter of right. *United States v. Horns*, 3 Cir. 147 F.2d 57. 28 U.S.C.A. § 1291 provides for the appeal of final decisions. *See Beneficial Industrial Loan Corp. v. Smith*, 170 F.2d 44, 49 (3rd Cir.1948) affirmed, *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949).
(iii) A decision is final when all appeals have been exhausted or when the time available for an appeal has passed. *See Leahy v. Orion Twp.*, 711 N.W.2d 438, 441 (Mich. Ct. App. 2006). Petitions for writs of certiorari were pending in each case until the Supreme Court denied them on January 7, 2021.

20. Please set forth the factual basis for your contention that you did not violate Rule 3.03(a)(1) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds generally as follows:
(i) Ms. Powell was entitled to rely on the representations of the client, sworn statements of affiants, and expert reports without having to assess the credibility of the clients, affiants or experts. *See Healey v. Chelsea Res., Ltd.*, 947 F.2d 611, 625-626 (2d Cir.1991); *Royal v. Netherland*, 4 F. Supp. 2d 540, 556 (E.D. Va. 1998); *Xcentric Ventures, L.L.C. v. Borodkin*, 908 F. Supp. 2d 1040, 1048-49 (D. Ariz. 2012), *aff'd*, 798 F.3d 1201 (9th Cir. 2015).
(ii) Ms. Powell did not draft the complaints or attach the exhibits to the complaints. *Klein v. Powell*, 174 F. 640 (3rd Cir. 1909); *Rachmil v. United States*, 43 F.2d 878 (9th Cir. 1930) certiorari denied, 283 U.S. 819, 51 S.Ct. 344, 75 L.Ed. 1434.
(iii) Ms. Powell did not act intentionally, any errors in filings were simply mistakes. *See Klein*, 174 F. 640; and *Rachmil*, 43 F.2d 878.

21. Please set forth the factual basis for your contention that you did not violate Rule 3.03(a)(5) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds: See response to Interrogatory #20.

22. Please set forth the factual basis for your contention that you did not violate Rule 3.04(c)(1) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
(i) The Elections Fraud Suits were all based on similar claims and similar evidence.
(ii) Using affidavits "recycled" from the other election cases raising similar issues in other jurisdictions is no violation of the law. There is no rule or practice that prevents counsel from using affidavits that have also been used in other cases – the practice is not uncommon. *See, e.g.*, *Eclipse Res.-Ohio, LLC v. Madzia*, No. 2:15-CV-00177, 2017 WL 274732, at *7 (S.D. Ohio Jan. 20, 2017), *aff'd*, 717 F. App'x 586 (6th Cir. 2017).

23. Please set forth the factual basis for your contention that you did not violate Rule 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.
SPECIFIC OBJECTIONS: The interrogatory seeks to require Ms. Powell to marshal her evidence and seeks to invade the work product privilege and the attorney-client privilege.
RESPONSE: Without waiving her objections, Ms. Powell directs you to her Rule 91a Motion and her Live Answer and responds:
(i) Even if Ms. Powell had clients or affiants with zero credibility, she had the right to file the suits so long as the testimony was not incredible as a matter of law at the time she accepted it as true. *Healey*, 947 F.2d at 625-26
(ii) Ms. Powell had an entirely reasonable ground for bringing suit even if the law or the facts appear questionable or unfavorable at the outset. *Christiansburg Garment Co. v. Equal Emp't Opportunity Comm'n*, 434 U.S. 412, 422 (1978).
(iii) The allegations in the complaints were filed against local state officials for violating federal elections law, there is an exception to the 11th Amendment that allows such suits.
(iv) Ms. Powell had the right to rely on the statements of affiants as a matter of law. *Royal*, 4 F. Supp. 2d at 556; *Xcentric*, 908 F. Supp. 2d at 1048-49.
(v) Ms. Powell was not required to assess the credibility of the affiants or clients. *Healey*, 947 F.2d at 626.
(vii) Ms. Powell was never given an evidentiary hearing in any of the four Election Fraud Cases; there was no discovery, no depositions and the cases never passed the pleadings stage. Since there were no hearings conduced in the cases, all facts alleged in the complaints filed in the Election Fraud Cases must be viewed as true. *CTC*

Imports and Exports v. Nigerian Petroleum Corp., 951 F.2d 573, 578 (3d Cir.1991). Sanctions should not awarded at any level. *Id.*

Respectfully submitted,
HOLMES LAWYER, PLLC

By: */s/ Robert H. Holmes*
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COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on July 14, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

Respectfully submitted,
HOLMES LAWYER, PLLC

By: */s/ Robert H. Holmes*
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COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on July 14, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

UNSWORN DECLARATION

My name is Sidney Powell, my birth date is May 1, 1955, and my address is Turtle Creek Blvd, Suite 300, Dallas, Dallas County, Texas 75081. I declare under the penalty of perjury that the statements of fact contained in the foregoing Response to Interrogatories are true and correct.

Executed in Dallas County, Texas on July 14, 2022.

/s/ Sidney Powell
Sidney Powell

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Robert Holmes on behalf of Robert Holmes
Bar No. 9908400
rhholmes@swbell.net
Envelope ID: 66325965
Status as of 7/14/2022 1:46 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	7/14/2022 1:45:53 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	7/14/2022 1:45:53 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	7/14/2022 1:45:53 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	7/14/2022 1:45:53 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	7/14/2022 1:45:53 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	7/14/2022 1:45:53 PM	SENT

Todd Hill

From: Todd Hill
Sent: Wednesday, October 12, 2022 1:36 PM
To: 'Robert Holmes'; 'Rachel Craig'
Cc: 'Brittany Paynton'; 'Mike McColloch'; 'Karen Cook'; 'Kristin Brady'
Subject: RE: Cause No. DC-22-02562; Commission for Lawyer Discipline vs. Sidney Powell

Counsel,

Please confer on a proposed order on Petitioner's motion to compel that Respondent supplement discovery as follows:

(a) For all responses to Petitioner's requests for production: identify, by bates-label, file name, or other indicator, which documents or other materials produced by Respondent are responsive to each request (as discussed at the hearing);
(b) For the response to interrogatory number 11: the name, date, location, and type of communication between Respondent and any non-client Affiant exchanged prior to the entry of a final order in the litigation in which the Affiant's testimony was offered;
(c) For the response to request for production number 3: all communications between Respondent and any non-client Affiant exchanged prior to the entry of a final order in the litigation in which the Affiant's testimony was offered; and
(d) For request for production numbers 5, 6, 7, and 8: all documents filed of public record, and all external communications Respondent sent to or received from non-parties prior to the entry of a final order, in the Michigan Case, Wisconsin Case, Arizona Case, and Georgia Case, respectively, which Respondent has maintained in her client file for each case, but specifically excluding privileged communications.

All supplementation should be made within 30 days of the entry of a written order on the motion.

Further, the order should reflect that the court considered the parties' arguments concerning attorney-client and work-product privilege, and finds that: Respondent's clients have not waived privilege; Respondent has not waived any client's privilege on behalf of that client; and the Commissioner has not shown itself entitled to invade such privilege. If these findings do not resolve the Commission's complaints as to Respondent's privilege log, the parties can submit letter briefs on the remaining issues either for submission or for short oral hearing.

A word or PDF version of the proposed order can be sent via email for review/entry.

Thank you,
Judge Bouressa

Todd Hill

Court Administrator
471st Civil District Court
471@collincountytx.gov

EXHIBIT
C

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 69150207

Status as of 10/12/2022 2:25 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kristin Brady	24082719	kristin.brady@texasbar.com	10/12/2022 1:42:24 PM	SENT
S. Michael McColloch	13431950	smm@mccolloch-law.com	10/12/2022 1:42:24 PM	SENT
Brittany Paynton		brittany.paynton@texasbar.com	10/12/2022 1:42:24 PM	SENT
Karen Cook	12696860	karen@karencooklaw.com	10/12/2022 1:42:24 PM	SENT
Robert H.Holmes		rhholmes@swbell.net	10/12/2022 1:42:24 PM	SENT
Rachel Craig		rachel.craig@texasbar.com	10/12/2022 1:42:24 PM	SENT
Todd Hill		thill@collincountytx.gov	10/12/2022 1:42:24 PM	SENT

Exh. 5

EXHIBIT
D

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the Dominion Voting System (EAC Certification Number DVS-DemSuite5.5-A), consisting of the Democracy Suite 5.5-A Election Management System Version 5.5.12.1, EMS Adjudication Version 5.5.8.1, ImageCast X Prime (ICX BMD) Ballot Marking Device Version 5.5.10.30, ImageCast Precinct (ICP) Precinct Scanning Device Version 5.5.3-0002, and ImageCast Central (ICC) Central Scanning Device Version 5.5.3-0002, manufactured by Dominion Voting Systems, Inc., 1201 18th Street, STE 210, Denver, Colorado 80202, has been thoroughly examined and tested and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this inspection, it is my opinion that this kind of voting system and its components can be safely used by the electors of this state in all primaries and elections as provided in Chapter 2 of Title 21 of the Official Code of Georgia; provided however, that I hereby reserve my opinion to reexamine this voting system and its components at anytime so as to ensure that it continues to be one that can be safely used by the voters of this state.

Exh. 6

PRO V&V

VERIFICATION VALIDATION

Test Report

Dominion Voting Systems
D-Suite 5.5-A Voting System
Georgia State Certification Testing

Approved by: Michael L. Walker

Michael Walker, VSTL Project Manager

1 INTRODUCTION

The purpose of this Test Report is to document the procedures that Pro V&V, Inc. followed to perform certification testing of the Dominion Voting Systems D-Suite 5.5-A Voting System Voting System to the requirements set forth for voting systems in the State of Georgia Election Systems Certification Program.

1.1 Authority

The State of Georgia has a unified voting system whereby all federal, state, and county elections are to use the same voting equipment. Beginning in 2020, the unified voting system shall be an optical scanning voting system with ballot marking devices.

The Georgia Board of Elections, under the authority granted to it by the Georgia Election Code, has the duty to promulgate rules and regulations to obtain uniformity in the practices and procedures of local election officials as well as to ensure the fair, legal, and orderly conduct of primaries and elections. The Georgia Board of Elections is to investigate frauds and irregularities in primaries and elections and report violations for prosecution. It can issue orders, after the completion of appropriate proceedings, directing compliance with the Georgia Election Code.

The Georgia Secretary of State is designated as the Chief Election Official and is statutorily tasked with developing, programing, building, and reviewing ballots for use by counties and municipalities on the unified voting system in the state. The Georgia Election Code provides that the Secretary of State is to examine and approve an optical scanning voting system and ballot marking devices prior to their use in the state. County Boards of Elections (CBE) may only use an optical scanning voting system and ballot marking devices that have been approved and certified and that may be continuously reviewed for ongoing certification, by the Secretary of State. The Secretary of State has authority to decertify voting systems. The Secretary of State has promulgated rules and regulations that govern the voting system certification process.

1.2 References

The documents listed below were utilized in the development of this Test Report:

- Election Assistance Commission Testing and Certification Program Manual, Version 2.0
- Election Assistance Commission Voting System Test Laboratory Program Manual, Version 2.0

- National Voluntary Laboratory Accreditation Program NIST Handbook 150, 2016 Edition, "NVLAP Procedures and General Requirements (NIST HB 150-2016)", dated July 2016
- National Voluntary Laboratory Accreditation Program NIST Handbook 150-22, 2008 Edition, "Voting System Testing (NIST Handbook 150-22)", dated May 2008
- Pro V&V, Inc. Quality Assurance Manual, Revision 7.0
- United States 107th Congress Help America Vote Act (HAVA) of 2002 (Public Law 107-252), dated October 2002
- Dominion Voting Systems D-Suite 5.5-ATechnical Data Package

1.3 Terms and Abbreviations

The terms and abbreviations applicable to the development of this Test Plan are listed below:

"BMD" – Ballot Marking Device

"COTS" – Commercial Off-The-Shelf

"EAC" – Election Assistance Commission

"EMS" – Election Management System

"FCA" – Functional Configuration Audit

"PCA" – Physical Configuration Audit

"TDP" – Technical Data Package

"VSTL" – Voting System Test Laboratory

"2005 VVSG" – EAC 2005 Voluntary Voting Systems Guidelines

1.4 Background

The State of Georgia identified the Dominion Voting Systems D-Suite 5.5-A Voting System to be evaluated as part of this test campaign. This report documents the findings from that evaluation.

functions, which are essential to the conduct of an election in the State of Georgia, were evaluated.

The scope of this testing event incorporated a sufficient spectrum of physical and functional tests to verify that the D-Suite 5.5-A Voting System conformed to the State of Georgia requirements. Specifically, the testing event had the following goals:

- Ensure proposed voting systems provide support for all Georgia election management requirements (i.e. ballot design, results reporting, recounts, etc.).

- Simulate pre-election, Election Day, absentee, recounts, and post-election activities on the corresponding components of the proposed voting systems for the required election scenarios.

2 TEST CANDIDATE

The D-Suite 5.5-A Voting System is a paper-based optical scan voting system consisting of the following major components: The Election Management System (EMS), the ImageCast Central (ICC), the ImageCast Precinct (ICP), and the ImageCast X (ICX) BMD. The D-Suite 5.5-A Voting System configuration is a modification from the EAC approved D-Suite 5.0 system configuration. The D-Suite 5.5-A Voting System will be configured with the KNOWiNK Pollpad which utilizes the ePulse Epoll data management system, for voter registration purposes.

The following table provides the software and hardware components of the D-Suite 5.5-A Voting System that were tested, identified with versions and model numbers:

Table 2-1 D-Suite 5.5-A Voting System

D-Suite 5.5-A Voting System Component	Firmware/Software Version	Hardware Model
oftware pplications		
EMS Election Event Designer (EED)	5.5.12.1	---
EMS Results Tally and Reporting (RTR)	5.5.12.1	---
EMS Application Server	5.5.12.1	---
EMS File System Service (FSS)	5.5.12.1	---
EMS Audio Studio (AS)	5.5.12.1	---
EMS Data Center Manager (DCM)	5.5.12.1	---
EMS Election Data Translator (EDT)	5.5.12.1	---
ImageCast Voter Activation (ICVA)	5.5.12.1	---

Table 2-1 D-Suite 5.5-A Voting System *(continued)*

D-Suite 5.5-A Voting System Component	Firmware/Software Version	Hardware Model
Device Configuration File (DCF)	5.4.01_20170521	---
olling lace canner and eripherals		
ImageCast Precinct (ICP)	5.5.3-0002	PCOS-320C
ICP Ballot Box	---	BOX-330A
EMS Standard Configuration		
Dell Server R640	---	R640
Dell Precision 3430	---	3430
Dell Network Switch	---	X10206P
EMS Express Configuration		
Dell Precision 3420	---	3420
Dell Monitor	---	P2419H
Dell Network Switch	---	X1008
entral canning evice omponents		
ImageCast Central	5.5.3.0002	---
Canon DR-G1130 Scanner	---	DR-G1130
Canon DR-M160II Scanner	---	DR-M160II
Dell Optiplex 3050AIO Computer	Windows 10 Pro	3050AIO
ompliant allot Mar ing evice		
Avalue ImageCast X Prime 21" BMD	5.5.10.30	HID-21V
HP M402dne Printer	---	M402dne
e oll oo olution		
KNOWiNK Poll Pad	---	iPad Air Rev. 2
KNOWiNK ePulse Epoll Data Management System	---	---

2.1 Testing Configuration

The following is a breakdown of the D-Suite 5.5-A Voting System components and configurations for the test setup:

Standard Testing Platform (D-Suite 5.5-A):

The system will be configured in the EMS Standard configuration with an Adjudication

The precinct polling station setup will consist of ImageCast X Prime 21" BMD's and ImageCast Precinct tabulators with plastic ballot boxes. The ImageCast X Prime 21" BMD's will be set up as accessible voting stations.

The KNOWiNK Epollbook solution consisting of the Poll Pad and ePulse Epoll data management system, will be setup and interfaced as required with the EMS Standard configuration.

Dominion Voting Systems is expected to provide all previously identified software and equipment necessary for the test campaign along with the supporting materials listed in section 2.2. The State of Georgia is providing the election definitions and ballots.

Express Testing Platform (D-Suite 5.5-A):

The system will be configured in the EMS Express configuration. This platform will be used to test all scenarios as provided by the election definition.

The central office setup will be an EMS Express configuration accompanied by both Canon DR-G1130 and Canon DR-M160II Central Scan tabulators and their associated PC's.

The precinct polling station setup will consist of ImageCast X Prime 21" BMD's and ImageCast Precinct tabulators with plastic ballot boxes. The ImageCast X Prime 21" BMD's will be set up as accessible voting stations.

The KNOWiNK Epollbook solution consisting of the Poll Pad and ePulse Epoll data management system, will be setup and interfaced as required with the EMS Standard configuration.

Dominion Voting Systems provided all previously identified software and equipment necessary for the test campaign along with the supporting materials ,election definitions, and ballots

2.2 Test Support Equipment/Materials

The following materials, if required, were supplied by Dominion Voting Systems to facilitate testing:

- USB Flash Drives

- Ballot Paper
- Marking Devices
- Pressurized air cans
- Lint-free cloth
- Cleaning pad and isopropyl alcohol
- Labels
- Other materials and equipment as required

3 TEST PROCESS AND RESULTS

The following sections outline the test process that was followed to evaluate the D-Suite 5.5-A Voting System under the scope defined in Section 1.5.

3.1 General Information

All testing was conducted under the guidance of Pro V&V by personnel verified by Pro V&V to be qualified to perform the testing. The examination was performed at the Pro V&V, Inc. test facility located in Cummings Research Park, Huntsville, AL.

3.2 Testing Initialization

Prior to execution of the required test scenarios, the systems under test underwent testing initialization to establish the baseline for testing and ensure that the testing candidate matched the expected testing candidate and that all equipment and supplies were present.

The following were completed during the testing initialization:

- Ensure proper system of equipment. Check connections, power cords, keys, etc.
- Check version numbers of (system) software and firmware on all components.
- Verify the presence of only the documented COTS.
- Ensure removable media is clean
- Ensure batteries are fully charged.
- Inspect supplies and test decks

- Retain proof of version numbers.

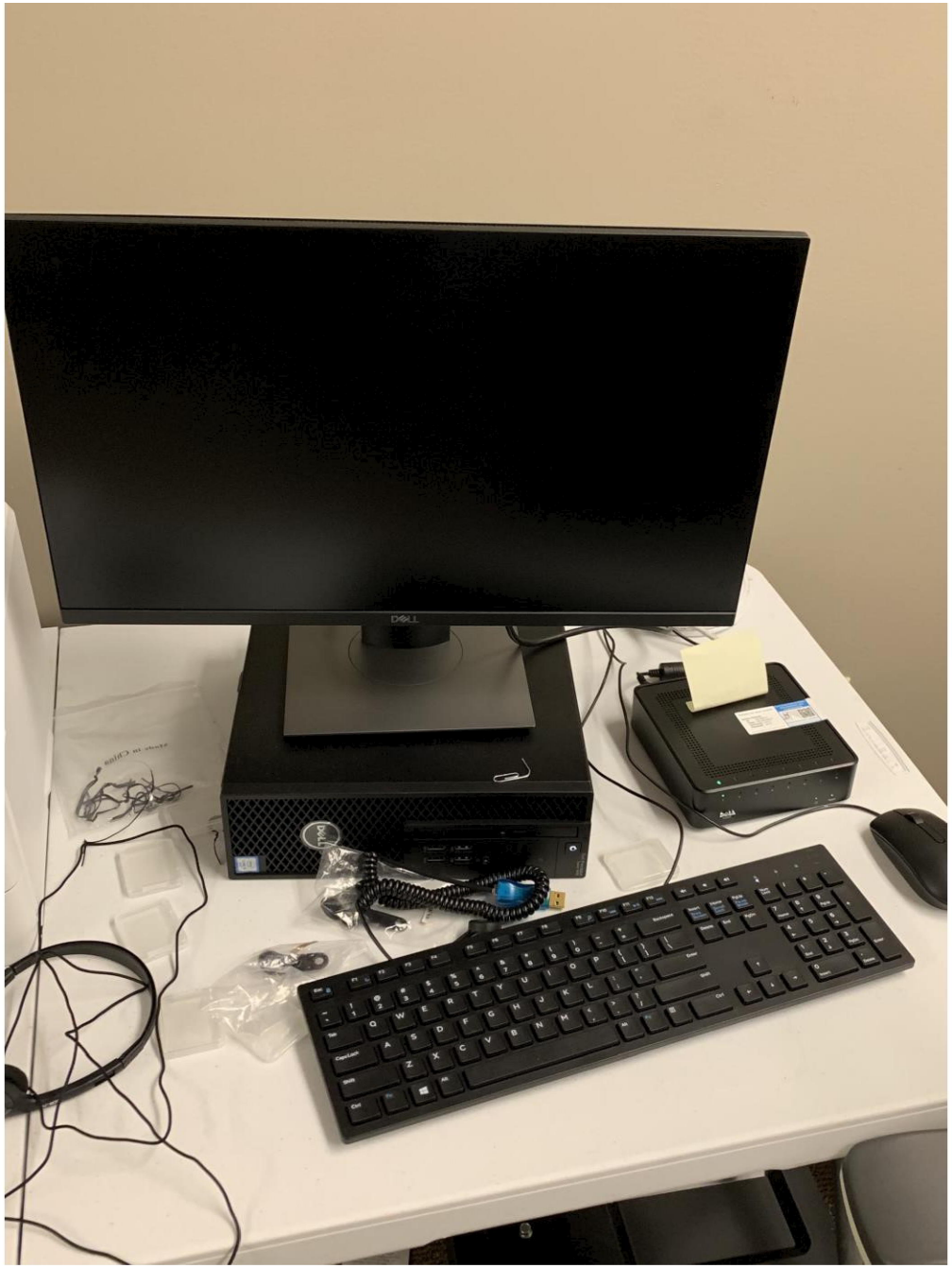
3.3 Summary Findings

The voting system was evaluated against the requirements set forth for voting systems by the State of Georgia. A Conditions of Satisfaction Checklist was developed based on each identified test requirements. Throughout the test campaign, Pro V&V executed tests, inspected resultant data and performed technical documentation reviews to ensure that each applicable requirement was met. The Conditions of Satisfaction Checklist is presented in Section 4 of this test report. The Summary Findings from each area of evaluation are presented in the following sections.

3.3.1 Physical Configuration Audit (PCA) and Setup

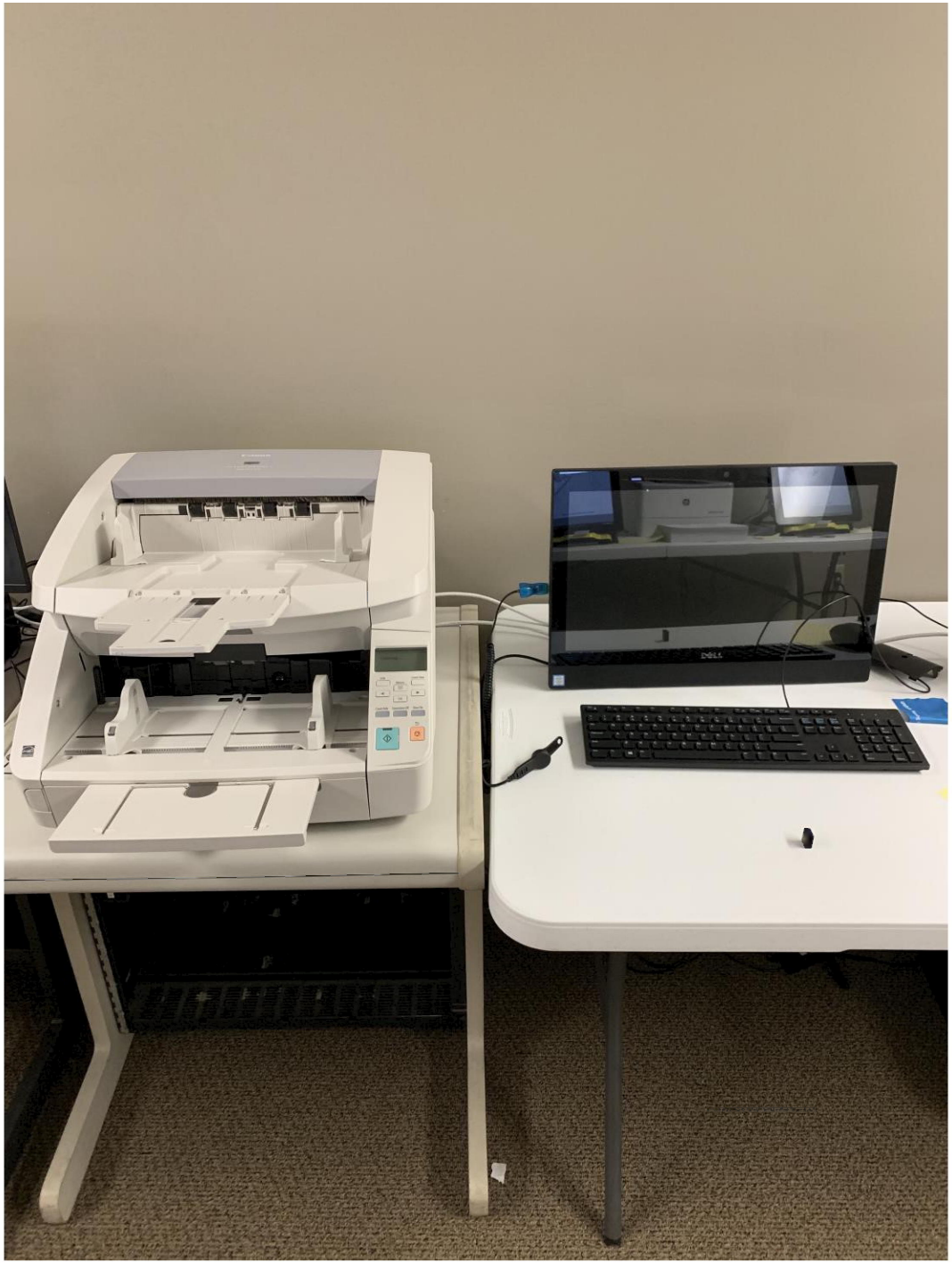
Prior to test initiation, the D-Suite 5.5-A Voting System was subjected to a Physical Configuration Audit (PCA) to baseline the system and ensure all items necessary for testing were present. This process included validating that the hardware and software components received for testing matched hardware and software components proposed and demonstrated to the State during the RFP process. This process also included validating that the submitted components matched the software and hardware components which have obtained EAC certification to the Voluntary Voting System Guidelines (VVSG) Standard 1.0, by comparing the submitted components to the published EAC Test Report. The system was then setup as designated by the manufacturer supplied Technical Documentation Package (TDP).

