EXHIBIT 1

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

REPUBLICAN NATIONAL COMMITTEE and GEORGIA REPUBLICAN PARTY, INC.,

Plaintiffs,

v.

THOMAS MAHONEY III, et al.,

Defendants,

DEMOCRATIC NATIONAL COMMITTEE and DEMOCRATIC PARTY OF GEORGIA, INC.,

Proposed-Intervenor Defendants.

CIVIL ACTION NO.:
4:24-CV-00248-RSB-CLR

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE BY THE DEMOCRATIC NATIONAL COMMITTEE AND DEMOCRATIC PARTY OF GEORGIA, INC.

The Democratic National Committee ("DNC") and Democratic Party of Georgia, Inc. ("DPG") are entitled to intervention as a matter of right pursuant to Federal Rule of Civil Procedure 24(a). In the alternative, the Court should grant permissive intervention pursuant to Federal Rule of Civil Procedure 24(b).

INTRODUCTION

Georgia's election code explicitly permits absentee ballots to be returned either by mail or in person up until and including election day. Section 21-2-385(a) provides that a voter may "personally mail or personally deliver" absentee ballot to the board of registrars, and Section 21-2-382(a) provides that the boards of registrars "may establish additional registrar's offices or places of registration for the purpose of receiving absentee ballots[.]"[1] Moreover, Section 21-2-386(a)(1)(A) instructs county boards to "keep safely, unopened, and stored in a manner that will prevent tampering … all official absentee ballots received from absentee electors prior to the closing of the polls on the day of the … election."[2] Georgia's Secretary of State agrees too, confirming that "[u]nder state law, election officials can receive absentee ballots in person at govt facilities if the county chooses."[3]

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A superior court in Fulton County confirmed as much a mere 48 hours ago in response to a substantively indistinguishable lawsuit that Plaintiffs the Fulton County Republican Party and Georgia Republican Party, Inc. ("GRP") filed in that

[1] O.C.G.A. §§ 21-2-382(a), 21-2-385.
[2] *Id.* § 21-2-386(a)(1)(A).
[3] @GaSecofState, X (Nov. 2, 2024, 2:04 PM), https://x.com/GaSecofState/status/1852773817048768877; *see also* @GabrielSterling, X (Nov. 2, 2024, 8:30 PM), https://x.com/GabrielSterling/status/1852870823159218536 (Chief Operating Officer in the Office of the Georgia Secretary of State stating "To be clear, no election laws were broken in Georgia today. The law clearly states that govt buildings can be used to receive absentee ballots. A judge said so this morning.").

court. *See* Ex. A (Verified Emergency Petition); *see also* Fulton County Elections Hearing (Nov. 2, 2024)[4]. Plaintiffs' request that this court intercede where the state courts refused, and bar seven Georgia counties from accepting absentee ballots returned in person to election offices between November 2 and November 4, 2024, should be rejected out of hand. Georgia's election code explicitly permits counties to accept absentee ballots returned during this time and in this way. DNC and DPG move to intervene to protect their interests in ensuring that county election officials follow state law, to prevent Plaintiffs from interfering with Georgia voters' ability to return their absentee ballots, and to ensure that all votes for Democratic candidates are accepted and counted.

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DNC and DPG should be allowed to intervene as of right or, at a minimum, be granted permissive intervention. Courts across the country have granted motions to intervene in similar election-related litigation to protect the interests of political parties, including multiple Georgia courts in election-related litigation over the past several weeks and months. *See, e.g.*, *Republican Nat'l Comm. v. N.C. State Bd. of Elections*, No. 24-2044, 2024 WL 4597030 (4th Cir. Oct. 29, 2024) (DNC granted intervention in challenge to state election board compliance with Help America Vote Act); *Adams v. Fulton Cnty. Bd. of Elections & Registration*, No. 24CV011584 (Fulton Cnty. Super. Ct. Sept. 23, 2024) (DNC and DPG granted intervention as a

[4] https://www.youtube.com/watch?v=wGqGpNsqODg.

