

No. 22O155

In The
Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA,
STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

On Motion for Leave to File a Bill of Complaint

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF,
MOTION FOR LEAVE TO FILE BRIEF UNDER RULE 33.2,
AND *AMICI CURIAE* BRIEF OF WILLIAM LIGON, GREG
DOLEZAL, BRANDON BEACH, BURT JONES, *ET AL.*

Supporting Plaintiff's Motion for Leave to File a Bill of Complaint

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**MOTION FOR LEAVE TO FILE *AMICUS* BRIEF AND FOR LEAVE TO
FILE BRIEF UNDER RULE 33.2¹**

Movants William Ligon, Burt Jones, Brandon Beach, Greg Dolezal, *et al.*,² respectfully seek leave to file the accompanying brief as *amici curiae* in support of Plaintiff's Motion for Leave to File Bill of Complaint in the above-captioned matter. Movants also seek leave to file this brief under Supreme Court Rule 33.2.

IDENTITY AND INTERSTS OF *AMICI*

With two exceptions, Movants are elected to and currently serving in the General Assembly of the State of Georgia, which is the legislature of the State. All but one of the Movants served in the legislature in 2019 when that body last amended the statutory law governing elections held in Georgia.

In the months before the November 3, 2020 election, and without notice to or permission from the State legislature, Georgia election officials committed acts that were contrary to Georgia statutory law. These acts described below usurped the plenary power granted by the U. S. Constitution to the Georgia legislature to prescribe the manner of elections held for federal officials in Georgia. U.S. Const., Art. 1, § 4, cl. 1.

First, on March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia's Secretary of State and the members

¹ Pursuant to Supreme Court Rule 37, all Parties have received timely notice of intent to the filing of this brief and have consented to the filing. However, this consent came at the last moment after this Motion was prepared. Rather than move important material from this Motion into the Brief, *Amici* have left the Motion as it was at the time consent was obtained to facilitate filing as quickly as possible. No counsel for any party authored this *amici* brief in whole or in part and no person or entity other than *amici* made a monetary contribution to its preparation or submission.

² The remaining *Amici* are listed in the proposed Brief.

of the State Election Board (hereafter collectively “Board”) entered into a Compromise Settlement Agreement and Release (“Settlement”) with the Democratic Party of Georgia, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee that materially altered the statutory requirements for reviewing and verifying signatures on absentee-ballot envelopes to confirm the voter’s identity. The Settlement provided that the Secretary of State would issue an “Official Election Bulletin” to county administrators overriding the statutory procedures, set forth at O.C.G.A. § 21-2-386(a)(1)(B), governing the verification of signatures on absentee ballots.

Second, in April 2020 the Board adopted Secretary of State Rule 183-114-0.9-.15, Processing Ballots Prior to Election Day, which purports to authorize county administrators to begin processing absentee ballots up to three weeks before Election Day. This rule violates O.C.G.A. § 21-2-386(a)(2), which prohibits the opening of absentee ballots until after the polls open on Election Day. The rule therefore fails to comply with the statutory mandate that any rules promulgated for the conduct of primaries and elections be “consistent with law.” O.C.G.A. § 21-2-31.

Third, the Board promulgated Rule 183-1-14-0.8-.14, establishing unattended absentee-ballot drop box locations, which are not authorized anywhere in Georgia’s Election Code. These unattended drop box locations denied the parties and candidates the assurance that absentee-ballots would be handled

safely and securely by the U.S. Postal Service or by election officials directly receiving them.

Fourth, the Board allowed election officials in heavily Democratic Fulton County to equip at least two “buses” with voting machines and drive to locations around the area as a “mobile voting” location.³ “Mobile voting locations” are not authorized under Georgia law and are not “consistent with law.” O.C.G.A. § 21-2-265 provides that precinct voting locations are to be fixed and not to be changed without notice, and further requires that the voting location for each precinct must occur (with very limited exceptions) within the precinct. This statutory violation may have denied the parties and candidates their right to have poll watchers present, a right protected by O.C.G.A. §§ 21-2-408 and 21-2-483. Finally, providing mobile voting locations to ease the voting for one county with a large population voting heavily for one party deprives other counties favoring the other party equal protection of the law.

Finally, the Board and county election officials, through lax enforcement of the Election Code, allowed votes to be cast in violation of Georgia’s election law, as specified in the attached *amici* brief.