Photographs of the system components, as configured for testing, are presented below:

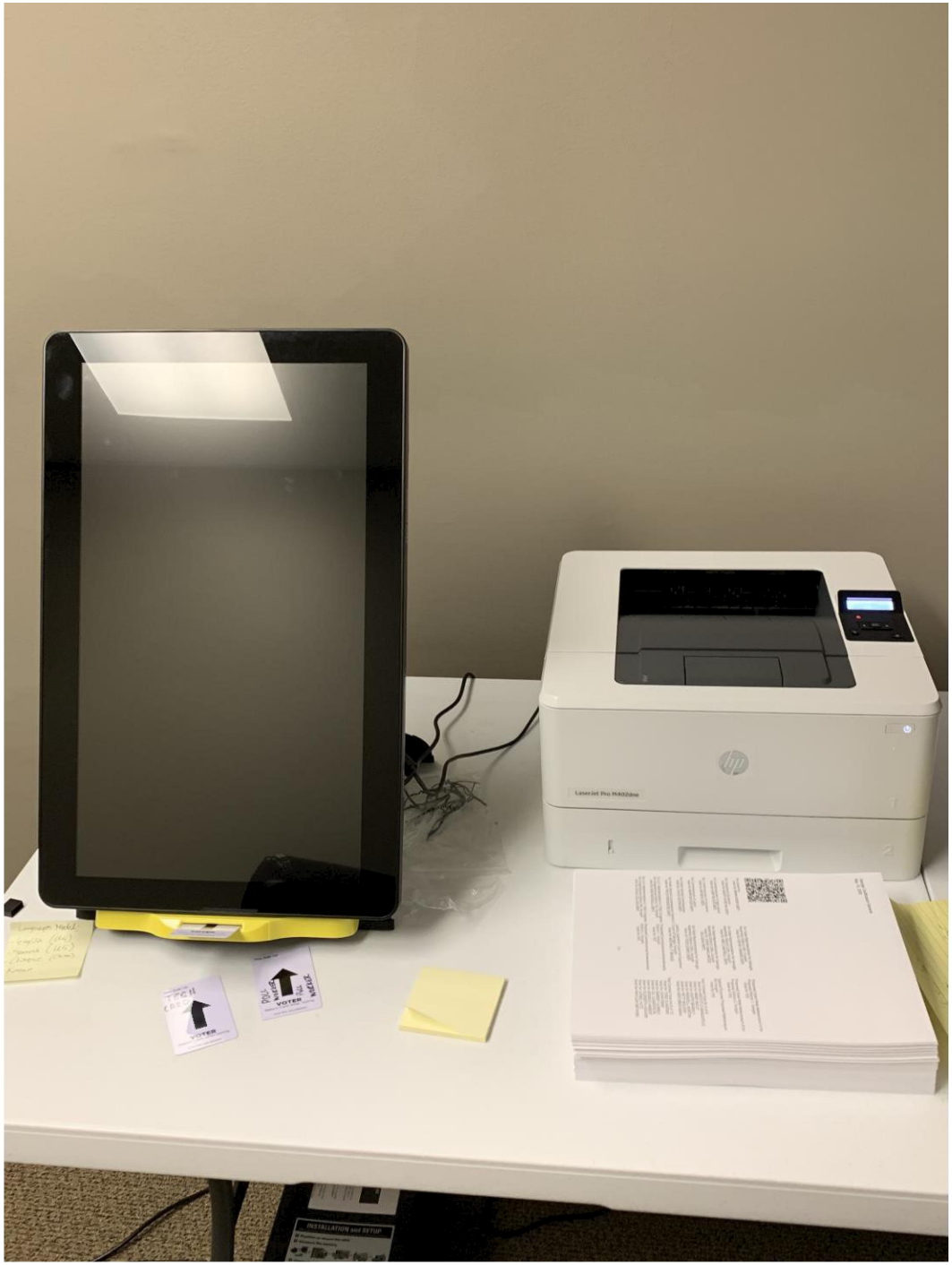


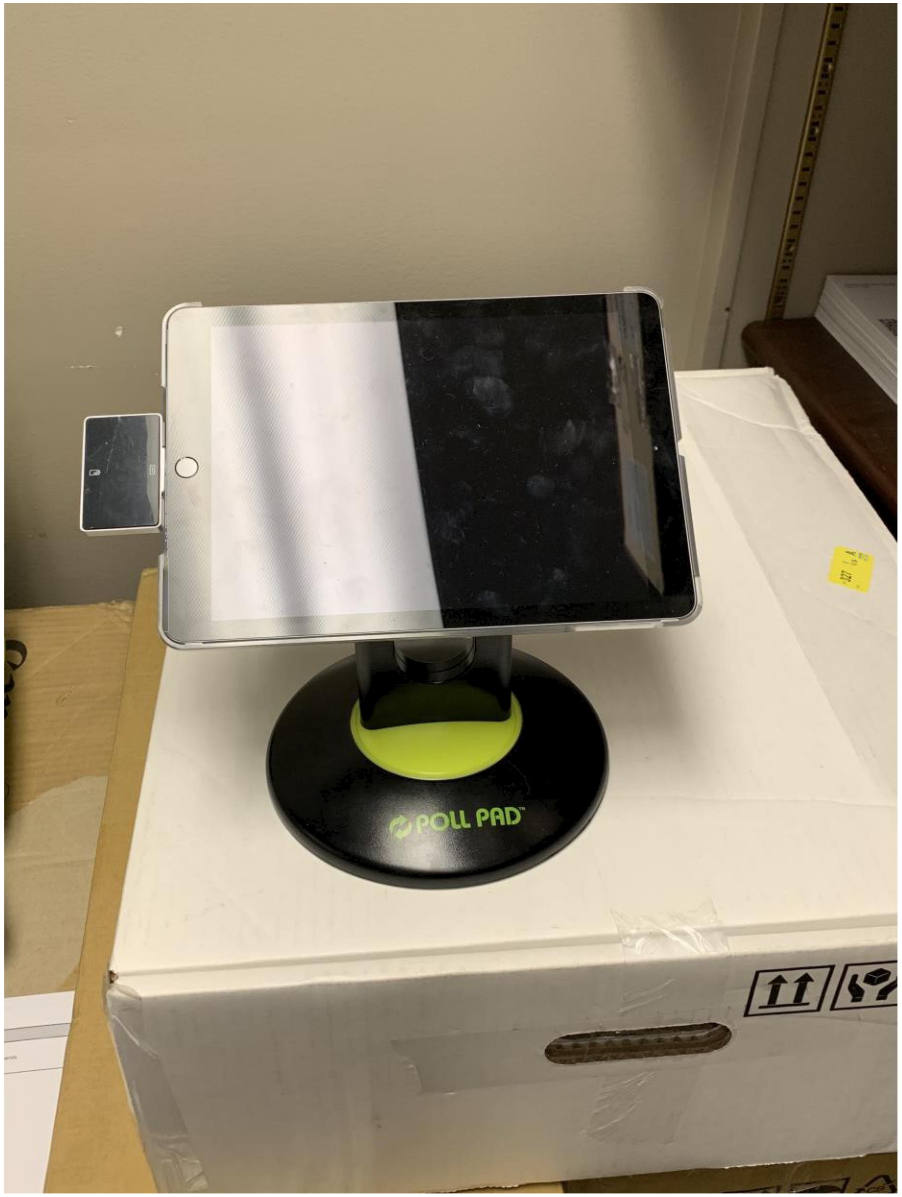
Photograph 1: EMS Express Configuration

Photograph 2: EMS Standard Configuration




DELL
Canon


VOTER
VOTER



Photograph 6: ePollbok

A pre-certification election was then loaded and an Operational Status Check was performed to verify satisfactory system operation. The Operational Status Check consisted of processing ballots and verifying the results obtained against known expected results from pre-determined

Summary Findings

During execution of the test procedure, the components of the D-Suite 5.5-A system were documented by component name, model, serial number, major component, and any other relevant information needed to identify the component. For COTS equipment, every effort was made to verify that the COTS equipment had not been modified for use. Additionally, the Operational Status Check was successfully completed with all actual results obtained during test execution matching the expected results.

3.3.2 System Level Testing

System Level Testing included the Functional Configuration Audit (FCA), the Accuracy Test, the Volume and Stress Test, and the System Integration Test. This testing included all proprietary components and COTS components (software, hardware, and peripherals).

During System Level Testing, the system was configured exactly as it would for normal field use per the manufacturer. This included connecting the supporting equipment and peripherals.

3.3.2.1 Functional Configuration Audit (FCA)

The Functional Configuration Audit (FCA) encompassed an examination of the system to the requirements set forth by the State of Georgia Election Systems Certification Program as designed in the Test Plan, and which are included in this report in the Conditions of Satisfaction Checklist.

Summary Findings

The D-Suite 5.5-A system successfully passed the FCA Tests without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.2.2 Accuracy Testing

The Accuracy Test ensured that each component of the voting system could process at least 1,549,703 consecutive ballot positions correctly within the allowable target error rate. The Accuracy Test is designed to test the ability of the system to "capture, record, store, consolidate and report" specific selections and absences of a selection. The required accuracy is defined as

Summary Findings

The D-Suite 5.5-A system successfully passed the Accuracy Test. It was noted during test performance that the ICP under test experienced a memory lockup after scanning approximately 4500 ballots. The issue was presented to Dominion for resolution. Dominion provided the following analysis of the issue:

The ICP uClinux operating system does not have a memory management unit (MMU) and, as such, it can be susceptible to memory fragmentation. The memory allocation services within the ICP application are designed to minimize the effects of memory fragmentation. However, if the ICP scans a large number of ballots (over 4000), without any power cycle, it can experience a situation where the allocation of a large amount of memory can fail at the Operating System level due to memory fragmentation across the RAM. This situation produces an error message on the ICP which requires the Poll Worker to power cycle the unit, as documented. Once restarted, the ICP can continue processing ballots without issue. All ballots scanned and counted prior to the power cycle are still retained by the unit; there is no loss in data.

Pro V&V performed a power cycle, as instructed by Dominion, and verified that the issue was resolved and that the total ballot count was correct. Scanning then resumed with no additional issues noted.

A total of 1,569,640 voting positions were processed on the system with all actual results verified against the expected results. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.2.3 Volume and Stress Testing

The Volume & Stress Tests consisted of tests designed to investigate the system's ability to meet the requirement limits and conditions set forth by the State of Georgia Election Systems Certification Program as designed in the Test Plan, and which are included in this report in the Conditions of Satisfaction Checklist.

Summary Findings

The D-Suite 5.5-A system successfully passed the Volume and Stress Tests without any noted issues. The individual testing requirements and their results can be seen in the included

3.3.2.4 System Integration Test

System Integration is a system level test that evaluates the integrated operation of both hardware and software. System Integration tests the compatibility of the voting system software components, or subsystems, with one another and with other components of the voting system environment. This functional test evaluates the integration of the voting system software with the remainder of the system.

During test performance, the system was configured as it would be for normal field use, with a new election created on the EMS and processed through the system components to final results.

Summary Findings

The D-Suite 5.5-A system successfully passed the System Integration Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.3 e-Pollbook Testing

The ePolllbook Test evaluated the ability of the designated ePollbook to produced voter activation cards that could be successfully processed by the BMD.

Summary Findings

The D-Suite 5.5-A system successfully passed the ePollbook Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of Satisfaction Checklist.

3.3.4 Ballot Copy Testing

The Ballot Copy Test evaluated the ability of a photocopy of a ballot produced by the system to be successfully processed by the system's tabulators.

Summary Findings

The D-Suite 5.5-A system successfully passed the Ballot Copy Test without any noted issues. The individual testing requirements and their results can be seen in the included Conditions of

3.3.5 Trusted Build and Software Hash Delivery

At test campaign conclusion, HASH signatures and software installation packets of the tested software were generated for delivery to the State of Georgia.

4 Conditions of Satisfaction

The voting system was evaluated against the requirements set forth for voting systems by the EAC 2005 VVSG and the State of Georgia. Throughout this test campaign, Pro V&V executed tests, inspected resultant data and performed technical documentation reviews to ensure that each applicable requirement was met. The Conditions of Satisfaction Checklist developed for this test campaign is presented in Table 4-1.

Table 4-1 Conditions of Satisfaction Checklist

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Single FCA Test Election database(s) containing Republican and Democratic Primaries (Open Primary) and one Non-Partisan election	PASS
FCA	Database is being built for a single county jurisdiction	PASS
FCA	Republican Primary = 5 Races (1 statewide, 2 countywide, 3 county district level)	PASS
FCA	Democratic Primary = 5 Races (1 statewide, 1 countywide, 1 state district level, 2 county district level)	PASS
FCA	Non-Partisan Election = 1 Race (1 statewide)	PASS
FCA	Republican and Democratic races contain 1 to 8	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Non-Partisan race contains 4 candidates and 1 write-in	PASS
FCA	All races are Vote for One	PASS
FCA	County contains 5 Precincts, for results reporting purposes	PASS
FCA	Each precinct is split at both state district and county district level	PASS
FCA	Election Day Voting [4 total], 1 Vote Center containing 2 precincts	PASS
FCA	Election Day Voting [4 total], 3 Polling Locations containing 1 precinct each	PASS
FCA	Advance Voting [2 total], Each polling location houses all 5 Precincts	PASS
FCA	Prepare election media from EMS to program PPS's (Polling Place Scanners) and BMD's for Advance Voting Polling locations	PASS
FCA	Prepare election media from EMS to program PPS's and BMD's for Election Day Polling locations	PASS
FCA	Prepare election media from EMS to program CSD's (Central Scan Devices) system for processing of mail-out absentee ballots and provisional ballots	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Prepare election media from EMS to program CSD's for processing Advance Voting ballots generated by BMDs	PASS
FCA	Prepare election media from EMS to program CSD's for processing Election Day ballots generated by BMDs	PASS
FCA	Produce watermarked Sample ballots for public distribution	PASS
FCA	Prepare a test deck (Deck 1) of voted ballots with a known result using all available vote positions on all ballot styles generated by the test scenario, including write-ins, overvotes, undervotes, and blank ballots.	PASS
FCA	Prepare an Absentee test deck (Deck 2) of voted absentee ballots with a known result, to be used on the CSD, including write-ins, overvoted races, and blank ballots.	PASS
FCA	Vote test deck (Deck 1) on each BMD and print BMD ballots for each ballot in the test deck	PASS
FCA	Scan ballots created from the BMD's into the associated PPS's	PASS
FCA	Scan the Absentee test deck (Deck 2) on the CSD and confirm the CSD separates ballots by various conditions for physical review when scanning (i.e..	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
FCA	Prepare printouts from PPS's documenting results tabulated and verify them against test deck	PASS
FCA	Prepare printouts from CSD documenting results tabulates and verify them against test deck	PASS
FCA	Scan ballots created from BMD's on the CSD	PASS
FCA	Prepare printouts from CSD documenting results tabulated and verify them against Absentee test deck (Deck 2)	PASS
FCA	Upload to EMS the election media used in PPS and CSD devices	PASS
FCA	Prepare printouts from EMS documenting the results tabulated and verify them against test deck contents	PASS
FCA	Prepare printouts documenting results at various reporting levels:	PASS
FCA	Prepare printouts documenting results at various reporting levels: Precinct	PASS
FCA	Prepare printouts documenting results at various reporting levels: Polling Place	PASS
FCA	Prepare printouts documenting results at various reporting levels: vote Type	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	General election	PASS
Accuracy	21 Contests in election	PASS
Accuracy	2 Column Ballot	PASS
Accuracy	5 Precincts	PASS
Accuracy	Election is produced at County Level	PASS
Accuracy	No Counting Groups	PASS
Accuracy	Incumbency is supported	PASS
Accuracy	No Straight Party Voting	PASS
Accuracy	Non-Partisan contests only (Candidates are not directly linked to parties, but are labeled by party on the ballot)	PASS
	Parties (for labeling purposes): o Democratic	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	Write-Ins present in all races	PASS
Accuracy	Proposed State Wide Referendums	PASS
Accuracy	Advance Voting (Early Voting)	PASS
Accuracy	Elections for Judges are Non-Partisan	PASS
Accuracy	N of M Voting o Test N of M – 6 of 8 o Test N of M – 8 of 10	PASS
Accuracy	1000 Ballots printed from BMD using 3 units as follows (Unit 1: 250 ballots, unit 2: 250 ballots, unit 3: 500 ballots)	PASS
Accuracy	Run the Accuracy Test Election on BMD & Verify results against known expected results	PASS
Accuracy	Run the Accuracy Test Election on PPS & Verify results against known expected results	PASS
Accuracy	Run the Accuracy Test Election on CSD & Verify results against known expected results	PASS
Accuracy	Reporting: Winners: Contest reports review	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
Accuracy	Election Night Reporting: Export Election Night Results in the following formats: o Common Data Format (CDF)	PASS
Accuracy	Election Night Reporting: Export Election Night Results in the following formats: o Non-CDF	PASS
Accuracy	Accuracy in ballot counting and tabulation shall achieve 100% for all votes cast (1,549,703 ballot positions)	PASS
V&S	Volume & Stress Open Primary Election	PASS
V&S	400 Precincts	PASS
V&S	1 County	PASS
V&S	150 Ballot Styles	PASS
V&S	30 Ballot Styles in 1 Precinct	PASS
V&S	3 Languages (English, Spanish, Korean)	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
V&S	30 candidates in 1 contest	PASS
V&S	Referendum (Approximately 15000 words)	PASS
V&S	Referendum: Test using 10pt Arial Font (Currently used in State of Georgia)	PASS
V&S	Referendum: Test using 12pt Sans Serif font (To Accommodate future changes)	PASS
V&S	Referendum: Verify at Normal Size	PASS
V&S	Referendum: Verify when Zoomed-In (Text size increased)	PASS
V&S	Candidate Name Lengths – (Must support 25 characters) – Verify to make sure they display properly	PASS
V&S	Candidate Name Lengths – Check Translations	PASS
V&S	Candidate Name Lengths – Check appearance on BMD Printed Ballot	PASS
V&S	Candidate Name Lengths – Check appearance on Ballot Review Screen	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
V&S	Tabulator Reports – Tabulators print 3 copies of Zero Proof Reports, and Results Reports	PASS
V&S	Run the V&S Test Election on BMD & Verify results against known expected results	PASS
V&S	Run the V&S Test Election on PPS & Verify results against known expected results	PASS
V&S	Run the V&S Test Election on CSD & Verify results against known expected results	PASS
V&S	Reporting: Winners: Contest reports review	PASS
V&S	Reporting: Results: Precinct summary reports, precinct-based reporting, reporting by Congressional District Level	PASS
Epollbook	Verify that the Pollbook can program voter activation cards for BMD	PASS
Epollbook	Verify that voter activation cards activate the correct ballot styles when used on the BMD's	PASS
Ballot Copy	Verify whether or not a ballot produced by the BMD, can be photocopied, and then have the photocopied ballot be successfully cast on:	PASS

Table 4-1 Conditions of Satisfaction Checklist *(continued)*

DOMINION Conditions of Satisfaction Checklist		
Area	**Condition**	**Test Result**
System Integration	Run the SI Test Election on BMD & Verify results against known expected results	PASS
System Integration	Run the SI Test Election on PPS & Verify results against known expected results	PASS
System Integration	Run the SI Test Election on CSD & Verify results against known expected results	PASS
System Integration	Reporting: Winners: Contest reports review	PASS
System Integration	Reporting: Results: Precinct summary reports, precinct-based reporting, reporting by Congressional District Level	PASS

IN THE UNITED STATES DISTRICCT COURT, NORTHERN DISTRCOICT OF GEORGIA, ATLANTA DIVISION

CORECO JA'QAN PEARSON, VIKKI TOWNSEND CONSIGLIO, GLORIA KAY GODWIN, JAMES KENNETH CARROLL, , CAROLYN HALL FISHER, CATHLEEN ALSTON LATHAM, and BRIAN JAY VAN GUNDY, **Plaintiffs.** **v.** **BRIAN KEMP, in his official capacity as Governor of Georgia, BRAD RAFFENSPERGER, in his official capacity as Secretary of State and Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a member of the Georgia State Election Board, REBECCA N.SULLIVAN, in her official capacity as a member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board, and ANH LE, in her official capacity as a member of the Georgia State Election Board,** **Defendants.**	**CASE NO.**

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

EXHIBIT F

NATURE OF THE ACTION

This civil action brings to light a massive election fraud, multiple violations of Georgia laws, including O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1 and §21-2-522, and multiple Constitutional violations, as shown by fact witnesses to specific incidents, multiple expert witnesses and the sheer mathematical impossibilities found in the Georgia 2020 General Election.[1]

1.

As a civil action, the plaintiff's burden of proof is a "preponderance of the evidence" to show, as the Georgia Supreme Court has made clear that, *"[i]t was not incumbent upon [Plaintiff] to show how the [] voters would have voted if their [absentee] ballots had been regular. [Plaintiff] only had to show that there were enough irregular ballots to place in doubt the result."* *Mead v. Sheffield*, 278 Ga. 268, 272, 601 S.E.2d 99, 102 (2004) (*citing Howell v. Fears*, 275 Ga. 627, 571 S.E.2d 392 (2002).

[1] The same pattern of election fraud and voter fraud writ large occurred in all the swing states with only minor variations, see expert reports, regarding Michigan, Pennsylvania, Arizona and Wisconsin. (See William M. Briggs Decl., attached here to as Exh. 1, Report with Attachment). Indeed, we believe that in Arizona at least 35,000 votes were illegally added to Mr. Biden's vote count.

2.

The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to make certain the election of Joe Biden as President of the United States.

3.

The fraud was executed by many means,[2] but the most fundamentally troubling, insidious, and egregious is the systemic adaptation of old-fashioned "ballot-stuffing." It has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose. Mathematical and statistical anomalies rising to the level of impossibilities, as shown by affidavits of multiple witnesses, documentation, and expert testimony evince this scheme across the state of Georgia. Especially egregious conduct arose in Forsyth, Paulding, Cherokee, Hall, and Barrow County. This scheme and artifice to defraud affected tens of thousands of votes in Georgia alone and "rigged" the election in Georgia for Joe Biden.

[2] 50 USC § 20701 requires Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation, but as will be shown wide pattern of misconduct with ballots show preservation of election records have not been kept; and Dominion logs are only voluntary, with no system wide preservation system.

4.

The massive fraud begins with the election software and hardware from Dominion Voting Systems Corporation ("Dominion") only recently purchased and rushed into use by Defendants Governor Brian Kemp, Secretary of State Brad Raffensperger, and the Georgia Board of Elections. Sequoia voting machines were used in 16 states and the District of Colombia in 2006. Smartmatic, which has revenue of about $100 million, focuses on Venezuela and other markets outside the U.S. [3]

After selling Sequoia, Smartmatic's chief executive, Anthony Mugica. Mr. Mugica said, he hoped Smartmatic would work with Sequoia on projects in the U.S., though Smartmatic wouldn't take an equity stake." Id.

5.

Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. (*See* Redacted whistleblower affiant*, attached as Exh*. 2) Notably, Chavez "won" every election thereafter.

[3] *See WSJ.com, Smartmatic to Sell U.S. Unit, End Probe into Venezuelan Links, by Bob Davis, 12/22/2006,* h*ttps://www.wsj.com/articles/SB116674617078557263*

6.

As set forth in the accompanying whistleblower affidavit, the Smartmatic software was designed to manipulate Venezuelan elections in favor of dictator Hugo Chavez:

> Smartmatic's electoral technology was called "Sistema de Gestión Electoral" (the "Electoral Management System"). Smartmatic was a pioneer in this area of computing systems. Their system provided for transmission of voting data over the internet to a computerized central tabulating center. The voting machines themselves had a digital display, fingerprint recognition feature to identify the voter, and printed out the voter's ballot. The voter's thumbprint was linked to a computerized record of that voter's identity. Smartmatic created and operated the entire system.

7.