matter of right in challenge to county election practice); Order on Various Pending Mots. at 1-2, *Cobb Cnty. Bd. of Elections & Registration v. State Election Bd.*, No. 24CV012491 (Fulton Cnty. Super. Ct. Oct. 15, 2024) (DNC, DPG, and GRP granted intervention as a matter of right in challenge to State Election Board hand count rule); Order, *Eternal Vigilance Action, Inc. v. Georgia*, No. 24CV011558 (Fulton Cnty. Super. Ct. Oct. 2, 2024) (Republican National Committee ("RNC") and GRP granted intervention as a matter of right in challenge to State Election Board rules); *see also Donald J. Trump for President, Inc. v. Benson*, 2020 WL 8573863, at *5 (W.D. Mich. Nov. 17, 2020) (DNC and Michigan Democratic Party granted intervention when plaintiffs sought an injunction precluding the Michigan Secretary of State from certifying the results of the 2020 election); *LaRose v. Minn. Sec'y. of State*, 2020 Minn. Dist. LEXIS 455, at *23 (Minn. Dist. Ct. Aug. 3, 2020) (RNC granted intervention in a challenge to Minnesota's absentee ballot requirements); *Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580, 584 (6th Cir. 2012) (Ohio Democratic Party allowed to intervene where the challenged practice would disenfranchise its voters). This Court should do the same.

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ARGUMENT

I. DNC And DPG Are Entitled To Intervene As Of Right

Rule 24(a)(2) requires that courts grant a timely motion to intervene as of right by anyone who "claims an interest relating to the property or transaction that is the

subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). That standard is met here. The relief Plaintiffs request, if granted, would prevent Democratic voters from returning absentee ballots in a manner permitted by Georgia law, harming DNC's and DPG's interests in the election of Democratic candidates. Because Plaintiffs challenge an ongoing practice that will end later today, even temporary relief will cause irreparable harm by preventing the return of valid votes. This litigation, accordingly, represents the only opportunity to adequately defend DNC's and DPG's interests.

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A. DNC and DPG Have Substantial Interests Relating to the Subject of this Action

DNC and DPG possess a "direct, substantial, legally protectible interest in the proceeding." *Chiles v. Thornburgh*, 865 F.2d 1197, 1213-14 (11th Cir. 1989) (citations omitted). Both organizations are dedicated to electing Democratic candidates and protecting voters' rights, and thus both organizations have a core interest in ensuring proper and legal administration of elections and processing of ballots. *See, e.g.*, *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682 (7th Cir. 2023) (state democratic party could intervene as a matter of right given its organizational interests); *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299 (5th Cir. 2022) (party committees have a legally protectable interest that supports intervention by right).

That is why DNC and DPG are regularly permitted to intervene as of right in suits regarding states' election procedures. *See, e.g.*, *supra* at 4. The relief sought here would indisputably impact DNC's and DPG's interests by barring counties from accepting absentee ballots lawfully returned pursuant to the Georgia election code, including ballots cast for Democratic candidates and by Democratic voters.

B. Denying Intervention Prejudices DNC and DPG's Ability to Protect Their Interests

An applicant for intervention as of right must show that "the disposition of the lawsuit will, as a practical matter, impair their ability to protect their interests." *Chiles*, 865 F.2d at 1214. Because Plaintiffs seek to stop the acceptance of absentee ballots immediately, two days *after* the start of the complained-of conduct and with less than 36 hours before the close of the polls on election day, DNC and DPG have no other means to protect their interests in ensuring that voters have all opportunities to return ballots in a manner permitted by Georgia law. Any relief granted here is effectively permanent and will cause DNC, DPG, and Democratic voters irreparable harm—the hours that the defendant counties are currently permitting voters to return ballots, once gone, cannot be given back. Intervention in this litigation is the only means to ensure that does not happen.

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C. DNC and DPG's Interests Are Not Adequately Represented by The Defendants

Rule 24(a)(2) also requires a proposed intervenor also must show that the existing parties do not adequately represent their interests. "The requirement of the Rule is satisfied if the applicant shows that representation of his interest '*may* be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added); *see also Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1259 (11th Cir. 2002) ("the proposed intervenor has a minimal burden of showing that the existing parties cannot adequately represent its interest"); *Clark v. Putnam Cnty.*, 168 F.3d 458, 462 (11th Cir. 1999) (a showing that existing parties' "representation of the proposed intervenors 'may be' inadequate" is "enough" to entitle movants to intervene (citing *Trbovich*, 404 U.S. at 538 n.10)).

