No. _____

In The
Supreme Court Of The United States

L. LIN WOOD, JR.,
Petitioner,

v.

BRAD RAFFENSPERGER, et al.,
Respondents.

On Petition for a Writ of Certiorari to
the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The Georgia Legislature has plenary authority to set the "Times, Places and Manner" of Federal Elections and has clearly set forth the procedures to be followed in verifying the identity of in-person voters as well as mail-in absentee ballot voters as well as the procedures for receiving, opening and processing absentee ballots. The Georgia Secretary of State usurped that power by modifying the Legislature's clear procedures for verifying the identity of mail-in voters. The Secretary also unilaterally changed the procedures for receiving and opening votes. The effect of the Secretary of State's unauthorized procedures is to treat the class of voters who vote by mail different from the class of voters who vote in-person, like Petitioner. That procedure dilutes the votes of in-person voters. The Secretary's unconstitutional modifications to the legislative scheme violated Petitioner's Equal Protection and Due Process rights by infringing on his fundamental right to vote. The Eleventh Circuit has held that Petitioner does not have standing to challenge State action that dilutes and infringes upon his constitutional right to vote. In this regard, the Court of Appeals decision conflicts with relevant decisions of this Court, and as such, calls for an exercise of this Court's supervisory power. The questions presented are:

1. Whether the Petitioner, as a registered voter, has standing to challenge the unconstitutional actions of nonlegislative officials, who unilaterally altered the "manner" of federal elections prescribed by the state legislature, resulting in the

dilution, impairment, and discounting of his vote.

2. Whether nonlegislative officials had the authority to rewrite, change or otherwise determine the "times, places and manner" of federal elections, including the senatorial runoff election, in contravention of the established legislative framework, without the approval of the Georgia General Assembly.

3. Whether Respondents' unauthorized actions in changing the signature verification requirements, time of opening and method of delivering absentee ballots violated Petitioner's Equal Protection and Due Process rights.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner is L. Lin Wood, Jr., individually, is a voter and donor to the Republican party. Petitioner was the Plaintiff at the trial court level. Petitioner is not a corporate entity.

Respondents are BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, REBECCA N. SULLIVAN, in her official capacity as Vice Chair of the Georgia State Election Board, DAVID J. WORLEY, in his 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, et al. The Respondents were the Defendants at the trial court level.

The intervenors at the trial court level and the Eleventh Circuit are the Democratic Party of Georgia, Inc. and the Democratic Senatorial Campaign Committee ("DSCC").

RELATED PROCEEDINGS

Wood v. Raffensperger, et al., district court case no. 1:20-cv-4651-SDG

Wood v. Raffensperger, et al., 11th Circuit case no. 20-14418

Wood v. Raffensperger, et al., U.S. Supreme Court no. 20-799

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INTRODUCTION

In December 2020, Petitioner was a registered voter residing in Fulton County, Georgia, possessing all of the qualifications for voting in the State of Georgia. On December 18, 2020, Petitioner filed an action seeking declaratory and injunctive relief in the district court, seeking to enjoin the Respondents from conducting the January 5, 2021 Senatorial Runoff election in an unconstitutional manner, which violated his rights and directly conflicted with the election scheme established by the Georgia State Legislature. Petitioner specifically alleged that Respondents' actions in unilaterally promulgating rules and revising the State's election scheme unconstitutionally contravened the Georgia Legislature's prescribed election procedures in multiple respects. Namely, the signature verification procedures for absentee ballots; the manner for opening and processing absentee ballots; and the installation of unauthorized ballot drop boxes were unconstitutional changes made by Respondents. The state legislature never approved of these changes. As a result of these unlawful and unconstitutional changes to the State's election procedures, Petitioner alleged that his rights under the equal protection and due process clause of the Fourteenth Amendment to the United States Constitution were violated.

Petitioner's Complaint, in addition to seeking declaratory and injunctive relief, sought nominal damages with respect to each count in the complaint. Consequently, Petitioner's claims, contrary to the district court and appellate court's conclusions, involves a live case or controversy and are not moot. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021)

(pending claim for nominal damages precluded a finding of mootness).

In the short period of time this case was pending in the district court, and despite the voluminous record on the court's docket, which included witness and expert affidavits, documentary evidence and exhibits, the district court refused to hold any evidentiary hearings or otherwise address the merits of the claims. Respondents would no doubt reference each and every election challenge Petitioner participated in during the 2020-2021 election cycle, ostensibly to point out that each challenge was summarily rejected, and that this Court should follow suit. Quite the contrary, the validity and appropriateness of those claims has now been recognized by the Georgia Legislature, which on March 25, 2021 passed SB 202, reversing most of the unconstitutional election procedures utilized by Respondents during the 2021 Senatorial runoff election. To be sure, the injury suffered by Petitioner, as recognized by SB 202, is directly traceable to Respondents' conduct and their violation of Petitioner's constitutional rights.

For these reasons, this Court should grant the petition, vacate the opinion below and remand this matter with instructions that the district court address the merits of the claims set forth in the Complaint.

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

The Eleventh Circuit's Opinion of which Petitioner seeks review, and the Judgment thereon were entered and filed in that court's general docket on August 6, 2021, and the petition for rehearing and rehearing *en banc* was denied on November 4, 2021.

This Court has jurisdiction over this Petition for Writ of Certiorari under 28 U.S.C. § 1254(1), 28 U.S.C. § 2101(c), and Supreme Court Rules 10, 12 and 13.

Although the Court's review in this instance is discretionary, there are compelling reasons why this Petition should be granted. As stated more fully below, the Eleventh Circuit Court of Appeals has improperly denied vote dilution standing to a voter, the owner of the fundamental right, whose vote was diluted and whose right has been impaired by the State action at issue. That court decided this important federal constitutional question in a way that conflicts with relevant decisions of this Court. Moreover, the challenged election procedures were allowed to stand by the Eleventh Circuit despite their illegality and unconstitutional nature, which calls for the exercise of this Court's supervisory power.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The full text of the following constitutional provisions, statutes and the Secretary of State's unconstitutional procedures are attached as Appendix D to this Petition:

1. Article I, Section 4, Clause 1, of the United States Constitution (Elections Clause);
2. Amendment XIV, Section 1, United States Constitution (Equal Protection and Due Process);
3. O.C.G.A, Section 21-2-386;
4. O.C.G.A., Section 21-2-417;
5. Georgia State Board of Elections, Official Election Bulletin, May 1, 2020.

CONCISE STATEMENT OF THE CASE

Petitioner, an individual residing in Fulton County, Georgia, is a qualified, registered "elector" who possesses all of the qualifications for voting in the State of Georgia. See O.C.G.A. §§ 21-2-2(7), 21-2-216(a). Petitioner sought declaratory and injunctive relief from the district court below, among other things, enjoining the January 5, 2021 Senatorial Runoff election from proceeding while the unconstitutional procedures described herein were in place, and declaring the election procedures described herein, constitutionally defective and requiring Respondents to cure their violations.

The named Respondents include Brad Raffensperger, as Secretary of State of Georgia and Chairperson of Georgia's State Election Board, as well as the other members of the State Election Board, all of which were sued in their official capacities - Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board"). The Complaint alleges violations of the United States Constitution and the applicable Georgia Election laws in regard to the January 5,

2021 run-off election for Georgia's United States Senators.

The Georgia Legislature established a clear an efficient process for handling absentee ballots. To the extent that there is any change in that process, that change must, under Article I, Section 4 of the Constitution, be prescribed by the Georgia Legislature.

Specifically, the unconstitutional procedures in this case involved the unlawful and improper processing of absentee ballots. First, the Georgia Legislature instructed county registrars and clerks (the "County Officials") regarding the handling of absentee ballot signature verification O.C.G.A. §§21-2-386(a)(l)(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 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…

O.C.G.A. § 21-2-386(a)(l)(B) (emphasis added).

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"). *See* O.C.G.A. § 21-2-386(a)(1)(C). With respect to defective absentee ballots:

> *If the elector has failed to sign the oath, or if the signature does not appear to be valid,* or if the elector has failed to furnish required information *or information so furnished does not conform with that on file in the registrar's or clerk's office,* or if the elector is otherwise found disqualified to vote, the registrar or clerk *shall* write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk *shall* promptly *notify the elector of such rejection,* a copy of which notification *shall* be retained in the files of the board of registrars or absentee ballot clerk for at least one year.

O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added). The Georgia Legislature clearly contemplated the use of written notification by the county registrar or clerk in notifying the elector of the rejection. These legislative pronouncements were legally required to be followed in the runoff election, but they indisputably were not.

In March 2020, Respondents Secretary Raffensperger, and the State Election Board, who administer the state elections (collectively the "Administrators") entered into a "Compromise and Settlement Agreement and Release" (the "Litigation Settlement") with the Intervenors Democratic Party of Georgia, Inc. and the Democratic Senatorial Campaign Committee, as well as the Democratic Congressional Campaign Committee (the "Democrat Agencies"), setting forth totally different election procedures and standards to be followed by County Officials in processing absentee ballots in Georgia.

Although Secretary Raffensperger is authorized to promulgate rules and regulations that are "conducive to the fair, legal, and orderly conduct of primaries and elections," all such rules and regulations must be "consistent with law." O.C.G.A. § 21-2-31(2).

Under the Litigation Settlement, the Administrators agreed to change the statutorily prescribed process of handling absentee ballots in a manner that was not consistent with the laws promulgated by the Georgia Legislature. The Litigation Settlement provides that the Secretary of State would issue an "Official Election Bulletin" to County Officials overriding the prescribed statutory procedures. The unauthorized Litigation

Settlement procedure, set forth below, is more cumbersome, and made it much more difficult to follow the statute with respect to defective absentee ballots.

Under the Litigation Settlement, the following language added to the pressures and complexity of processing defective absentee ballots, making it less likely that they would be identified or, if identified, processed for rejection:

> County registrars and absentee ballot clerks *are required,* upon receipt of each mail-in absentee ballot, to compare the signature or make of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21- 2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot.
>
> ***If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee***

ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under O.C.G.A. § 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

The ***second*** unconstitutional procedure at issue in this case relates to the unlawful opening and/or viewing of absentee ballots (mail-in ballots) in advance of the statutory date set for such opening. As with the identity verification procedures described above, the Respondents have also usurped the Georgia General Assembly's plenary power over the manner of conducting elections by impermissibly changing the laws regarding the time for opening and/or viewing of those ballots.

Particularly, the Legislature promulgated O.C.G.A. §21-2-386(a)(1)(A) which provides "the board of registrars or absentee ballot clerk shall keep safely, unopened, and stored in a manner that will prevent tampering and unauthorized access all official absentee ballots received from absentee electors prior to the closing of the polls on the day of the primary or election." (emphasis added).