Prior to the 2020 Presidential Election, Georgia’s legislature had not ratified the material changes made by the Board to statutory election law. These changes vitiated the legislature’s absolute authority under Article I, section 4 of the Constitution of the United States: “The Times, Places and Manner of holding

³ See <https://www.fultoncountyga.gov/news/2020/10/12/early-voting-and-fulton-mobile-voting-units-hit-the-streets> .

Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof” The legislative mandates established in the Georgia Election Code cannot be overridden by state executive officials. The authority of the State legislatures under Article I, Section 4 for the “manner” of federal elections is plenary, unless Congress intercedes, which Congress has not done. *See McPherson v. Blacker*, 146 U.S. 1, 35 (1892) (“the legislature possesses plenary authority to direct the manner of appointment” of a state’s electoral votes); *accord, Bush v. Gore*, 531 U.S. 98, 104 (2000) (“the State legislature’s power to select the manner for appointing electors is plenary”).

As representatives of the body endowed by the Constitution with the plenary authority to mandate election procedures – authority that was wrongfully usurped by other entities before the November 3, 2020 election – Movants have suffered a unique harm and can offer a unique perspective on the critical issues raised by Plaintiff the State of Texas in its Motion for Leave to File Bill of Complaint. For these reasons Movants ask this Court to grant the Plaintiff’s motion and, ultimately, to grant the relief sought by Plaintiff the State of Texas in this case.

Movants also request permission to file their proposed brief on 8 1/2 inch by 11-inch paper pursuant to Rule 33.2. Plaintiff’s emergency petition seeks the Court’s immediate intervention, and time does not allow for the printing of booklets under Rule 33.1. Accordingly, Movants respectfully request this Court to accept the filing of their amicus brief using the format specified in Rule 33.2.

For these reasons, Movants respectfully request the Court's leave to file the attached Amicus Curiae Brief and for leave to file the brief pursuant to Rule 33.2.

Dated: December 10, 2020

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*

Amici for this brief William Ligon, Burt Jones, Brandon Beach, Greg Dolezal, Bruce Thompson, Matt Brass, Blake Tillery, Marty Harbin, Lindsey Tippins, Tyler Harper, Randy Robertson, Renee Unterman, Jeff Mullis, Steve Gooch, and Lee Anderson are elected and currently serving members of the Georgia State Senate. Amicus Sheila McNeill is a Senator-elect in the Georgia State Senate. Amici Jason Ridley, Trey Rhodes, Rick Williams, Colton Moore, Jeff Jones, Don Hogan, Wes Cantrell, David Clark, Bill Werkheiser, Steven Meeks, Greg Morris, and Sheri Gilligan are elected and currently serving members of the Georgia State House of Representatives. All currently serving Amici served in the legislature in 2019, when it amended Title 21 of the Official Code of Georgia to govern elections held in the State.

Amici are interested in this case because granting the relief requested by the State of Texas is crucial to protecting the Constitution's division of authority over state election laws. The United States Constitution says that "[e]ach State shall appoint" electors "in such Manner *as the Legislature thereof* may direct." Art. II, § 1, cl.2 (emphasis added). The Georgia Legislature prior to the 2020 Presidential Election held hearings on and amended Georgia's Election Code that gave legal voters the opportunity to vote while preserving voting integrity. Non-legislators in the Executive Branch subsequently modified several provisions of the Election Code without first obtaining the approval of, or even notifying, the Legislature. These unapproved modifications of the Election Code likely resulted in irregularities sufficient to change the outcome of Georgia's recent Presidential Election.

SUMMARY OF ARGUMENT

Plenary authority to prescribe the “manner” (conduct) of elections for federal office is vested in the State legislatures pursuant to Article I, Section 4 of the Constitution. Pursuant to this authority, the Georgia General Assembly enacted (and periodically amended) the Georgia Election Code that governs the election process from voter registration to election contests. Pursuant to its legislative authority, the Georgia General Assembly created the State Election Board and gave it and the Georgia Secretary of State election responsibilities. Although the Board and the Secretary of State could promulgate election regulations, these regulations must be “consistent with law.”

Prior to the 2020 Presidential Election, the Board and Secretary of State promulgated regulations and altered election procedures pursuant to a Settlement with Democratic entities. These altered procedures were not subsequently ratified by the Georgia General Assembly, and were actually in conflict with the election laws enacted by the General Assembly. The unauthorized modifications of Georgia law, coupled with the lax enforcement of the Georgia Election Code, likely resulted in tens of thousands of illegal votes, which probably altered the Presidential Election.