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DNC's and DPG's interests are not adequately represented by the defendant counties. Although Defendants have a general interest in defending Georgia's election laws, DNC and DPG have interests that extend well beyond that scope, including ensuring that votes for Democratic candidates are properly accepted and counted, and protecting individual Democratic voters' rights. Defendants are not likely to raise arguments with respect to these more specific, distinct interests. *See Kleisser v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) ("when an agency's views are necessarily colored by its view of the public welfare …, the burden [of

proving inadequate representation] is comparatively light"). As shown in the forthcoming proposed opposition to Plaintiffs' request for a temporary restraining order, DNC and DPG will also advance arguments that no party, including Defendants, will likely raise. Because it is not at all clear that Defendants will provide adequate representation of DNC's and DPG's interests, intervention as of right is warranted.

D. DNC and DPG's Motion is Timely

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"[T]imeliness depends on the circumstances of each case." *Comm'r, Ala. Dep't of Corr. v. Advance Local Media, LLC*, 918 F.3d 1161, 1171 (11th Cir. 2019). "Courts consider four factors in assessing timeliness: (1) the length of time during which the would-be intervenor knew or reasonably should have known of his interest in the case before petitioning for leave to intervene; (2) the extent of the prejudice that existing parties may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest; (3) the extent of the prejudice that the would-be intervenor may suffer if denied the opportunity to intervene; and (4) the existence of unusual circumstances weighing for or against a determination of timeliness." *Id.* "The most important consideration in determining timeliness is whether any existing party to the litigation will be harmed or prejudiced by the proposed intervenor's delay in moving to intervene. In fact, this may well be the only significant consideration when the

proposed intervenor seeks intervention of right." *Id.* (quoting *McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir 1970) (citations omitted)).

This motion to intervene is being submitted less than 24 hours after the case was filed, and before the matter has progressed in any meaningful way. Defendants have not responded to Plaintiffs' complaint or request for a temporary restraining order, and the Court has yet to schedule arguments. Indeed, DNC and DPG could not realistically have sought intervention at any earlier stage, or in a manner less prejudicial to Plaintiffs. The existing parties and the court will not be prejudiced by allowing DNC and DPG to intervene. To the contrary, it is DNC and DPG that will be significantly prejudiced if they are unable to participate in this litigation, particularly given the relief requested and the fact that the general election occurs tomorrow. Finally, there are no unusual circumstances counseling against granting intervention. This motion is therefore timely.

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II. Alternatively, DNC And DPG Should Be Granted Permissive Intervention

If the Court does not grant intervention of right under Rule 24(a)(2), then it should grant permissive intervention under Rule 24(b). That rule vests courts with discretion to permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact," with consideration to "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24. DNC and DPG meet this standard

because they seek to defend the county practices challenged in the complaint and ensure that absentee ballots can continue to be accepted today pursuant to state law. Allowing permissive intervention will also not "delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). This motion to intervene precedes any substantive briefing or arguments in this matter. DNC and DPG will participate on whatever schedule is set by the Court, and have every interest in the prompt adjudication of this matter to ensure that all absentee ballots are accepted as permitted by Georgia law.

CONCLUSION

The Court should grant DNC and DPG's motion to intervene as of right or, in the alternative, grant permissive intervention.

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Respectfully submitted this 4th day of November, 2024.

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* *Pro hac vice application forthcoming*

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EXHIBIT A

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FULTON COUNTY REPUBLICAN PARTY, INC and GEORGIA REPUBLICAN PARTY, INC.

Plaintiffs,

v.

FULTON COUNTY

Defendant.

CIVIL ACTION FILE NO:

VERIFIED COMPLAINT

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VERIFIED EMERGENCY PETITION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, MEMORANDUM OF LAW, AND COMPLAINT FOR VIOLATIONS OF O.C.G.A. §§ 21-2-381 AND 21-2-385

NOW COMES, Plaintiffs Fulton County Republican Party, Inc., and Georgia Republican Party, Inc. (Collectively "GOP") by and through their counsel file this, their Verified Emergency Petition for Injunctive Relief and Complaint for Violations of the Georgia Election Code §§ 381 and 385 et seq. and hereby state as their Complaint against Defendant Fulton County ("Defendant" or "Fulton"), as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this matter pursuant to O.C.G.A. §§ 9-4-2 and 15-6-8.

2. Venue is proper in Fulton County pursuant to O.C.G.A. §§ 9-10-30 and 9-10-31 in that at Defendant resides in this county and the cause of action accrued in this county.