A *core requirement* of the Smartmatic software design was the *software's ability to hide its manipulation of votes from any audit.* As the whistleblower explains:

> Chavez was most insistent that Smartmatic design the system in a way that the system could change the vote of each voter without being detected. He wanted the software itself to function in such a manner that if the voter were to place their thumb print or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity as having voted, but that voter would not be tracked to the changed vote. He made it clear that the system would have to be setup to not leave any evidence of the changed vote for a specific voter and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumb print was going with a changed vote. Smartmatic agreed to create such a system and produced the software and hardware that

accomplished that result for President Chavez. (See Id., see also Exh. 3, Aff. Cardozo, attached hereto)).

8.

The design and features *of* the Dominion software do not permit a simple audit to reveal its misallocation, redistribution, or deletion of votes. First, the system's central accumulator does not include a protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the system utilize unprotected logs. Essentially this allows an unauthorized user the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events that do not reflect actual voting tabulations—or more specifically, do not reflect the actual votes of or the will of the people. (*See* Hursti August 2019 Declaration, attached hereto as Exh. 4, at pars. 45-48; and attached hereto, as Exh. 4B, October 2019 Declaration in Document 959-4, at p. 18, par. 28).

9.

Indeed, under the professional standards within the industry in auditing and forensic analysis, when a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log. There is incontrovertible physical evidence that the standards of physical security of the voting machines and the software were breached, and machines were connected to

the internet in violation of professional standards and state and federal laws. (*See Id.)*

10.

Moreover, lies and conduct of Fulton County election workers about a delay in voting at State Farm Arena and the reasons for it evince the fraud.

11.

Specifically, video from the State Farm Arena in Fulton County shows that on November 3rd after the polls closed, election workers falsely claimed a water leak required the facility to close. All poll workers and challengers were evacuated for several hours at about 10:00 PM. However, several election workers remained unsupervised and unchallenged working at the computers for the voting tabulation machines until after 1:00 AM.

12.

Defendants Kemp and Raffensperger rushed through the purchase of Dominion voting machines and software in 2019 for the 2020 Presidential Election[4]. A certificate from the Secretary of State was awarded to Dominion

[4] Georgia Governor Inks Law to Replace Voting Machines, The Atlanta Journal-Constitution, AJC News Now, Credit: Copyright 2019 The Associated Press, June 2019. https://www.ajc.com/blog/politics/georgia-governor-inks-law-replace-voting-machines/xNXs0ByQAOvtXhd27kJdqO/

Voting Systems but is undated. (*See* attached hereto Exh. 5, copy Certification for Dominion Voting Systems from Secretary of State). Similarly a test report is signed by Michael Walker as Project Manager but is also undated. (See Exh. 6, Test Report for Dominion Voting Systems, Democracy Suite 5-4-A)

13.

Defendants Kemp and Raffensperger disregarded all the concerns that caused Dominion software to be rejected by the Texas Board of Elections in 2018, namely that it was vulnerable to undetected and non-auditable manipulation. An industry expert, Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has recently observed, with reference to Dominion Voting machines: "I figured out how to make a slightly different computer program that just before the polls were closed, it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with it and a screwdriver." (Attached hereto Exh. 7, Study, Ballot-Marking Devices (BMDs) Cannot Assure the Will of the Voters by Andrew W. Appel Princeton University, Richard A. DeMillo, Georgia Tech Philip B. Stark, for the Univ. of California, Berkeley, December 27, 2019).[5]

[5] Full unredacted copies of all exhibits have been filed under seal with the Court and Plaintiffs have simultaneously moved for a protective order.

14.

As explained and demonstrated in the accompanying redacted declaration of a former electronic intelligence analyst under 305th Military Intelligence with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent US general election in 2020. This Declaration further includes a copy of the patent records for Dominion Systems in which Eric Coomer is listed as the first of the inventors of Dominion Voting Systems. (See Attached hereto as Exh. 8, copy of redacted witness affidavit, 17 pages, November 23, 2020).

15.

Expert Navid Keshavarez-Nia explains that US intelligence services had developed tools to infiltrate foreign voting systems including Dominion. He states that Dominion's software is vulnerable to data manipulation by unauthorized means and permitted election data to be altered in all battleground states. He concludes that hundreds of thousands of votes that were cast for President Trump in the 2020 general election were transferred to former Vice-President Biden. (Exh. 26).

16.

Additionally, incontrovertible evidence Board of Elections records demonstrates that at least 96,600 absentee ballots were requested and counted but were never recorded as being returned to county election boards by the voter. *Thus, at a minimum, 96,600 votes must be disregarded.* (See Attached hereto, Exh. 9, R. Ramsland Aff.).

17.

The Dominion system used in Georgia erodes and undermines the reconciliation of the number of voters and the number of ballots cast, such that these figures are permitted to be unreconciled, opening the door to ballot stuffing and fraud. The collapse of reconciliation was seen in Georgia's primary and runoff elections this year, and in the November election, where it was discovered during the hand audit that 3,300 votes were found on memory sticks that were not uploaded on election night, plus in Floyd county, another 2,600 absentee ballots had not been scanned. These "found votes" reduced Biden's lead over Donald Trump[6].

[6] *Recount find thousands of Georgia votes*, Atlanta Journal-Constitution by Mark Niesse and David Wickert,11/19/20. https://www.ajc.com/politics/recount-finds-thousands-of-georgia-votes-missing-from-initial-counts/ERDRNXPH3REQTM4SOINPSEP72M/

18.

Georgia's election officials and poll workers exacerbated and helped, whether knowingly or unknowingly, the Dominion system carry out massive voter manipulation by refusing to observe statutory safeguards for absentee ballots. Election officials failed to verify signatures and check security envelopes. They barred challengers from observing the count, which also facilitated the fraud.

19.

Expert analysis of the actual vote set forth below demonstrates that at least 96,600 votes were illegally counted during the Georgia 2020 general election. All of the evidence and allegation herein is more than sufficient to place the result of the election in doubt. More evidence arrives by the day and discovery should be ordered immediately.

20.

Georgia law, (OCGA 21-5-552) provides for a contest of an election where:

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

21.

As further set forth below, all of the above grounds have been satisfied and compel this Court to set aside the 2020 General Election results which fraudulently concluded that Mr. Biden defeated President Trump by 12,670 votes.

22.

Separately, and independently, there are sufficient Constitutional grounds to set aside the election results due to the Defendants' failure to observe statutory requirements for the processing and counting of absentee ballots which led to the tabulation of more than fifty thousand illegal ballots.

THE PARTIES

23.

Plaintiff Coreco Ja'Qan ("CJ") Pearson, is a registered voter who resides in Augusta, Georgia. He is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia. He has standing to bring this action under *Carson v. Simon*, 2020 US App Lexis 34184 (8th Cir. Oct. 29, 2020). He brings this action to set aside and decertify the election results for the Office of President of the United States that was certified by the Georgia Secretary of State on November 20, 2020. The certified results showed a plurality of 12,670 votes in favor of former Vice-President Joe Biden over President Trump.

24.

Plaintiff Vikki Townsend Consiglio, is a registered voter who resides in Henry County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

25.

Plaintiff Gloria Kay Godwin, is a registered voter who resides in Pierece County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

26.

Plaintiff James Kenneth Carroll, is a registered voter who resides in Dodge County, Georgia. He is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

27.

Plaintiff Carolyn Hall Fisher, is a registered voter who resides in Forsyth County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

28.

Plaintiff Cathleen Alston Latham, is a registered voter who resides in Coffee County, Georgia. She is a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Georgia.

29.

Plaintiff Jason M. Shepherd is the Chairman of the Cobb County Republican Party and brings this action in his official capacity on behalf of the Cobb County Republican Party.

30.

Plaintiff Brian Jay Van Gundy is registered voter in Gwinnett County, Georgia. He is the Assistant Secretary of the Georgia Republican Party.

31.

Defendant Governor Brian Kemp (Governor of Georgia) is named herein in his official capacity as Governor of the State of Georgia. On or about June 9, 2019, Governor Kemp bought the new Dominion Voting Systems for Georgia, budgeting 150 million dollars for the machines. Critics are quoted, "Led by Abrams, Democrats fought the legislation and pointed to cybersecurity experts who warned it would leave Georgia's elections susceptible to hacking and tampering." And "Just this week, the Fair Fight voting rights group started by [Stacy] Abrams launched a television ad critical of the bill. In a statement Thursday, the group called it "corruption at its worst" and a waste of money on "hackable voting machines."[7]

[7] *Georgia Governor Inks Law to Replace Voting Machines*, The Atlanta Journal-Constitution, AJC News Now, Credit: Copyright 2019 The Associated Press, June 2019

32.

Defendant Brad Raffensperger ("Secretary Raffensperger") is named herein in his official capacity as Secretary of State of the State of Georgia and the Chief Election Official for the State of Georgia pursuant to Georgia's Election Code and O.C.G.A. § 21-2-50. 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). 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 further responsible for the administration of the state laws affecting voting, including the absentee voting system. *See* O.C.G.A. § 21-2-50(b).

33.

Defendants Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board") are members of the State Election Board in Georgia, responsible for "formulating, adopting, and promulgating 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). The State Election Board, personally and through the conduct of the Board's employees, officers, agents, and servants, acted under color of state law at all times relevant to this action and are sued for emergency declaratory and injunctive relief in their official capacities.

JURISDICTION AND VENUE

34.

This Court has subject matter jurisdiction under 28 U.S.C. 1331 which provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

35.

This Court also has subject matter jurisdiction under 28 U.S.C. 1343 because this action involves a federal election for President of the United States. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); *Smiley v. Holm*, 285 U.S. 355, 365 (1932).

36.

The jurisdiction of the Court to grant declaratory relief is conferred by 28 U.S.C. 2201 and 2202 and by Rule 57 and 65, Fed. R. Civ. P. 7.

37.

This Court has jurisdiction over the related Georgia Constitutional claims and State law claims under 28 U.S.C. 1367.

38.

In Georgia, the "legislature" is the General Assembly. *See* Ga. Const. Art. III, § I, Para. I.

39.

Because the United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary Raffensperger, have no authority to exercise that power unilaterally, much less flout existing legislation or the Constitution itself.

STATEMENT OF FACTS

40.

Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988, and under Georgia law, O.C.G.A. § 21-2-522 to remedy deprivations of rights,

privileges, or immunities secured by the Constitution and laws of the United States and to contest the election results.

41.

The United States Constitution sets forth the authority to regulate federal elections, the Constitution provides:

> 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 ("Elections Clause").

42.

With respect to the appointment of presidential electors, the Constitution provides: Each 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 the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. U.S. CONST. art. II, § 1 ("Electors Clause").

43.

Neither Defendant is a "Legislature" as required under the Elections Clause or Electors Clause. The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley* 285 U.S. 365. Regulations of congressional and presidential elections, thus, "must be in accordance with

the method which the state has prescribed for legislative enactments." Id. at 367; see also *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 135 S. Ct. 2652, 2668 (U.S. 2015).

44.

While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," *Ariz. State Legislature,* 135 S. Ct. at 2677, it does hold states accountable to their chosen processes when it comes to regulating federal elections, *id.* at 2668. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush,* 531 U.S. at 113 (Rehnquist, C.J., concurring); *Smiley,* 285 U.S. at 365.

45.

Plaintiffs also bring this action under Georgia law, O.C.G.A. § 21-2-522, Grounds for Contest:

> A result of a primary or election may be contested on one or more of the following grounds:
>
> (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.

46.

Under O.C.G.A. § 21-2-10, Presidential Electors are elected.

47.

Under O.C.G.A. § 21-2-386(a)(l)(B), the Georgia Legislature instructed the county registrars and clerks (the "County Officials") to handle the absentee ballots as directed therein. The Georgia Legislature set forth the procedures to be used by each municipality for appointing the absentee ballot clerks to ensure that such clerks would "perform the duties set forth in this Article." *See* O.C.G.A. § 21-2-380.1.

48.

The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

> 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)(l)(B) (emphasis added).

49.

Under O.C.G.A. § 21-2-386(a)(l)(C), the Georgia Legislature also established a clear and efficient process to be used by County Officials if they determine that an elector has failed to sign the oath on the outside envelope enclosing the ballot or that the signature does not conform with the signature on file in the registrar's or clerk's office (a "defective absentee ballot").

50.

The Georgia Legislature also provided for the steps to be followed by County 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) (l)(C) (emphasis added).

I. DEFENDANTS' UNAUTHORIZED ACTIONS VIOLATED THE GEORGIA ELECTION CODE AND CAUSED THE PROCESSING OF DEFECTIVE ABSENTEE BALLOTS.

51.

Notwithstanding the clarity of the applicable statutes and the constitutional authority for the Georgia Legislature's actions, on March 6, 2020, the Secretary of State of the State of Georgia, Secretary Raffensperger, and the State Election Board, who administer the state elections (the "Administrators") entered into a "Compromise and Settlement Agreement and Release" (the "Litigation Settlement") with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively, the "Democrat Party Agencies"), setting forth different standards to be followed by the clerks and registrars in processing absentee ballots in the State of Georgia8.

52.

Under the Settlement, however, the Administrators agreed to change the statutorily prescribed manner of handling absentee ballots in a manner that is not consistent with the laws promulgated by the Georgia Legislature for elections in this state.

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[8] *See Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.,* Civil Action File No. 1:1 9-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division, Doc. 56-1.

53.

The Settlement provides that the Secretary of State would issue an "Official Election Bulletin" to county Administrators overriding the statutory procedures prescribed for those officials. That power, however, does not belong to the Secretary of State under the United States Constitution.

54.

The Settlement also changed the signature requirement reducing it to a broad process with discretion, rather than enforcement of the signature requirement as statutorily required under O.C.G.A. 21-2-386(a)(l).

55.

The Georgia Legislature instructed county registers and clerks (the "County Officials") regarding the handling of absentee ballots in O.C.G.A. S 21-2-386(a)(1)(B), 21-2-380.1. The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

> 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 absent 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 …

O.C.G.A. S 21-2-386(a)(1)(B).

56.

The Georgia Legislature prescribed procedures to ensure that any request for an absentee ballot must be accompanied by sufficient identification of the elector's identity. *See* O.C.G.A. *§* 21-2-38 l(b)(1) (providing, in pertinent part, "In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 ...").

57.

An Affiant testified, under oath, that "It was also of particular interest to me to see that signatures were not being verified and that there were no corresponding envelopes seen in site." (Attached hereto as Exh. 10, Mayra Romera, at par. 7).

58.

To reflect the very reason for process, it was documented that in the primary election, prior to the November 3, 2020 Presidential election, many ballots got to voters after the election. Further it was confirmed that "Untold thousands of absentee ballot requests went unfulfilled, and tens of thousands of mailed ballots were rejected for multiple reasons including arriving too late

to be counted. See the Associated Press, *Vote-by-Mail worries: A leaky pipeline in many states*, August 8, 2020.[9]

59.

Pursuant to the Settlement, the Administrators delegated their responsibilities for determining when there was a signature mismatch by considering in good faith only partisan-based training - "additional guidance and training materials" drafted by the Democrat Party Agencies' representatives contradicting O.C.G.A. § 21-2-31.

B. Unlawful Early Processing of Absentee Ballots

60.

In April 2020, the State Election Board adopted on a purportedly "Emergency Basis" Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day. Under this rule, county election officials are authorized to begin processing absentee ballots up to three weeks befoe election day. Thus, the rule provides in part that "(1) Beginning at 8:00 AM on the third Monday prior to Election Day, the county election superintendent **shall be authorized to open the outer envelope of accepted absentee ballots** …" (Emphasis added).

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[9] *https://apnews.com/article/u-s-news-ap-top-news-election-2020-technology-politics-52e87011f4d04e41bfffccd64fc878e7*

61.

Rule 183-1-14-0.9-.15 is in direct and irreconcilable conflict with O.C.G.A. § 21-2-386(a)(2), which prohibits the opening of absentee ballots until election day:

> **After the opening of the polls** on the day of the primary, election, or runoff, the registrars or absentee ballot clerks **shall be authorized to open the outer envelope** on which is printed the oath of the elector in such a manner as not to destroy the oath printed thereon; provided, however, that the registrars or absentee ballot clerk shall not be authorized to remove the contents of such outer envelope or to open the inner envelope marked "Official Absentee Ballot," except as otherwise provided in this Code section.

(Emphasis added).

62.

In plain terms, the statute clearly prohibits opening absentee ballots prior to election day, while the rule authorizes doing so three weeks before election day. There is no reconciling this conflict. The State Election Board has authority under O.C.G.A. § 21-2-31 to adopt lawful and legal rules and regulations, but no authority to promulgate a regulation that is directly contrary to an unambiguous statute. Rule 183-1-14-0.9-.15 is therefore plainly and indisputably unlawful.

63.

The State Election Board re-adopted Rule 183-1-14-0.9-.15 on November 23, 2020 for the upcoming January 2021 runoff election.

C. Unlawful Audit Procedures

64.

According to Secretary Raffensperger, in the presidential general election, 2,457,880 votes were cast in Georgia for President Donald J. Trump, and 2,472,002 votes were cast for Joseph R. Biden, which narrowed in Donald Trump's favor after the most recent recount.

65.

Secretary Raffensperger declared that for the Hand Recount:

> 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.[10]

[10] *Office of Brad Raffensperger, Monitors Closely Observing Audit-Triggered Full Hand Recount: Transparency is Built Into Process*, https://sos.ga.gov/index.php/elections/monitors_closely_observing_audit-triggered_full_hand_recount_transparency_is_built_into_process

66.

The audit was conducted O.C.G.A. § 21-2-498. This code section requires that audits be completed "in public view" and authorizes the State Board of Elections to promulgate regulations to administer an audit "to ensure that collection of validly cast ballots is complete, accurate and trustworthy throughout the audit."

67.

Plaintiffs can show that Democrat-majority counties provided political parties and candidates, including the Trump Campaign, no meaningful access or actual opportunity to review and assess the validity of mail-in ballots during the pre-canvassing meetings. While in the audit or recount, they witnessed Trump votes being put into Biden piles.

68.

Non-parties Amanda Coleman and Maria Diedrich are two individuals who volunteered to serve as designated monitors for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") on behalf of the Georgia Republican Party (the "Republican Party") at the Hand Recount. (Attached hereto and incorporated herein as Exhibits 2 and 3), respectively, are true and correct copies of (1) the Affidavit of Amanda Coleman in Support of Plaintiffs' Motion for Temporary Restraining Order (the "Coleman Affidavit"), and (2) the Affidavit of Maria Diedrich in Support of Plaintiffs'

Motion for Temporary Restraining Order (the "Diedrich Affidavit"). (See Exh. 11, Coleman Aff.,2; Exh. 12, Diedrich Aff., 2.)

69.

The Affidavits set forth various conduct amounting to federal crimes, clear improprieties, insufficiencies, and improper handling of ballots by County Officials and their employees that Ms. Coleman and Ms. Diedrich personally observed while monitoring the Hand Recount. *(See* Exh. 11, Coleman Aff., 3-10; Exh. 12, Diedrich Aff., 4-14.)

70.

As a result of her observations of the Hand Recount as a Republican Party monitor, Ms. Diedrich declared, "There had been no meaningful way to review or audit any activity" at the Hand Recount. *(See* Exh. 12, Diedrich Aff.,14.)

71.

As a result of their observations of the Hand Recount as Republican Party monitors, Ms. Coleman likewise declared, "There was no way to tell if any counting was accurate or if the activity was proper." (See Exh. 12, Coleman Aff.,10).

72.

On Election Day, when the Republican poll watchers were, for a limited time, present and allowed to observe in various polling locations, they

observed and reported numerous instances of election workers failing to follow the statutory mandates relating to two critical requirements, among other issues:

(1) a voter's right to spoil their mail-in ballot at their polling place on election day and to then vote in-person, and

(2) the ability for voters to vote provisionally on election day when a mail-in ballot has already been received for them, but when they did not cast those mail-in ballots, who sought to vote in person during early voting but was told she already voted; she emphasized that she had not. The clerk told her he would add her manually with no explanation as to who or how someone voted using her name. (Attached hereto as Exh. 13, Aff. Ursula Wolf)

73.

Another observer for the ballot recount testified that "*at no time did I witness any Recounter or individual participate in the recount verifying signatures [on mail-in ballots].*" (Attached hereto as Exh. 14, Nicholas Zeher Aff).

74.

In some counties, there was no actual "hand" recounting of the ballots during the Hand Recount, but rather, County Officials and their employees

simply conducted another machine count of the *same* ballots. (See. Exh. 9, 10). That will not reveal the massive fraud of which plaintiffs complain.

75.

A large number of ballots were identical and likely fraudulent. An Affiant explains that she observed a batch of utterly pristine ballots:

> 14. Most of the ballots had already been handled; they had been written on by people, and the edges were worn. They showed obvious use. However, one batch stood out. It was pristine. There was a difference in the texture of the paper - it was if they were intended for absentee use but had not been used for that purposes. There was a difference in the feel.
>
> 15. These different ballots included a slight depressed pre-fold so they could be easily folded and unfolded for use in the scanning machines. There were no markings on the ballots to show where they had com~ from, or where they had been processed. These stood out.
>
> 16. In my 20 years of experience of handling ballots, I observed that the markings for the candidates on these ballots were unusually uniform, perhaps even with a ballot-marking device. By my estimate in observing these ballots, approximately 98% constituted votes for Joe Biden. I only observed two of these ballots as votes for President Donald J. Trump." (See Exh. 15 Attached hereto).

76.

The same Affiant further testified specifically to the breach of the chain of custody of the voting machines the night before the election stating:

> we typically receive the machines, the ballot marking devices – on the Friday before the election, with a chain of custody letter to be signed on Sunday, indicating that we had received the machines and the counts on the machines when received, and that the machines have been sealed. **In this case, we were asked to sign the chain of custody letter on Sunday, even though the machines were not delivered until 2:00 AM in the morning on Election Day.**

> The Milton precinct received its machines at 1:00 AM in the morning on Election Day. This is unacceptable and voting machines should [not] be out of custody prior to an Election Day. *Id.*

II. EVIDENCE OF FRAUD

A PATTERN SHOWING THE ABSENCE OF MISTAKE

77.

The stunning pattern of the nature and acts of fraud demonstrate an absence of mistake.

78.

The same Affiant further explained, in sworn testimony, that the breach included: "when we did receive the machines, they were not sealed or locked, the serial numbers were not what were reflected on the related documentation…" *See Id.*

79.

An affiant testified that "While in Henry County, I personally witnessed ballots cast for Donald Trump being placed in the pile for Joseph Biden, I witnessed this happen at table "A".' (See Exh. 14, par. 27).

80.

The Affiant further testified, that "when this was brought to Ms. Pitts attention, it was met with extreme hostility. At no time did I witness any ballot cast for Joseph Biden be placed in the pile for Donald Trump. (See Exh. 14, par. 28).

81.

Another Affiant in the mail-in ballot and absentee ballot recounting process, testified in her sworn affidavit, that "on November 16, 2020 … It was also of particular interest to me to see that signatures were not being verified and there were no corresponding envelopes seen in sight." (See Exh. 10, at Par. 7).

82.

Yet another Affiant, in the recount process, testified that he received push back and a lack of any cooperation and was even threatened as if he did something wrong, when he pointed out the failure to follow the rules with the observers while open mail-in ballot re-counting was occurring, stating:

> "However, as an observer, I observed that the precinct had twelve (12) counting tables, but only one (1) monitor from the Republican Party. I brought it up to Erica Johnston since the recount rules provided for one (1) monitor from each Party per ten (10) tables or part thereof…"

(See Attached hereto, Exh. 16, Ibrahim Reyes Aff.)

83.

Another Affiant explains a pattern of behavior that is alarming, in his position as an observer in the recount on absentee ballots with barcodes, he testified:

> ***I witnessed two poll workers placing already separated paper machine receipt ballots with barcodes in the Trump tray, placing them in to the Biden tray.*** I also witnessed the same two poll workers putting the already separated paper receipt b*a*llots in

> the "No Vote" and "Jorgensen" tray, and removing them and putting them inside the Biden tray, They then took out all of the ballots out of the Biden tray and stacked them on the table, writing on the count ballot sheet.

(See Attached hereto, Exh.17, pars. 4-5, Aff. of Consetta Johson).

84.

Another Affiant, a Democrat, testified in his sworn affidavit, that before he was forced to move back to where he could not see, he had in fact seen "absentee ballots for Trump inserted into Biden's stack, and counted as Biden votes. This occurred a few times". (See attached hereto, Exh. 18 at Par. 12, Aff. of Carlos Silva).

85.

Yet another Affiant testified about the lack of process and the hostility only towards the Republican party, which is a violation of the Equal Protection Clause. He testified:

> I also observed throughout my three days in Atlanta, not once did anyone verify these ballots. In fact, there was no authentication process in place and no envelopes were observed or allowed to be observed. I saw hostility towards Republican observers but never towards Democrat observers. Both were identified by badges.

(*See Id.*, at pars. 13-14).

86.

Another Affiant explained that his ballot was not only not processed in accordance with Election law, he witnessed people reviewing his ballot to decide where to place it, which violated the privacy of his ballot, and when he

tried to report it to a voter fraud line, he never received any contact or cooperation stating:

> "I voted early on October 12 at the precinct at Lynwood Park … Because of irregularities at the polling location, I called the voter fraud line to ask why persons were discussing my ballot and reviewing it to decide where to place it. When I called the state fraud line, I was directed to a worker in the office of the Secretary of State…"

(See Attached hereto, Exh. 19, Andrea ONeal Aff, at par. 3).