ARGUMENT

I. ARTICLE I, SECTION 4 OF THE CONSTITUTION GIVES EXCLUSIVELY TO STATE LEGISLATURES THE AUTHORITY TO SET THE MANNER OF FEDERAL ELECTIONS UNLESS CONGRESS DIRECTS OTHERWISE, WHICH CONGRESS HAS NOT DONE

The United States Constitution vests in the State Legislatures the authority to regulate *federal* elections: “The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” U.S. Const. Art. I, § 4. By acting on this authority, the State Legislature makes *federal* law. Although Congress has made uniform certain aspects of federal elections (e.g., election day for members of the House of Representatives, 2 U.S.C. § 7), most of the “manners” of federal elections are left to the discretion of the State Legislators. Regarding the appointment of Presidential Electors for the Electoral College, the Constitution provides, “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in Congress.” U.S. Const. Art. II, § 1.

In Georgia, the “legislature” for purposes of Article I, Section 4 is the General Assembly (hereafter “Legislature”). See Ga. Const. Art. III, § 1, Para. I. The Legislature, pursuant to its vested powers, enacted the Election Code to regulate elections (including Presidential Electors) in Georgia. See O.C.G.A. §§ 21-2-1 et seq. (the “Election Code”). Non-members of the Legislature (including members of the

Executive Branch and the Judiciary) must not by their actions undermine the constitutional authority given The Legislature to prescribe the “Manner” in which Presidential Electors are appointed, since the Constitution grants this authority exclusively and specifically to The Legislature. See *McPherson v. Blacker*, 146 U.S. 1, 35 (1892) (“the legislature possesses plenary authority to direct the manner of appointment” of a state’s electoral votes); see also *Bush v. Gore*, 531 U.S. 98, 104 (2000) (“the State legislature’s power to select the manner for appointing electors is plenary”).

As detailed in Section I, B above, the Board during the recent Presidential Election promulgated rules pursuant to the Settlement, and took additional election actions, that were not authorized by The Legislature. Given the exclusive, plenary authority granted the State Legislatures by Article I, Section 4, this unauthorized action by the Secretary of State and the Board must be remedied.

II. THE 2020 PRESIDENTIAL ELECTION IN GEORGIA WAS RIDDLED WITH ERRORS

A. SOME OF THESE ERRORS WERE CAUSED BY IMPROPER ENFORCEMENT OF GEORGIA ELECTION LAW

1. Over 133,000 Georgians Voted Without Proper Registration

The State of Texas in its Bill of Complaint has cited several violations of Georgia law that were committed on Election Day. See Bill of Complaint ¶¶ 66 – 72. These violations, although more than sufficient to overturn the results of the Presidential Election in Georgia (¶¶ 75 – 76), are few when compared to those

identified in the Verified Petition to Contest Georgia's Presidential Election filed in *Trump et al. v. Raffensperger*, 2020CV343255 (Fulton Co. Superior Court). The errors identified in this Verified Petition attributable to errors in Election Code enforcement include:

- As many as 2,560 felons voted in violation of O.C.G.A. § 21-2-216(b);
- At least 66,247 underage people illegally registered to vote and later voting in violation of O.C.G.A. § 21-2-216(c);
- At least 2,423 unregistered voters actually voted in the election;
- At least 4,926 individuals voted in Georgia after they had registered to vote in another State, in violation of O.C.G.A. § 21-2-217;
- At least 15,700 individuals voted in the Presidential Election after they had filed a national change of address with the U.S. Postal Service;
- At least 40,279 individuals voted after moving across county lines at least 30 days prior to Election Day and who failed to re-register, in violation of O.C.G.A. § 21-2-218(b);
- At least 1,043 individuals voted after illegally registering to vote using a post office box as their habitation in violation of O.C.G.A. § 21-2-217;
and
- At least 98 persons voted after voter registration for the election had closed, in violation of O.C.G.A. § 21-2-224.

Assuming that no single voter was guilty of more than one voting infraction, the number of voters casting illegal ballots as described above is at least 133,276, more

than ten times the vote spread between Mr. Trump and Mr. Biden (approximately 12,670).