Pursuant to the Georgia Legislature's clear directives, "***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 a mail-in absentee ballot. O.C.G.A. § 21-2-386(a)(2) (emphasis added). Additionally, "a county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff open the inner envelopes in accordance with the procedures prescribed in this subsection and beginning tabulating the absentee ballots [after following certain notice procedures]." *Id.* at (a)(3). In short, mail-in absentee ballots may not be opened before election day under the Georgia Legislative framework for federal elections.

Nonetheless, Respondents usurped the Legislature's power by enacting Rule 183-1-14-0.7-.15 (1). The Respondents adopted that Rule on an emergency basis on or about May 18, 2020. In direct conflict with the General Assembly's above procedures, it provides that

> ***beginning at 8:00 a.m. on the second Monday prior to election day, county election superintendents shall be authorized to open the outer envelope*** of accepted absentee ballots, remove the contents including the absentee ballots, and scan the absentee ballots using one or more ballot scanners, in accordance with this Rule, and may continue until all accepted absentee ballots are processed. (emphasis added).

This emergency rule was enacted for the June 2020 election, but was then extended on or about August 10, 2020 for use in the General Election. Thereafter, on less than 24-hour notice and with no time for meaningful public comment, the Respondents amended the rule to allow absentee ballots to be opened even earlier - three weeks before the election. This rule was in effect and was implemented in the January 5, 2021 senatorial runoff election.

This emergency rule is in direct contravention of the acts of the Georgia Legislature in its plenary power to direct the manner of the runoff election – the Legislature established its purpose for preventing early opening in the statute

– to "prevent tampering and unauthorized access." The Georgia Election Code expressly prohibits the opening of absentee ballots before election day. In contrast, the Respondents' Rule expressly allows the opening of absentee ballots three-weeks before election day. The Code and the Rule are inconsistent and mutually exclusive. The Rule must be declared invalid and stricken and/or the Respondents should be in enjoined from employing the Rule in the future. The state legislature has never approved these changes to the election law, and in fact has rejected them as shown by the recent amendments mentioned above.

The ***third*** unconstitutional procedure in this case involves the Respondents' establishment of an unlawful method of delivering absentee ballots to election officials.

The Georgia Legislature established a clear procedure for voters to deliver absentee ballots to election officials. O.C.G.A. § 21-2-382 specifies how and where absentee ballots may be delivered to county election officials. Further, O.C.G.A. § 21-2-385(a) requires electors or certain authorized representatives of electors to "personally mail or personally deliver [their absentee ballots] to the board of registrars or absentee ballot clerk."

These statutes, which codify a specific and detailed procedure for requesting, delivering, processing, verifying and monitoring the tabulation of absentee ballots, are designed to protect Georgians from the universally acknowledged dangers of ballot harvesting through widespread mail-in absentee voting, which carries a significant risk of election irregularities and vote fraud.

Specifically, mail-in absentee voting creates opportunities to obscure the true identities of persons fraudulently claiming to be legitimate electors and facilitates the collection of large quantities of purportedly valid absentee ballots by third-parties – commonly called "ballot harvesting" – that results in an extraordinary increase in the number of absentee ballots received by county election officials, which in turn are not received and verified in accordance with the procedure required by applicable Georgia statutes. In fact, the Georgia Legislature set forth the very specific circumstances for returning an absentee ballot, and only authorizes those to be returned by caregivers or close family members. O.C.G.A. §21-2-385(a).

In contravention of the Election Code, Respondents adopted Rule 183-1-14-0.6-.14 authorizing the use of drop boxes in order to provide, as the rule states, "a means for absentee by mail electors to deliver their ballots to the county registrars."

By this rule, Respondents permitted and encouraged the installation and use of unattended drop boxes within Georgia's counties as a means for delivery of absentee ballots, and Respondents receipt thereof. There is no mechanism to ensure that a person who uses a drop box meets the requirements of the Election Code.

Respondents' Rule 183-1-14-0.6-.14 claims that a drop box "shall be deemed delivery pursuant to O.C.G.A. § 21-2-385."

This rule's definition of delivery is in direct conflict with the language of O.C.G.A. § 21-2-385,

which the Georgia General Assembly amended in 2019 specifically to prohibit ballot harvesting.

O.C.G.A. § 21-2-385 now specifies only two options for the submission of an absentee ballot: "the elector shall then personally mail or personally deliver the same to the board of registrars or absentee ballot clerk . . . ."

O.C.G.A. § 21-2-382(a) establishes the precise locations where an election official may receive an absentee ballot from the individual voter or their caregivers or family member. These sites are defined as "additional registrar's offices or places of registration."

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

O.C.G.A. § 21-2-2(27) defines a "polling place" to mean "the room provided in each precinct for voting at a primary or election."

O.C.G.A. § 21-2-382(b) provides that in larger population areas, such as Fulton, DeKalb, Gwinnett, and Cobb counties, the following sites would automatically serve as additional receiving locations for absentee ballots:

> any branch of the county courthouse or courthouse annex established within any such county shall be an additional registrar's or absentee ballot clerk's office or place of registration for the purpose of receiving absentee ballots . . . under Code Section 21-2-385.

A drop box, however, is not included in the list of additional reception sites described in the exercise in O.C.G.A. § 21-2-382(a) and (b) and is not within the meaning of a "registrar's office or places of registration" in O.C.G.A. § 21-2-386.

A "registrar's office or places of registration" contemplates a building with staff capable of receiving absentee ballots and verifying the signature as required by the procedures prescribed in § 21-2-386.

A drop box cannot be deemed a location to apply for an absentee ballot "in person in the registrar's or absentee ballot clerk's office" as prescribed by § 21-2-381 nor can it be a location for an elector to appear "in person" to present the absentee ballot to the "board of registrars or absentee ballot clerk," as prescribed by § 21-2-385.

Throughout the Georgia Election Code, the Legislature clearly contemplated a staffed office or building for voter registration, receipt of absentee ballot applications, and receipt of absentee ballots so that the voter can deliver the ballot "in person" or through their designated statutory agent. See e.g., O.C.G.A. § 21-2-385.

Drop boxes make it easier for political activists to conduct ballot harvesting to gather votes. When they are used there is a break in the chain of custody of those authorized by statute to collect and deliver absentee ballots, which produces opportunities for political activists to submit fraudulent absentee ballots, and the opportunity for illicit votes to be counted is significantly increased.

The break in the chain of custody caused by the use of drop boxes increases the chances that an absentee voter will cast his or her vote under the improper influence of another individual and enhances opportunities for ballot theft or submission of illicitly generated absentee ballots.

The procedures outlined above dilute the Petitioner's fundamental right to vote, treat his vote in a disparate manner and violate his constitutional rights to Equal Protection and Due Process under the U.S. Constitution.

Importantly, Georgia's Legislature has not approved or ratified the above material changes to statutory law mandated by the Respondents.

On December 28, 2021, before the runoff election, without first conducting an evidentiary hearing or considering the merits of the extensive sworn evidence presented, the District Court denied the Petitioner relief and determined that he

lacked standing as a voter to challenge the unconstitutional procedures adopted by the Secretary of State and Election Board. A Final Judgment dismissing the case was entered by the Clerk on the same date. A week later, the January 5, 2021 Senatorial Runoff came and went without any judicial intervention, and the constitutionally defective procedures were used. As a result, the Petitioner's voting rights were diluted, and his constitutional rights violated.

While the Complaint was dismissed on December 28, 2020, the underlying issue that permeates this appeal—whether the Respondent's election procedures in the runoff violate the Petitioner's constitutional rights—will be repeated and will continue to evade review. Additionally, nominal damages were pled in the Complaint and formed the basis for relief. These constitutional violations are ongoing. As such, this appeal involves a live case or controversy or in the alternative fits squarely within the exception to mootness as a case involving an issue capable of repetition, yet evading review. Accordingly, Petitioner appealed the District Court's ruling to the Eleventh Circuit, which affirmed.

ARGUMENT AND REASONS FOR GRANTING THE WRIT

This Court has held that the right to vote is a "fundamental political right," "preservative of all rights." *Yick Wo v. Hopkins*, 6 S. Ct. 1064 (1886); *see also United States v. Anderson*, 481 F.2d 685, 699 (4th Cir. 1973). This right extends not only to "the initial allocation of the franchise," but also to "the manner of

its exercise." *Bush v. Gore*, 121 S. Ct. 525 (2000). Infringement of fundamental constitutional freedoms such as the right to vote "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 96 S. Ct. 2673 (1976); *see also Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). Respondents' ongoing violations of Petitioner's constitutional rights unlawfully infringe upon the Petitioner's fundamental right to vote. The constitutional violation is ongoing. Further, there is a danger the same unconstitutional procedures will be used in the future.

A. The Petitioner Has Standing to Challenge the Unconstitutional Actions of Nonlegislative Officials Who Unilaterally Altered Election Procedures Which Diluted, Impaired and Infringed on his Constitutional Right to Vote In a Federal Election.

The right to vote derives from the right of individuals to associate for the advancement of political beliefs that is at the core of the First Amendment and is protected from state infringement by the Fourteenth Amendment. *E.g., Williams v. Rhodes*, 393 U.S. 23, 30–31, 89 S. Ct. 5, 21 L.Ed.2d 24 (1968); *NAACP v. Button*, 371 U.S. 415, 430, 83 S. Ct. 328, 9 L.Ed.2d 405 (1963).

> Writing for a unanimous Court in *NAACP v. Alabama* [357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958)], Justice Harlan stated that it 'is beyond debate that freedom to engage in

> association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.'

Anderson v. Celebrezze, 460 U.S. 780, 786-87 (1983) (internal citation omitted). Petitioner expressed a strong preference to cast his vote in person and did not want to be shunted out of the regular exercise of the shared political experience of voting with his fellow citizens at their local precinct location. The First and Fourteenth Amendments afford them this right to associate for the advancement of political beliefs by exercising the franchise at the voting booth and to cast their votes effectively. *See generally, Anderson*, 460 U.S. at 788, 103 S. Ct. 1564; *Williams v. Rhodes*, 393 U.S. 23, 30-31, 89 S. Ct. 5, 21 L.Ed.2d 24 (1968); *Reynolds v. Sims*, 377 U.S. 533, 563, 84 S. Ct. 1362, 12 L.Ed.2d 506 (1964).

"Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds*, 377 U.S. at 562, 84 S. Ct. 1362.

The requirements for standing under Article III of the Constitution, are three-fold: First, the plaintiff must have suffered, or must face an imminent and not merely hypothetical prospect of suffering, an invasion of a legally protected interest resulting in a "concrete and particularized" injury. Second, the injury must have been caused by the

defendant's complained-of actions. Third, the plaintiff's injury or threat of injury must likely be redressable by a favorable court decision. *Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1159 (11th Cir. 2008). An injury sufficient for standing purposes is "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

In the voting context, "voters who allege facts showing disadvantage to themselves as individuals have standing to sue," *Baker v. Carr*, 369 U.S. 186, 206, (1962), so long as their claimed injuries are "distinct from a 'generally available grievance about the government,'" *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018)(quoting *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam)).