PARTIES

3. Plaintiff Fulton County Republican Party, Inc is a county political committee that works to ensure elections in Fulton County are conducted in a free and fair manner, seeks to

assist and facilitate the electoral success of the candidates, and works to protect the fundamental constitutional right to vote of its members and all voters of Fulton County.

4. Plaintiff Fulton County Republican Party, Inc has a direct, personal, and substantial interest in ensuring that the sanctity of the election is upheld and that the laws be followed regarding when the ballot boxes can be available for the dropping of off absentee ballots.

5. Plaintiff Georgia Republican Party, Inc. is a state political committee that works to ensure elections in Georgia are conducted in a free and fair manner, seeks to assist and facilitate the electoral success of the candidates, and works to protect the fundamental constitutional right to vote of its members and all voters of the state of Georgia.

6. Plaintiff Georgia Republican Party, Inc. has a direct, personal, and substantial interest in ensuring that the sanctity of the election is upheld and that the laws be followed regarding when the ballot boxes can be available for the dropping of off absentee ballots.

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7. Defendant Fulton County is a political subdivision of the State of Georgia and subject to suit.

8. Defendant Fulton County is responsible for overseeing the conduct of elections in Fulton County, including but not limited to the conduct of election personnel at polling locations throughout the county and the regulation of polling places. Its principal place of business for conducting elections is located at 5600 Campbellton Fairburn Road, Fairburn, GA 30213 and its Government Center is Fulton County Government Center, 141 Pryor Street, SW, Atlanta, GA 30303

GENERAL FACTUAL ALLEGATIONS

9. Georgia election law requires that ballot boxes must be closed when advance voting is not being conducted. O.C.G.A. § 21-2-382.

10. Pursuant to O.C.G.A. §21-2-385 (d)(1)(B) the advance voting period ends the Friday prior to the election.

11. O.C.G.A. §21-2-385 (d)(1)(B) further states that "that voting shall occur only on the days specified in this paragraph and counties and municipalities shall not be authorized to conduct advance voting on any other days."

12. On November 1, 2024, Plaintiff discovered that Fulton County has authorized the Department of Registration and Elections to be opened between the hours of 9 a.m. to 4 p.m on November 2nd and 3rd so that voters can hand return their absentee ballots. **EX 1**, incorporated herein by reference.

13. November 2nd and 3rd are outside the advanced voting period authorized by statute.

14. O.C.G.A. §21-2-382 further provides that "any additional drop boxes shall be evenly geographically distributed by population in the county."

15. However, Fulton County's stated intention is to only open some drop boxes tacitly acknowledging that the action of Fulton County is contrary to law as the drop boxes must be closed.

16. Defendants were immediately notified about Defendants' violation of Georgia's ballot box closure laws, but refused to take timely and effective action to ensure that state election laws were complied with.

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<u>This Court Should Enter a Temporary Restraining Order Against Defendants.</u>

To obtain a temporary restraining order or preliminary injunction, the movant must show:

1) The threat of irreparable harm to the moving party;
2) Whether the threatened injury outweighs the harm done to the party being enjoyed;
3) Whether there is a substantial likelihood of prevailing on the merits; and
4) Whether granting the interlocutory injunction is not against the public interest.

City of Waycross v. Pierce County Board of Commissioners, 300 Ga. 109, 111 (2016).

17. The purpose of temporary restraining order is to "'protect[] against irreparable harm and preserve[] the status quo until a meaningful decision on the merits can be made.'"

Holmes v. Dominique, No. 1:13-CV-04270-HLM, 2014 WL 12115947, at *2 (N.D. Ga. May 5, 2014) (*quoting Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1297 (11th Cir. 2005)).

18. The duration of the temporary restraint cannot exceed 30 days, as the court fixes, "unless the party against whom the order is directed consents that it may be extended for a longer period." O.C.G.A. § 9-11-65(b)(2). However, if the Court grants the temporary restraining order, "the motion for a preliminary injunction shall be set down for hearing at the earliest possible time…." Id.

19. While the grant of a temporary restraining order is an extraordinary remedy that should not be granted unless the movant clearly carries its burden as to the four aforementioned elements, *Western Sky Financial, LLC v. State ex rel. Olens*, 300 Ga. 340, (2016), it is "designed to preserve the status quo pending a final adjudication of the case." *Bijou Salon & Spa, LLC v. Kensington Enterprises, Inc.*, 283 Ga.App. 857, 860 (2007); *Poe & Brown of Georgia, Inc. v. Gill*, 268 Ga. 749, 750 (1997).