2. Other Voting Law Infractions Raised Serious Questions as to the Fairness and Transparency of the Vote

Georgia law grants each political party the right to have “two official poll watchers in each precinct” on Election Day as well as each day early voting is conducted. O.C.G.A. §§ 21-2-408(b)(1), (b)(3)(A). The legislative intent behind the authorization of poll watchers is to ensure both parties, and independent candidates as well, that the voting process is transparent, fair and legal (O.C.G.A. § 21-2-483(b) provides that “all proceedings at the tabulating center and precincts shall be open to the view of the public....”).

On the night of the election, however, Republican poll watchers at various heavily Democratic precincts, were physically barred from observing the vote count. One incident involved all Republican poll watchers’ being told to go home at approximately 10:30 p.m. from the State Farm Arena in Fulton County, since no further counting would be done that night.⁴ Surveillance footage shows that shortly after these poll watchers left, suitcases of ballots were wheeled out from under a covered table and absentee ballots were counted. As a result, Republicans were illegally denied their statutory right to observe the counting of thousands of ballots.⁵

⁴ <https://www.foxnews.com/politics/georgia-investigating-vote-counting-delayed-by-flooding-in-democratic-county-gop-poll-watchers-told-counting>

⁵ https://www.cbs46.com/news/lawmakers-hear-bombshell-allegations-of-georgia-election-fraud/article_8404e930-35e5-11eb-8ac3-1fc96e3b52d8.html

Another election law infraction that reduced the fairness and transparency of the election was starting the absentee-ballot process before election day. Georgia law in effect on election day provided:

After the opening of the polls on the day of the primary, election, or runoff, the registrars or absentee ballot clerks shall be authorized to open the outer envelope on which is printed the oath of the elector in such a manner as not to destroy the oath printed thereon; provided, however, that the registrars or absentee ballot clerk shall not be authorized to remove the contents of such outer envelope or to open the inner envelope marked "Official Absentee Ballot," except as otherwise provided in this Code section (emphasis added). O.C.G.A. § 21-2-386(G)(2).

Although there are statutory exceptions for opening and performing a preliminary scan of ballots under O.C.G.A. §21-2-386, Section (G)(5) of O.C.G.A. § 21-2-386 states definitively, “No absentee ballots shall be tabulated before 7:00 A.M. on the day of a primary, election, or runoff” (emphasis added). The legislative intent behind this rule is obvious. Vote tabulation is not to occur until all the electoral safety precautions (like poll watchers from both parties) are on hand.

In August, 2020, the Election Board passed Rule 183-1-14-0.9-.15. The rule authorized local election officials to open and “process” absentee ballots three weeks before the election.⁶ The rule also purported to forbid counting of any absentee ballot until the polls were closed.⁷

However, two counties counted absentee ballots before the election, in violation of the clear dictates of O.C.G.A. § 21-2-386(G)(5). The Board allowed these ballots to be counted among the final total in Georgia, despite their having been

⁶ <https://www.ajc.com/politics/absentee-ballots-can-begin-to-be-opened-but-not-counted-in-georgia/BRBLHVUJOFHB5OEHAMZV34HPDA/>

⁷ See Rule 183-1-14-0.9-.15 , available at [https://sos.ga.gov/admin/files/Table%20of%20Contents%20for%20SEB%20Rule%20183-1-14-0.9-.15%20\(Amended\).pdf](https://sos.ga.gov/admin/files/Table%20of%20Contents%20for%20SEB%20Rule%20183-1-14-0.9-.15%20(Amended).pdf)

counted before Election Day, in violation of the law and perhaps without the full electoral safety precautions in place.

B. OTHER ERRORS WERE CREATED BY GEORGIA ELECTION OFFICIALS WHO MODIFIED GEORGIA ELECTION LAWS WITHOUT THE APPROVAL OF THE GEORGIA LEGISLATURE

As is evident from Title 21 of the Georgia Code, *amici* and their fellow Georgia legislators laid out prior to the Presidential Election a careful plan to promote the integrity of Georgia's elections by ensuring that valid votes were not diluted and canceled out by invalid votes. To further this plan, the Georgia legislators delegated specified duties to the State Election Board and its chair, the Secretary of State. Georgia law grants to the State Election Board and Secretary of State the responsibility for promulgating and enforcing rules and regulations to (1) obtain uniformity in the practices and proceedings of election officials as well as legality and purity in all primaries and general elections, and (2) be conducive to the fair, legal, and orderly conduct of primaries and general elections. See O.C.G.A. §§ 21-2-30(d), 21-2-31. While the State Election Board and its Chair may adopt rules in furtherance of the "fair, legal and orderly conduct of...elections," such rules and regulations must be "*consistent with law.*" See O.C.G.A. § 21-2-31.