87.

He further testified that when he was an Observer at the Lithonia location, he saw many irregularities, and specifically "saw an auditor sort Biden votes that he collected and sorted into ten ballot stacks, which [the auditor] did not show anyone." Id. at p. 8.

88.

Another Affiant testified about the use of different paper for ballots, that would constitute fraud stating:

> I noticed that almost all of the ballots I reviewed were for Biden. Many batches went 100% for Biden. I also observed that the watermark on at least 3 ballots were solid gray instead of transparent, leading me to believe the ballot was counterfeit. I challenged this and the Elections Director said it was a legitimate ballot and was due to the use of different printers. Many ballots had markings for Biden only, and no markings on the rest of the ballot.

(See Attached hereto, Exh. 20, Aff of Debra J. Fisher, at pars. 4, 5, 6).

89.

An Affiant testified, that while at the Audit, **'While in Henry County, I personally witnessed ballots cast for Donald Trump being placed in the pile for Joseph Biden. I witnessed this happen at table "A"**". (*See* attached hereto as Exh. 22, Kevin Peterford, at par. 29). Another Affiant testified, that "I witnessed two poll workers placing already separated paper machine receipt ballots with barcodes in the Trump tray, placing them in to the Biden tray. I also witnessed the same two poll workers putting the already separated paper receipt abllots in the "No Vote" and "Jorgensen" tray, and removing them and putting them inside the Biden tray, They then took out all of the ballots out of the Biden tray and stacked them on the table, writing on the count ballot sheet. (See Exh. 17, Johnson, pars. 4-5).

90.

Another Affiant, a Democrat, testified in his sworn affidavit, before he was forced to move back to where he could not see, he had in fact seen**, "*I also saw absentee ballots for Trump inserted***

***into Biden's stack, and counted as Biden votes. This occurred a few times*".** (See Exh. 18, Par. 12).

91.

A Republican National Committee monitor in Georgia's election recount, Hale Soucie, told an undercover journalist there are individuals counting ballots who have made continuous errors," writes O'Keefe. Project Veritas, Watch: Latest Project Veritas Video reveals "Multiple Ballots Meant for Trump Went to Biden in Georgia.[11]

B. THE VOTING MACHINES, SECRECY SOFTWARE USED BY VOTING MACHINES THROUGHOUT GEORGIA IS CRUCIAL

92.

These violations of federal and state laws impacted the election of November 3, 2020 and set the predicate for the evidence of deliberate fraudulent conduct, manipulation, and lack of mistake that follows. The commonality and statewide nature of these legal violations renders certification of the legal vote untenable and warrants immediate

[11] https://hannity.com/media-room/watch-latest-project-veritas-video-reveals-multiple-ballots-meant-for-trump-went-to-biden-in-georgia/

impoundment of voting machines and software used throughout Georgia for expert inspection and retrieval of the software.

93.

An Affiant, who is a network & information cyber-security expert, under sworn testimony explains that after studying the user manual for Dominion Voting Systems Democracy software, he learned that the information about scanned **ballots can be tracked inside the software system for Dominion**:

> (a) When bulk ballot scanning and tabulation begins, the "ImageCast Central" workstation operator will load a batch of ballots into the scanner feed tray and then start the scanning procedure within the software menu. The scanner then begins to scan the ballots which were loaded into the feed tray while the "ImageCast Central" software application tabulates votes in real-time. Information about scanned ballots can be tracked inside the "ImageCast Central" software application.

(*See* attached hereto Exh 22, Declaration of Ronald Watkins, at par. 11).

94.

Affiant further explains that the central operator can remove or discard batches of votes. "After all of the ballots loaded into the scanner's feed tray have been through the scanner, the "ImageCast Central" operator will remove the ballots from the tray then have the option to either "Accept Batch" or "Discard Batch" on the scanning menu …. "(*Id.* at par. 8).

95.

Affiant further testifies that the Dominion/ Smartmatic user manual itself makes clear that the system allows for threshold settings to be set to mark all ballots as "problem ballots" for *discretionary determinations* on where the vote goes. It states:

> *During the scanning process, the "ImageCast Central" software will detect how much of a percent coverage of the oval was filled in by the voter. The Dominion customer determines the thresholds of which the oval needs to be covered by a mark in order to qualify as a valid vote. If a ballot has a marginal mark which did not meet the specific thresholds set by the customer, then the ballot is considered a "problem ballot" and may be set aside into a folder named "NotCastImages". Through creatively tweaking the oval coverage threshold settings it should be possible to set thresholds in such a way that a non-trivial amount of ballots are marked "problem ballots" and sent to the "NotCastImages" folder. It is possible for an administrator of the ImageCast Central work station to view all images of scanned ballots which were deemed "problem ballots" by simply navigating via the standard "Windows File Explorer" to the folder named "NotCastImages" which holds ballot scans of "problem ballots". It is possible for an administrator of the "ImageCast Central" workstation to view and delete any individual ballot scans from the "NotCastImages" folder by simply using the standard Windows delete and recycle bin functions provided by the Windows 10 Pro operating system.*

Id. at pars. 9-10.

96.

The Affiant further explains the vulnerabilities in the system when the copy of the selected ballots that are approved in the Results folder are made

to a flash memory card – and that is connected to a Windows computer stating:

> *It is possible for an administrator of the "ImageCast Central" workstation to view and delete any individual ballot scans from the "NotCastImages" folder by simply using the standard Windows delete and recycle bin functions provided by the Windows 10 Pro operating system. … The upload process is just a simple copying of a "Results" folder containing vote tallies to a flash memory card connected to the "Windows 10 Pro" machine. The copy process uses the standard drag-n-drop or copy/paste mechanisms within the ubiquitous "Windows File Explorer". While a simple procedure, this process may be error prone and* ***is very vulnerable to malicious administrators****.*

Id. at par. 11-13 (emphasis supplied).

97.

It was announced on "Monday, [July 29, 2019], [that] Governor Kemp awarded a contract for 30,000 new voting machines to Dominion Voting Systems, scrapping the state's 17-year-old electronic voting equipment and replacing it with touchscreens that print out paper ballots."[12] Critics are quoted: "Led by Abrams, Democrats fought the legislation and pointed to cybersecurity experts who warned it would leave Georgia's elections susceptible to hacking and tampering." And "Just this week, the Fair Fight voting rights group started by [Stacy] Abrams launched a television ad

[12] *Georgia Buys New Voting Machines for 2020 Presidential Election, by Mark Niesse, the Atlanta Journal-Constitution, July 30, 2019, https://www.ajc.com/news/state--regional-govt--politics/georgia-awards-contract-for-new-election-system-dominion-voting/tHh3V8KZnZivJoVzZRLO4O/*

critical of the bill. In a statement Thursday, the group called it "corruption at its worst" and a waste of money on "hackable voting machines."[13]

98.

It was further reported in 2019 that the new Dominion Voting Machines in Georgia "[w]ith Georgia's current voting system, there's **no way to guarantee that electronic ballots accurately reflect the choices of voters because there's no paper backup to verify results**, with it being reported that:

> (a) Recounts are meaningless on the direct-recording electronic voting machines because they simply reproduce the same numbers they originally generated.
>
> (b) But paper ballots alone won't protect the sanctity of elections on the new touchscreens, called ballot-marking devices.
>
> (c) The new election system depends on voters to verify the printed text of their choices on their ballots, a step that many voters might not take. The State Election Board hasn't yet created regulations for how recounts and audits will be conducted. And paper ballots embed selections in bar codes that are only readable by scanning machines, leaving Georgians uncertain whether the bar codes match their votes.[14]

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[13] *Georgia Governor Inks Law to Replace Voting Machines, The Atlanta Journal-Constitution, AJC News Now, by Greg Bluestein and Mark Niesse, June 14, 2019; Credit: Copyright 2019 The Associated Press, June 2019*

i. *As part of the scheme and artifice to defraud the plaintiffs, the candidates and the voters of undiminished and unaltered voting results in a free and legal election, the Defendants and other persons known and unknown committed the following violations of law:*

50 U.S.C. § 20701 requires the retention and preservation of records and papers by officers of elections under penalty of fine and imprisonment:

> **§ 20701. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation**
>
> Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, **all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election,** except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

50 U.S.C.§ 20701.

99.

In the primaries it was confirmed that, "The rapid introduction of new technologies and processes in state voting systems heightens the risk of

foreign interference and insider tampering. That's true even if simple human error or local maneuvering for political advantage are more likely threats[15].

100.

A Penn Wharton Study from 2016 concluded that "Voters and their representatives in government, often prompted by news of high-profile voting problems, also have raised concerns about the reliability and integrity of the voting process, and have increasingly called for the use of modern technology such as laptops and tablets to improve convenience."[16]

101.

As evidence of the defects or features of the Dominion Democracy Suite, as described above, the same Dominion Democracy Suite was denied certification in Texas by the Secretary of State on January 24, 2020 specifically because of a **lack of evidence of efficiency and accuracy and to be safe from fraud or unauthorized manipulation.**[17]

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[15] *See Threats to Georgia Elections Loom Despite New Paper Ballot Voting, By Mark Niesse, The Atlanta Journal-Constitution and (The AP, Vote-by-Mail worries: A leaky pipeline in many states, August 8, 2020).*

[16] Penn Wharton Study by Matt Caufield, The Business of Voting, July 2018.

[17] Attached hereto, Exh. 23, copy of Report of Review of Dominion Voting Systems Democracy Suite 5.5-A Elections Division by the Secretary of State's office, Elections Division, January 24, 2020.

102.

Plaintiffs have since learned that the "glitches" in the Dominion system–that have the uniform effect of taking votes from Trump and shifting them to Biden—have been widely reported in the press and confirmed by the analysis of independent experts.

103.

Plaintiffs can show, through expert and fact witnesses that:

c. Dominion/ Smartmatic Systems Have Massive End User Vulnerabilities.

1. Users on the ground have full admin privileges to machines and software. Having been created to "rig" elections, the Dominion system is designed to facilitate vulnerability and allow a select few to determine which votes will be counted in any election. Workers were responsible for moving ballot data from polling place to the collector's office and inputting it into the correct folder. Any anomaly, such as pen drips or bleeds, results in a ballot being rejected. It is then handed over to a poll worker to analyze and decide if it should count. This creates massive opportunity for purely discretionary and improper vote "adjudication."

2. Affiant witness (name redacted for security reasons[18]), in his sworn testimony explains he was selected for the national security guard detail of the President of Venezuela, and that he witnessed the creation of Smartmatic for the purpose of election vote manipulation to insure Venezuelan dictator Hugo Chavez never lost an election and he saw it work. Id.

   "The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes against

> persons running the Venezuelan government to votes in their favor in order to maintain control of the government."

(*See* Exh. 2, pars. 6, 9, 10).

104.

Smartmatic's incorporators and inventors have backgrounds evidencing their foreign connections, including Venezuela and Serbia, specifically its identified inventors:

> Applicant: SMARTMATIC, CORP.
>
> Inventors: Lino Iglesias, Roger Pinate, Antonio Mugica, Paul Babic, Jeffrey Naveda, Dany Farina, Rodrigo Meneses, Salvador Ponticelli, Gisela Goncalves, Yrem Caruso.[19]

105.

The presence of Smartmatic in the United States—owned by foreign nationals, and Dominion, a Canadian company with its offices such as the Office of General Counsel in Germany, would have to be approved by CFIUS. CFIUS was created in 1988 by the Exon-Florio Amendment to the Defense Production Act of 1950. CFIUS' authorizing statute was amended by the Foreign Investment and National Security Act of 2007 (FINSA).

> As amended, section 721 of the DPA directs "the President, acting through [CFIUS]," to review a "**covered transaction to determine the effects of the transaction on the national security of the United States.**" 50 U.S.C. app. § 2170(b)(1)(A). Section 721 defines

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19 https://patents.justia.com/assignee/smartmatic-corp

> a covered transaction as "any merger, acquisition, or takeover …, by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States." Id. § 2170(a)(3). *Ralls Corp. v. Comm. on Foreign Inv.*, 758 F.3d 296, 302, 411 U.S. App. D.C. 105, 111, (2014). Review of covered transactions under section 721 begins with CFIUS. As noted, CFIUS is chaired by the Treasury Secretary and its members include the heads of various federal agencies and other high-ranking Government officials with foreign policy, national security and economic responsibilities.

106.

Then Congresswoman Carolyn Maloney wrote October 6, 2006 to the Secretary of Treasury, Henry M. Paulson, Jr., Objecting to approval of Dominion/Smartmatic by CFIUS because of its corrupt Venezuelan origination, ownership and control. (See attached hereto as Exh. 24, Carolyn Maloney Letter of October 6, 2006). Our own government has long known of this foreign interference on our most important right to vote, and it had either responded with incompetence, negligence, willful blindness, or abject corruption. In every CFIUS case, there are two TS/SCI reports generated. One by the ODNI on the threat and one by DHS on risk to critical infrastructure. Smartmatic was a known problem when it was nonetheless approved by CFIUS.

107.

The Wall Street Journal in 2006 did an investigative piece and found that, “Smartmatic came to prominence in 2004 when its machines were used

in an election to recall President Chávez, which Mr. Chávez won handily -- and which the Venezuelan opposition said was riddled with fraud. Smartmatic put together a consortium to conduct the recall elections, including a company called Bizta Corp., in which Smartmatic owners had a large stake. For a time, the Venezuelan government had a 28% stake in Bizta in exchange for a loan.'[20] …"Bizta paid off the loan in 2004, and Smartmatic bought the company the following year. But accusations of Chávez government control of Smartmatic never ended, especially since Smartmatic scrapped a simple corporate structure, in which it was based in the U.S. with a Venezuelan subsidiary, for a far more complex arrangement. The company said it made the change for tax reasons, but critics, including Rep. Carolyn Maloney (D., N.Y.) and TV journalist Lou Dobbs, pounded the company for alleged links to the Chávez regime. *Id*. Since its purchase by Smartmatic, Sequoia's sales have risen sharply to a projected $200 million in 2006, said Smartmatic's chief executive, Anthony Mugica." *Id.*

108.

Indeed, Mr. Cobucci testified, through his sworn affidavit, that he born in Venezuela, is cousins with Antonio ('Anthony') Mugica, and he has

[20] *See WSJ.com, Smartmatic to Sell U.S. Unit, End Probe into Venezuelan Links, by Bob Davis, 12/22/2006,* h*ttps://www.wsj.com/articles/SB116674617078557263*

personal knowledge of the fact that Anthony Mugica incorporated Smartmatic in the U.S. in 2000 with other family members in Venezuela listed as owners. He also has personal knowledge that Anthony Mugica manipulated Smartmatic to ensure the election for Chavez in the 2004 Referendum in Venezuela. He also testified, through his sworn affidavit, that Anthony Mugica received tens of millions of dollars from 2003- 2015 from the Venezuelan government to ensure Smartmatic technology would be implemented around the world, including in the U.S. (See attached hereto, Exh. 25, Juan Carlos Cobucci Aff.)

109.

Another Affiant witness testifies that in Venezuela, she was in an official position related to elections and witnessed manipulations of petitions to prevent a removal of President Chavez and because she protested, she was summarily dismissed. Corroborating the testimony of our secret witness, and our witness Mr. Cobucci, cousin of Anthony Mugica, who began Smartmatic, and this witness explains the vulnerabilities of the electronic voting system and Smartmatica to such manipulations. (See Exh. 3, Diaz Cardozo Aff).

110.

Specific vulnerabilities of the systems in question that have been documented or reported include:

a. Barcodes can override the voters' vote: As one University of California, Berkeley study shows, "In all three of these machines [including Dominion Voting Systems] the ballot marking printer is in the same paper path as the mechanism to deposit marked ballots into an attached ballot box. This opens up a very serious security vulnerability: the voting machine can make the paper ballot (to add votes or spoil already-cast votes) after the last time the voter sees the paper, and then deposit that marked ballot into the ballot box without the possibility of detection." (See Exh. 7). [21]

b. Voting machines were able to be connected to the internet by way of laptops that were obviously internet accessible. If one laptop was connected to the internet, the entire precinct was compromised.

c. We … discovered that at least some jurisdictions were not aware that their systems were online," said Kevin Skoglund, an independent security consultant who conducted the research with nine others, all of them long-time security professionals and academics with expertise in election security. Vice. August 2019. [22]

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[21] *Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters,* Andrew W. Appel, Richard T. DeMillo, University of California, Berkeley, 12/27/2019.

[22] *Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials, Motherboard Tech by Vice, by Kim Zetter, August 8, 2019, https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials*

d. October 6, 2006 – Congresswoman Carolyn Maloney called on Secretary of Treasury Henry Paulson to conduct an investigation into Smartmatic based on its foreign ownership and ties to Venezuela. (See Exh. 24)

e. Congresswoman Maloney wrote that "It is undisputed that Smartmatic is foreign owned and it has acquired Sequoia … Smartmatica now acknowledged that Antonio Mugica, a Venezuelan businessman has a controlling interest in Smartmatica, but the company has not revealed who all other Smartmatic owners are." *Id.*

f. Dominion "got into trouble" with several subsidiaries it used over alleged cases of fraud. One subsidiary is Smartmatic, a company "that has played a significant role in the U.S. market over the last decade," according to a report published by UK-based AccessWire[23].

g. Litigation over Smartmatic "glitches" alleges they impacted the 2010 and 2013 mid-term elections in the Philippines, raising questions of cheating and fraud. An independent review of the source codes used in the machines found multiple problems, which concluded, "The software

[23] *Voting Technology Companies in the U.S. – Their Histories and Present Contributions, Access Wire, August 10, 2017, https://www.accesswire.com/471912/Voting-Technology-Companies-in-the-US--Their-Histories.*

inventory provided by Smartmatic is inadequate, … which brings into question the software credibility…"[24]

h. Dominion acquired Sequoia Voting Systems as well as Premier Election Solutions (formerly part of Diebold, which sold Premier to ES&S in 2009, until antitrust issues forced ES&S to sell Premier, which then was acquired by Dominion).[25].

i. Dominion entered into a 2009 contract with Smartmatic and provided Smartmatic with the PCOS machines (optical scanners) that were used in the 2010 Philippine election—the biggest automated election run by a private company. The international community hailed the automation of that first election in the Philippines.[26] The results' transmission reached 90% of votes four hours after polls closed and Filipinos knew for the first time who would be their new president on Election Day. In keeping with local election law requirements, Smartmatic and Dominion were required to provide the source code of

[24] *Smartmatic-TIM running out of time to fix glitches, ABS-CBN News, May 4, 2010 https://news.abs-cbn.com/nation/05/04/10/smartmatic-tim-running-out-time-fix-glitches*
[25] *The Business of Voting*, Penn Wharton, Caufield, p. 16.
[26] *Smartmatic-TIM running out of time to fix glitches, ABS-CBN News, May 4, 2010 https://news.abs-cbn.com/nation/05/04/10/smartmatic-tim-running-out-time-fix-glitches*

the voting machines prior to elections so that it could be independently verified.[27]

j. In late December of 2019, three Democrat Senators, Warren, Klobuchar, Wyden, and House Member Mark Pocan wrote about their ***'particularized concerns that secretive & "trouble -plagued companies"*** "***have long skimped on security in favor of convenience***," in the context of how they described the voting machine systems that three large vendors – Election Systems & Software, Dominion Voting Systems, & Hart InterCivic – collectively provide voting machines & software that facilitate voting for over 90% of all eligible voters in the U.S." (See attached hereto as Exh. 26, copy of Senator Warren, Klobuchar, Wyden's December 6, 2019 letter).

k. Senator Ron Wyden (D-Oregon) said the findings [insecurity of voting systems] are "yet another damning indictment of the profiteering election vendors, who care more about the bottom line than protecting our democracy." It's also an indictment, he said, "of the notion that important cybersecurity decisions should be left entirely to county

[27] Presumably the machiens were not altered following submission of the code. LONDON, ENGLAND / ACCESSWIRE / August 10, 2017, *Voting Technology Companies in the U.S. - Their Histories and Present Contributions*

election offices, many of whom do not employ a single cybersecurity specialist."[28]

111.

An analysis of the Dominion software system by a former US Military Intelligence expert concludes that the system and software have been accessible and were certainly compromised by rogue actors, such as Iran and China. By using servers and employees connected with rogue actors and hostile foreign influences combined with numerous easily discoverable leaked credentials, Dominion neglectfully allowed foreign adversaries to access data and intentionally provided access to their infrastructure in order to monitor and manipulate elections, including the most recent one in 2020. (See Exh. 7).

112.

An expert witness in pending litigation in the United States District Court, Northern District Court of Georgia, Atlanta Div., 17-cv-02989 specifically testified to the acute security vulnerabilities, among other facts, by declaration filed on October 4, 2020, (See Exh. 4B, Document 959-4

[28] *Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials, Motherboard Tech by Vice, by Kim Zetter, August 8, 2019, https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials*

attached hereto, paragraph. 18 and 20 of p. 28, Exh. 4, Hursti Declaration). wherein he testified or found:

1) The failure of the Dominion software "*to meet the methods and processes for national standards for managing voting system problems and should not be accepted for use in a public election under any circumstances*."

2) In Hursti's declaration he explained that "There is evidence of remote access and remote troubleshooting which presents a grave security implication and certified identified vulnerabilities should be considered an "extreme security risk." *Id.* Hari Hursti also explained that USB drives with vote tally information were observed to be removed from the presence of poll watchers during a recent election. *Id.* The fact that there are no controls of the USB drives was seen recently seen the lack of physical security and compliance with professional standards, " in one Georgia County, where it is reported that 3,300 votes were found on memory sticks not loaded plus in Floyd county, another 2,600 were unscanned, and the "found votes" reduced Biden's lead over Donald Trump[29].

(a) In the prior case against Dominion, supra, further implicating the secrecy behind the software used in Dominion Systems,

[29] *Recount find thousands of Georgia votes*, Atlanta Journal-Constitution by Mark Niesse and David Wickert,11/19/20. https://www.ajc.com/politics/recount-finds-thousands-of-georgia-votes-missing-from-initial-counts/ERDRNXPH3REQTM4SOINPSEP72M/

Dr. Eric Coomer, a Vice President of Dominion Voting Systems, testified that even he was not sure of what testing solutions were available to test problems or how that was done, " *I have got to be honest, we might be a little bit out of my bounds of understanding the rules and regulations*… and in response to a question on testing for voting systems problems in relation to issues identified in 2 counties, he explained that "*Your Honor, I'm not sure of the complete test plan… Again Pro V&V themselves determine what test plan in necessary based on their analysis of the code itself*." (*Id*. at Document 959-4, pages 53, 62 L.25- p. 63 L3).

113.

Hursti stated within said Declaration:

> "The security risks outlined above – operating system risks, the failure to harden the computers, performing operations directly on the operating systems, lax control of memory cards, lack of procedures, and potential remote access are extreme and destroy the credibility of the tabulations and output of the reports coming from a voting system."

(See Paragraph 49 of Hursti Declaration).

114.

Rather than engaging in an open and transparent process to give credibility to Georgia's brand-new voting system, the election processes were

hidden during the receipt, review, opening, and tabulation of those votes in direct contravention of Georgia's Election Code and federal law.

115.

The House of Representatives passed H.R. 2722 in an attempt to address these very risks identified by Hursti, on June 27, 2019:

> *This bill addresses election security through grant programs and requirements for voting systems and paper ballots.*
>
> *The bill establishes requirements for voting systems, including that systems (1) use individual, durable, voter-verified paper ballots; (2) make a voter's marked ballot available for inspection and verification by the voter before the vote is cast; (3) ensure that individuals with disabilities are given an equivalent opportunity to vote, including with privacy and independence, in a manner that produces a voter-verified paper ballot; (4) be manufactured in the United States; and (5) meet specified cybersecurity requirements, including the prohibition of the connection of a voting system to the internet.*

ADDITIONAL SPECIFIC FRAUD

116.

On November 4, 2020, the Georgia GOP Chairman issued the following statement:

> *"Let me repeat. Fulton County elections officials told the media and our observers that they were shutting down the tabulation center at State Farm Arena at 10:30 p.m. on election night to continue counting ballots in secret until 1:00 a.m.* [30]

117.

It was widely reported that "As of 7 p.m. on Wednesday Fulton County Elections officials said 30,000 absentee ballots were not processed due to a pipe burst."[31] Officials reassured voters that none of the ballots were damaged and the water was quickly cleaned up. But the emergency delayed officials from processing ballots between 5:30 a.m. and 9:30 a.m. Officials say they continued to count beginning at 8:30 a.m. Wednesday. The statement from Fulton County continues:

> "Tonight, Fulton County will report results for approximately 86,000 absentee ballots, as well as Election Day and Early Voting results. These represent the vast majority of ballots cast within Fulton County.
>
> "As planned, Fulton County will continue to tabulate the remainder of absentee ballots over the next two days. Absentee ballot processing requires that each ballot is opened, signatures verified, and ballots scanned. This is a labor-intensive process that takes longer to tabulate than other forms of voting. Fulton County did not anticipate having all absentee ballots processed on Election Day." Officials said they will work to ensure every vote is counted and all laws and regulations are followed.[32]

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[31] "4,000 remaining absentee ballots being counted in Fulton County", Fox 5 Atlanta, November 3, 2020, https://www.fox5atlanta.com/news/pipe-burst-at-state-farm-arena-delays-absentee-ballot-processing

[32] 4,000 remaining absentee ballots being counted in Fulton County, Fox 5 Atlanta, November 3, 2020, https://www.fox5atlanta.com/news/pipe-burst-at-state-farm-arena-delays-absentee-ballot-processing

118.