Contrary to the District Judge and Eleventh Circuit's conclusion, Petitioner, consistent with several constitutional provisions specified in the Complaint and herein, established an injury sufficient for standing. Specifically, under the Fourteenth Amendment of the U.S. Constitution, a state may not "deny to any person within its jurisdiction the equal protection of the laws" or deny "due process." U.S. Const. amend. XIV. The Fourteenth Amendment is one of several constitutional provisions that "protects the right of all qualified citizens to vote, in state as well as federal elections." *Reynolds*, 377 U.S. at 554. Because the Fourteenth Amendment protects not only the "initial allocation of the franchise," as well as "the manner of its exercise," *Bush v. Gore*, 531 U.S. 98, 104, (2000), "lines may not be drawn which are inconsistent with

the Equal Protection Clause...." *Id*. at 105 (citing *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966)).

This Court has identified two theories of voting harms prohibited by the Fourteenth Amendment. First, the Court has identified a harm caused by "debasement or dilution of the weight of a citizen's vote," also referred to "vote dilution." *Reynolds*, 377 U.S. at 555. Petitioner presented a dilution claim below.

This Court has found that the Equal Protection Clause is violated where the state, "[h]aving once granted the right to vote on equal terms," through "later arbitrary and disparate treatment, value[s] one person's vote over that of another." *Bush*, 531 U.S. at 104-05 (2000); see also *Baker v. Carr*, 369 U.S. 186, 208 (1962) ("A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, or by a refusal to count votes from arbitrarily selected precincts, or by a stuffing of the ballot box.") (internal citations omitted). Petitioner supplied evidence in the form of numerous affidavits outlining numerous irregularities in the actual re-counting of votes including attributing the votes of one candidate to the other, the failure of counters to compare signatures on absentee ballots with other signatures on file, processing of absentee ballots that appear to be counterfeit because they had no creases indicative of having been sent by mail, and the manner in which they were bubbled in, not allowing observers sufficient access to meaningfully observe the counting and concluding fraudulent conduct occurred during the vote counting. These procedures

were in effect during the Runoff but were never approved by the state legislature. These irregularities rise to the level of an unconstitutional impairment and dilution of the Petitioner's vote.

The second theory of voting harm requires courts to balance competing concerns around access to the ballot. On the one hand, a state should not engage in practices which prevent qualified voters from exercising their right to vote. A state must ensure that there is "no preferred class of voters but equality among those who meet the basic qualifications." *Gray v. Sanders*, 372 U.S. 368, 379-80, 83 (1963). On the other hand, the state must protect against "the diluting effect of illegal ballots." *Id*. at 380. Because "the right to have one's vote counted has the same dignity as the right to put a ballot in a box," *id*., the vote dilution occurs only where there is both "arbitrary ***and*** disparate treatment." *Bush*, 531 U.S. at 105. To this end, states must have "specific rules designed to ensure uniform treatment" of a voter's ballot. *Id*. at 106.

In *Bush*, this Court held 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." 531 U.S. at 104-05. Petitioner argued below that he has been subjected to arbitrary and disparate treatment because he voted under one set of rules, and other voters, through the guidance in the unlawful consent agreement and Election Bulletin, were permitted to vote invalidly under a different and unequal set of rules, and that this is a concrete and particularized injury.

For the purposes of determining whether Petitioner has standing, it is not "necessary to decide

whether [Petitioner's] allegations of impairment of his vote" by Respondents' actions "will, ultimately, entitle them to any relief," *Baker*, 369 U.S. at 208; whether a harm has occurred is best left to this Court's analysis of the merits of Petitioner's claims. Instead, the appropriate inquiry is, "[i]f such impairment does produce a legally cognizable injury," whether Petitioner "is among those who have sustained it." *Baker*, 369 U.S. at 208.

For purposes of standing, a denial of equal treatment is an actual injury even when the complainant is able to overcome the challenged barrier:

> When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.

New Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville, Fla., 508 U.S. 656, 666 (1993).

This Court has rejected the argument that an injury must be "significant"; rather, a small injury, "an identifiable trifle," is sufficient to confer standing. *United States v. Students Challenging Regulatory*

Agency Procedures (SCRAP), 412 U.S. 669, 689 n.14 (1973). Petitioner submits that he has suffered an injury sufficient to confer standing. "A plaintiff need not have the franchise wholly denied to suffer injury. Any concrete, particularized, non-hypothetical injury to a legally protected interest is sufficient." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005).

The inability of a voter to pay a poll tax, for example, is not required to challenge a statute that imposes a tax on voting, *see Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966), and the lack of an acceptable photo identification is not necessary to challenge a statute that requires photo identification to vote in person. Because Petitioner has demonstrated that the unlawful "Consent Agreement" as well as the illegal drop boxes and early opening of absentee ballots subjected him to arbitrary and disparate treatment, vis-à-vis, other voters (i.e. absentee ballot voters), he has clearly suffered a sufficient injury. See also *Roe v. Alabama*, 43 F.3d 574, 580-581 (11th Cir. 1995)(voter and candidates in statewide election had standing to allege violation of their constitutional rights based on the counting of improperly completed absentee ballots, which diluted votes of the voters who went to the polls on election day.) *Accord Citizens for Legislative Choice v. Miller*, 993 F. Supp. 1041, 1044-1045 (E.D. Mich. 1998)(voters who wished to vote for specific candidates in an election had standing to challenge constitutionality of a state constitutional amendment establishing term limits for state legislators). The lower court, while denying that the Petitioner/voter had standing to challenge the Secretary's unauthorized procedures and the vote dilution they

caused, stated that "the alleged injuries are paradigmatic generalized grievances unconnected to Petitioner's individual vote" and "he would need to show an 'individual burden[]' on his right to due process" to demonstrate that he has standing to pursue his due process claims.. Most respectfully, the reasoning below fails to provide ***any*** protection to Petitioner, or any individual citizen's fundamental right to vote. Petitioner has alleged more than just an "individual burden[]' on his right to due process". As the holder of the fundamental right to vote, Petitioner must be deemed to have standing to seek redress for vote dilution and impairment.

The Respondents' procedures for verifying signatures and rejecting absentee ballots was unconstitutional, and it impermissibly diluted the Petitioner's in person vote.

The Eleventh Circuit held that Petitioner has not suffered aninjury-in-fact because he failed to show how the unlawful procedures implemented by Respondents specifically disadvantaged his vote rather than impacting the proportional effect of every vote. Moreover, it concluded that Petitioner failed to show how he was personally harmed as an individual, when his asserted injuries were "shared identically by [all] Georgians who voted in person."

To the contrary, Petitioner consistent with several constitutional provisions specified in the complaint and in his pleadings, established that as an individual voter he suffered an injury in fact based on the associational and aggregate harm that resulted when the unlawful procedures unilaterally implemented by Respondents, permitted the counting of fraudulent votes, which harmed him, his party, and his candidate of choice. The Eleventh Circuit's opinion

exhibited confusion between a *generalized* grievance with a grievance that, although widely shared, is *personal* to each person who shares it. This Court has repeatedly sought to dispel this confusion, explaining in *Spokeo v. Robbins*, 136 S. Ct. 1540 (2016), for instance: "[t]he fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. The victims' injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm." *Id.* at 1548, n.7. As in *Spokeo*, the Supreme Court in *FEC v. Akins*, 524 U.S. 11 (1998), recognized that one may have Article III standing where the "asserted harm . . . is one which is shared in substantially equal measure by *all or a large class of citizens*." *Id.* at 23 (emphasis added; citations and quotation marks omitted). The distinction that the *Akins* Court drew between cases in which a plaintiff did, versus did not, have Article III standing with respect to a widely shared injury is fully applicable in the present case:

> Whether styled as a constitutional or prudential limit on [Article III] standing, the Court has sometimes determined that where large numbers of Americans suffer alike, the political process, rather than the judicial process, may provide the more appropriate remedy for a widely shared grievance.
>
> The kind of judicial language to which the *FEC* points, however, [in arguing against Article III standing]

> invariably appears in cases where the harm at issue is not *only* widely shared, but *also* of an *abstract and indefinite nature* – for example, harm to the "common concern for obedience to law."
>
> ***
>
> *Often* the fact that an interest is *abstract* and the fact that it is *widely shared* go *hand in hand*. But their association is *not in variable*, and *where harm is concrete, though widely shared, the Court has found "injury-in-fact."*

Id. at 23, 24 (emphases added; citations omitted).

Under the Eleventh Circuit's reasoning, the government could make an announcement that it is going to imprison every single person in the United States, and no one would have Article III standing to seek judicial relief against such edict, even though the panel presumably would agree that a person would have Article III standing if he were the only person, or one of a small number of persons, that the government had targeted. However, as *Akins* recognized, the fact that a harm is widely shared is not relevant by itself; rather, a widely shared harm is *often* abstract, but, when it is, it is the *abstract nature* of the harm, rather than the fact that it is widely shared, that precludes Article III standing; thus, an abstract harm experienced by only one person would preclude such person from having Article III standing. In the present case, Petitioner's asserted

harm may be widely shared, but it is *not* abstract, thus the Petitioner has standing.

B. The Respondents Instituted Procedures for Receiving, Opening and Processing Absentee Ballots That Conflict with State Law and are Unconstitutional.

The Constitution gives each state legislature authority to determine the "Manner" of federal elections. Art. I, § 4, cl. 1. However, the authority given to state legislatures does not authorize nonlegislative officials to unilaterally rewrite the rules concerning the conduct of federal elections, without obtaining legislative approval. See *Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732 (2021) (Thomas, J., dissenting). The Elections Clause of the United States 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;* 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, cl. 1 (emphasis added). Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." *Smiley v. Holm*, 285 U.S. 355, 367 (1932); *see also Arizona State Leg. v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 807-08 (2015). In Georgia, the "legislature" is the General Assembly (the "Georgia Legislature"). *See* Ga. Const. Art. III, § I, Para. I; *(see id*).

The Supreme Court of Georgia has recognized that statutes delegating legislative authority violate constitutional nondelegation and separation of powers. *Premier Health Care Investments, LLC. v. UHS of Anchor*, LP, 2020 WL 5883325 (Ga. 2020). The non-delegation doctrine is rooted in the principle of separation of powers in that the integrity of the tripartite system of government mandates the general assembly does not divest itself of the legislative power granted to it by the State Constitution. See *Department of Trans. v. City of Atlanta*, 260 Ga. 699, 703 (Ga. 1990) (finding OCGA § 50-16-180 through 183 created an impermissible delegation of legislative authority); see also *Mitchell v. Wilkerson,* 258 Ga. 608, 610 (Ga. 1988) (election recall statute's attempt to transfer the selection of the reasons to the applicant amounted to an impermissible delegation of legislative authority.)