Preceding the Presidential Election, the State Election Board adopted rules and regulations *inconsistent* with Georgia law, and thereby usurped the plenary authority given *amici* and their fellow legislators by Article I, Section 4. Examples include:

1. Violations of Law Pursuant to the Illegal “Settlement” with the Democratic Party

On March 6, 2020, the Secretary of State and members of the Election Board, acting in their official capacities, entered into a settlement agreement (“the Settlement”) to resolve litigation initiated by the Democratic Party of Georgia, Inc. (“DPG”), the Democratic Senatorial Campaign Committee (“DSCC”), and the Democratic Congressional Campaign Committee (“DCCC”). In the Settlement, the Board specifically agreed to promulgate regulations inconsistent with Georgia law.

a. **The Settlement defied the plain language of the statute for receiving and counting absentee ballots and ballot applications.**

According to Georgia law, when an absentee ballot is received, “a registrar or clerk” must check the envelope in which each ballot is sealed, to ensure that the voter information on the envelope and the voter’s signature match the information and signature on the voter rolls and that the voter has signed the required oath. O.G.C.A. § 21.2-386(a)(1)(B). If each piece of information is not accurately given, “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.” O.G.C.A. § 21.2-386(a)(1)(C).

Under the statutory framework, during the 2016 election, fully 6.42% of all absentee ballots were rejected by a registrar or clerk for failure to meet one or more of the legal requirements. Out of 213,033 absentee ballots mailed in, fully 13,677 failed to meet legal requirements and were rejected. Texas Compl. ¶ 75.

The Settlement, and resulting new regulation established by Board, dramatically increased the review requirements. Rather than a single clerk or registrar reviewing each ballot and making a decision to accept or reject, the Board required the review of three such officials. If these reviewers did not reach a unanimous decision, the vote of two would control. If the ballot was rejected, the reviewers were required to provide the basis for their decision and add their names to the envelope.

Although increasing the number of reviewers from one to three has the laudable effect of increasing the fairness of the review, it *substantially* increases the review process if the signature is rejected. Unless there is an increase of election officials at each precinct, two of the election officials must be dedicated as reviewers, which means there are two fewer people to perform other election-site duties. If there are no dedicated reviewers, the single official reviewing signatures must wait for others to join him/her in the reviewing process. Under either scenario, the efficiency of the voting process is hindered and a bias for signature approval may result.

The effect of tripling the reviewers in the Presidential Election was remarkable. According to the Texas Complaint, a mere .34% of absentee applications were rejected – just 4,786 out of 1,305,659 submitted. Texas Compl. at ¶ 75. In effect, with over six times as many mail-in ballots as in the 2016 election, only one-third as many ballots were rejected. It defies logic to believe that in 2020, with an overwhelming flood of additional mail-in ballots, mostly from individuals

voting by mail for the first time, a vastly smaller percentage of individuals failed to meet signature requirements. It seems far more likely that the triple review requirement, coupled with a flood of absentee ballots to be reviewed, simply resulted in a lesser review than what was intended by the Election Code.

This is consistent with an affidavit prepared by Benjamin Overholt, who confirmed the significant drop-off in signature verification in a different analysis. Looking at simply the decrease in ballots rejected in 2020 from the ballots rejected in 2016 for the “SIG” and “OATH” category (not including ballots rejected in 2016 for the failure to include a year or birth or mismatch address or date) there were NO rejections for those categories in 2020 due to the loosening of the standards. Even so, the number of rejections for the failure of the Oath to be signed or the lack of matching signatures fell from 2016 to 2020 from 0.88% to 0.15%. Any way of analyzing the data shows a significant falloff. *See* Appendix A (Overholt Aff. ¶¶ 10-13). Either way of looking at the falloff would change a number of votes that exceeded the margin of victory in the presidential race and was not in accord with the legislative mandates for the election.

By usurping the authority over the “manner” of the 2020 election reserved solely to the Legislature by the Constitution, the Board materially altered the outcome of the Georgia election. This Court should not allow the action to stand.

b. Likewise, the Board without the authority of the Legislature modified the statutory signature verification requirement.