Plaintiffs have learned that the representation about "a water leak affecting the room where absentee ballots were counted" was not true. The only water leak that needed repairs at State Farm Arena from November 3 – November 5 was a toilet overflow that occurred earlier on November 3. It had nothing to do with a room with ballot counting, but the false water break representation led to "everyone being sent home." Nonetheless, first six (6) people, then three (3) people stayed until 1:05 a.m. working on the computers.

119.

An Affiant recounts how she was present at State Farm Arena on November 3, and saw election workers remaining behind after people were told to leave. (See Exh. 28, Affidavit of Mitchell Harrison; Exh. 29, Affid. of Michelle Branton)

120.

Plaintiffs have also learned through several reports that in 2010 Eric Coomer joined Dominion as Vice President of U.S. Engineering. According to his bio, Coomer graduated from the University of California, Berkeley with a Ph.D. in Nuclear Physics. Eric Coomer was later promoted to Voting Systems Officer of Strategy and Security although Coomer has since been removed from the Dominion page of directors. Dominion altered its website after

Colorado resident Joe Oltmann disclosed that as a reporter he infiltrated ANTIFA, a domestic terrorist organization where he recorded Eric Coomer representing: "Don't worry. Trump won't win the election, we fixed that." – as well as social media posts with violence threatened against President Trump. (See Joe Oltmann interview with Michelle Malkin dated November 13, 2020 which contains copies of Eric Coomer's recording and tweets).[33]

121.

While the bedrock of American elections has been transparency, almost every crucial aspect of Georgia's November 3, 2020, General Election was shrouded in secrecy, rife with "errors," and permeated with anomalies so egregious as to render the results incapable of certification.

MULTIPLE EXPERT REPORTS AND STATISTICAL ANALYSES PROVE HUNDREDS OF THOUSANDS OF VOTES WERE LOST OR SHIFTED THAT COST PRESIDENT TRUMP AND THE REPUBLICAN CANDIDATES OF CONGRESSIONAL DISTRICTS 6 AND 7 THEIR RACES.

122.

As evidenced by numerous public reports, expert reports, and witness statements, Defendants egregious misconduct has included ignoring legislative mandates concerning mail-in and ordinary ballots and led to

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33 Malkin Live: Election Update, Interview of Joe Oltmann, by Michelle Malkin, November 13, 2020, *available at:* https://www.youtube.com/watch?v=dh1X4s9HuLo&fbclid=IwAR2EaJc1M9RT3DaUraAjsycM0uPKB3uM_-MhH6SMeGrwNyJ3vNmlcTsHxF4

disenfranchisement of an enormous number of Georgia voters. Plaintiffs experts can show that, consistent with the above specific misrepresentations, analysis of voting data reveals the following:

(a) Regarding uncounted mail ballots, based on evidence gathered by Matt Braynard in the form of recorded calls and declarations of voters, and analyzed by Plaintiff's expert, Williams M. Briggs, PhD, shows, based on a statistically significant sample, **that the total number of mail ballots that voters mailed in, but were never counted, have a 95% likelihood of falling between 31,559 and 38,886 total lost votes.** This range exceeds the margin of loss of President Trump of 12,670 votes by at least 18,889 lost votes and by as many as 26,196 lost votes. (See Exh. 1, Dr. Briggs' Report, with attachments).

(b) Plaintiff's expert also finds that **voters received tens of thousands of ballots that they never requested.** (See Exh. 1). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an absentee ballot that they did not request ranges from 16,938 to 22,771. **This range exceeds the margin of loss of**

President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests. *Id.*

(c) This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not be in the database of unreturned ballots analyzed here. See O.G.C.A. 21-2-522. **These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud down ballot as well.**

(d) **Further, as calculated by Matt Braynard, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state.** (See Id., attachment to report). Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

(e) Applying *pro-rata* the above calculations separately to Cobb County based on the number of unreturned ballots, a range of 1,255 and 1,687 ballots ordered by 3rd parties and a range of 2,338 and 2,897 lost mail ballots, plus 10,684 voters documented in the NCOA as having moved, **for a combined minimum of 14,276 missing and unlawful ballots, and maximum of 15,250 missing and unlawful ballots, which exceeds the statewide Presidential race total margin by a range of as few as 1,606 ballots and as many as 2,580 in the County of Cobb alone impacting the Cobb County Republican Party ("Cobb County Republicans").**

123.

As seen from the **expert analysis of Eric Quinnell**, mathematical anomalies further support these findings, when in various districts within Fulton County such as vote gains that exceed reasonable expectations when compared to 2016, and a failure of gains to be normally distributed but instead shifting substantially toward the tail of the distribution in what is known as a platykurtic distribution. Dr. Quinell identifies numerous anomalies such as votes to Biden in excess of 2016 exceed the registrations that are in excess of 2016. Ultimately, he identifies the counties in order of their excess performance over what would have fit in a

normal distribution of voting gains, revealing a list of the most anomalous counties down to the least. These various anomalies provide evidence of voting irregularities. (See Exh.27, Declaration of Eric Quinnell, with attachments).

124.

In sum, with the expert analysis of William M. Briggs PhD based on recorded calls and declarations, the extent of missing AND unlawfully requested ballots create substantial evidence that the mail ballot system has fundamentally failed to provide a fair voting mechanism. In short, tens of thousands of votes did not count while the pattern of fraud makes clear that tens of thousands were improperly counted. This margin of victory in the election for Mr. Biden was only 12,670 and cannot withstand most of these criticisms individually and certainly not in aggregate.

125.

Cobb county, based on lost votes, unlawfully requested votes and NCOA data on these facts alone would consume more than the entire margin of the statewide difference in the Presidential race. These election results must be reversed.

126.

Applying *pro-rata* the above calculations separately to Cobb County based on the number of unreturned ballots, a range of 1,255 and 1,687 ballots

ordered by 3rd parties and a range of 2,338 and 2,897 lost mail ballots, plus 10,684 voters documented in the NCOA as having moved, **for a combined minimum of 14,276 missing and unlawful ballots, and maximum of 15,250 missing and unlawful ballots, which exceeds the statewide Presidential race total margin by a range of as few as 1,606 ballots and as many as 2,580 in the County of Cobb alone impacting the Cobb County Republican Party ("Cobb County Republicans").** (See Exh. 1).

127.

Mr. Braynard also found a pattern in Georgia of voters registered at totally fraudulent residence addresses, including shopping centers, mail drop stores and other non-residential facilities[34].

128.

In sum, with the expert analysis of William M. Briggs PhD based on extensive investigation, recorded calls and declarations collected by Matt Braynard, (See attachments to Exh. 1, Briggs' report) the extent of missing and unlawfully requested ballots create substantial evidence that the mail ballot system has fundamentally failed to provide a fair voting mechanism. In

[34] Matt Braynard, https://twitter.com/MattBraynard/status/1331324173910761476; https://twitter.com/MattBraynard/status/1331299873556086787?s=20; (a) https://twitter.com/MattBraynard/status/1331299873556086787?s=20

short, tens of thousands of votes did not count while the pattern of fraud and mathematical anomalies that are impossible absent malign human agency makes clear that tens of thousands were improperly counted. This margin of victory in the election for Mr. Biden was only 12,670 and cannot withstand most of these criticisms individually and certainly not in aggregate.

129.

Cobb county, based on lost votes, unlawfully requested votes and NCOA data on these facts alone would consume more than the entire margin of the statewide difference in the Presidential race.

130.

Russell Ramsland confirms that data breaches in the Dominion software permitted rogue actors to penetrate and manipulate the software during the recent general election. He further concludes that at least 96,600 mail-in ballots were illegally counted as they were not cast by legal voters.

131.

In sum, as set forth above, for a host of independent reasons, the Georgia certified election results concluding that Joe Biden received 12,670 more votes that President Donald Trump must be set aside.

COUNT I

DEFENDANTS VIOLATED THE ELECTIONS CLAUSE AND 42 U.S.C. § 1983

132.

Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

133.

The Electors Clause states that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for President. Art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause of the U.S. Constitution states that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." Art. I, § 4, cl. 1 (emphasis added).

134.

The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley*, 285 U.S. at 193. Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2668 (2015).

135.

Defendants are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants' power is limited to "tak[ing] care that the laws be faithfully executed." Pa. Const. Art. IV, § 2. Because the United States Constitution reserves for the General Assembly the power to set the time, place, and manner of holding elections for the President and Congress, county boards of elections and state executive officers have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation.

136.

Defendants are not the legislature, and their unilateral decision to create a "cure procedure" violates the Electors and Elections Clauses of the United States Constitution.

137.

The Secretary of State and the State Election Board are not the legislature, and their decision to permit early processing of absentee ballots in direct violation of the unambiguous requirements of O.C.G.A. § 21-2-386(a)(2) violates the Electors and Elections Clauses of the United States Constitution.

138.

Many Affiants testified to many legal infractions in the voting process, including specifically switching absentee ballots or mail-in ballots for Trump to Biden. Even a Democrat testified in his sworn affidavit that before he was forced to move back to where he could not see, he had in fact seen, "*I also saw absentee ballots for Trump inserted into Biden's stack, and counted as Biden votes. This occurred a few times*". (See Exh. 18, Par. 12).

139.

Plaintiff's expert also finds that voters received tens of thousands of ballots that they never requested. (See Exh. 1, Dr. Briggs' Report). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an absentee ballot that they did not request one ranges from 16,938 to 22,771. This range exceeds the margin of loss of President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests.

140.

This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not

be in the database of unreturned ballots analyzed here. *See* O.G.C.A. 21-2-522. These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud.

141.

Further, as shown by data collected by Matt Braynard, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state. Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

142.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted. Defendants have acted and, unless enjoined, will act under color of state law to violate the Elections Clauses of the Constitution. Accordingly, the results for President and Congress in the November 3, 2020 election must be set aside. The results are infected with Constitutional violations.

COUNT II

THE SECRETARY OF STATE AND GEORGIA COUNTIES VIOLATED THE FOURTEENTH AMENDMENT U.S. CONST. AMEND. XIV, 42 U.S.C. § 1983

DENIAL OF EQUAL PROTECTION

INVALID ENACTMENT OF REGULATIONS AFFECTING OBSERVATION AND MONITORING OF THE ELECTION

143.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

144.

The Fourteenth Amendment of the United States Constitution provides "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *See also Bush v. Gore*, 531 U.S. 98, 104 (2000)(having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over the value of another's). *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665 (1966) ("Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.").

145.

The Court has held that to ensure equal protection, a "problem inheres in the absence of specific standards to ensure its equal application. The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude, necessary." *Bush v. Gore*, 531 U.S. 98, 106, 121 S. Ct. 525, 530, 148 L. Ed. 2d 388 (2000).

146.

The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights. The requirement of equal protection is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote.

147.

In statewide and federal elections conducted in the State of Georgia, including without limitation the November 3, 2020, General Election, all candidates, political parties, and voters, including without limitation Plaintiffs, have a vested interest in being present and having meaningful access to observe and monitor the electoral process in each County to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

148.

Moreover, through its provisions involving watchers and representatives, the Georgia Election Code ensures that all candidates and political parties in each County, including the Trump Campaign, have meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent. *See, e.g.* In plain terms, the statute clearly prohibits opening absentee ballots prior to election day, while the rule authorizes doing so three weeks before election day. There is no reconciling this conflict. The State Election Board has authority under O.C.G.A. § 21-2-31 to adopt lawful and legal rules and regulations, but no authority to promulgate a regulation that is directly contrary to an unambiguous statute. Rule 183-1-14-0.9-.15 is therefore plainly and indisputably unlawful.

Plaintiffs also bring this action under Georgia law, O.C.G.A. § 21-2-522, Grounds for Contest:

149.

A result of a primary or election may be contested on one or more of the following grounds:

150.

(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.

151.

Several affiants testified to the improper procedures with absentee ballots processing, with the lack of auditable procedures with the logs in the computer systems, which violates Georgia law, and federal election law. See

also, 50 U.S.C. § 20701 requires the retention and preservation of records and papers by officers of elections under penalty of fine and imprisonment.

152.

The State Election Board re-adopted Rule 183-1-14-0.9-.15 on November 23, 2020 for the upcoming January 2021 runoff election.

153.

A large number of ballots were identical and likely fraudulent. An Affiant explains that she observed a batch of utterly pristine ballots:

> 14. Most of the ballots had already been handled; they had been written on by people, and the edges were worn. They showed obvious use. However, one batch stood out. It was pristine. There was a difference in the texture of the paper - it was if they were intended for absentee use but had not been used for that purposes. There was a difference in the feel.
>
> 15. These different ballots included a slight depressed pre-fold so they could be easily folded and unfolded for use in the scanning machines. There were no markings on the ballots to show where they had com~ from, or where they had been processed. These stood out.
>
> 16. In my 20 years of experience of handling ballots, I observed that the markings for the candidates on these ballots were unusually uniform, perhaps even with a ballot-marking device. By my estimate in observing these ballots, approximately 98% constituted votes for Joe Biden. I only observed two of these ballots as votes for President Donald J. Trump." (See Exh. 15).

154.

The same Affiant further testified specifically to the breach of the chain of custody of the voting machines the night before the election stating:

> we typically receive the machines, the ballot marking devices – on the Friday before the election, with a chain of custody letter to be signed on Sunday, indicating that we had received the machines and the counts on the machines when received, and that the machines have been sealed. **In this case, we were asked to sign the chain of custody letter on Sunday, even though the machines were not delivered until 2:00 AM in the morning on Election Day.** The Milton precinct received its machines at 1:00 AM in the morning on Election Day. This is unacceptable and voting machines should [not] be out of custody prior to an Election Day. *Id.*

155.

Defendants have a duty to treat the voting citizens in each County in the same manner as the citizens in other counties in Georgia.

156.

As set forth in Count I above, Defendants failed to comply with the requirements of the Georgia Election Code and thereby diluted the lawful ballots of the Plaintiffs and of other Georgia voters and electors in violation of the United States Constitution guarantee of Equal Protection.

157.

Specifically, Defendants denied the plaintiffs equal protection of the law and their equal rights to meaningful access to observe and monitor the electoral process enjoyed by citizens in other Georgia Counties by:

(a) mandating that representatives at the pre-canvass and canvass of all absentee and mail-ballots be either Georgia barred

attorneys or qualified registered electors of the county in which they sought to observe and monitor;

(b) not allowing watchers and representatives to visibly see and review all envelopes containing official absentee and mail-in ballots either at or before they were opened and/or when such ballots were counted and recorded; and

(c) allowing the use of Dominion Democracy Suite software and devices, which failed to meet the Dominion Certification Report's conditions for certification.

158.

Instead, Defendants refused to credential all of the Trump Republican's submitted watchers and representatives and/or kept Trump Campaign's watchers and representatives by security and metal barricades from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted

159.

Many Affiants testified to switching absentee ballots or mail-in ballots for Trump to Biden, including a Democrat. He testified in his sworn affidavit, that before he was forced to move back to where he could not see, he

had in fact seen, "absentee ballots for Trump inserted into Biden's stack, and counted as Biden votes. This occurred a few times". (See Exh. 18, Par. 12).

160.

Other Georgia county boards of elections provided watchers and representatives of candidates and political parties, including without limitation watchers and representatives of the Republicans and the Trump Campaign, with appropriate access to view the absentee and mail-in ballots being pre-canvassed and canvassed by those county election boards and without restricting representatives by any county residency or Georgia bar licensure requirements.

161.

Defendants intentionally and/or arbitrarily and capriciously denied Plaintiffs access to and/or obstructed actual observation and monitoring of the absentee and mail-in ballots being pre-canvassed and canvassed by Defendants, depriving them of the equal protection of those state laws enjoyed by citizens in other Counties.

162.

Defendants have acted and will continue to act under color of state law to violate Plaintiffs' right to be present and have actual observation and access to the electoral process as secured by the Equal Protection Clause of the United States Constitution.

163.

Defendants further violated Georgia voters' rights to equal protection insofar as Defendants allowed the Georgia counties to process and count ballots in a manner that allowed ineligible ballots to be counted, and through the use of Dominion Democracy Suite, allowed eligible ballots for Trump and McCormick to be switched to Biden or lost altogether. Defendants thus failed to conduct the general election in a uniform manner as required by the Equal Protection Clause of the Fourteenth Amendment and the Georgia Election Code.

164.

Plaintiffs seek declaratory and injunctive relief holding that the election, under these circumstances, was improperly certified and that the Governor be enjoined from transmitting Georgia's certified Presidential election results to the Electoral College. Georgia law forbids certifying a tally that includes any ballots that were not legally cast, or that were switched from Trump to Biden, through the unlawful use of Dominion Democracy Suite software and devices.

165.

Alternatively, Plaintiffs seek declaratory and injunctive relief holding that the election, under these circumstances, was improperly certified and that the Governor be required to recertify the results declaring that Donald

Trump has won the election and transmitting Georgia's certified Presidential election result in favor of President Trump.

166.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the declaratory and injunctive relief requested herein is granted. Indeed, the setting aside of an election in which the people have chosen their representative is a drastic remedy that 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. Georgia law 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 accurately. O.C.G.A. § 21-2-520 et seq.

167.

In addition to the alternative requests for relief in the preceding paragraphs, hereby restated, Plaintiffs seek a permanent injunction requiring the County Election Boards to invalidate ballots cast by: 1) voters whose signatures on their registrations have not been matched with ballot, envelope and voter registration check; 2) all "dead votes"; and 4) all 900 military ballots in Fulton county that supposedly were 100% for Joe Biden.

COUNT III

FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE U.S. CONST. AMEND. XIV, 42 U.S.C. § 1983

DENIAL OF DUE PROCESS

DISPARATE TREATMENT OF ABSENTEE/MAIL-IN VOTERS AMONG DIFFERENT COUNTIES

168.

Plaintiffs incorporate each of the prior allegations in this Complaint.

Voting is a fundamental right protected by the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin*, 570 F.2d at 1077-78. "[H]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05.

169.

Defendants are not part of the General Assembly and cannot exercise legislative power. Rather, Defendants' power is limited to executing the laws as passed by the legislature Although the Georgia General Assembly may enact laws governing the conduct of elections, "no legislative enactment may

contravene the requirements of the Georgia or United States Constitutions." *Shankey*, 257 A. 2d at 898.

170.

Federal courts "possess broad discretion to fashion an equitable remedy." *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Engineers*, 781 F.3d 1271, 1290 (11th Cir. 2015); *Castle v. Sangamo Weston, Inc.*, 837 F.2d 1550, 1563 (11th Cir. 1988) ("The decision whether to grant equitable relief, and, if granted, what form it shall take, lies in the discretion of the district court.").

171.

Moreover, "[t]o the extent that a voter is at risk for having his or her ballot rejected due to minor errors made in contravention of those requirements, … the decision to provide a 'notice and opportunity to cure' procedure to alleviate that risk is one best suited for the Legislature[,] . . . particularly in light of the open policy questions attendant to that decision, including what the precise contours of the procedure would be, how the concomitant burdens would be addressed, and how the procedure would impact the confidentiality and counting of ballots, all of which are best left to the legislative branch of Georgia's government." *Id.*

172.

The disparate treatment of Georgia voters, in subjecting one class of voters to greater burdens or scrutiny than another, violates Equal Protection guarantees because "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555. *Rice v. McAlister*, 268 Ore. 125, 128, 519 P.2d 1263, 1265 (1975); *Heitman v. Brown Grp., Inc.*, 638 S.W.2d 316, 319, 1982 Mo. App. LEXIS 3159, at *4 (Mo. Ct. App. 1982); *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶ 41, 56 P.3d 524, 536-37 (Utah 2002).

173.

Defendants are not the legislature, and their unilateral decision to create and implement a cure procedure for some but not all absentee and mail-in voters in this State violates the Due Process Clause of the United States Constitution. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

COUNT IV

FOURTEENTH AMENDMENT, U.S. CONST. ART. I § 4, CL. 1; ART. II, § 1, CL. 2; AMEND. XIV, 42 U.S.C. § 1983

DENIAL OF DUE PROCESS ON THE RIGHT TO VOTE

174.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

175.

The right of qualified citizens to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment of the United States Constitution. *Harper*, 383 U.S. at See also *Reynolds*, 377 U.S. at 554 (The Fourteenth Amendment protects the "the right of all qualified citizens to vote, in state as well as in federal elections."). Indeed, ever since the Slaughter-House Cases, 83 U.S. 36 (1873), the United States Supreme Court has held that the Privileges or Immunities Clause of the Fourteenth Amendment protects certain rights of federal citizenship from state interference, including the right of citizens to directly elect members of Congress. *See Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (*citing Ex parte Yarbrough*, 110 U.S. 651, 663-64 (1884)). *See also Oregon v. Mitchell,* 400 U.S. 112, 148-49 (1970) (Douglas, J., concurring) (collecting cases).

176.

The fundamental right to vote protected by the Fourteenth Amendment is cherished in our nation because it "is preservative of other basic civil and political rights." *Reynolds*, 377 U.S. at 562. Voters have a "right to cast a ballot in an election free from the taint of intimidation and fraud," Burson v. Freeman, 504 U.S. 191, 211 (1992), and "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

177.

"Obviously included within the right to [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted" if they are validly cast. *United States v. Classic*, 313 U.S. 299, 315 (1941). "[T]he right to have the vote counted" means counted "at full value without dilution or discount." *Reynolds*, 377 U.S. at 555, n.29 (quoting *South v. Peters,* 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

178.

"Every voter in a federal . . . election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States*, 417 U.S. 211, 227 (1974); see also *Baker v. Carr*, 369 U.S. 186, 208 (1962). Invalid or

fraudulent votes "debase[]" and "dilute" the weight of each validly cast vote. *See Anderson*, 417 U.S. at 227.

179.

The right to an honest [count] is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States." *Anderson*, 417 U.S. at 226 (quoting *Prichard v. United States*, 181 F.2d 326, 331 (6th Cir.), *aff'd due to absence of quorum*, 339 U.S. 974 (1950)).

180.

Practices that promote the casting of illegal or unreliable ballots or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots. *See Reynolds*, 377 U.S. at 555 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

181.

In Georgia, the signature verification requirement is a dead letter. The signature rejection rate for the most recent election announced by the Secretary of State was 0.15%. The signature rejection rate for absentee ballot applications was .00167% - only 30 statewide. Hancock County, Georgia,

population 8,348, rejected nine absentee ballot applications for signature mismatch. Fulton County rejected eight. No other metropolitan county in Georgia rejected even a single absentee ballot application for signature mismatch. The state of Colorado, which has run voting by mail for a number of years, has a signature rejection rate of between .52% and .66%.[35] The State of Oregon had a rejection rate of 0.86% in 2016.[36] The State of Washington has a rejection rate of between 1% and 2%.[37]If Georgia rejected absentee ballots at a rate of .52% instead of the actual .15%, approximately 4,600 more absentee ballots would have been rejected.

COUNT V

THERE WAS WIDE-SPREAD BALLOT FRAUD.

OCGA 21-2-522

182.

Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

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[35] *See* https://duckduckgo.com/?q=colorado+signature+rejection+rate&t=osx&ia=web last visited November 25,2020

[36] *See* https://www.vox.com/21401321/oregon-vote-by-mail-2020-presidential-election, last visited November 25,2020.

[37] *See* https://www.salon.com/2020/09/08/more-than-550000-mail-ballots-rejected-so-far-heres-how-to-make-sure-your-vote-gets-counted/ last visited November 25, 2020.

183.

Plaintiffs contest the results of Georgia's election, with Standing conferred under pursuant to O.G.C.A. 21-2-521.

184.

Therefore, pursuant to O.G.C.A. 21-2-522, for misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result. The foundational principle that Georgia law "nonetheless 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 accurately." *Martin v. Fulton County Bd. of Registration & Elections*, 307 Ga. 193, 194, 835 S.E.2d 245, 248 (2019). The Georgia Supreme Court has made clear that Plaintiffs need not show how the [] voters would have voted if their [absentee] ballots had been regular. [] only had to show that there were enough irregular ballots to place in doubt the result." See OCGA § 21-2-520 et seq., *Mead v. Sheffield*, 278 Ga. 268, 272, 601 S.E.2d 99, 102 (1994) the Supreme Court invalidated an election, and ordered a new election because it found that,

> Thus, [i]t was not incumbent upon [the Plaintiff] to show how the [481] voters would have voted if their [absentee] ballots had been regular. He only had to show that there were enough irregular ballots to place in doubt the result. He succeeded in that task.

Id. at 271 (citing *Howell v. Fears*, 275 Ga. 627, 571 SE2d 392, (2002) (primary results invalid where ballot in one precinct omitted names of both qualified candidates).

185.

The "glitches" in the Dominion system—that seem to have the uniform effect of hurting Trump and helping Biden have been widely reported in the press and confirmed by the analysis of independent experts.

186.