Because the Constitution reserves for state legislatures the power to set the time, place, and manner of holding federal elections, state executive officers have no authority to unilaterally exercise that power, much less flout or ignore existing legislation. While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," it does hold states accountable to their chosen processes in regulating federal elections. *Arizona. State Leg.,* 135 S. Ct. at 2677, 2668.

In *North Fulton Med. Center v. Stephenson*, 269 Ga. 540 (Ga. 1998), a hospital outpatient surgery center which had already relocated to a new site and commenced operations applied to the State Health Planning Agency for a certificate of need under the agency's second relocation rule,

which certificate was provided by the agency. A competitor sought appellate relief and the Georgia Supreme Court held that the agency rule conflicted with the State Health Planning Act, and thus, was invalid and had to be stricken. Additionally, the supreme court held that the rule was the product of the agency's unconstitutional usurpation of the general assembly's power to define the thing to which the statute was to be applied. *Id.* at 544. See also *Moore v. Circosta*, 2020 WL 6063332 (MDNC October 14, 2020) (North Carolina State Board of Elections exceeded its statutory authority when it entered into consent agreement and eliminated witness requirements for mail-in ballots).

The Framers of the Constitution were concerned with just such a usurpation of authority by State administrators. In Federalist No. 59, Alexander Hamilton defended the Elections Clause by noting that "a discretionary power over elections ought to exist somewhere" and then discussed why the Article I, Clause 4 "lodged [the power]… primarily in the [State legislatures] and ultimately in the [Congress]." He defended the right of Congress to have the ultimate authority, observing that even though granting this right to states was necessary to secure their place in the national government, that power had to be subordinate to the Congressional mandates to prevent what could arise as the "sinister designs in the leading members of a few of the State legislatures."

The procedures employed by the Respondents during the election constitute a usurpation of the legislator's plenary

authority. This is because the procedures are not consistent with- *and in fact conflict with*- the statute adopted by the Georgia Legislature governing processing of absentee ballots. First, the Litigation Settlement overrides the clear statutory authorities granted to County Officials individually and forces them to form a committee of three if any one official believes that an absentee ballot is a defective absentee ballot. Such a procedure creates a cumbersome bureaucratic procedure to be followed with each defective absentee ballot – and such ballots simply will not be identified by the County Officials.

Additionally, the Litigation Settlement allows a County Official to compare signatures in ways not permitted by the statutory structure created by the Georgia Legislature. 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. § 21-2-38l (b)(l) (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 ..."). Under O.C.G.A. § 21-2-220(c), the elector must present identification, but need not submit identification if the electors submit with their application information such that the County Officials are able to match the elector's information with the state database, generally referred to as the eNet system.

The system for identifying absentee ballots

was carefully constructed by the Georgia Legislature to ensure that electors were identified by acceptable identification, but at some point in the process, the Georgia Legislature mandated the system whereby the elector be identified for each absentee ballot. Under the Litigation Settlement, any determination of a signature mismatch will lead to the cumbersome process described in the settlement, which was not intended by the Georgia Legislature, which authorized those decisions to be made by single election officials.

In short, the Litigation Settlement by itself has created confusion, misplaced incentives, and undermined the confidence of the voters of the State of Georgia in the electoral system. Neither it nor any of the activities spawned by it were authorized, approved or ratified by the Georgia Legislature, as required by the United States Constitution.

"A consent decree must of course be modified, if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under Federal law." *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 388 (1992).

C. The Respondents' Procedures for Receiving, Opening and Processing Absentee Ballots Violates Petitioner's Rights to Equal Protection under the United States Constitution.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a state from "deny[ing] to any person within

its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1. This constitutional provision requires "that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).

And this applies to voting. "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). The Respondents have failed to ensure that Georgia voters are treated equally regardless of whether they vote in person or through absentee ballot. Under the Equal Protection Clause of the Fourteenth Amendment, a state cannot utilize election practices that unduly burden the right to vote or that dilute votes.

When deciding a constitutional challenge to state election laws, the flexible standard outlined in *Anderson v. Celebrezze,* 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992) applies. Under *Anderson* and *Burdick,* courts must "weigh the character and magnitude of the burden the State's rule imposes on those rights against the interests the State contends justify that burden and consider the extent to which the State's concerns make the burden necessary." *Timmons v. Twin Cities Area New Party,* 520 U.S. 351, 358 (1997) (citations and quotations omitted). "[E]ven when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden." *Democratic Exec. Comm. of Fla. v. Lee,* 915 F.3d 1312, 1318-19 (11th Cir. 2019).

"To establish an undue burden on the right to vote under the *Anderson-Burdick* test, Plaintiffs

need not demonstrate discriminatory intent behind the signature-match scheme or the notice provisions because we are considering the constitutionality of a generalized burden on the fundamental right to vote, for which we apply the *Anderson-Burdick* balancing test instead of a traditional equal protection inquiry." *Lee,* 915 F.3d at 1319.

Petitioner's Equal Protection claim is straightforward: states may not, by arbitrary action or other unreasonable impairment, burden a citizen's right to vote. *See Baker v. Carr,* 369 U.S. 186, 208 (1962) ("citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution"). "Having once granted the right to vote on equal terms, the state may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush,* 531 U.S. at 104-05. Among other things, this requires "specific rules designed to ensure uniform treatment" in order to prevent "arbitrary and disparate treatment to voters." *Id.* at 106-07; *see also Dunn v. Bloomstein,* 405 U.S. 330, 336 (1972) (providing that each citizen "has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction").

"The right to vote extends to all phases of the voting process, from being permitted to place one's vote in the ballot box to having that vote actually counted. Thus, the right to vote applies equally to the initial allocation of the franchise as well as the manner of its exercise. Once the right to vote is granted, a state may not draw distinctions between voters that are inconsistent

with the guarantees of the Fourteenth Amendment's equal protection clause." *Pierce v. Allegheny County Bd. of Elections*, 324 F.Supp.2d 684, 695 (W.D. Pa. 2003) (citations and quotations omitted). "[T]reating voters differently "thus "violate[s] the Equal Protection Clause" when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros v. Bd. of Elections,* 249 F.3d 941, 954 (9th Cir. 2001). Indeed, a "minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote]." *Bush,* 531 U.S. at 105.

Simply put, Respondents are not part of the Georgia Legislature and cannot exercise legislative power to enact rules or regulations regarding the handling of defective absentee ballots that are contrary to the Georgia Election Code. By entering the Litigation Settlement, establishing ballot drop boxes, and opening mail-in ballots early, however, Respondents unilaterally and without authority altered the Georgia Election Code. Indeed, the district court, while denying that the Petitioner/voter had standing to challenge the Secretary's unauthorized procedures and the vote dilution they caused, acknowledged that "vote dilution under the Equal Protection Clause is concerned with votes being weighted *differently*." (citing *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019). In the instant case, the result is that absentee ballots have been processed *differently* by County Officials than the process created by the Georgia Legislature and set forth in the Georgia Election Code.

Thus, the rules and regulations set forth in the Litigation Settlement created an arbitrary, disparate, and ad hoc process for processing

defective absentee ballots, and for determining which of such ballots should be "rejected," contrary to Georgia law. *See* O.C.G.A. § 21-2-386. This disparate treatment is not justified by, and is not necessary to promote, any substantial or compelling state interest that cannot be accomplished by other, less restrictive means. As such, Petitioner has been harmed by Respondents' violations of his equal protection rights, and the lower court committed error when it dismissed his claims and failed to recognize his standing to maintain his Constitutional challenges.

If the same procedures continue in future elections, then Georgia's election results will continue to be improper, illegal, and therefore unconstitutional. The fact that the January 5, 2021, election procedures with respect to which Petitioner seeks relief has already occurred does not moot the Petitioner's lawsuit. The Petitioner's fundamental right to vote continues to be impaired, and the constitutionally improper procedures may be implemented in future elections, absent Court intervention. *Siegel v. LePore,* 234 F.3d 1163, 1372 (11th Cir. 2000).

D. The Respondents' Election Procedures Violated Due Process.

The procedures utilized in the runoff election as described in the Verified Complaint violate the Petitioner's right to due process. The abrogation of the absentee ballot signature verification statute, of the requirement that absentee ballots not be opened before election day, and the installation of unauthorized ballot drop boxes, when considered

singularly and certainly when considered collectively, render the election procedures for the runoff so defective and unlawful as to constitute a violation of Petitioner's right to procedural due process under the Fourteenth Amendment to the Constitution.

This Court and other federal courts have repeatedly recognized that when election practices reach the point of patent and fundamental unfairness, the integrity of the election itself violates Petitioner's substantive due process right. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th Cir. 1995); *Roe v. State of Ala.*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*, 19 F.3d 873, 878 (3d Cir. 1994).

The Respondents' unconstitutional rule making discussed above represents an intentional failure to follow election law as enacted by the Georgia Legislature. These unauthorized acts violate Petitioner's procedural due process rights. *Parratt v. Taylor*, 451 U.S. 527, 537-41 (1981), overruled in part on other grounds by *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 532 (1984). Accordingly, the District Court erred, as did the Eleventh Circuit Court of Appeals.

CONCLUSION

For the foregoing reasons this Court should grant the petition, vacate the Eleventh Circuit's Opinion and Judgment and remand to the lower court, with instructions to grant the Petitioner an

evidentiary hearing in order to cure the above described constitutional violations and the procedures established in violation of Georgia's legislative framework. Further, this Court should enjoin, or instruct the lower court to enjoin the Respondents from employing the constitutionally defective procedures in the future, and to award Petitioner nominal damages. This relief will ensure that the election process is conducted in a manner consistent with the United States Constitution. Further, it would promote public confidence in the results of elections.

Respectfully submitted,

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14813
Non-Argument Calendar

D.C. Docket No. 1:20-cv-05155-TCB

L. LIN WOOD,
Plaintiff-Appellant,

versus

BRAD RAFFENSPERGER, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(August 6, 2021)

Before MARTIN, JORDAN, and GRANT, Circuit Judges.

PER CURIAM:

L. Lin Wood, Jr. appeals the district court's dismissal of his lawsuit against various Georgia state election officials. After careful consideration, we affirm the district court's ruling because Wood is without Article III standing to make the claims he asserts in this action.

I

The district court described this case as "the latest in a series of cases associated with Wood that seek to challenge aspects of the 2020 election cycle." On December 18, 2020, Wood, then a registered Georgia voter, sued Brad Raffensperger, Georgia's Secretary of State, along with members of the Georgia State Election Board in their official capacities ("Defendants"). Wood sought declaratory relief and an injunction "halting" Georgia's January 5, 2021, runoff election because he alleged the election was proceeding in a manner contrary to Georgia's election laws and the U.S. Constitution.