The Election Code requires that the signature on an absentee ballot envelope match the signature on both the voter’s registration card and the application for

absentee ballot. See O.C.G.A. § 21-2-386(A)(1)(b). This statutory verification process was replaced by the Board with the much more lax requirement that the signature on the envelope only need match the signature on the application for the absentee ballot. This permitted many more instances of fraudulent voting, since persons assuming the identities of others, and having received the mass mailing of absentee-ballot applications, could apply for a mail-in ballot that would be issued to them, and their signatures on the application would match the signature on the ballot.⁸

This potential for fraud is very evident simply by an examination of the Election Code. The Code specifically allows relatives of the voter to complete an application for an absentee-ballot on behalf of the voter. See O.C.G.A. § 21.2-281(a)(1)(B). In fact, a signature of the relative on the absentee-ballot application is sufficient. *Id.* According to the statutory provisions, when the voter completes the absentee ballot, the voter must sign the ballot and the envelope in which the ballot is secured. O.C.G.A. § 21.2-385(a). This allows for ballot integrity, as long as the signature of the voter on the envelope and the ballot matches the signature on the voters' roll. If, however, this requirement of matching ballot/envelope signature and voters' roll signature is eliminated, and the only requirement is matching the envelope signature with the application, then the relative signing the application can also cast the vote illegally.

⁸ One other matter of note in the Settlement was the Board's agreement to consider in good faith "additional guidance and training materials" drafted by a "handwriting and signature review expert" of the Democratic Party. The Republican Party was granted no such consideration.

- c. **The Board allowed election officials in heavily Democratic Fulton County to equip buses with voting machines and drive to locations around the area as a “mobile voting” location.⁹**

The Georgia Election Code makes no provision for “mobile voting locations.”

Georgia law makes clear that precinct voting locations are to be fixed, and not to be changed without notice. See O.C.G.A. § 21-2-265. “Mobile voting locations,” particularly where they are available in only one certain county dominated by a single political party, deny the residents of other counties equal protection of the law, as well as perhaps the voting safety protection of poll watchers required by O.C.G.A. §§ 21-2-408 and 21-2-483.

- d. **The Board likewise promulgated without the Legislature’s approval Rule 183-1-14-0.8-.14, establishing unattended absentee ballot drop box locations, which are not authorized anywhere in Georgia’s Election Code.**

Rule 183-1-14-0.8-.14 states, *inter alia*,

County registrars are authorized to establish one or more drop box locations as a means for absentee by mail electors to deliver their ballots to the county registrars. ...Drop box locations may open beginning 49 days before Election Day.... Counties shall provide notice of the location of each drop box by posting such information on the home page of the county election website....

The Election Code is devoid of any authorization for unattended ballot collection locations. These unattended drop box locations denied the parties and candidates the assurance that absentee-ballots would be handled safely and securely by the U.S. Postal Service or by election officials directly receiving them.

⁹ <https://www.ajc.com/news/atlanta-news/fulton-unveils-new-mobile-voting-precinct-vehicle-to-help-with-election/PNBY6NYKUJHQZEUZGOWZESFX7U/>

CONCLUSION

Elections generate passion, which continues six weeks after the Presidential Election. These passions can cool only when both sides are confident that the election was fair and transparent, pursuant to the rules established before the election and followed throughout. As demonstrated in this amicus brief, the rules established by the General Assembly of Georgia for the Presidential Election were not followed. This Court should, indeed must, remedy the situation and once again bring confidence in the integrity of our electoral system.

For the reasons stated above, we respectfully request that this Court grant the remedies requested by the State of Texas in its Bill of Complaint.

Respectfully submitted,

this 10th day of December, 2020

/s/James Alan Davids
Counsel of Record

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AFFIDAVIT OF BENJAMIN A. OVERHOLT

I, Benjamin A. Overholt, Ph.D., declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.
2. I have an M.S. and a Ph.D. in Applied Statistics and Research Methods from the University of Northern Colorado. I am currently an active federal civil servant for over seven years and served in the United States Army for 15 years. During that time, I spent more than five years reviewing election results for the Voting Rights Section of the Civil Rights Division of the U.S. Department of Justice in Washington, D.C.
3. I am familiar with and have analyzed public data from the office of the Secretary of State of Georgia (the "SoS") regarding the recent presidential election held on November 3, 2020 (the "2020 General Election".)
4. The plaintiff asked me to review the data available on the SoS website to determine its usefulness in questioning the rejection rates of mailed ballots ("mailed ballots") in the 2020 General Election and to determine whether anomalies existed that could change the outcome of the presidential race in

the 2020 General Election. Based on my experience and because of my personal interest in the matter, I felt qualified to do so. I am not being compensated for this work or for my time, rather, I am reviewing the data for the sake of verifying outcomes.