Prima facie evidence in multiple affidavits shows specific fraudulent acts, which directly resulted in the flipping of the race at issue:

a) votes being switched in Biden's favor away from Trump during the recount;
b) the lack of procedures in place to follow the election code, and the purchase and use, Dominion Voting System despite evidence of serious vulnerabilities;
c) a demonstration that misrepresentations were made about a pipe burst that sent everyone home, while first six, then three, unknown individuals were left alone until the morning hours working on the machines;

d) further a failure to demonstrate compliance with the Georgia's Election Codes, in maintaining logs on the Voting system for a genuine and sound audit, other than voluntary editable logs that prevent genuine audits. While the bedrock of this Democratic Republic rests on citizens' confidence in the validity of our elections and a transparent process, Georgia's November 3, 2020 General Election remains under a pall of corruption and irregularity that reflects a pattern of the absence of mistake. At best, the evidence so far shows ignorance of the truth; at worst, it proves a knowing intent to defraud.

187.

Plaintiff's expert also finds that voters received tens of thousands of ballots that they never requested. (See Exh. 1, Dr. Briggs' Report). Specifically, Dr. Briggs found that in the state of Georgia, based on a statistically significant sample, the expected amount of persons that received an **absentee ballot that they did not request ranges from 16,938 to 22,771.** This range exceeds the margin of loss of President Trump by 12,670 votes by at least 4,268 unlawful requests and by as many as 10,101 unlawful requests.

188.

This widespread pattern, as reflected within the population of unreturned ballots analyzed by Dr. Briggs, reveals the unavoidable reality that, in addition to the calculations herein, third parties voted an untold number of unlawfully acquired absentee or mail-in ballots, which would not be in the database of unreturned ballots analyzed here. See O.G.C.A. 21-2-522. These unlawfully voted ballots prohibited properly registered persons from voting and reveal a pattern of widespread fraud.

189.

Further, there exists clear evidence of 20,311 absentee or early voters in Georgia that voted while registered as having moved out of state. Specifically, these persons were showing on the National Change of Address Database (NCOA) as having moved, or as having filed subsequent voter registration in another state also as evidence that they moved and even potentially voted in another state. The 20,311 votes by persons documented as having moved exceeds the margin by which Donald Trump lost the election by 7,641 votes.

190.

Plaintiffs" expert Russell Ramsland concludes that at least 96,600 mail-in ballots were fraudulently cast. He further concludes that up to

136,098 ballots were illegally counted as a result of improper manipulation of the Dominion software. (Ramsland Aff).

191.

The very existence of absentee mail in ballots created a heightened opportunity for fraud. The population of unreturned ballots analyzed by William Briggs, PhD, reveals the probability that a far greater number of mail ballots were requested by 3rd parties or sent erroneously to persons and voted fraudulently, undetected by a failed system of signature verification. The recipients may have voted in the name of another person, may have not had the legal right to vote and voted anyway, or may have not received the ballot at the proper address and then found that they were unable to vote at the polls, except provisionally, due to a ballot outstanding in their name.

192.

When we consider the harm of these uncounted votes, and ballots not ordered by the voters themselves, and the potential that many of these unordered ballots may in fact have been improperly voted and also prevented proper voting at the polls, the mail ballot system has clearly failed in the state of Georgia and did so on a large scale and widespread basis. The size of the voting failures, whether accidental or intentional, are multiples larger than the margin of votes between the presidential candidates in the

state. For these reasons, Georgia cannot reasonably rely on the results of the mail vote.

193.

The right to vote includes not just the right to cast a ballot, but also the right to have it fairly counted if it is legally cast. The right to vote is infringed if a vote is cancelled or diluted by a fraudulent or illegal vote, including without limitation when a single person votes multiple times. The Supreme Court of the United States has made this clear in case after case. See, e.g., *Gray v. Sanders*, 372 U.S. 368, 380 (1963) (every vote must be "protected from the diluting effect of illegal ballots."); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op. of Stevens, J.) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters."); *accord Reynolds v. Sims*, 377 U.S. 533, 554-55 & n.29 (1964).

194.

Plaintiffs have no adequate remedy at law. As seen from the expert analysis of William Higgs, PhD, based on actual voter data, tens of thousands of votes did not count, and tens of thousands of votes were unlawfully requested.

195.

The Fourteenth Amendment Due Process Clause protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin v. Burns*, 570 F.2d 1065, 1077-78 (1st Cir. 1978).

196.

Separate from the Equal Protection Clause, the Fourteenth Amendment's due process clause protects the fundamental right to vote against "the disenfranchisement of a state electorate." *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981). "When an election process 'reaches the point of patent and fundamental unfairness,' there is a due process violation." *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008) (*quoting Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir.1995) (*citing Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir.1986))). *See also Griffin*, 570 F.2d at 1077 ("If the election process itself reaches the point of patent and fundamental unfairness, a violation of the due process clause may be indicated and relief under § 1983 therefore in order."); *Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994) (enjoining winning state senate candidate from exercising official authority where absentee ballots were obtained and cast illegally).

197.

Part of courts' justification for such a ruling is the Supreme Court's recognition that the right to vote and to free and fair elections is one that is preservative of other basic civil and political rights. *See Black*, 209 F.Supp.2d at 900 (quoting *Reynolds*, 377 U.S. at 561-62 ("since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.")); see also *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("the political franchise of voting … is regarded as a fundamental political right, because [sic] preservative of all rights.").

198.

"[T]he right to vote, the right to have one's vote counted, and the right to have ones vote given equal weight are basic and fundamental constitutional rights incorporated in the due process clause of the Fourteenth Amendment to the Constitution of the United States." Black, 209 F. Supp. 2d at 900 (a state law that allows local election officials to impose different voting schemes upon some portions of the electorate and not others violates due process). "Just as the equal protection clause of the Fourteenth Amendment prohibits state officials from improperly diluting the right to vote, the due process clause of the Fourteenth amendment forbids state

officials from unlawfully eliminating that fundamental right." *Duncan*, 657 F.2d at 704. "Having once granted the right to vote on equal terms, [Defendants] may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05.

199.

In statewide and federal elections conducted in the State of Georgia, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including without limitation Plaintiffs, have a vested interest in being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

200.

Moreover, through its provisions involving watchers and representatives, the Georgia Election Code ensures that all candidates and political parties, including without limitation Plaintiff, Republicans, and the Trump Campaign, shall be "present" and have meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and otherwise free, fair, and transparent.

201.

Defendants have a duty to guard against deprivation of the right to vote through the dilution of validly cast ballots by ballot fraud or election tampering. Rather than heeding these mandates and duties, Defendants arbitrarily and capriciously denied the Trump Campaign and Republicans meaningful access to observe and monitor the electoral process by: (a) mandating that representatives at the pre- canvass and canvass of all absentee and mail-ballots be either Georgia barred attorneys or qualified registered electors of the county in which they sought to observe and monitor; and (b) not allowing watchers and representatives to visibly see and review all envelopes containing official absentee and mail-in ballots either at the time or before they were opened and/or when such ballots were counted and recorded. Instead, Defendants refused to credential all of the Trump Campaign's submitted watchers and representatives and/or kept Trump Campaign's watchers and representatives by security and metal barricades from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. The lack of meaningful access with actual access to see the ballots invited further fraud and cast doubt of the validity of the proceedings.

202.

Consequently, Defendants created a system whereby it was physically impossible for the candidates and political parties to view the ballots and verify that illegally cast ballots were not opened and counted.

203.

Defendants intentionally and/or arbitrarily and capriciously denied Plaintiffs access to and/or obstructed actual observation and monitoring of the absentee and mail-in ballots being pre-canvassed and canvassed by Defendants, and included the unlawfully not counting and including uncounted mail ballots, and that they failed to follow absentee ballot requirements when thousands of **voters received ballots that they never requested.** Defendants have acted and will continue to act under color of state law to violate the right to vote and due process as secured by the Fourteenth Amendment to the United States Constitution.

204.

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

205.

When we consider the harm of these uncounted votes, and ballots not ordered by the voters themselves, and the potential that many of these

unordered ballots may in fact have been improperly voted and also prevented proper voting at the polls, the mail ballot system has clearly failed in the state of Georgia and did so on a large scale and widespread basis. The size of the voting failures, whether accidental or intentional, are multiples larger than the margin in the state. For these reasons, Georgia cannot reasonably rely on the results of the mail vote.

206.

Relief sought is the elimination of the mail ballots from counting in the 2020 election. Alternatively, the Presidential electors for the state of Georgia should be disqualified from counting toward the 2020 election.

207.

The United States Code (3 U.S.C. 5) provides that,

> "[i]f any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

3 USCS § 5.

REQUEST FOR RELIEF

208.

Accordingly, Plaintiffs seek an emergency order instructing Defendants to de-certify the results of the General Election for the Office of President.

209.

In the alternative, Plaintiffs seek an emergency order prohibiting Defendants from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with the Election Code, including, without limitation, the tabulation of absentee and mail-in ballots Trump Campaign's watchers were prevented from observing or based on the tabulation of invalidly cast absentee and mail-in ballots which (i) lack a secrecy envelope, or contain on that envelope any text, mark, or symbol which reveals the elector's identity, political affiliation, or candidate preference, (ii) do not include on the outside envelope a completed declaration that is dated and signed by the elector, or (iii) are delivered in-person by third parties for non-disabled voters.

210.

When we consider the harm of these uncounted votes, and ballots not ordered by the voters themselves, and the potential that many of these unordered ballots may in fact have been improperly voted and also prevented

proper voting at the polls, the mail ballot system has clearly failed in the state of Georgia and did so on a large scale and widespread basis. The size of the voting failures, whether accidental or intentional, are multiples larger than the margin in the state. For these reasons, Georgia cannot reasonably rely on the results of the mail vote. Relief sought is the elimination of the mail ballots from counting in the 2020 election. Alternatively, the electors for the state of Georgia should be disqualified from counting toward the 2020 election. Alternatively, the electors of the State of Georgia should be directed to vote for President Donald Trump.

211.

For these reasons, Plaintiff asks this Court to enter a judgment in their favor and provide the following emergency relief:

1. An order directing Governor Kemp, Secretary Raffensperger and the Georgia State Board of Elections to de-certify the election results;

2. An order enjoining Governor Kemp from transmitting the currently certified election results to the Electoral College;

3. An order requiring Governor Kemp to transmit certified election results that state that President Donald Trump is the winner of the election;

4. An immediate order to impound all the voting machines and software in Georgia for expert inspection by the Plaintiffs.

5. An order that no votes received or tabulated by machines that were not certified as required by federal and state law be counted.

6. A declaratory judgment declaring that Georgia Secretary of State Rule 183-1-14-0.9-.15 violates the Electors and Elections Clause, U.S. CONST. art. I, § 4;

7. A declaratory judgment declaring that Georgia's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement;

8. A declaratory judgment declaring that current certified election results violates the Due Process Clause, U.S. CONST. Amend. XIV;

9. A declaratory judgment declaring that mail-in and absentee ballot fraud must be remedied with a Full Manual Recount or statistically valid sampling that properly verifies the signatures on absentee ballot envelopes and that invalidates the certified results if the recount or sampling analysis shows a sufficient number of ineligible absentee ballots were counted;

10. An emergency declaratory judgment that voting machines be Seized and Impounded immediately for a forensic audit—by plaintiffs' expects;

11. A declaratory judgment declaring absentee ballot fraud occurred in violation of Constitutional rights, Election laws and under state law;

12. A permanent injunction prohibiting the Governor and Secretary of State from transmitting the currently certified results to the Electoral College based on the overwhelming evidence of election tampering;

13. Immediate production of 36 hours of security camera recording of all rooms used in the voting process at State Farm Arena in Fulton County, GA from 12:00am to 3:00am until 6:00pm on November 3.

14. Plaintiffs further request the Court grant such other relief as is just and proper, including but not limited to, the costs of this action and their reasonable attorney fees and expenses pursuant to 42 U.S.C. 1988.

Respectfully submitted, this 25th day of November, 2020.

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CORECO JA'QAN PEARSON, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
v.	)	1:20-cv-4809-TCB
	)	
BRIAN KEMP, *et al.*,	)	
	)	
Defendants.	)	

DEFENDANTS' CONSOLIDATED BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS AND RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF

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EXHIBIT
G

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INTRODUCTION

Plaintiffs, a group of disappointed Republican presidential electors, filed a Complaint alleging widespread fraud in the November general election in Georgia, weaving an unsupported tale of "ballot stuffing," the switching of votes by an "algorithm" uploaded to the state's electronic voting equipment that switched votes from President Trump to Joe Biden, hacking by foreign actors from Iran and China, and other nefarious acts by unnamed actors. Plaintiffs did not bring this election challenge in state court as provided by Georgia's Election Code. Instead, they ask this Court to change the election outcome by judicial fiat and order the Governor, the Secretary, and the State Election Board to "de-certify" the results of the election and replace the presidential electors for Joe Biden (who were selected by a majority of Georgia voters by popular vote as provided by state law) with presidential electors for President Trump. Their claims would be extraordinary if true, but they are not. Much like the mythological "kraken" monster[1] after which Plaintiffs have named this lawsuit, their claims of election fraud and malfeasance belong more to the kraken's realm of mythos than they do to reality.

[1] A "kraken" is a mythical sea monster appearing in Scandinavian folklore, being "closely linked to sailors' ability to tell tall tales." *See* https://en.wikipedia.org/wiki/Kraken.

The truth is that the 2020 general election was, according to the federal agency tasked with overseeing election security, "the most secure in history." (*See* **Exhibit B**.)[2] Cybersecurity experts have determined that there is "***no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised***." (*Id.*) The accuracy of the presidential election results has been confirmed through at least (1) the statewide risk-limiting audit; (2) a hand recount; and (3) independent testing, which has confirmed that the security of the state's electronic voting equipment was not compromised.

As a threshold matter, the Eleventh Circuit issued an opinion today that mandates dismissal of this action for lack of standing and mootness in the related case of *Wood v. Raffensperger*, No. 20-14418, which raised many of the same claims as this case and sought similar relief. (*See* slip opinion attached as **Exhibit A**). In affirming the district court's decision denying Wood's motion to enjoin certification of the election results, the panel held:

> We agree with the district court that Wood lacks standing to sue because he fails to allege a particularized injury. And because Georgia has already certified its election results and its slate of presidential electors, Wood's requests for emergency relief are moot to the extent they concern the 2020 election. The Constitution makes clear that

[2] *See* Cybersecurity & Infrastructure Security Agency's Joint Statement From Elections Infrastructure Government Coordinating Council & the Election Infrastructure Selector Coordinating Committees, November 12, 2020. A true and correct copy of this statement is attached as **Exhibit B**.

> federal courts are courts of limited jurisdiction, U.S. Const. art. III; we may not entertain post-election contests about garden-variety issues of vote counting and misconduct that may properly be filed in state courts.

(slip op. at 1). This decision squarely controls, and the Court should dismiss the action because Plaintiffs lack an injury in fact sufficient to establish Article III standing. Certification of the election results also moots Plaintiffs' claims, as the Court has no authority under federal law to undo what has already been done.

Other threshold issues bar the relief Plaintiffs seek. Even if they were not moot, Plaintiffs' claims are barred by laches because of their inexcusable delay in raising their challenge to the State's electronic voting system and absentee ballot procedures until after their preferred candidate lost. Plaintiffs' claims are also barred by the Eleventh Amendment to the U.S. Constitution, which bars suits for retrospective relief against state officials acting in their official capacity absent a waiver by the State. Similarly, despite their attempts to raise constitutional claims, Plaintiffs' lawsuit is really an election contest challenging the Presidential election, which can and should be brought in a Georgia court as some of Plaintiffs' allies have recently done.

But most importantly, there is no credible evidence to support the drastic and unprecedented remedy of substituting certified presidential election results with the Plaintiffs' preferred candidate. Without this, Plaintiffs cannot clearly establish the

required elements for injunctive relief. Like every state, Georgia has a compelling interest in preserving the integrity of its election process. "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Public confidence in the electoral process would certainly be undermined by a court invalidating the certified results of a presidential election in which nearly 5 million Georgians cast ballots. This Court should decline Plaintiffs' unsupportable efforts to overturn the expressed will of the voters, and should deny their request for relief and dismiss this action.

FACTUAL BACKGROUND

I. Georgia's Electronic Voting System is Secure and Has Not Been Compromised.

Plaintiffs allege wide-ranging conspiracy theories that Georgia's electronic voting system has been compromised by Hugo Chavez and the Venezuelan government (or China and Iran, depending on which "expert" is asked), is infected with a vaguely described "weighted" algorithm that switches votes between candidates, and otherwise produces fraudulent results. In support of their argument, Plaintiffs cite to the un-signed declaration of Dr. Shiva Ayyadurai,[3] other redacted

[3] Dr. Ayyadurai claims he is "an engineer with vast experience in engineering systems, pattern recognition, mathematical and computational modeling and analysis." [Doc. 6-1, ¶ 2]. Elsewhere, Dr. Ayyadurai claims to be the inventor of

declarations, hearsay in the form of various news articles, and contested evidentiary filings in the case *Curling v. Raffensperger*, No. 1:17-cv-2989 (N.D. Ga.).[4]

The Plaintiffs—blinded by either willful ignorance or a lack of basic knowledge of Georgia elections—are incorrect. Georgia's electronic voting system was adopted in compliance with state and federal law, is certified by the Election Assistance Commission following inspection and testing conducted by independent Voting System Test Laboratories ("VSTLs"), and has not been compromised. A review of the *facts*, as opposed to Plaintiffs' conspiracies, confirms the inaccuracy of Plaintiffs' allegations.

A. Adoption and selection of Georgia's electronic voting system.

In 2019, the Georgia General Assembly enacted House Bill 316 ("HB 316"), a sweeping and comprehensive reform of Georgia's election laws, which also modernized and further secured Georgia's voting system. Specifically, the General Assembly chose to require a new unified system of voting throughout the State—

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electronic mail. *See* Sam Biddle, *The Crazy Story of the Man Who Pretended to Invent Email*, Business Insider (Mar. 6, 2012), https://www.businessinsider.com/the-crazy-story-of-the-man-who-pretended-to-invent-email-2012-3. State Defendants object to any consideration of Dr. Ayyadurai's report as he is not qualified to offer the opinions proffered and utilizes unreliable methodology.

[4] The *Curling* matter is now subject to two appeals pending in the Eleventh Circuit Court of Appeals, docket numbers 20-13730 and 20-14067.

moving the State away from the secure, but older, direct-recording electronic ("DRE") voting system to a voting system utilizing Ballot-Marking Devices ("BMDs") and optical scanners. The General Assembly determined this replacement of DREs with BMDs should occur "as soon as possible." O.C.G.A. § 21-2-300(a)(2). The legislation placed the responsibility of selecting the equipment for the new voting system on the Secretary of State. O.C.G.A. § 21-2-300(a). However, contrary to Plaintiffs' assertions that Governor Kemp and Secretary Raffensperger "rushed through the purchase of Dominion voting machines and software," (Doc. 6, p. 15), the procurement of Georgia's new voting system was completed through an open and competitive bidding process as required by Georgia's State Purchasing Act, O.C.G.A. § 50-5-50. Secretary Raffensperger did not make the purchasing decision alone, but established a Selection Committee comprised of seven individuals who were tasked with reviewing bid proposals.[5] Selection Committee members evaluated those proposals using criteria and processes set forth on a Master Technical Evaluation spreadsheet.[6] Of the three requests for proposals evaluated by the Selection Committee, Dominion Voting Systems ("Dominion") received the highest overall score. *Id.*

[5] *See* https://sos.ga.gov/admin/uploads/Selection%20Committee%20Bios.pdf
[6] *See* https://sos.ga.gov/admin/uploads/MasterTechnicalEvaluation_redacted.xls

On July 29, 2019, Secretary Raffensperger posted a Notice of Intent to Award the contract for the statewide voting system to Dominion. No bid protests were received by the State, and Secretary Raffensperger issued a final Notice of Intent to Award on August 9, 2019. *Id.* The voting system consists of BMDs that print ballots by way of a connected printer and optical scanners connected to a locked ballot box. The Dominion BMD allows the voter to make selections on a screen and then prints those selections onto a paper ballot. The voter has an opportunity to review the paper ballot for accuracy before placing it into the scanner. After scanning, the paper ballot drops into a locked ballot box connected to the scanner. BMDs thus create an auditable, verifiable ballot, as required by statute. O.C.G.A. § 21-2-300(a)(2) ("electronic ballot markers shall produce paper ballots which are marked with the elector's choices **in a format readable by the elector**") (emphasis added).

B. Testing and certification of Georgia's voting system.

Georgia's voting system is subject to two different certification requirements. First, the voting system must have been certified by the United States Election Assistance Commission ("EAC") at the time of procurement. O.C.G.A. § 21-2-300(a)(3). Second, the voting system must also be certified by the Secretary of State as safe and practicable for use. Georgia's BMD system meets both requirements.

The Help America Vote Act ("HAVA") created the EAC, which set up a rigorous process for voting-equipment certification, working with committees of experts and coordinating with the National Institute of Standards and Technology. 52 U.S.C. § 20962; *see also* 52 U.S.C. §§ 20962, 20971 (test lab standards). The EAC certifies voting systems as in compliance with the Voluntary Voting System Guidelines ("VVSG"), version 1.0, and does so by utilizing approved, independent Voting System Test Laboratories ("VSTL"). In the case of the voting system utilized in Georgia, SLI Compliance served as the VSTL tasked with testing the system for EAC purposes. The system utilized by Georgia, Democracy Suite 5.5-A, was certified by the EAC on January 30, 2019.[7]

Separately, the Secretary of State utilized another independent EAC-certified VSTL, Pro V&V, to conduct testing for *state* certification of the voting system. Following the VSTL's testing, the Secretary issued a Certification of the Dominion Voting Systems as meeting all applicable provisions of the Georgia Election Code and Rules of the Secretary of State on August 9, 2019.[8] That certification has been

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[7] *See* United States Election Assistance Commission, Agency Decision — Grant of Certification, https://www.eac.gov/sites/default/files/voting_system/files/Decision.Authority.Grant.of.Cert.D-Suite5.5-A.pdf

[8] Plaintiffs erroneously claim that both the Certificate and a test report signed by Michael Walker were "undated" and have attached altered documents that have been cropped to remove the dates of the documents. *See* Compl., ¶12 and Exhibits 5 and 6 thereto. A correct copy of the Certificate showing the date of August 9,

updated due to de minimis changes in system components on two different occasions since, on February 19, 2020, and again on October 5, 2020.

C. Georgia's electronic voting system has not been compromised and Plaintiffs' assertions to the contrary are disproven by the Risk-Limiting Audit.

Plaintiffs' conjecture and speculation does not rebut the reality that Georgia's voting system has not been compromised. Not only have two separate EAC-Certified independent VSTLs confirmed that the system operates as intended, but Georgia's risk-limiting audit ("RLA") further confirms that no "weighted" vote switching occurred.

Shockingly, the basis for Plaintiffs' outlandish claims of system compromise are rooted in suspect statistical—not software—analyses that they suggest irrefutably proves vote switching occurred. For example, in Dr. Ayyadurai's unsigned declaration, the author references (without citation) vote totals in certain precincts for the proposition that a "weighted race" algorithm must be responsible. (*See generally* Doc. 6-1.) The author, however, makes no attempt to evaluate any other reasons voters may have chosen not to vote for President Trump. Indeed, the

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2019 may be viewed at https://sos.ga.gov/admin/uploads/Dominion_Certification.pdf. A copy of the test report showing a date of August 7, 2019 may be found at https://sos.ga.gov/admin/uploads/Dominion_Test_Cert_Report.pdf.

author of that declaration speculates that 48,000 of 373,000 votes cast in Dekalb County were switched in this manner from Trump to Biden, (Doc. 6-1, p. 28), meaning that (under the author's theory) the results in Dekalb County would be 106,373 for Trump to 260,227 for Biden (or approximately 28.6% to 70%). Of course, this would be extraordinarily unusual for heavily democratic Dekalb County, in which President Trump received 51,468 votes (16.47%) in 2016, when the State was using an entirely different voting system.[9]

Moreover, the existence of such a "weighted" algorithm would have been detected in the RLA conducted this year. Following the counties' tabulation of the November election results, but prior to certification, Secretary Raffensperger was required by law to conduct a risk-limiting audit in accordance with O.C.G.A. § 21-2-498. State Election Board Rule 183-1-15-.04 provides that the Secretary of State shall choose the particular election contest to audit. Recognizing the importance of clear and reliable results for such an important contest, Secretary Raffensperger selected the presidential race for the audit.[10] *See* **Exhibit C**.

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[9] *See* Dekalb County Election Results, 2016, *available at* https://results.enr.clarityelections.com/GA/DeKalb/64036/183321/en/summary.html.

[10] *See* Statement of Secretary Raffensperger, "Historic First Statewide Audit of Paper Ballots Upholds Results of Presidential Race, attached as Exhibit C hereto and available at

County election officials were then required to count by hand all absentee ballots and paper ballots printed by the Dominion BMDs. *See id.* The audit confirmed the same outcome of the presidential race as the original tabulation using the Dominion voting systems equipment. *Id.* While there was a slight differential between the audit results and the original machine counts, the differential was well within the expected margin of error that occurs when hand-counting ballots. *Id.* A 2012 study by Rice University and Clemson University found that hand counting ballots in post-election audit or recount procedures can result in error rates of up to 2 percent. *Id.* In Georgia's audit, the highest error rate reported in any county recount was 0.73%, and most counties found no change in their final tally. *Id.*

The audit results refute Plaintiffs' speculation that Dominion machines or software might have somehow flipped, switched, or "stuffed" ballots in the 2020 presidential election. *Id.* Because Georgia voters can verify that their paper ballots (whether hand-marked absentee ballots or ballots marked by BMDs) accurately reflect their intended votes, any actual manipulation of the initial electronic vote count would have been revealed when the hand count of paper ballots presented a different result. The fact that this did not happen forecloses the possibility that

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https://sos.ga.gov/index.php/elections/historic_first_statewide_audit_of_paper_ballots_upholds_result_of_presidential_race

Dominion equipment or software had been manipulated to somehow record false votes for one candidate or to eliminate votes from another.