Wood alleged that Defendants authorized four unlawful procedures for use in the election: (1) the signature verification process for absentee ballots, (2) the processing of absentee ballots prior to election day, (3) the use of drop boxes for absentee ballots, and (4) the use of Dominion Voting Systems Corporation's voting machines. Based on these allegations, Wood brought three claims. First, he alleged the procedures violated his equal protection and voting rights, as he said he planned to vote in person in the election, and these procedures would dilute his vote and cause his

vote to be treated differently. Second, Wood alleged the procedures violated his due process rights because the procedures were "defective and unlawful" and affected the "integrity of the election." Last, he alleged the procedures violated the Guarantee Clause of the Constitution, which says the United States "shall guarantee to every State in this Union a Republican Form of Government." U.S. Const. Art. IV, § 4. In Wood's view, the procedures he identified violated the Guarantee Clause because they did "not provide for the certainty of a free and fair election."

The district court dismissed Wood's lawsuit for lack of jurisdiction, as the court found Wood did not have Article III standing to sue. With regard to the equal protection and due process claims, the district court found that Wood failed to demonstrate a particularized injury. The court noted other deficiencies for these claims as well. The district court then found that Wood lacked standing to bring his Guarantee Clause claim because the Guarantee Clause makes a guarantee of republican government only to the states and thus does not confer any rights on individuals. This is Wood's appeal.[1]

[1] Two issues arose while this appeal was pending. First, this Court directed the parties to address whether this appeal is moot, and thus whether we lack jurisdiction, "given that the January 5, 2021, election with respect to which Wood seeks relief has already occurred." In response, Wood says the appeal is not moot because the controversy is capable of repetition yet evading review and because he seeks nominal damages. Defendants argue that the appeal is moot because the election has "come and gone" and none of the exceptions to the mootness doctrine applies.

II

On appeal, Wood says the district court erred in dismissing his lawsuit for lack of Article III standing. We review *de novo* whether a plaintiff has Article III standing. *See Wood v. Raffensperger*, 981 F.3d 1307, 1313–16 (11th Cir. 2020). To show he has standing, a plaintiff must demonstrate he suffered an injury in fact that is fairly traceable to the defendant's actions and likely to be redressed by a favorable decision. *Id.* at 1314 (citing *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020)). An injury in fact is one that is concrete, particularized, and either actual or imminent. *Id.* (citing *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020)). The burden is on the plaintiff to demonstrate these requirements for each claim. *See JW ex rel. Williams v. Birmingham Bd. of Educ.*, 904 F.3d 1248, 1264 (11th Cir. 2018) (per curiam). Here, we look to the

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Because we hold Wood lacked Article III standing to sue, we need not reach the question of whether the appeal is moot. *See Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 431, 127 S. Ct. 1184, 1191 (2007) ("[T]here is no mandatory 'sequencing of jurisdictional issues.'").

Second, Defendants moved for leave to supplement the appellate record with material showing Wood did not actually vote in the election, which Defendants say "establishes beyond any doubt" that Wood lacked Article III standing and that the appeal is moot. Wood, in turn, moved to strike Defendants' motion to supplement the appellate record. Because we conclude Wood lacked standing without reference to any supplemental material, Defendants' motion to supplement the appellate record and Wood's motion to strike are **DENIED AS MOOT**.

particularized-injury requirement. A particularized injury is one that "affects the plaintiff in a personal and individual way." *Wood*, 981 F.3d at 1314 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. __, 136 S. Ct. 1540, 1548 (2016)) (quotation marks omitted and alteration adopted). That means the plaintiff must show more than a generalized grievance that is "undifferentiated and common to all members of the public." *Id.* at 1314 (quotation marks omitted).

In a recent case involving similar claims brought by Wood, our Court applied this framework to hold that Wood lacked standing to bring his claims. In that case, Wood alleged that Georgia's absentee-ballot and recount procedures used in the 2020 election violated his constitutional rights. *Id.* at 1310. He therefore sought to "enjoin certification of the general election results, to secure a new recount under different rules, and to establish new rules for an upcoming runoff election." *Id.* The Court noted that Wood's alleged "injury to the right 'to require that the government be administered according to the law'" was an insufficient generalized grievance. *Id.* at 1314 (quoting *Chiles v. Thornburgh*, 865 F.2d 1197, 1205–06 (11th Cir. 1989)). And although Wood argued that "the inclusion of unlawfully processed absentee ballots diluted the weight of his vote" and that Georgia "valued" and "favored" in-person votes less than absentee votes, the Court held that neither injury was particularized and thus could not support standing. *Id.* at 1314–15 (alteration adopted). While the Court recognized vote dilution can be a particularized injury, Wood's claim of vote dilution was an insufficient

generalized grievance because any vote dilution had a proportional effect on every vote and thus "no single voter [was] specifically disadvantaged." *Id.* at 1314–15 (quotation marks omitted). And Wood's assertion that Georgia "valued" and "favored" in-person votes less than absentee votes was also only a generalized grievance because any harm did "not affect Wood as an individual—it [was] instead shared identically by the four million or so Georgians who voted in person this November." *Id.* at 1315 (alteration adopted).

Here, just like in his recent case, Wood lacked Article III standing to bring each of his three claims. Beginning with his equal protection claim, Wood argues he had standing because the challenged procedures diluted in-person votes and valued in-person votes less than absentee votes. However, Wood does not explain how his *particular* in-person vote, as opposed to all in-person votes *more generally*, was diluted or disvalued. With respect to his argument that the procedures diluted in-person votes, Wood fails to show the procedures "specifically disadvantaged" his vote rather than impacting the proportional effect of every vote. *Id.* at 1314–15 (quotation marks omitted). As for his argument that the procedures valued in-person votes less than absentee votes, Wood fails to show that harm "affect[ed] Wood as an individual." *Id.* at 1315. At most, Wood's asserted injuries were "shared identically by [all] Georgians who voted in person." *Id.* Wood therefore has shown nothing more than a textbook generalized grievance that is insufficient for Article III standing. *See id.* at 1314–15. And to the extent Wood argues in passing that he had

standing because he believes the procedures were "unlawful," "illegal," and "unconstitutional," the injury to his right that the government be administered according to the law is likewise an insufficient generalized grievance. *See id.* at 1314; *see also, e.g.*, *Lance v. Coffman*, 549 U.S. 437, 439–42, 127 S. Ct. 1194, 1196–98 (2007) (per curiam) (collecting cases) (stating an allegation "that the law ... has not been followed" is "precisely the kind of undifferentiated, generalized grievance" that is insufficient to support standing).

Turning to Wood's due process and Guarantee Clause claims, we note that he has failed to raise any arguments in support of his standing to bring those claims. Rather, all of his arguments in support of standing address his equal protection claim. Under our precedent, he has therefore abandoned his due process and Guarantee Clause claims on appeal. *See Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1124 n.1 (11th Cir. 2019) (holding that plaintiffs abandoned a claim when they failed to challenge the district court's dismissal of the claim for lack of Article III standing).

But even if his claims were not abandoned, Wood lacked standing to bring them. For his due process claim, Wood alleged the procedures violated his due process rights because the procedures were "defective and unlawful" and affected the "integrity of the election." However, this grievance is common to all members of the public, so it is not particularized and thus not enough for Article III standing. *See Wood*, 981 F.3d at 1314; *see also Dillard v. Chilton Cnty. Comm'n*,

495 F.3d 1324, 1333 (11th Cir. 2007) (per curiam) (noting that "an asserted interest in being free of an allegedly illegal electoral system" is not a particularized injury). Wood's Guarantee Clause claim fails for the same reason. He alleged the procedures violated the Guarantee Clause because they did "not provide for the certainty of a free and fair election." This grievance is also common to all members of the public and therefore insufficient for Article III standing. *See Wood*, 981 F.3d at 1314; *see also Democratic Party of Wis. v. Vos*, 966 F.3d 581, 589 (7th Cir. 2020) (observing that "the Guarantee Clause makes the guarantee of a republican form of government *to the states*; the bare language of the Clause does not directly confer any rights on individuals [vis-à-vis] the states" (quoting *Largess v. Supreme Jud. Ct. for the State of Mass.*, 373 F.3d 219, 224 n.5 (1st Cir. 2004) (per curiam) (quotation marks omitted)).

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[COURT LETTERHEAD]

August 06, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-14813-RR
Case Style: L. Lin Wood v. Brad Raffensperger, et al
District Court Docket No: 1:20-cv-05155-TCB

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office

within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. *See* 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. *See* 11th Cir. R. 35-5(k) and 40-1.

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, *costs taxed against appellant*.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

For questions concerning the issuance of the decision

of this court, please call the number referenced in the signature block below. For all other questions, please call Regina A. Veals-Gillis, RR at (404) 335-6163.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1A Issuance of Opinion With Costs

APPENDIX B

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

L. LIN WOOD, JR.,
Plaintiff,

v.

BRAD RAFFENSPERGER,
REBECCA N. SULLIVAN,
DAVID J. WORLEY,
MATTHEW MASHBURN, and
ANH LE,
Defendants,

and

DEMOCRATIC PARTY OF
GEORGIA, INC. and DSCC,
Intervenor-Defendants.

CIVIL ACTION FILE
NO. 1:20-cv-5155-TCB

O R D E R

This case comes before the Court on Plaintiff L. Lin Wood, Jr.'s motion for a temporary restraining

order ("TRO").

I. Background

This is the latest in a series of cases associated with Wood that seek to challenge aspects of the 2020 election cycle.

Wood is a registered voter in Fulton County who plans to vote in the January 5, 2021 runoff election in-person.[1] He seeks to prevent the runoff from proceeding, arguing that "Defendants are conducting it in a 'Manner' that differs from and conflicts with the election scheme established by the State Legislature." [1] ¶ 9. He contends that three aspects of Defendants' election scheme unconstitutionally contravene the Georgia legislature's prescribed election procedures:

1. signature verification for absentee ballots;[2]

2. processing of absentee ballots prior to January 5;[3] and

[1] Wood swears in his amended verification that his averments are true and correct, [5-1] at 1, and the Court will presume the veracity of his statements for purposes of this motion.

[2] Pursuant to a March 6, 2020 settlement agreement, a signature-matching bulletin issued by Defendants requires two-person review of any allegedly mismatched signatures on absentee ballots.

[3] State Election Board ("SEB") Rule 183-1-14-0.9-.15, the "Ballot Processing Rule," permits the processing—*but not*

3. installation of ballot drop boxes.[4]

Wood argues that the election board's promulgation of these rules—together with the use of Dominion voting machines—violates his rights to equal protection (Count I), due process (Count II), and a republican form of government (Count III).

In his motion for a TRO, Wood seeks the following emergency relief:

1. a declaration that Defendants' senatorial runoff election procedures violate his rights to due process, equal protection, and the guarantee of a republican form of government;

2. a preliminary and permanent injunction prohibiting Defendants' election procedures in the runoff;

3. an order requiring Defendants to "cure their violation"; and

4. an order that Wood have access to absentee ballot mail-in envelopes received and/or processed thus far and access to view and verify the signatures

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tabulation—of ballots prior to the runoff.

[4] SEB Rule 183-1-14-0.8-.14, the "Drop Box Rule," permits the use of ballot drop boxes for voters to mail absentee ballots.

against those on file.