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20. Here, a Temporary Restraining Order is Warranted since all elements are met. The damage to Plaintiffs would begin in only a few hours as soon as the drop boxes are opened. Defendant cannot be harmed simply by following the law as enacted by the General Assembly and therefore the damage to Plaintiffs far outweighs that to Defendant. Additionally, granting the injunctive relief maintains the status quo. As the law is clear on the timing of when drop boxes may be open, here is a substantial likelihood of Plaintiffs succeeding on the merits and all Georgia voters are entitled to having their elections conducted in a manner consistent with law and in an equitable fashion across all 159 counties in Georgia. If Fulton County is permitted to proceed with the clear violations of O.C.G.A. §1-2-382 and O.C.G.A. §21-2-385, it would make the conduct of the election arbitrary. For the aforementioned reasons, the granting of Petitioner's

prayer for emergency injunctive relief is within the public's interest and consistent with public policy.

COUNT I
EMERGENCY INJUNCTION AND INTERLOCUTORY INJUNCTION
DROP BOXES MUST BE CLOSED WHEN
ADVANCE VOTING IS NOT OCCURRING

21. Plaintiffs repeat and reallege the allegations in Paragraphs 1-20 as set forth above as though fully set forth herein verbatim.

22. The threat of irreparable harm to the moving party is real and immediate as once these illegally cast absentee ballots are accepted, they will be impossible to be separated and not counted;

23. Whether the threatened injury outweighs the harm done to the party being enjoyed is without dispute as the allowance of one county to illegally accept absentee ballots while the other 158 follow the law creates a substantial harm to Republican voters in other counties and Republican candidates, as well as a real and immediate cost to find poll watchers to adequately observe this weekend in Fulton County;

24. Whether there is a substantial likelihood of prevailing on the merits has been met as the code sections at issue are clear and unambiguous and Fulton's actions to allow receipt of absentee ballots at drop boxes while in person voting is not occurring is in violation of Georgia law; and

25. Whether granting the interlocutory injunction is not against the public interest.

City of Waycross v. Pierce County Board of Commissioners, 300 Ga. 109, 111 (2016).

COUNT II

DECLARATORY JUDGEMENT

26. Plaintiffs repeat and reallege the allegations in Paragraphs 1-25 as set forth above as though fully set forth herein verbatim.

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27. On account of the foregoing, an actual and justiciable controversy exists between and among the parties regarding their respective rights, status or other legal relations under the above-cited statutes. O.C.G.A. § 21-2-382 and O.C.G.A. §21-2-385.

28. Plaintiffs therefore seek a declaratory judgment that Defendants are not in compliance with their legal obligations under the above-cited statutes.

29. The action of Fulton County in exercising a power specifically denied to them by the General Assembly is a direct violation of state law.

30. As a result of the acts and omissions of Defendants, Plaintiffs have been compelled to hire the services of an attorney to protect their interests and are entitled to reimbursement of attorneys' fees and costs incurred in the prosecution of this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

a. Declaratory judgment that Defendants are in violation of O.C.G.A. § 21-2-382 and O.C.G.A. §21-2-385.

b. A Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction providing that Defendants, as well as their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them shall:

- Cease any and all violations of O.C.G.A. § 21-2-382 and O.C.G.A. §21-2-385;
- Not permit persons to hand-return their absentee ballots in violation of O.C.G.A. § 21-2-382 and O.C.G.A. §21-2-385; to wit; not accept absentee ballots in drop boxes on November 2 and 3, 2024 anywhere within Fulton County, Georgia;

c. Award Plaintiffs' their actual costs and attorney fees, and

d. Any such other and further relief as this Honorable Court deems just, equitable, and necessary under the circumstances.

Respectfully submitted this 1st day of November, 2024.

CHALMERS, ADAMS, BACKER & KAUFMAN, LLC

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By: *__/s/Alex B. Kauufman_______________*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed this day using the Court's electronic filing system which will automatically send notice of same to counsel of record, and I have caused a true and accurate copy of the foregoing document to be served on all parties and counsel of record via statutory electronic service. We have also sent a copy via email to Joseph J. Siegelman at jsiegelman@cglawfirm.com

This 1st day of November 2024,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using the font type of Times New Roman and a point size of 14.

Dated: November 4, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2024, I electronically filed this document with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the attorneys of record.

Dated: November 4, 2024

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