In sum, the components of Georgia's voting system have been evaluated, tested, and certified by two different independent laboratories as compliant with both state and federal requirements and safe for use in elections. Neither of those two VSTLs identified any "weighted" vote counting algorithm, nor any other impropriety. And, in Georgia's 2020 general election, the correct operation of the voting system was again confirmed by the state's risk-limiting audit.

II. Absentee Ballots Were Validly Processed According to Law

Plaintiffs' claim that the rules under which county elections officials verified absentee ballots are contrary to Georgia law is also without merit. Absentee ballots for the 2020 general election were processed by county election officials according to the procedures established by the Georgia legislature. These procedures were part of HB 316, bipartisan legislation passed in 2019 to reform the state's election code and implement a new electronic voting system. The reforms kept in place Georgia's policy of "no excuse" absentee voting, but modified the technical requirements for absentee ballots. HB 316 modified the language of the oath on the outer absentee ballot envelope to leave the signature requirement but remove the elector's address and date of birth. *See* O.C.G.A. § 21-2-384. Further, HB 316 added a "cure"

provision, which requires election officials to give a voter until three days after the date of the election to cure an issue with the voter's signature before rejecting an absentee ballot for a missing or mismatched signature on the outer envelope. *See* O.C.G.A. § 21-2-386(a)(1)(C). The "cure" provision was added to the statute's requirement that election officials "promptly notify" the voter of a rejected absentee ballot due to a missing or mismatched signature.

On November 6, 2019, the Democratic Party of Georgia, DSCC, and DCCC (collectively, "Political Party Organizations") sued the State Defendants, alleging that the "promptly notify" language of O.C.G.A. § 21-2-386(a)(1)(C) was vague and ill-defined and left counties without standards for verifying signatures on absentee ballots. (App'x Vol. I at 144-49).

While that action was pending, the State Election Board ("SEB") approved a rule that established a uniform standard for counties to follow to "promptly notify" voters when their absentee ballot is rejected as required by O.C.G.A. § 21-2-386(a)(1)(C). The rule provides that when a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk must send the voter notice of the rejection and opportunity to cure within three business days, or by the next business day if within ten days of Election Day. Ga. Comp. R. & Regs. r. 183-1-14-.13 (the "Prompt Notification Rule").

The Prompt Notification Rule was adopted pursuant to the SEB's rule-making authority under O.C.G.A. § 21-2-31(2). It provides a uniform three-day standard for "prompt" notification required by O.C.G.A. § 21-2-386(a)(1)(C) when an absentee ballot is rejected, so that all counties give notice in a uniform manner. The Prompt Notification Rule was promulgated pursuant to the Georgia Administrative Procedure Act, published for public comment, and discussed at multiple public hearings before it became effective on March 22, 2020.

Because the Prompt Notification Rule resolved the issues in the pending lawsuit, the parties resolved the matter in a settlement agreement that included, among other terms, an agreement that (1) the State Election Board would promulgate and enforce the Prompt Notification Rule; and (2) the Secretary of State would issue guidance to county election officials regarding the signature matching process.

On May 1, 2020, the Secretary of State distributed an Official Election Bulletin ("OEB"), advising county election officials of the Prompt Notification Rule and providing guidance for reviewing signatures on absentee-ballot envelopes. (Declaration of Chris Harvey ¶ 5).[11] The OEB instructed that after an election official makes an initial determination that the signature on the absentee ballot envelope does

[11] The Harvey Declaration was submitted in the related case of *Wood v. Raffensperger*, Civil Action No. 1:20-CV-4651-SDG and is attached as **Exhibit D**.

not match the signature on file for the voter pursuant to O.C.G.A. § 21-2-386(a)(1)(B) and (C), two additional registrars, deputy registrars, or absentee ballot clerks should also review the signature, and the ballot should be rejected if at least two of the three officials agree that the signature does not match. (*Id.*) The OEB expressly instructs county officials to comply with state law. (*Id.*)

Contrary to Plaintiff's claim that the Prompt Notification Rule and the OEB have significantly disrupted the signature verification process, these measures have had no detectable effect on the absentee ballot rejection rate since the last general election in 2018. (Harvey Dec. ¶¶ 6, 7). An analysis of the number of absentee-ballot rejections for signature issues for 2020 as compared to 2018 found that the rejection rate for absentee ballots with missing or non-matching signatures in the 2020 general election was 0.15%; the same rejection rate for signature issues as in 2018 before the new measures were implemented. (*Id.*)

ARGUMENT AND CITATION OF AUTHORITIES

I. The Court Lacks Subject Matter Jurisdiction because Plaintiffs Cannot Establish Article III Standing.

Plaintiffs raise three constitutional counts in their Complaint: (1) that the State Defendants violated the Electors and Elections Clauses of Articles I and II ("Count I"); that the State Defendants violated the equal protection clause of the U.S. Constitution ("Count II"); that the State Defendants denied Plaintiffs Due Process

related to "alleged disparate treatment of absentee/mail-in voters among different counties" ("Count III"); and that the State Defendants denied Plaintiffs Due Process "on the right to vote" ("Count IV"). Plaintiffs also bring a state law election contest claim against Defendants pursuant to O.C.G.A. § 21-5-522, invoking the Court's supplemental jurisdiction under 28 U.S.C. § 1367. However, because Plaintiffs cannot establish standing as to any of these causes of action, the Court lacks jurisdiction to consider the merits of Plaintiffs' claims and the case should be dismissed.

Federal courts have an independent obligation to ensure that subject-matter jurisdiction exists before reaching the merits of a dispute. *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (vacating and ordering dismissal of voting rights case due to lack of standing). "For a court to pronounce upon . . . the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires." *Id.* (citation omitted). "If at any point a federal court discovers a lack of jurisdiction, it must dismiss the action." *Id.*

Article III of the Constitution limits the subject-matter jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. A party invoking federal jurisdiction bears the burden of establishing standing at the commencement of the lawsuit. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). As an

irreducible constitutional minimum, Plaintiffs must show they have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Lujan*, 504 U.S. at 561. As the party invoking federal jurisdiction, Plaintiffs bear the burden at the pleadings phase of "clearly alleg[ing] facts demonstrating each element." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

A. Plaintiffs have not Alleged an Injury in Fact Sufficient to Form a Basis for Standing.

Injury in fact is the "first and foremost" of the standing elements. *Spokeo*, 136 S. Ct. at 1547. An injury in fact is "an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020); *see also Bognet v. Sec'y Commonwealth of Pa.*, No. 20-3214, 2020 U.S. App. LEXIS 35639 at *16 (3d Cir. Nov. 13, 2020) ("To bring suit, you—and you personally—must be injured, and you must be injured in a way that concretely impacts your own protected legal interests.").

The alleged injury must be "distinct from a generally available grievance about government." *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018). This requires more than a mere "keen interest in the issue." *Trump v. Hawaii*, 138 S. Ct. 2392, 2416 (2018); *see also Lance v. Coffman*, 549 U.S. 437, 440–41 (2007) ("Our refusal

to serve as a forum for generalized grievances has a lengthy pedigree. . . . [A] generalized grievance that is plainly undifferentiated and common to all members of the public" is not sufficient for standing).

It is for this reason that the Eleventh Circuit found lack of standing in the *Wood* case. The plaintiff in that case could not "explain how his interest in compliance with state election laws is different from that of any other person. Indeed, he admits that any Georgia voter could bring an identical suit. But the logic of his argument sweeps past even that boundary. All Americans, whether they voted in this election or whether they reside in Georgia, could be said to share [plaintiff's] interest in "ensur[ing] that [a presidential election] is properly administered." (slip op., **Ex. A**, at 11).

Plaintiffs have fared no better at articulating a particularized grievance that is somehow different than that of the general voting public. In fact, throughout their Complaint, Plaintiffs allege that their interests are one and the same as any Georgia voter. *See, e.g.* Compl. at ¶ 156 ("Defendants…diluted the lawful ballots of Plaintiffs and of other Georgia voters and electors…"); ¶ 163 ("Defendants further violated Georgia voters' rights…"), ¶ 199 ("all candidates, political parties, and voters, including without limitation Plaintiffs, have a vested interest in being present and having meaningful access to observe and monitor the electoral process"). Having

confirmed that their interests are no different than the interests of all Georgia voters, Plaintiffs have articulated only generalized grievances insufficient to confer standing upon them to pursue their claims.

B. Plaintiffs do not have Standing as Presidential Electors.

Plaintiffs assert that by virtue of their status as Republican presidential electors, they are "candidates" that have standing to raise whatever variety of election complaints that they may choose. For this proposition, they cite to only a single case: *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020). However, *Carson* was predicated on Minnesota election laws that differ from Georgia's and upon facts that are distinguishable from the Plaintiffs' case. Further, the Third Circuit in *Bognet* recently rejected Plaintiff's broad reading of *Carson*. In that case, the court found that a congressional candidate lacked standing to pursue claims under the Elections and Elector clauses based on a generalized "right to run." It specifically noted its disagreement with *Carson*, saying "The Carson court appears to have cited language from [*Bond v. United States*, 564 U.S. 211 (2011)] without considering the context—specifically, the Tenth Amendment and the reserved police powers—in which the U.S. Supreme Court employed that language. There is no precedent for expanding Bond beyond this context, and the *Carson* court cited none." 2020 U.S. App. LEXIS 35639 at *24, fn. 6; *see also Hotze v. Hollins*, No. 4:20-CV-03709, 2020 WL

6437668 at *2 (S.D. Tex. Nov. 2, 2020) (holding candidate lacked standing under Elections Clause); *Looper v. Boman*, 958 F.Supp. 341, 344 (M.D. Tn. 1997) (candidate lacked standing to claim that violations of state election laws had disenfranchised voters as "[h]ow other people vote…does not in any way relate to plaintiff's own exercise of the franchise and further does not constitute concrete and specific judicially cognizable injury."); *Moncier v. Haslam*, 1 F.Supp.3d 854 (E.D. Tn. 2014) (plaintiff denied opportunity to be placed on ballot as candidate for judicial office shared the same generalized grievance as a large class of citizens and failed to demonstrate concrete and particularized injury).

In finding that presidential elector did have standing to challenge purported violations of state election laws, *Carson* relies heavily on specific provisions of Minnesota elections law that treated presidential electors the same as other candidates for office. However, in Georgia, unlike in Minnesota, all persons possessing the qualifications for voting and who have registered in accordance with the law are considered "Electors." O.C.G.A. § 21-2-2(7). Presidential electors in Georgia are not elected to public office, but perform only a limited ministerial role in which they appear at the Capitol on the designated date and time to carry out the expressed will of Georgia's electors by casting their votes for President and Vice President in the Electoral College. O.C.G.A. § 21-2-11. Presidential electors need

not file notices of candidacy otherwise required of political candidates. O.C.G.A. § 21-2-132. Their names do not appear on the ballot; instead, the names of the candidates for President and Vice President appear on the ballot. O.C.G.A. § 21-2-325. Georgia electors do not elect any presidential electors individually; instead, "that slate of candidates shall be elected to such office which receives the highest number of votes cast." O.C.G.A. § 21-2-501(f).

The Eleventh Circuit has held that voters do not suffer a "concrete and particularized injury" simply because their preferred candidate loses an election (*see Jacobson,* 974 F.3d at 1252), and that such a harm would be based on "generalized partisan preferences" which are insufficient to establish standing. *Id.*; *see also Gill v. Whitford,* 138 S.Ct. 1916, 1933 (2018) (rejecting standing based on "group political interests, not individual legal rights"). Plaintiffs have failed to articulate how they, as presidential electors, have suffered any injury not common to their partisan group political interests, or that would not have also been suffered by all Georgia electors generally.

C. Plaintiffs' Alleged Injuries are not Traceable to the State Defendants.

Not only have Plaintiffs failed to demonstrate an injury in fact, they cannot satisfy the causation requirement of standing, which requires that "a plaintiff's injury must be 'fairly traceable to the challenged action of the defendant, and not the result

of the independent action of some third party not before the court.'" *Jacobson*, 974 F.3d at 1253 (citation omitted); *see also Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1265 (11th Cir. 2011) (holding that an injury sufficient to establish standing cannot "result [from] the independent action of some third party not before the court.").

Plaintiffs have introduced declarations and affidavits from witnesses that raise disparate complaints about a variety of events that occurring at various times and places during the November election and subsequent audit. These complaints focus on actions allegedly taken by local elections officials and other third parties that are not named as defendants in this case.[12] Whatever one might conclude from these varied allegations, they all have one thing in common: none of the actions complained of are attributable in any way to any of the State Defendants. Instead, they were taken by local elections officials not named as parties to this case, and any

[12] Examples of these complaints include allegations that Dekalb County elections workers were "more hostile" to Republican observers than Democratic observers (Silva Aff. 06-9 Ex. 18, ¶14), that a Cobb County volunteer audit monitor witnessed "already separated paper machine receipt ballots with barcodes in the Trump tray, placing them in to the Biden tray" (Johnson Aff., Compl., Ex. 17, ¶¶4-5), and that an audit observer at the Lithonia location was too far away from ballots to see how they had been voted and that some auditors were validating ballots without reading them aloud to another auditor. (O'Neal Aff., 6-10, Exhibit J, ¶5-8).

injuries that might have resulted from those actions are not traceable to and cannot be redressed by the State Defendants.

With regard to Plaintiffs' conspiratorial claims related to Dominion equipment and software, there has been no allegation whatsoever that any of the State Defendants participated in any conspiracy or collusion with Dominion or any other third party malicious actor to cause any harm to Plaintiffs or any Georgia voters. The only allegation made against any of the State Defendants is that Governor Kemp and Secretary Raffensperger somehow "rushed" through the equipment selection process. However, this process was an open, competitive bidding process, conducted pursuant to Georgia procurement law, and during *Curling* hearings, and no allegation has been made as to how *any* action or inaction taken by any of the State Defendants during that bidding process might have caused any of Plaintiffs' alleged injuries.

Finally, to the extent that Plaintiffs claim injury as a result of any improprieties in the mailing, processing, validation or tabulation of absentee ballots, these injuries again would not be traceable to any of the State Defendants. Absentee ballots are mailed, processed, validated, and tabulated by local elections officials. *See* O.C.G.A. § 21-2-386. Having failed to establish that any of their purported injuries are traceable to or redressable by the State Defendants, Plaintiffs lack standing and their

claims should be dismissed. *See Jacobson*, 974 F.3d at 1253. *See also Anderson v. Raffensperger*, 1:20-CV-03263, 2020 WL 6048048, at *22 (N.D. Ga. Oct. 13, 2020) (applying *Jacobson* to dismiss election related claims against State Defendants).

II. Plaintiffs' Claims are Moot.

The Eleventh Circuit held in the *Wood* decision today that federal challenges to the certification of the presidential election results in Georgia are now moot. "'We cannot turn back the clock and create a world in which' the 2020 election results are not certified." *Wood v. Raffensperger*, slip op. at 17 (quoting *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015)). Accordingly, the case "no longer presents a live controversy with respect to which the court can give meaningful relief." *Troiano v. Supervisor of Elections in Palm Beach Cty., Fla.*, 382 F.3d 1276, 1282 (11th Cir. 2004). Mootness is jurisdictional—because a federal court may only adjudicate cases and controversies, and a ruling that cannot provide meaningful relief is an impermissible advisory opinion. *Id.*

The Court "cannot prevent what has already occurred." *De La Fuente v. Kemp*, 679 F. App'x 932, 933 (11th Cir. 2017); *Yates v. GMAC Mortg. LLC*, No. 1:10-CV-02546-RWS, 2010 WL 5316550, at *2 (N.D. Ga. Dec. 17, 2010) ("The Court is powerless to enjoin what has already occurred."). While Plaintiffs purportedly seek "decertification" of the certifications that Secretary Raffensperger

and Governor Kemp have already executed, they cite no authority whatsoever to support the notion that a court could order such relief. If the Plaintiffs believed that the results certified by Secretary Raffensperger and Governor Kemp were invalid for fraud or other grounds specified in O.C.G.A. § 21-2-522, Georgia provides an adequate remedy at law by setting forth the procedures for a state law election contest to be initiated in the Superior Court of Fulton County. O.C.G.A. §§ 21-2-520, *et seq*. However, there is simply no precedent for a federal court to issue an injunction requiring either Governor Kemp or Secretary Raffensperger to "decertify" their already-issued certifications or to certify results in direct contravention of the actual election result.

III. Plaintiffs' Claims are Barred by the Eleventh Amendment.

Plaintiffs' federal claims are asserted against the individually named State Defendants in their official capacities. (Doc. 1 at ¶¶ 31-33). These claims are barred by the Eleventh Amendment. The Eleventh Amendment bars suit against a State or one of its agencies, departments or officials, absent a waiver by the State or a valid congressional override, when the State is the real party in interest. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Because claims against public officials in their official capacities are merely another way of pleading an action against the entity of which the officer is an agent, "official capacity" claims against a state officer are

included in the Eleventh Amendment's bar. *Kentucky*, 473 U.S. at 165. While an exception to Eleventh Amendment immunity exists under *Ex parte Young*, 209 U.S. 123 (1908), it is limited to suits against state officers for **prospective** injunctive relief. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 n. 24 (1997). "A federal court cannot award retrospective relief, designed to remedy past violations of federal law." *Id.*

Plaintiffs' claims for injunctive and declaratory relief, premised on the conduct of the November 3, 2020 General Election and the certification of results that have already taken place, are barred because they are retrospective in nature. "Retrospective relief is backward-looking, and seeks to remedy harm 'resulting from a past breach of a legal duty on the part of the defendant state officials.'" *Seminole Tribe of Fla. v. Fla. Dep't of Revenue*, 750 F.3d 1238, 1249 (11th Cir. 2014) (quoting *Edelman v. Jordan,* 415 U.S. 651, 668 (1974)). "Simply because the remedy will occur in the future, does not transform it into 'prospective' relief. The term, 'prospective relief,' refers to the ongoing or future threat of harm, not relief." *Fedorov v. Bd. of Regents*, 194 F. Supp. 2d 1378, 1387 (S.D. Ga. 2002). Plaintiffs' claims for any relief related to the rules and regulations governing the conduct of the November 3, 2020, election or any alleged past security lapses, miscounting of votes,

or election irregularities are entirely retrospective and barred by the Eleventh Amendment.

IV. Laches Bars Plaintiffs' Claims for Post-Election Relief.

In *Wood v. Raffensperger*, 2020 U.S.Dist. LEXIS 218058 (Nov. 20. 2020), this Court found that claims raised by Plaintiffs' counsel Lin Wood were barred by the doctrine of laches. While Plaintiffs' claims overlap significantly with Wood's claims, the facts here are even more compelling when it comes to a finding of laches. Plaintiffs waited even longer than Wood did to file this action. As in *Wood,* virtually all of the complaints that Plaintiffs allege regarding the security of Georgia's voting system or the propriety of State Election Board rules or regulations could have been raised prior to the election.

To establish laches, State Defendants must show "(1) there was a delay in asserting a right or a claim, (2) the delay was not excusable, and (3) the delay caused [them] undue prejudice." *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1326 (11th Cir. 2019) ("To succeed on a laches claim, [defendant] must demonstrate that [p]laintiffs inexcusably delayed bringing their claim and that the delay caused it undue prejudice.").

Where, as here, a challenge to an election procedure is not filed until *after* an election has already been conducted, the prejudice to the state and to the voters that have cast their votes in the election becomes particularly severe. Once the election has been conducted, any harm that might arise from a purported constitutional violation must be weighed against "such countervailing equitable factors as the extremely disruptive effect of election invalidation and the havoc it wreaks upon local political continuity." *Soules v. Kauaians for Nukolii Campaign Committee*, 849 F.2d 1176, 1177 (9th Cir. 1988). For this reason, "if aggrieved parties, without adequate explanation, do not come forward before the election, they will be barred from the equitable relief of overturning the results of the election." *Id*. at 1180-81 (*citing Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177, 182-83 (4th Cir. 1983); *see also Curtin v. Va. State Bd. of Elections*, No. 1:20-cv-0546, 2020 U.S. Dist. LEXIS 98627, *16-17 (E.D. Va. May 29, 2020) (rejecting a similar challenge to state official guidance as barred by laches due to plaintiffs' failure to raise the challenge prior to the election). To hold otherwise "permit[s], if not encourage[s], 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." *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973).

Plaintiffs delayed considerably in asserting their claims. To the extent that they had any concerns regarding the vulnerability of Dominion's voting systems, they could have raised those claims long before the election. Each of the absentee ballot regulations and procedures that Plaintiffs now complain of were adopted well before the November 3, 2020 election, and any claims related to the application of those rules during that election are subject to dismissal here for the same reasons that they were dismissed in *Wood*. And, with regard to the purported "irregularities" reported by Plaintiffs' voter and observer declarants, Plaintiffs offer no explanation why they did not attempt to address those issues with the relevant local election officials at the time, but instead waited until after the election officials completed the initial count and audit and certified those results.

As the *Wood* court recognized, Defendants and the public at large would be significantly injured if Plaintiffs were permitted to raise these challenges after the election has already taken place. 2020 U.S.Dist. LEXIS 218058 at *23 ("Wood's requested relief could disenfranchise a substantial portion of the electorate and erode the public's confidence in the electoral process."); *see also Arkansas United v. Thurston*, No. 5:20-cv-5193, 2020 WL 6472651, at *5 (W.D. Ark. Nov. 3, 2020) ("[T]he equities do not favor intervention where the election is already in progress and the requested relief would change the rules of the game mid-play.").

V. The Court should Abstain from Granting Relief.

The relief Plaintiffs seek is nothing short of overturning the November election. The ad damnum clause asks this Court to (1) order the Defendants to de-certify the election results; (2) enjoin the Governor from transmitting the certified results to the Electoral College; and instead (3) require the Governor to transmit a certification that President Trump received the majority of votes in Georgia. (Doc. 1 ¶ 211(1-3); Doc. 101 at 100.) There are numerous problems with this proposed relief. First, it violates the principles of federalism. Second, the *Pullman* doctrine warrants dismissal. Finally, and at the very least, this lawsuit should be stayed pending the outcome of state election challenges pursuant to the *Colorado River* doctrine.

On federalism, the Eleventh Circuit recently held that it is "doubtful" that a federal court could compel a state to promulgate a regulation. *Jacobson*, 974 F.3d at 1257. First, federal courts are only able to order state defendants from "refrain[ing] from violating federal law." *Id.* (citing *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 255 (2011)). Much of Plaintiffs' proposed relief cannot be reconciled with this binding precedent. Specifically, Plaintiffs do not seek to just refrain the Governor and the Secretary, they seek to compel them to certify a different candidate than the election laws demand, which is wholly inconsistent with Georgia's Election

Code and the thrice-audited results. The relief sought is particularly offensive to federalism principles in the light of the election challenges pending in state court that significantly mirror the claims brought in this lawsuit. As the Plaintiffs themselves now recognize, "Georgia law makes clear that post-election litigation may proceed in state Court." *Wood v. Raffensperger*, slip op. at 9. Indeed, Plaintiffs' Complaint repeatedly claims that they are bringing their lawsuit pursuant to Georgia statutes that provide the very basis to challenge elections. (Doc. No. 1 ¶¶ 150 (O.C.G.A. § 21-2-522), 183-207 (O.C.G.A. §§ 21-2-521, 21-2-522). It is hard to imagine a more significant challenge to federalism than for a party to come to federal court asking that court to reverse certified election results without giving the State an opportunity to act pursuant to its own statutory scheme.

These concerns are recognized by the *Pullman* doctrine, which is "appropriate 'in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law.'" *3637 Corp., Inc. v. City of Miami*, 314 F. Supp. 3d 1320, 1334 (S.D. Fla. 2018) (citing *Moheb, Inc. v. City of Miami*, 756 F.Supp.2d 1370, 1372 (S.D. Fla. 2010) (quoting *Abell v. Frank*, 625 F.2d 653, 656–57 (5th Cir. 1980)). Here, the constitutional issue presented—whether the legislature's delegation of rulemaking authority to the SEB is valid, and whether the SEB exceeded that authority when

promulgating various emergency rules—violates the federal constitution. In other words, the Court cannot answer the constitutional question without first deciding that the state agency exceeded its authority *under State law*. This is a classic *Pullman* situation, which examines and requires that "(1) there must be an unsettled issue of state law; and (2) there must be a possibility that the state law determination will moot or present in a different posture the federal constitutional questions raised." *Id.* at 1372–73 (citing *Abell*, 625 F.2d at 657). Judge Jones reached the same conclusion last December in another election-related lawsuit, *Fair Fight, Inc. v. Raffensperger*.[13] This Court should do the same and dismiss the lawsuit.