[2] at 29–30.

Subsequent to Wood's motion for a TRO, the Democratic Party of Georgia and the DSCC moved [13] to intervene as Defendants and dismiss this action. This Court granted [14] the motion to intervene and directed the Clerk to docket the intervenor-Defendants' motion [16] to dismiss.

The state Defendants also moved [26] to dismiss the complaint. They, like the intervenor-Defendants, contend that this Court lacks jurisdiction to hear this case and that Wood fails to state a claim for relief. Both the intervenor-Defendants and the state Defendants also responded [24, 25] in opposition to Wood's motion for a TRO. Wood later replied [33].

For the following reasons, Wood lacks standing to pursue his claims. Accordingly, the Court need not reach the merits of Wood's TRO argument, and this case will be dismissed.

II. Legal Standard

The standards for issuing a temporary restraining order and a preliminary injunction are identical. *Windsor v. United States*, 379 F. App'x 912, 916–17 (11th Cir. 2010). To obtain either, Wood must demonstrate that (1) his claims have a substantial likelihood of success on the merits; (2) he will suffer irreparable harm in the absence of an injunction; (3)

the harm he will suffer in the absence of an injunction would exceed the harm suffered by Defendants if the injunction is issued; and (4) an injunction would not disserve the public interest. *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246–47 (11th Cir. 2002). The likelihood of success on the merits is generally considered the most important of the four factors. *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986).

A preliminary injunction "is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion as to each of the four prerequisites." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000).

III. Discussion

Article III of the Constitution restricts federal courts' jurisdiction to "Cases" and "Controversies." U.S. CONST. art. III, § 2, cl. 1. "The purpose of the standing requirement is to ensure that the parties have 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'" *McLain v. Meier*, 851 F.2d 1045, 1048 (8th Cir. 1988) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Wood must have standing "for each claim he seeks to press and for each form of relief that is sought." *Town of Chester v. Laroe Estates, Inc.*, 137 S.

Ct. 1645, 1650 (2017).

Standing requires Wood to show "(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

The injury-in-fact component requires "an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Trichell v. Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020) (internal quotation omitted).

Thus, the injury must "affect [Wood] in a personal and individual way." *Lujan*, 504 U.S. at 561 n.1. Claims that are "plainly undifferentiated and common to all members of the public" are generalized grievances that do not confer standing. *Lance v. Coffman*, 549 U.S. 437, 441–42 (2007) (internal citation omitted).

And where, as here, a plaintiff seeks prospective relief to prevent a future injury, the plaintiff must also demonstrate that the future injury is "certainly impending." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quotation marks and citation omitted); *see also Indep. Party of Fla. v. Sec'y of the State of Fla.*, 967 F.3d 1277, 1280 (11th Cir. 2020). A "possible future injury" does not confer standing. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

A. Standing Under the Equal Protection Clause[5]

Throughout much of his complaint, Wood repeats that he suffered an injury from Defendants' purported violations of Georgia law.

However, as this Court has previously pointed out *to Wood*, "[c]laims premised on allegations that 'the law . . . has not been followed . . . [are] precisely the kind of undifferentiated, generalized grievance about the conduct of government . . . [and] quite different from the sorts of injuries alleged by plaintiffs in voting rights cases where we have found standing.'" *Wood*, 2020 WL 6817513, at *14–15 (quoting *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1332–33 (11th

[5] Though the Court will dismiss Wood's claims for lack of standing, his equal protection claim is also barred in part by the doctrine of collateral estoppel because this Court and the Eleventh Circuit recently concluded that Wood lacked standing to bring almost identical equal protection claims. *See Wood v. Raffensperger et al.*, No. 1:20-cv-4651-SDG, 2020 WL 6817513, at *1 (N.D. Ga. Nov. 20, 2020), *aff'd*, No. 20-14418, 2020 WL 7094866, at *1 (11th Cir. Dec. 5, 2020). And while

> dismissal of a complaint for lack of jurisdiction does not adjudicate on the merits so as to make the case res judicata on the substance of the asserted claim, it does adjudicate the court's jurisdiction, and a second complaint cannot command a second consideration of the same jurisdictional claims.

N. Ga. Elec. Membership Corp. v. City of Calhoun, 989 F.2d 429, 433 (11th Cir. 1993).

Cir. 2007)) (alterations in original); *see also Bognet v. Sec'y of Commonwealth of Pa.*, 980 F.3d 336, 355 (3d Cir. 2020) (citing *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062 (7th Cir. 2020) ("Violation of state election laws by state officials or other unidentified third parties is not always amenable to a federal constitutional claim.")); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573–74 (1992) ("[R]aising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.").

In an attempt to show a particularized injury for purposes of his equal protection claim, Wood alleges that he has standing as a "holder of the fundamental right to vote" because voters have "a legally cognizable interest in preventing 'dilution' of their vote through improper means." [2] ¶ 10 (quoting *Baker v. Reg'l High Sch. Dist. No. 5*, 520 F.2d 799, 800 n.6 (2d Cir. 1975)).

It is true that vote dilution can be a basis for standing. *See United States v. Hays*, 515 U.S. 737, 744–45 (1995) ("Where a plaintiff resides in a racially gerrymandered district . . . the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria.").

However, "vote dilution under the Equal Protection Clause is concerned with votes being

weighed differently." *Bognet*, 980 F.3d at 360 (emphasis added) (citing *Rucho v. Common Cause*, __ U.S. __, 139 S. Ct. 2484, 2501 (2019) ("'[V]ote dilution' in the one-person, one-vote cases refers to the idea that each vote must carry equal weight.")).

Courts have consistently found that a plaintiff lacks standing where he claims that his vote will be diluted by unlawful or invalid ballots. *See Moore v. Circosta*, Nos. 1:20cv911, 1:20cv912, __ F. Supp. 3d __, 2020 WL 6063332, at *14 (M.D.N.C. Oct. 14, 2020) ("[T]he notion that a single person's vote will be less valuable as a result of unlawful or invalid ballots being cast is not a concrete and particularized injury in fact necessary for Article III standing."); *Donald Trump for President, Inc. v. Cegavske*, No. 2:20-cv-1445 JCM (VCF), __ F. Supp. 3d __, 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) ("[P]laintiffs' claims of a substantial risk of vote dilution 'amount to general grievances that cannot support a finding of particularized injury . . . .'"); *Martel v. Condos*, No. 5:20-cv-131, __ F. Supp. 3d __, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020) (rejecting vote-dilution theory as conferring standing because it constituted a generalized grievance); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020) (pointing out that because "ostensible election fraud may conceivably be raised by any Nevada voter," the plaintiffs' "purported injury of having their votes diluted" does not "state a concrete and particularized injury"); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015).

This is because unlawful or invalid ballots dilute the lawful vote of *every* Georgia citizen. *See Bognet,* 980 F.3d at 356 ("'A vote cast by fraud or mailed in by the wrong person through mistake,' or otherwise counted illegally, 'has a mathematical impact on the final tally and thus on the proportional effect of every vote, but no single voter is specifically disadvantaged.'" (quoting *Martel*, 2020 WL 5755289, at *4)). And where a plaintiff cannot show a "threatened concrete interest of his own," there is no Article III case or controversy. *Lujan*, 504 U.S. at 573.

Accordingly, Wood's allegation of vote dilution does not demonstrate that he has standing to bring an equal protection claim.

Wood also appears to contend that he will be injured as a member of a class of in-person voters suffering from disparate treatment.

To demonstrate standing based upon a theory of disparate treatment, Wood must show that "a vote cast by a voter in the so-called 'favored' group counts . . . more than the same vote cast by the 'disfavored' group." *Bognet*, 980 F.3d at 359. He fails to do so.

First, Wood has not shown the existence of a favored or preferred class of voters. Georgia law permits all eligible voters to *choose* whether to cast an absentee ballot, without reason or explanation. O.C.G.A. § 21- 2-380(b). And "[a]n equal protection claim will not lie by 'conflating all persons not injured into a preferred class receiving better treatment.'"

Bognet, 980 F.3d at 360 (quoting *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005)). Instead, the "relevant prerequisite is unlawful discrimination, not whether the plaintiff is part of a victimized class." *Id.* (citing *Batra v. Bd. of Regents of Univ. of Neb.*, 79 F.3d 717, 721 (8th Cir. 1996)).

Wood does not show that he suffered from discrimination or other harm as a result of his classification as an in-person voter. The fact that the process for voting by absentee ballot is different from voting in-person does not establish an injury in fact. Courts have sanctioned the use of distinct voting processes for absentee and in-person ballots, acknowledging that "[a]bsentee voting is a fundamentally different process from in-person voting, and is governed by procedures entirely distinct." *Am. Civil Liberties Union of N.M. v. Santillanes*, 546 F.3d 1313, 1320 (10th Cir. 2008).

And to the extent Wood argues that he will be harmed if his in-person vote counts less as a result of an illegally-cast absentee ballot, the Court reminds him that "a plaintiff lacks standing to complain about his inability to commit crimes because no one has a right to commit a crime." *Bognet,* 980 F.3d at 362 (quoting *Citizen Ctr. v. Gessler*, 770 F.3d 900, 910 (10th Cir. 2014)). Accordingly, his theory of disparate treatment does not demonstrate that he suffered an injury in fact.

Even if Wood could demonstrate a particularized injury through either his theory of vote

dilution or disparate treatment, his claims are far too conclusive and speculative to satisfy Article III's "concreteness" requirement.

As previously noted, sufficiently pleading a non-speculative future injury requires Wood to show either that the threatened injury is "certainly impending" or that there is a "'substantial risk' that the harm will occur." *Susan B. Anthony List*, 573 U.S. at 158 (citing *Clapper*, 568 U.S. at 414 n.5). Allegations that harm is certainly impending or substantially likely must be "based on well-pleaded facts" because courts "do not credit bald assertions that rest on mere supposition." *Bognet*, 980 F.3d at 362 (citing *Finkelman v. NFL*, 810 F.3d 187, 201–02 (3d Cir. 2016)).

Here, Wood presumes that a chain of events—including the manipulation of signature-comparison procedures, abuse of ballot drop boxes, intentional mishandling of absentee ballots, and exploitation of Dominion's voting machines—will occur.

However, even taking his statements as true, Wood's allegations show only the "'possibility of future injury' based on a series of events— which falls short of the requirement to establish a concrete injury." *Donald J. Trump for President, Inc. v. Boockvar*, __ F. Supp. 3d __, 2020 WL 5997680, at *33 (W.D. Pa. Oct. 10, 2020) (rejecting a theory of future harm where "th[e] increased susceptibility to fraud and ballot destruction . . . [is] based solely on a chain of unknown events that may never come to pass"); *see also Clapper*,

568 U.S. at 409 (concluding that "allegations of *possible* future injury are not sufficient").

Wood attempts to show that fraud is certain to occur during the runoff by arguing that the November 3 general election was rife with fraud. However, even if that were the case, the alleged presence of harm during the general election does not increase the likelihood of harm during the runoff. *See Boockvar*, 2020 WL 5997680, at *33 ("It is difficult—and ultimately speculative—to predict future injury from evidence of past injury.").