Anomalies Based on Rejected Ballots – Signature Verification and Missing Oath

5. I generated tabulations of mailed ballot rejection and spoil rates from 2016 to 2020 to check the accuracy of data on the SoS website and to demonstrate the discrepancies in the number of mailed ballots that were “rejected” and “spoiled” when comparing previous elections to the 2020 General Election. All data used for this analysis was downloaded directly from the SoS’s public website. The datafile for the 2020 General Election was last updated on November 16, 2020.¹
6. In the datasets, the variables “Ballot Style”, “Ballot Status”, and “Status Reason” are each critical to understanding ballot rejection reasons and rates. “Ballot Style” is the type of ballot cast – values included are “ELECTRONIC”, “IN PERSON”, and “MAILED”. In the results below, I considered only those ballots marked as “MAILED”. “BALLOT STATUS” is the current status of a ballot, values are “A” for accepted, “C” for cancelled,

¹ <https://elections.sos.ga.gov/Elections/voterabsenteefile.do>

“R” for rejected and “S” for “spoiled”. In this analysis only values “A”, “R” and “S” were considered.

7. There are over 6,000 different “Status Reason” codes. They seem to be handwritten phrases and include similarities such as “R-ADDR MISSING” and “RADDR NOT A MATCH”. The “grepl” function in R was used to search for key words in “Status Reason”. Table 1 shows the keywords searched for that showed concerning discrepancies from 2016 to 2020 and are related to signatures. To get the “[Percentage] of Mail In Ballots” in Table 1, the “Counts” were divided by the total number of mailed ballots with a Status of “Accepted”, “Rejected”, or “Spoiled”.
8. The data was sorted for the general and primary elections in 2016, 2018 and 2020 in Georgia, with a “g” or “p” denominating the information in the columns below, respectively.

Table1: "Status Reason" Search Terms By Year for "Rejected" and "Spoiled Ballots"

Search Term	Counts				% of Mail In Ballots			
	2016g	2018g	2020p	2020g	2016g	2018g	2020p	2020g
ALL Rejections	6,059	7,889	11,772	4,471	2.90%	3.46%	1.01%	0.34%
"SIG"	581	457	3,212	1,998	0.28%	0.20%	0.28%	0.15%
"OATH"	1,259	3,029	0	0	0.60%	1.33%	0.00%	0.00%
"ADDR"	373	156	0	0	0.18%	0.07%	0.00%	0.00%
"DOB"	598	19	0	0	0.29%	0.01%	0.00%	0.00%
"DATE"	371	24	0	0	0.18%	0.01%	0.00%	0.00%
"DEADLINE"	1,004	1,783	8,495	2,400	0.48%	0.78%	0.73%	0.18%
"BY ELECTION"	1,836	1,788	0	0	0.88%	0.79%	0.00%	0.00%

9. Table 1 demonstrates the reduced rate of rejection for reasons with the term "SIG" and the near zero instances of reasons with the term "OATH" in the 2020 General Election. "SIG" is a shorthand designation for mailed ballots that were rejected because of a signature mismatch.

10. As the oath portion of the ballot is the portion signed, there is likely overlap between Oath and Signature issues. Considering only reasons with the term "SIG", the rejection rates were 0.28% in the 2016 general, 0.20% in the 2018 general and 0.28% in the 2020 primary but dropped to only 0.15% in the 2020 General Election.

11. Comparing the 0.15% rate in the 2020 General Election to the 0.28% rate in 2016 and the 2020 primary would suggest somewhere around 1,600 additional ballots should have been rejected for signature issues.

12. Considering the number of ballots classified as rejected in the "OATH" row, the rejection rates were 0.60% in 2016, 1.33% in 2018, and near zero in 2020.

The fact that there were two or three instances of “OATH” in both 2020 elections for spoiled ballots shows that “OATH” issues are still possible, but almost eliminated compared to earlier elections.