For a similar reason, Plaintiffs' requested relief violates the *Colorado River Doctrine.* There are numerous pending challenges to the November election that have properly been filed in Georgia's courts, including, according to press statements by Mr. Wood's counsel in the *Wood* litigation, one filed late on December 4, 2020, by President Trump. At least one seeks nearly identical relief as the Plaintiffs' lawsuit. Under similar circumstances, the Eleventh Circuit has indicated that a stay of federal proceedings is warranted under the *Colorado River* doctrine, which "authorizes a federal 'district court to dismiss or stay an action when there is an ongoing parallel action in state court.'" *Moorer v. Demopolis Waterworks &*

[13] A true and accurate copy of the December Order is attached as **Exhibit E**.

Sewer Bd., 374 F.3d 994, 997–98 (11th Cir. 2004) (citing *LaDuke v. Burlington Northern Railroad Co.,* 879 F.2d 1556, 1558 (7th Cir.1989)). Factors considered in the *Colorado River* analysis include: the desire to "avoid piecemeal litigation," whether state or federal law governs the issue, and whether the state court can protect all parties' rights. *Id.* at 987 (citation omitted).

Each of these factors warrants staying the litigation. The bulk of Plaintiffs' complaint addresses issues of state law: how absentee ballot requests and ballots are inspected, the authority of the General Assembly to delegate authority to the SEB and the Secretary, and the criteria for certifying elections. Moreover, the state court election challenges are to move swiftly. Thus, the possibility of piecemeal litigation is real and concrete. Finally, the relief that the parties in the state court challenges can obtain would protect all parties' rights. The remedies available to Georgia courts when ruling on election challenges are spelled out in state law. *See* O.C.G.A. § 21-2-527(d). Under these circumstances, *Colorado River* factors are satisfied, and the election challenge should proceed in state court under the same state laws that the Plaintiffs raised in their Complaint.

VI. Plaintiffs' Motion for Injunctive Relief Should be Denied.

Even if Plaintiffs could overcome the jurisdictional defects that are fatal to their claims, they still fail to satisfy the requirements for the extraordinary injunctive relief they seek.

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 24 (2008). To prevail on their motion, Plaintiffs are required to show: (1) a substantial likelihood of prevailing on the merits; (2) that the plaintiff will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damages the proposed injunction may cause the opposing party; and (4) the injunction would not be adverse to the public interest. *Duke v. Cleland*, 954 F.2d 1526, 1529 (11th Cir. 1992). The Court "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24.

A. Plaintiffs are not likely to succeed on the merits of their claims.

1. Plaintiffs' equal protection claims fail because they cannot show arbitrary and disparate treatment among different classes of voters.

Plaintiffs' equal protection claims fail for the same reason their counsel's equal protections claims failed in *Wood*. In the voting rights context, equal protection means that "[h]aving once granted the right to vote on equal terms, the state may

not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore,* 531 U.S. 98, 104 (2000) (citation omitted). Typically, when deciding a constitutional challenge to state election laws, federal courts apply the *Anderson-Burdick* framework that balances the burden on the voter with the state's interest in the voting regulation. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190 (2008); *Democratic Exec. Comm. of Fla. v. Lee,* 915 F.3d 1312, 1318-19 (11th Cir. 2019).

But, as the *Wood* court recognized, Plaintiffs' claims do not fit within this framework. 2020 U.S. Dist. LEXIS 218058 at *25. Plaintiffs have not articulated a cognizable harm that invokes the Equal Protection Clause. Any actions taken by the State Defendants were taken "in a wholly uniform manner across the entire state." *Id.* at 26. No voters – including the Plaintiffs – were treated differently than any other voter. *Id.* (*citing Wise v. Circosta*, 978 F.3d 93, 100 (4th Cir. 2020).

Nor have Plaintiffs set forth a "vote dilution" claim. None of the Plaintiffs have alleged that any action of Defendants have burdened their ability to cast their own votes. Instead, their claims, like Wood's, appear to be that because some votes were improperly counted or illegally cast, these illegal or improperly counted votes somehow caused the weight of ballots cast lawfully by Georgia voters to be somehow weighted differently than others. *Id.* at 27. Both the district court in *Wood*

court and the Third Circuit Court of Appeals in *Bognet* "squarely rejected" this theory. *Bognet*, 2020 WL 6686120, at *31-2 ("if dilution of lawfully cast ballots by the 'unlawful' counting of invalidly cast ballots were a true equal-protection problem, then it would transform every violation of state election law…into a potential federal equal-protection claim"); *see also Jacobson*, 974 F.3d at 1247 (rejecting partisan vote dilution claim).

The Supreme Court's decision in *Bush v. Gore* does not support Plaintiff's case (*see* Doc. 6 at 16-17), as that case found a violation of equal protection where certain counties were utilizing varying standards for what constituted a legal vote in the 2000 Florida recount. 531 U.S. at 105 ("The question before us … is whether the recount procedures … are consistent with its obligation to avoid arbitrary and disparate treatment of the members of its electorate"). Here, any actions taken by the State Defendants were undertaken state-wide. The isolated "irregularities" complained of by Plaintiff's various declarants, if true, would have taken place at the county level under the supervision of elections officials that are not parties to this case. All actions of the State Defendants have been uniform and applicable to all Georgia counties and voters, in order to avoid the kind of ad hoc standards that varied from county to county as found unconstitutional in *Bush*. They are the exact opposite of arbitrary and disparate treatment.

2. *Plaintiffs' claim under the Electors and Elections Clauses fails.*

The electors clause of the United States Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, "who, in turn, cast the State's votes for president. U.S. Const. art. II, § 1, cl. 2. The General Assembly established the manner for the appointment of presidential electors in O.C.G.A. § 21-2-10, which provides that electors are *selected by popular vote* in a general election. Plaintiffs fail to show how any act of the State Defendants has altered this process.

Similarly, Plaintiffs fail to show how State Defendants have violated the elections clause, which provides that "[t]he Times, Places, and Manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." U.S. Const. art. I, § 4, cl. 1. Plaintiffs complain about a variety of regulations or procedures related to absentee ballot processing, without articulating precisely how those regulations or procedures run afoul of the elections clause. In any event, the State Election Board has the authority, delegated by the legislature, "[t]o formulate, adopt, and promulgate such rules and regulations … as will be conducive to the fair, legal, and orderly conduct of primaries and elections" so long as those rules are "consistent with law." O.C.G.A. 21-2-31(2). Thus, while no one disagrees that State Defendants are not members of the Georgia legislature,

Plaintiff's claim depends on the assumption that the rules and procedures used to process absentee ballots during the November 3, 2020, election were somehow inconsistent with Georgia's election code.

But this simply is not so. The SEB Rule is consistent with State law, and a Georgia court would likely say the same. Under Georgia precedent, when an agency empowered with rulemaking authority (like the SEB is), the test applied to regulation challenges is quite deferential. Georgia courts ask whether the regulation is authorized by statute and reasonable. *Albany Surgical, P.C. v. Dep't of Cmty. Health*, 257 Ga. App. 636, 637 (2002). The answer to both questions is an unqualified "yes."

As shown, the SEB is empowered to promulgate regulations. O.C.G.A. § 21-2-31(1). As recognized by Judge Grimberg in *Wood*, it is normal and constitutional for state legislatures to delegate their authority in such a manner. 2020 U.S.Dist. LEXIS 218058 at *10. The regulations are also reasonable. There is no conflict between the signature verification regulation and statutes cited by the Plaintiffs, O.C.G.A. §§ 21-2-386(a)(1)(C). (Doc. No. 1 at 23.) The statute requires an absentee ballot where a signature "does not appear to be valid" to be rejected and notice provided to the voter. *Id*. The challenged SEB Rule, which merely requires "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," is consistent with this approach. *Wood*, 2020 U.S.Dist. LEXIS 218058 at *10. No statute cited by the Plaintiffs mandates that only one county official examine the absentee ballot, and that the review process involves several officials does not make it any less rigorous or inconsistent with the statutory law. (*See* Harvey Decl. ¶¶ 3, 5). A Georgia court would likely hold the same, because state courts have said that a "regulation must be upheld if the agency presents *any evidence* to support the regulation." *Albany Surgical, P.C. v. Dep't of Cmty. Health*, 257 Ga. App. 636, 640 (2002). Mr. Harvey's declaration certainly satisfies that standard, and it should be obvious that having a verification process in place designed to ensure uniform statewide application of the laws for determining consideration of an absentee ballot does not lead to invalid votes.

Any remaining doubt must be resolved in the State's favor, as the Plaintiffs have not identified any conflict in the language. This is what Judge Grimberg rightly concluded when he held that: "The record in this case demonstrate that, if anything, Defendants' actions in entering into the Settlement Agreement sought to achieve consistency among county election officials in Georgia, which ***furthers*** Wood's stated goals of conducting "[f]ree, fair, and transparent elections." *Wood* at * 10 (emphasis and brackets in original). This ends the inquiry and is fatal to Plaintiffs' claims in Counts I, III, IV, and V.

3. *Plaintiffs' due process claims fail.*

Plaintiffs' motion fails to articulate a discernable claim under the due process clause. It is unclear what process Plaintiffs claim that they were due or how any of the State Defendants failed to provide that process. Count II of Plaintiffs' Complaint, while captioned "Denial of Due Process" vaguely describes an undefined "disparate treatment" with regard to cure processes and argues that the disparate treatment "violates Equal Protection guarantees." *See* Compl. at ¶172. Count IV of Plaintiffs' Complaint is captioned "Denial of Due Process on the Right to Vote", and appears to describe a claim of vote dilution or debasement – citing to various equal protection cases. *See* Compl. at ¶§176-80. Plaintiffs' Motion for Preliminary Injunction does not include any discussion of due process at all.

Plaintiffs have not articulated a cognizable procedural due process claim. A procedural due process claim raises two inquires: "(1) whether there exists a liberty or property interest which has been interfered with by the State and (2) whether the procedures attendant upon that deprivation were constitutionally sufficient." *Richardson v. Texas Sec'y of State*, 978 F.3d 220, 229 (5th Cir. 2020) (citing *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989)). The party invoking the Due Process Clause's procedural protections bears the "burden . . . of establishing a cognizable liberty or property interest." *Richardson*, 978 F.3d at 229

(citing *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005)). Plaintiffs have not clearly articulated what liberty or property interest has been interfered with by the State Defendants, or how any procedures attendant to the purported deprivation were constitutionally sufficient. As the *Wood* court noted:

> …the Eleventh Circuit does "assume that the right to vote is a liberty interest protected by the Due Process Clause." *Jones v. Governor of Fla.*, 975 F.3d 1016, 1048 (11th Cir. 2020). But the circuit court has expressly declined to extend the strictures of procedural due process to "a State's election procedures." *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) ("The generalized due process argument that the plaintiffs argued for and the district court applied would stretch concepts of due process to their breaking point.").

2020 U.S. Dist. LEXIS 218058 at *33.

Nor have Plaintiffs articulated a cognizable substantive due process claim. The types of voting rights covered by the substantive due process clause are considered narrow. *Curry v. Baker*, 802 F.2d 1302, 1314 (11th Cir. 1986). This does not extend to examining the validity of individual ballots or supervising the administrative details of an election. *Id.* In only "extraordinary circumstances will a challenge to a state election rise to the level of a constitutional deprivation." *Id.*

As the *Wood* court recognized:

> Although Wood generally claims fundamental unfairness, and the declarations and testimony submitted in support of his motion speculate as to wide-spread impropriety, the actual harm alleged by Wood concerns merely a "garden variety" election dispute.

2020 U.S. Dist. LEXIS 218058 at *35. Further, "[p]recedent militates against a finding of a due process violation regarding such an ordinary dispute over the counting and marking of ballots." *Id.* (*citing Gamza v. Aguirre*, 619 F.2d 449, 453 (5th Cir. 1980) for the proposition that "If every state election irregularity were considered a federal constitutional deprivation, federal courts would adjudicate every state election dispute.").

The same is true here. Plaintiffs have introduced only speculative, conclusory and contradictory testimony from "experts" that would do no more than establish a possibility of irregularities if their analysis were correct, along with a hodge-podge of disparate claims by third-party voters and observers claiming that they observed a variety of different purported irregularities in a handful of different counties (none of which are parties to this action). Plaintiffs have failed to demonstrate the "extraordinary circumstances" rising to the level of a constitutional deprivation that are necessary to support a substantive due process claim. Plaintiffs have therefore failed to demonstrate a substantial likelihood of success on the merits of any claim for violation of the 14th Amendment's guarantee of either procedural or substantive Due Process.

4. Plaintiffs' Election Contest Claims Fail.

As shown, the Plaintiffs have effectively filed an election challenge under Georgia law. Seeking to stop certification does not save the Plaintiffs' Complaint for at least two additional reasons. First, it has long been the rule that electors are state and not federal officials. *See Walker v. United States*, 93 F.2d 383, 388 (8th Cir. 1937). Consequently, it is state law that determines how challenges to electors are made, and Georgia law sets forth that process as explained above. This also demonstrates why abstention is appropriate. Second, to the extent that the Plaintiffs argue that county election officials did not properly count mail-in and absentee ballots, there are state remedies available to challenge the acts of those county officials. Indeed, Georgia's laws governing election challenges provide for just that.

Finally, and as addressed elsewhere in this brief, the *Jacobson* decision makes clear that challenges to acts of county officials must be brought against those county officials. 974 F.3d at 1254. It is insufficient to rely on the Secretary's general powers "to establish traceability." *Anderson*, 2020 WL 6048048 at *23. Similarly, reliance on the phrase "chief election official" or statements about the uniformity in the administration of election laws have been deemed insufficient by the *Anderson* court when it applied *Jacobson*. *Id.*

In sum, because Plaintiffs are not likely to succeed on the merits of any of their claims, injunctive relief must be denied.

B. The loss of Plaintiffs' preferred candidate is not irreparable harm.

Plaintiffs fail to articulate any specific harm that he faces if his requested relief is not granted, other than the vague claim that an infringement on the right to vote constitutes irreparable harm. However, Plaintiffs do not allege that their right to vote was denied or infringed in any way—only that their preferred candidate lost. It is not irreparable harm if they are not able to "cast their votes in the Electoral College for President Trump," because "[v]oters have no judicially enforceable interest in the outcome of an election." *Jacobson*, 974 F.3d at 1246 ("Voters have no judicially enforceable interest in the outcome of an election.").

Irreparable harm goes to the availability of a remedy—not a particular outcome. Certifying the expressed will of the electorate is not irreparable harm, but rather inevitable and legally required within our constitutional framework. There is a remedy available to extent that the losing candidate—rather than a dissatisfied voter, supporter, or presidential elector—seeks post-certification remedies, and such election contests have been filed in state court and remain pending.

C. The balance of equities and public interest weigh heavily against an injunction.

These remaining injunction factors—balancing the equities and public interest—are frequently considered "in tandem" by courts, "as the real question posed in this context is how injunctive relief at this eleventh-hour would impact the public interest in an orderly and fair election, with the fullest voter participation possible." *Curling v. Kemp*, 334 F. Supp. 3d 1303, 1326 (N.D. Ga. 2018), *aff'd in part, appeal dismissed in part*, 761 F. App'x 927 (11th Cir. 2019); *see also Purcell*, 549 U.S. at 4. The Court must "balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief," paying "particular regard as well for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24.

Here, "the threatened injury to Defendants as state officials and the public at large far outweigh any minimal burden on [Plaintiffs]. *Wood*, 2020 U.S. Dist. LEXIS 218058 at *38. "Confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy," and court orders affecting elections "can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U. S. at 4-5. For this reason, the Supreme Court "has repeatedly emphasized that lower federal courts should ordinarily not alter the

election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S.Ct. 1205, 1207 (April 6, 2020) (per curiam).

The Eleventh Circuit recently held that the *Purcell* principle applies with even greater force when voting has already occurred. *See New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1283 (11th Cir. 2020) ("[W]e are not on the eve of the election—we are in the middle of it, with absentee ballots already printed and mailed. An injunction here would thus violate *Purcell*'s well-known caution against federal courts mandating new election rules—especially at the last minute."); *see also Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) ("Interference with impending elections is extraordinary, and interference with an election after voting has begun is unprecedented.").

Here, the election *has already been conducted*, and the slate of presidential electors has been certified. Granting Plaintiffs' extraordinary relief would only serve to "disenfranchise [] voters or sidestep the expressed will of the people." *Donald J. Trump for President,* 2020 U.S. App. LEXIS 37346 at *28. As the district court in *Wood* correctly recognized, "To interfere with the result of an election that has already concluded would be unprecedented and harm the public in countless ways." 2020 U.S. Dist. LEXIS 218058 at *37-38. Plaintiffs seek even broader relief than that sought in *Wood.* If granted, Plaintiffs' requested relief would disenfranchise not

only Georgia's absentee voters but would invalidate **all** votes cast by Georgia electors.

CONCLUSION

For the foregoing reasons, Plaintiffs' emergency motion for injunctive relief must be denied and the Court should dismiss the action with prejudice. Furthermore, the current TRO entered by the Court should be immediately dissolved to prevent ongoing harm to the ability of county elections officials to begin early voting for the January run-off, for the reasons shown in State Defendants' motion to modify the TRO.

Respectfully submitted, this 5th day of December, 2020.

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Attorneys for State Defendants

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing has been formatted using Times New Roman font in 14-point type in compliance with Local Rule 7.1(D).

/s/ *Charlene S. McGowan*
Charlene S. McGowan
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **STATE DEFENDANTS' CONSOLIDATED BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS AND RESPONSE TO PLAINTIFF'S EMERGENCY MOTION FOR INJUNCTIVE RELIEF** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel for all parties of record via electronic notification.

Dated: December 5, 2020.

/s/ *Charlene S. McGowan*
Charlene S. McGowan
Assistant Attorney General

From:	Rachel Craig
To:	Brittany Paynton
Subject:	FW: Commission v. Powell DC-22-02
Date:	Monday, November 21, 2022 8:59:06 AM
Attachments:	Catergorization of Documents Produced.pdf

From: rhholmes@swbell.net <rhholmes@swbell.net>
Sent: Wednesday, November 16, 2022 12:07 PM
To: Kristin Brady <Kristin.Brady@TEXASBAR.COM>; Rachel Craig <Rachel.Craig@TEXASBAR.COM>
Cc: Mike McColloch <smm@mccolloch-law.com>; Karen Cook <karen@karencooklaw.com>
Subject: Commission v. Powell DC-22-02

Ms. Brady, I have not yet seen an order signed by Judge Bouressa; however, we have no objection to the first item in her ruling so please find attached Ms. Powell's categorization of documents she produced by bates numbers for each request.

Bob Holmes
Holmes Lawyer, PLLC
19 St Laurent Pl
Dallas, Texas 75225
214-384-3182

EXHIBIT
H

CAUSE NO. DC-22-02562

COMMISSION FOR LAWYER DISCIPLINE,	§	IN THE DISTRICT COURT
Plaintiff,	§	
vs.	§	
SIDNEY POWELL (File Nos. 202006349, 202006347, 202006393, 202006599, 202100006, 202100652, 202101297, 202101300, 202101301, 202103520, 202106068, 202106284, 202106181)	§	DALLAS COUNTY, TEXAS
Defendant.	§	116th JUDICIAL DISTRICT

CATEGORIZATION OF DOCUMENTS RESPONSIVE TO REQUESTS

For all Responses to Petitioner's Requests for Production, Sidney Powell identifies, by bates-label, the documents she produced that are responsive to each request.

Request No. 1:

All documents upon which you rely to support your defenses.
SP000001- SP00051106

Request No. 2:

All documents, including but not limited to, correspondence, emails, texts, notes, phone logs, message slips, or memorandums relating to any communications between you and each Plaintiff.

None Produced, listed in Privilege Log

Request No. 3:

All documents, including but not limited to, correspondence, emails, texts, notes, phone logs, message slips, or memorandums relating to any communications between you and each Affiant.

None Produced, listed in Privilege Log

Request No. 4:

All documents, including but not limited to, correspondence, emails, texts, notes, phone logs, message slips, or memorandums concerning the Election Fraud Suits.

None Produced, listed in Privilege Log

Request No. 5:

All documents relating to your and/or your law firm's representation of any party in the **Michigan** Case from the commencement of the representation to the present including, but not limited to, the entire client file, any employment contracts or other writings upon which the representation was based, any documents reflecting an oral contract for representation, any documents reflecting the termination of representation, and any documents that reflect work performed by you or any employee, agent, representative, independent contractor, or affiliate of you or your law firm.

Specifically, SP040027 – SP041038, SP 36178-36179, SP036281, generally those listed in Response to Request No. 1.

Request No. 6:

All documents relating to your and/or your law firm's representation of any party in the **Wisconsin** Case from the commencement of the representation to the present including, but not limited to, the entire client file, any employment contracts or other writings upon which the representation was based, any documents reflecting an oral contract for representation, any documents reflecting the termination of representation, and any documents that reflect work performed by you or any employee, agent, representative, independent contractor, or affiliate of you or your law firm. Specifically, SP041039 - SP041392, generally those listed in Response to Request No. 1.

Request No. 7:

All documents relating to your and/or your law firm's representation of any party in the **Arizona** Case from the commencement of the representation to the present including, but not limited to, the entire client file, any employment contracts or other writings upon which the representation was based, any documents reflecting an oral contract for representation, any documents reflecting the termination of representation, and any documents that reflect work performed by you or any employee, agent, representative, independent contractor, or affiliate of you or your law firm.

Specifically, SP038882 – SP039327, SP044237 - SP044239, generally those listed in Response to Request No. 1.

Request No. 8:

All documents relating to your and/or your law firm's representation of any party in the **Georgia**

Case from the commencement of the representation to the present including, but not limited to, the entire client file, any employment contracts or other writings upon which the representation was based, any documents reflecting an oral contract for representation, any documents reflecting the termination of representation, and any documents that reflect work performed by you or any employee, agent, representative, independent contractor, or affiliate of you or your law firm. Specifically, SP001067 - SP001162, SP001272 - SP002260, SP034354 - SP034369, SP036332 - SP036393, SP037561 - SP037575, SP039328 - SP040009 SP040010 - SP040026, generally those listed in Response to Request No. 1.

Request No. 9:

All fee statements, billing statements, expense reports, accounting statements, and documents of any kind evidencing work you performed related to the Michigan Case.

SP040027 – SP041038, SP 36178-36179, SP036281; otherwise, none responsive or listed in Privilege Log

Request No. 10:

All fee statements, billing statements, expense reports, accounting statements, and documents of any kind evidencing work you performed related to the Wisconsin Case.

SP041039 - SP041392; otherwise, none responsive or listed in Privilege Log

Request No. 11:

All fee statements, billing statements, expense reports, accounting statements, and documents of any kind evidencing work you performed related to the Arizona Case.

SP038882 – SP039327, SP044237 - SP044239; otherwise, none responsive or listed in Privilege Log

Request No. 12:

All fee statements, billing statements, expense reports, accounting statements, and documents of any kind evidencing work you performed related to the Georgia Case.

SP001067 - SP001162, SP001272 - SP002260, SP034354 - SP034369, SP036332 - SP036393, SP037561 - SP037575, SP039328 - SP040009 SP040010 - SP040026; otherwise, none responsive or listed in Privilege Log

Request No. 13:

All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.01.

SP000001- SP00051106

Request No. 14:

All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.02.

SP000001- SP00051106

Request No. 15:

All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.03(a)(1).

SP000001- SP00051106

Request No. 16:

All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.03(a)(5).

SP000001- SP00051106

Request No. 17:

All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 3.03(c)(1).

SP000001- SP00051106

Request No. 18:

All documents that support your contention that you did not violate Texas Disciplinary Rules of Professional Conduct Rule 8.04(a)(3).

SP000001- SP00051106

Request No. 19:

All documents reflecting any of the following: the name, address, telephone number, and details of the information observed by any individual who was a witness or purports to be a witness or purports to have knowledge and/or information relating to the incident made the subject of this lawsuit.

Specifically, SP039906 - SP040009, SP040987 - SP041038, SP041090 - SP041392, generally those listed in Privilege Log

Request No. 20:

For each person with knowledge of facts relevant to this lawsuit, all documents reflecting the facts of which that person has knowledge.
SP035543 - SP035577, SP036166, SP036168, SP036172, SP036175, SP036188 – SP036190, SP036207 – SP036209, SP036282, SP040987 - SP041038, SP041090 - SP041392 SP044532 – SP044677

Request No. 21:

All electronically stored information or electronic format of any document produced in response to these requests.

Produced with SP000001- SP00051106

Request No. 22:

All reports from expert witnesses you intend to call to testify at the trial of this case.

There are no documents responsive at this time

Request No. 23:

All documents identified or referred to in your Answers to any of Petitioner's Interrogatories not provided in response to any of Petitioner's Requests for Production of Documents.

There are no documents responsive

Request No. 24:

All documents evidencing the diagnosis, onset, extent, prognosis, and treatment (including, but not limited to, treatment programs and medications) for depression or any other medical condition that you contend contributed to the actions that form the bases of this Disciplinary Proceeding.

There are no documents responsive

Respectfully submitted,
HOLMES LAWYER, PLLC

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COUNSEL FOR POWELL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been delivered, by efileTexas.gov to all attorneys of record on November 16, 2022.

/s/ Robert H. Holmes
Robert H. Holmes

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brittany Paynton on behalf of Kristin Brady
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Status as of 1/11/2023 5:17 PM CST

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