And claims of election fraud are especially speculative where they rely upon the future activity of independent actors. *See id.* at *33 (rejecting as speculative claims "that unknown individuals will utilize drop boxes to commit fraud . . . [and] for signature comparison, that fraudsters will submit forged ballots by mail") (citing *Clapper*, 568 U.S. at 414 (declining to "endorse standing theories that rest on speculation about the decisions of independent actors")). This is even more so the case where a plaintiff speculates that an "independent actor[] [will] make decisions to act *unlawfully*." *Bognet,* 980 F.3d at 362 (citing *City of L.A. v. Lyons*, 461 U.S. 95, 105–06 (1983)).

Here, Wood's theory of harm rests on speculation about the future illegal activity of independent actors. He alleges that use of ballot drop boxes "*produces opportunities* for political activists to submit fraudulent absentee ballots," [1] ¶ 50

(emphasis added); that enhanced signature review would "*ma[k]e it more likely* that ballots without matching signatures would be counted," *id.* ¶ 24 (emphasis added); and that permitting the processing of absentee ballots prior to January 5 will facilitate the counting of "fraudulent mail-in ballots . . . cast in the[] name" of would-be in-person voters," *id.* ¶ 32. These allegations plainly contemplate only the *possibility* of future harm and do not conclusively demonstrate a future injury.

Wood's claims regarding ongoing "systemic fraud" through use of the Dominion voting machines fare no better. He hazards that "there is actual harm imminent to [him]" because "Dominion w[as] founded by foreign oligarchs and dictators . . . to make sure [that] Venezuelan dictator Hugo Chavez never lost another election." *Id.* ¶ 63.

Not only is this allegation astonishingly speculative, but it also presumes that because independent bad actors allegedly fixed the election of a now-deceased Venezuelan president, fraud will recur during Georgia's runoff. Again, past harm does not sufficiently show a risk of future harm to confer standing. *Boockvar*, 2020 WL 5997680, at *33. Even if Wood's alleged fraudulent events were to ultimately occur, he has not shown more than a *possible* future injury. This is insufficient to confer standing. *See id.* at *35.

Thus, Wood's claims are both too generalized and too speculative to demonstrate an injury in fact.

Accordingly, he lacks standing to pursue his equal protection claim, and Count I will be dismissed.[6]

B. Standing Under the Due Process Clause

Although Wood does not argue in his motion for a TRO that he has standing to pursue his due process claim, he contends that Defendants' failure to act in a manner consistent with the Georgia Election Code and use of the Dominion machines "render the election procedures for the runoff so defective and unlawful as to constitute a violation of [his] right to procedural due process." [2] ¶ 80. He also argues that his substantive due process rights will be violated because Defendants' implementation of election procedures in violation of state law "reach the point of patent and fundamental unfairness." *Id.* ¶ 81.

However, as noted above, these alleged injuries

[6] Although it need not reach the separate elements of traceability and redressability, the Court also points out that standing requires that any injury be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party." *Lujan*, 504 U.S. at 560. Wood does not allege that Defendants—the Secretary of State and members of the election board— control the election processes which he seeks to enjoin. Accordingly, his alleged injury is not traceable to them and Defendants cannot provide him any redress. *See Ga. Republican Party Inc. et al. v. Sec'y of State for the State of Ga. et al.*, No. 20- 14741, at *6 (11th Cir. Dec. 21, 2020) (affirming dismissal of claims challenging election procedures based on lack of standing where the plaintiffs did not demonstrate either traceability or redressability).

are paradigmatic generalized grievances unconnected to Wood's individual vote. *See Lance*, 549 U.S. at 440–41; *see also Nolles v. State Comm. for Reorg. of Sch. Dists.*, 524 F.3d 892, 900 (8th Cir. 2008) (concluding that voters lacked standing to pursue substantive due process claim based on alleged violation of right to a free and fair election because they did not demonstrate a particularized injury).

For Wood to demonstrate that he has standing to pursue his due process claims, he would need to show an "individual burden[]" on his right to due process. *Wood*, 2020 WL 7094866, at *14. He fails to do so. Accordingly, he lacks standing to pursue his due process claim and Count II will be dismissed.

C. Standing Under the Guarantee Clause

Wood also fails to raise the issue of standing under the Guarantee Clause, but in any event, his Guarantee Clause claim is not only nonjusticiable, but he also lacks standing to pursue it.

Article IV, § 4 of the constitution provides that "[t]he United States shall guarantee to every State in this Union a Republican Form of Government . . . ." U.S. Const. art. IV, § 4.

The Supreme Court has historically held—point blank—that "the Guarantee Clause does not provide the basis for a justiciable claim." *City of Rome v. United States*, 446 U.S. 156, 182 n.17 (1980); *Baker v. Carr*, 369 U.S. at 217–19; *Pac. States Tel. & Tel. Co. v.*

Oregon, 223 U.S. 118, 147–51 (1912); *Luther v. Borden*, 48 U.S. 7 (1849). On this basis alone Wood is barred from asserting a claim under the Guarantee Clause.

More recently, the Supreme Court has expressed some doubt that *all* challenges to the Guarantee Clause are nonjusticiable. *See New York v. United States,* 505 U.S. 144, 185 (1992); *see also Reynolds v. Sims*, 377 U.S. 533, 582 (1964) (concluding that "*some* questions raised under the Guaranty Clause are nonjusticiable") (emphasis added).

However, even if this were one of those elusive justiciable claims, Wood lacks standing to pursue it. "[F]or purposes of the standing inquiry . . . the Guarantee Clause makes the guarantee of a republican form of government *to the states*; the bare language of the Clause does not directly confer any rights on individuals vis-à-vis the states." *Largess v. Supreme Jud. Ct. for the State of Mass.*, 373 F.3d 219, 224 n.5 (1st Cir. 2004) (per curiam). Accordingly, Count III alleging violation of the Guarantee Clause is due to be dismissed.

IV. Conclusion

Based on the foregoing, the Court lacks jurisdiction to hear this case. Accordingly, Wood's motions [2, 3] are denied, as is his request for a hearing.[7] The Clerk is directed to close this case.

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[7] Though the Court identified December 30, 2020 as the appropriate date, if any, for a hearing, it finds that oral argument

IT IS SO ORDERED this 28th day of December, 2020.

/s/
Timothy C. Batten, Sr.
United States District Judge

is unnecessary under the circumstances for the proper adjudication of this matter.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[COURT LETTERHEAD]

November 04, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-14813-CC
Case Style: L. Lin Wood v. Brad Raffensperger, et al
District Court Docket No: 1:20-cv-05155-TCB

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Carol R. Lewis, CC/lt
Phone #: (404) 335-6179

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14813-RR

L. LIN WOOD,
Plaintiff - Appellant,

versus

BRAD RAFFENSPERGER,
in his official capacity as Secretary of State of the State of Georgia,
REBECCA N. SULLIVAN,
in her official capacity as Vice Chair of the Georgia State Election Board,
DAVID J. WORLEY,
in his 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,
ANH LE,
in her official capacity as a Member of the Georgia State Election Board,
Defendants - Appellees,

DEMOCRATIC PARTY OF GEORGIA, INC.,
DSCC,
Intervenors - Defendants.

Appeal from the United States District Court

for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JORDAN and GRANT, Circuit Judges.*

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

* This order is being entered by a quorum pursuant to 28 U.S.C. § 46(d) due to Judge Martin's Retirement on September 30, 2021.

APPENDIX D

United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Alt. I § 4, cl. 1

Section 4, Clause 1. Congressional Elections; Time, Place, and Manner of Holding

Currentness

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 chasing Senators.

U.S.C.A. Const. Art. I§ 4, cl. 1, USCA CONST Art. I § 4, cl. 1
Current through P.L. 116-193.

United States Code Annotated
Constitution of the United States
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; App01tionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in

each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years ofage1 and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor

any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section I of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

West's Code of Georgia Annotated
Title 21. Elections (Refs & Annos)
Chapter 2. Elections and Primaries Generally (Refs & Annos)
Article 10. Absentee Voting (Refs & Annos)

Ga. Code Ann., § 21-2-386

§ 21-2-386. Ballot safekeeping, certification, rejection, tabulation; challenge for cause; disclosure regarding results

Effective: April 2, 2019
Currentness

(a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely, unopened, and stored in a manner that will prevent tampering and unauthorized access all official absentee ballots received from absentee electors prior to the closing of the polls on the day of the primary or election except as otherwise provided in this subsection.

(B) Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or mark on the oath with the signature or mark on the absentee elector's voter registration 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 mark 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.

(C) 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 two years. Such elector shall have until the end of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419 to cure the problem resulting in the rejection of the ballot. The elector may cure a failure to sign the oath, an invalid signature, or missing information by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of one

of the forms of identification enumerated in subsection (c) of Code Section 21-2-417 before the close of such period. The affidavit shall affirm that the ballot was submitted by the elector, is the elector's ballot, and that the elector is registered and qualified to vote in the primary, election, or runoff in question. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be counted.

(D) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state by absentee ballot shall include with his or her application for an absentee ballot or in the outer oath envelope of his or her absentee ballot either one of the forms of identification listed in subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not provide any of the forms of identification listed in this subparagraph with his or her application for an absentee ballot or with the absentee ballot, such absentee ballot shall be deemed to be a provisional ballot and such ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subparagraph within the time period for verifying provisional ballots pursuant to Code Section 21-2-419, The board of registrars

or absentee ballot clerk shall promptly notify the elector that such ballot is deemed a provisional ballot and shall provide information on the types of identification needed and how and when such identification is to be submitted to the board of registrars or absentee ballot clerk to verify the ballot.

(E) Three copies of the numbered list of voters shall also be prepared for such rejected absentee electors, giving the name of the elector and the reason for the rejection in each case. Three copies of the numbered list of certified absentee voters and three copies of the numbered list of rejected absentee voters for each precinct shall be turned over to the poll manager in charge of counting the absentee ballots and shall be distributed as required by law for numbered lists of voters.

(F) All absentee ballots returned to the board or absentee ballot clerk after the closing of the polls on the day of the primary or election shall be safely kept unopened by the board or absentee ballot clerk and then transferred to the appropriate clerk for storage for the period of the required for the preservation of ballots used at the primary or election and shall then, without being opened, be destroyed in like manner as the used ballots of the primary or election, The board of registrars or absentee ballot clerk shall promptly notify the elector by first-class mail that the elector's ballot was returned too late to be counted and that the elector will not receive

credit for voting in the primary or election. All such late absentee ballots shall be delivered to the appropriate clerk and stored as provided in Code Section 21-2-390.