13. Comparing the 0.60% rate for 2016 and the 1.33% rejection rate in 2018 to the near zero rate in 2020 would suggest an additional 7,900 or 17,500 ballots should have been rejected, respectively. Together the difference in rejection reasons with the terms “SIG” and “OATH” would account for more ballots than the margin of victory in the presidential race in the 2020 General Election and might have affected other state-wide or local races.

Anomalies Based on Spoiled Ballots

14. I observed an additional issue when I considered the rate of spoiled ballots. Essentially, a spoiled ballot is a ballot with multiple markings or damage that make it difficult to determine the voter’s intent. In both 2016 and 2018, fewer than 100 Mailed ballots were “Spoiled” (0.03% and 0.04% of Accepted, Spoiled and Rejected ballots cast, respectively). In 2020, the corresponding number increased to 1,794 in the primary (0.15% of Accepted, Spoiled and Rejected ballots cast) and 4,082 in the 2020 General Election (0.31% of Accepted, Spoiled and Rejected ballots cast – nearly 10 times the 2016 rate). The rate of spoiled ballots in the 2020 General Election was twice the rate in

the primary, over seven times the rate in 2018 and over 9 times the rate in 2016.

Table 2: "Ballot Status Counts by Election

Ballot Status	2016g	2018g	2020p	2020g
Accepted	202,492	219,731	1,150,478	1,308,447
Cancelled	12,053	20,601	116,424	318,086
Rejected	6,059	7,889	11,772	4,471
Spoiled	69	98	1,794	4,082
<blank>	25,948	36,074	333,608	133,886

The Secretary of State Analysis

15. The office of the SoS published the results of its own review of this same data (the "SOS Analysis")², concluding that, "The number of absentee ballot rejections for signature issues increased approximately 350% in the November 2020 election in Georgia from the 2018 election." This conclusion is misleading and the SOS Analysis is flawed in two material ways.

16. First, the SOS Analysis does not make any comparison to the most probative election available, the 2016 General Election. Second, the SOS Analysis inconsistently applies rules for computing the denominators for their percentages.

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https://sos.ga.gov/index.php/elections/number_of_absentee_ballots_rejected_for_signature_issues_in_the_2020_election_increased_350_from_2018

17. In calculating the percentage of “Rejected” ballots, the SOS Analysis uses as numerators (number of rejected ballots) the numbers 454, 3,266 and 2,011. Those numbers are the number of ballots rejected in the 2018 General Election, the 2020 Primary Election, and the 2020 General Election, respectively, and are all reasonably close to the numerators used in my analysis.
18. But the SOS Analysis uses differing denominators to calculate the reported percentages. In the 2018 General Election, the SOS Analysis divided the number of rejected ballots by a denominator which was the sum of all Ballot Statuses (Accepted, Cancelled, Rejected, Spoiled, even the blanks) to get their 284,393 number, which would minimize the reported percentage.
19. For the 2020 Primary Election, the SOS Analysis divided total rejections by Accepted ballots only. For the 2020 General Election, the SOS Analysis divided the number of Rejected ballots by the total of all Accepted, Rejected and Spoiled ballots (the method employed in this analysis). That was correct, but the SOS Analysis for the 2018 General Election minimized the percentage and maximized it for the 2020 Primary Election. The data in the article cited above reporting the SOS Analysis was therefore generated improperly and inconsistently and is misleading.


Further Anomalies

20. There is one caveat regarding the dataset for the 2020 General Election. The datafile contains records for 4,505,778 ballots while Georgia's official election totals currently show a total of 4,998,482 votes cast for the top 3 candidates in the presidential contest. It is surprising that while the dataset I used is missing around 500,000 votes, it is only missing 13 rejected ballots.

21. There are other anomalies in the reported data that should be analyzed, and many raise significant questions about the conduct and results of the 2020 General Election. The effect of the difference in ballot totals on this analysis is unknown and cannot be calculated without better understanding of the underlying conduct of the election throughout Georgia. The recent "hand recount" would not resolve these issues. I understand there are further questions about the conduct and outcomes of that process.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Benjamin A. Overholt, Ph.D.

COMMONWEALTH OF VIRGINIA
COUNTY OF PRINCE WILLIAM
CITY OF MANASSAS

Benjamin A. Overholt appeared before me, a Notary Public in and for the above jurisdiction, this 2nd day of November 2020, and after being duly sworn, made the foregoing declaration, under oath.

[Affix Seal]



Notary Public

My Commission Expires 3-31-2023