(G) Notwithstanding any provision of this chapter to the contrary, until the United States Department of Defense notifies the Secretary of State that the Department of Defense has implemented a system of expedited absentee voting for those electors covered by this subparagraph, absentee ballots cast in a primary, election, or runoff by eligible absentee electors who reside outside the county or municipality in which the primary, election, or runoff is held and are members of the armed forces of the United States, members of the merchant marine of the United States, spouses or dependents of members of the armed forces or merchant marine residing with or accompanying such members, or overseas citizens that are postmarked by the date of such primary, election, or runoff and are received within the three-day period following such primary, election, or runoff, if proper in all other respects, shall be valid ballots and shall be counted and included in the certified election results.

(2) 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. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present before commencing; and three persons who are registrars, deputy registrars, or absentee ballot clerks shall be present at all times while the outer envelopes are being opened. After opening the outer envelopes, the ballots shall be safely and securely stored until the time for tabulating such ballots.

(3) A county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff open the inner envelopes in accordance with the procedures prescribed in this subsection and begin tabulating the absentee ballots. If the county election superintendent chooses to open the inner envelopes and begin tabulating such ballots prior to the close of the polls on the day of the primary, election, or runoff, the superintendent shall notify in writing, at least seven days prior to the primary, election, or runoff, the Secretary of State of the superintendents intent to begin the absentee ballot tabulation prior to the close of the polls. The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election

in such county shall have the right to designate two persons and each independent and nonpartisan candidate whose name appears on the ballot for such election in such county shall have the right to designate one person to act as monitors for such process. In the event that the only issue to be voted upon in an election is a referendum question, the superintendent shall also notify in writing the chief judge of the superior court of the county who shall appoint two electors of the county to monitor such process.

(4) The county election superintendent shall publish a written notice in the superintendent's office of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls and publish such notice at least one week prior to the primary, election, or runoff in the legal organ of the county.

(5) The process for opening the inner envelopes of and tabulating absentee ballots on the day of a primary, election, or runoff as provided in this subsection shall be a confidential process to maintain the secrecy of all ballots and to protect the disclosure of any balloting information before 7:00 P.M. on election day. No absentee ballots shall be tabulated before 7:00 A.M. on the day of a primary, election, or runoff.

(6) All persons conducting the tabulation of absentee ballots during the day of a primary, election, or runoff, including the vote review panel required by Code Section 21-2-483, and all monitors and

observers shall be sequestered until the time for the closing of the polls. All such persons shall have no contact with the news media; shall have no contact with other persons not involved in monitoring, observing, or conducting the tabulation; shall not use any type of communication device including radios, telephones, and cellular telephones; shall not utilize computers for the purpose of e-mail, instant messaging, or other forms of communication; and shall not communicate any information concerning the tabulation until the time for the closing of the polls; provided, however, that supervisory and technical assistance personnel shall be permitted to enter and leave the area in which the tabulation is being conducted but shall not communicate any information concerning the tabulation to anyone other than the county election superintendent; the staff of the superintendent; those persons conducting, observing, or monitoring the tabulation; and those persons whose technical assistance is needed for the tabulation process to operate.

(7) The absentee ballots shall be tabulated in accordance with the procedures of this chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be placed into locked ballot boxes and may be transferred to locked ballot bags, if needed, for security. The persons conducting the tabulation of the absentee ballots shall not cause the tabulating equipment to produce any count, partial or otherwise, of the absentee votes cast until the time for the closing of the polls.

(b) As soon as practicable after 7:00 A.M. on the day of the primary, election, or runoff, in precincts other than those in which optical scanning tabulators are used, a registrar or absentee ballot clerk shall deliver the official absentee ballot of each certified absentee elector, each rejected absentee ballot, applications for such ballots, and copies of the numbered lists of certified and rejected absentee electors to the manager in charge of the absentee ballot precinct of the county or municipality, which shall be located in the precincts containing the county courthouse or polling place designated by the municipal superintendent. In those precincts in which optical scanning tabulators are used, such absentee ballots shall be taken to the tabulation center or other place designated by the superintendent, and the official receiving such absentee ballots shall issue his or her receipt therefor. Except as otherwise provided in this Code section, in no event shall the counting of the ballots begin before the polls close.

(c) Except as otherwise provided in this Code section, after the close of the polls on the day of the primary, election, or runoff, a manager shall then open the outer envelope in such manner as not to destroy the oath printed thereon and shall deposit the inner envelope marked "Official Absentee Ballot" in a ballot box reserved for absentee ballots. In the event that an outer envelope is found to contain an absentee ballot that is not in an inner envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person sealing the inner envelope. and deposited in the ballot box and counted in the same manner as other

absentee ballots, provided that such ballot is otherwise proper. Such manager with two assistant managers, appointed by the superintendent, with such clerks as the manager deems necessary shall count the absentee ballots following the procedures prescribed by this chapter for other ballots, insofar as practicable, and prepare an election return for the county or municipality showing the results of the absentee ballots cast in such county or municipality.

(d) All absentee ballots shall be counted and tabulated in such a manner that returns may be reported by precinct; and separate returns shall be made for each precinct in which absentee ballots were cast showing the results by each precinct in which the electors reside.

(e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall write "Challenged," the elector's name, and the alleged cause of challenge on the outer envelope and shall deposit the ballot in a secure, sealed ballot box; and it shall be counted as other challenged ballots are counted. Where direct recording electronic voting systems are used for absentee balloting and a challenge to an elector's right to vote is made prior to the time that the elector votes, the elector shall vote on a paper or optical scanning ballot and such ballot shall be handled as provided in this subsection, The board of registrars or absentee ballot clerk shall promptly notify the elector of such challenge.

(f) It shall be unlawful at any time prior to the close of

the polls for any person to disclose or for any person to receive any information regarding the results of the tabulation of absentee ballots except as expressly provided by law.

Credits
Laws 1924, p. 186, §§ 11, 12, 14; Laws 1955, p. 204, § 5; Laws 1964, Ex, Sess,, p. 26, § 1; Laws I 969, p. 280, §§ 1, 2; Laws 1974, p. 71, §§ 9-11; Laws 1977, p. 725, § 2; Laws 1978, p. 1004, § 32; Laws 1979, p. 629, § 1; Laws 1982, p. 1512, § 5; Laws 1983, p. 140, § 1; Laws 1990, p. 143, § 6; Laws 1992, p. 1, § 4; Laws 1992, p. 1 815, § 4; Laws 1993, p. 118, § 1; Laws 1997, p. 590, § 32; Laws 1997, p. 662, § 2; Laws 1998, p. 145, § 1; Laws 1998, p. 295, § 1; Laws 1998, p. 1231, §§ 16, 39; Laws 1999, p. 29, § 2; Laws 2001, p. 240, § 34; Laws 2001, p. 269, § 21; Laws 2003, Act 209, § 40, eff, July 1, 2003; Laws 2005, Act 53, § 54, eff, July 1, 2005; Laws 2006, Act 452, § 1, eff. April 14, 2006; Laws 2007, Act 261, § 4, eff. July 1, 2007; Laws 2008, Act 453, § 1, eff. May 6, 2008; Laws 2008, Act 531, § 4, eff. May 12, 2008; Laws 2009, Act 71, § 1, eff, July 1, 2009; Laws 2011, Act 193, § 1, eff. May 12, 2011; Laws 2011, Act 240, § 13, eff. July 1, 2011; Laws 2012, Act 719, § 27, eff. July 1, 2012; Laws 2012, Act 719, § 28, eff. July 1, 2012; Laws 2019, Act 24, § 32, eff. April 2, 2019.

Formerly Code 1933, §§ 34-3311, 34-3312, 34-3314; Code 1933, § 34-1407.

Ga, Code Ann,,§ 21-2-386, GA ST§ 21-2-386

The statutes and Constitution are current through

laws passed at the 2020 legislative sessions. Some statute sections may be more current, see credits for details. The statutes are subject to changes by the Georgia Code Commission.

West's Code of Georgia Annotated
Title 21. Elections (Refs & Annos)
Chapter 2. Elections and Primaries Generally (Refs & Annos)
Article 11. Preparation for and Conduct of Primaries and Elections (Refs & Annos)
Part 1. General Provisions

Ga. Code Ann.,§ 21-2-417

§ 21-2-417. Proper identification; presentation to poll worker; provisional ballots; false affirmation; penalty

Effective: January 26, 2006
Currentness

(a) Except as provided in subsection (c) of this Code section, each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

(1) A Georgia driver's license which was properly issued by the appropriate state agency;

(2) A valid Georgia voter identification card issued under Code Section 21-2-417.1 or other valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to

issue personal identification, provided that such identification card contains a photograph of the elector;

(3) A valid United States passport;

(4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;

(5) A valid United States military identification card, provided that such identification card contains a photograph of the elector; or

(6) A valid tribal identification card containing a photograph of the elector.

(b) Except as provided in subsection (c) of this Code section, if an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall be allowed to vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in subsection (a) of this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such

statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

(c) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a) of this Code section or a copy of a current utility bill, battle statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not have any of the forms of identification listed in this subsection, such elector may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subsection within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

Credits
Laws 1997, p. 662, § 3; Laws 1998, p. 295, § 1; Laws 2001, p. 230, § 15; Laws 2003, Act 209, § 48, eff. July 1, 2003; Laws 2005, Act 53, § 59, eff. July 1, 2005; Laws 2006, Act 432, § 2, eff. Jan. 26, 2006.

Ga. Code Ann.,§ 21-2-417, GA ST § 21-2-417

The statutes and Constitution are current through laws passed at the 2020 legislative sessions. Some statute sections may be more current, see credits for details. The statutes are subject to changes by the Georgia Code Commission.

[GEORGIA STATE SEAL]

OFFICIAL ELECTION BULLETIN
May 1, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, State Elections Director

RE: Absentee Ballot Signature Review Guidance

Verifying that a voter's signature on his or her absentee ballot matches his or her signature on the absentee ballot application or in the voter registration record is required by Georgia law and is crucial to secure elections. Ensuring that signatures match is even more crucial in this time of increased absentee voting due to the COVID-19 crisis. The purpose of this OEB is to remind you of some recent updates to Georgia law and regulations regarding verifying signatures on absentee ballots and to make you aware of the procedures that should be followed when a signature on an absentee ballot does not match. HB 316, which passed in 2019, modified the absentee ballot laws and the design of the oath envelope. The State Election Board also adopted Rule 183-1-14.13 this year, which addresses how quickly and by what methods electors need to be notified concerning absentee ballot issues. What follows are the procedures that should be followed when the signature on the absentee ballot does not match the voter's

signature on his or her application or voter registration record:

> County registrars and absentee ballot clerks are required, upon receipt of each mail-in absentee ballot, to compare the signature or mark of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C).
>
> When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot.[1] If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot

[1] Once the registrar or clerk verifies a matching signature, they do not need to continue to review additional signatures for the same voter.

clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks.

A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under OCGA 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.