

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

THE NEW GEORGIA PROJECT, *et al.*,
Plaintiffs-Appellees,

v.

BRAD RAFFENSBERGER, *et al.*,
Defendants-Appellants.

On Appeal from the United States
District Court for the Northern District of Georgia
No. 1:20-cv-01986-ELR

**AMICUS BRIEF OF THE HONEST ELECTIONS PROJECT
IN SUPPORT OF DEFENDANTS' MOTION FOR A STAY
PENDING APPEAL**

HOLTZMAN VOGEL
JOSEFIK TORCHINSKY PLLC
Jason Torchinsky
Kenneth C. Daines
Dallin B. Holt
15405 John Marshall Hwy
Haymarket, VA 20169
Phone: (540) 341-8808
Fax: (540) 341-8809
Email: jtorchinsky@hvjt.law
Email: kdaines@hvjt.law
Email: dholt@hvjt.law
Counsel for Amicus Curiae
The Honest Elections Project

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Per Rule 26.1 and Circuit Rule 26.1, The Honest Elections Project certifies that the below is a complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this appeal:

1. Aiken, Fred: Member of the Cobb County Board of Registration and Elections and defendant in the underlying case.
2. Andrews, Wanda: Member of the Chatham County Board of Registrars and defendant in the underlying case.
3. Augusta Georgia Law Department: Counsel for defendants Sherry T. Barnes, Marcia Brown, Terrence Dicks, Bob Finnegan, and Tim McFalls, members of the Richmond County Board of Elections, in the underlying case.
4. Bahl, Neera: Member of the Cobb County Board of Registration and Elections and defendant in the underlying case.
5. Baldwin, Beauty: Member of the Gwinnett County Board of Registration and Elections and defendant in the underlying case.
6. Barger, Gerald: Member of the Rockdale County Board of Elections and Voter Registration and defendant in the underlying case.
7. Barham, Gary: Former defendant in the underlying case. Terminated 6-17-2020.
8. Barnes, Sherry T.: Member of the Richmond County Board of Elections and defendant in the underlying case.
9. Belinfante, Joshua Barrett: Counsel for Appellants.

10. Blender, Matthew: Member of the Forsyth County Board of Registrations and Elections and defendant in the underlying case.
11. Boughey, Timothy M.: Counsel for defendants David C. Fedack, Myesha Good, Maurice Hurry, Robert Proctor, and Daniel Zimmermann, members of the Douglas County Board of Elections and Registration, in the underlying case.
12. Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP: Counsel for defendants Jesse Evans, Willa Fambrough, Charles Knapper, and Ann Till, members of the Athens- Clarke County Board of Elections and Voter Registration, in the underlying case.
13. Brooks, Jessica M.: Member of the Cobb County Board of Registration and Elections and defendant in the underlying case.
14. Brown, Arch: Member of the Henry County Board of Elections and Registration and defendant in the underlying case.
15. Brown, Marcia: Member of the Richmond County Board of Elections and defendant in the underlying case.
16. Caldwell Propst & DeLoach, LLP: Counsel for Public Interest Legal Foundation, amicus curiae in the underlying case.
17. Callais, Amanda R.: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall and Beverly Pyne.
18. Callaway, Andy: Member of the Henry County Board of Elections and Registration and defendant in the underlying case.
19. Carr, Christopher Michael: Counsel for Appellants.
20. Chatham County Attorney: Counsel for defendant Colin McRae, member of the Chatham County Board of Registrars, in the underlying case.

21. Clark, Jr., James Clinton: Counsel for Uhland Roberts, Margaret Jenkins, Diane Scrimshire, and Eleanor White, members of the Columbus-Muscogee County Board of Elections in the underlying case.
22. Clemmons, Dee: Former defendant in the underlying case. Terminated 6-17-2020.
23. Cole, David Alan: Counsel for defendants David C. Fedack, Myesha Good, Maurice Hurry, Robert Proctor, and Daniel Zimmermann, members of the Douglas County Board of Elections and Registration, in the underlying case.
24. Cook & Tolley, LLP: Counsel for defendants Jesse Evans, Willa Fambrough, Charles Knapper, and Ann Till, members of the Athens-Clarke County Board of Elections and Voter Registration, in the underlying case.
25. Cooney, Mary Carole: Member of the Fulton County Board of Registration and Elections and defendant in the underlying case.
26. Daniell, Phil: Member of the Cobb County Board of Registration and Elections and defendant in the underlying case.
27. Day, Stephen: Member of the Gwinnett County Board of Registration and Elections and defendant in the underlying case.
28. DeKalb County Law Department: Counsel for defendants Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel E. Tillman, and Baoky N. Vu, members of the DeKalb County Board of Registration and Elections, in the underlying case.
29. Denton, Alexander Fraser: Counsel for Appellants.
30. Dicks, Terrence: Member of the Richmond County Board of Elections and defendant in the underlying case.

31. Elias, Marc E.: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
32. Evans, Jesse: Member of the Athens-Clarke County Board of Elections and Voter Registration and defendant in the underlying case.
33. Fambrough, Willa: Member of the Athens-Clarke County Board of Elections and Voter Registration and defendant in the underlying case.
34. Fedack, David C.: Member of the Douglas County Board of Elections and Registration and defendant in the underlying case.
35. Ficklin, Henry: Member of the Macon-Bibb County Board of Elections and defendant in the underlying case.
36. Finnegan, Bob: Member of the Richmond County Board of Elections and defendant in the underlying case.
37. Forys, Matthew C.: Counsel for Landmark Legal Foundation, amicus curiae in the underlying case.
38. Freeman Mathis & Gary, LLP: Counsel for defendants David C. Fedack, Myesha Good, Maurice Hurry, Robert Proctor, and Daniel Zimmermann, members of the Douglas County Board of Elections and Registration, in the underlying case; and counsel for defendants Diane Givens, Dorothy Foster Hall, Darlene Johnson, Patricia Pullar, and Carol Wesley, members of the Clayton County Board of Elections and Registration, in the underlying case.
39. Georgia Attorney General's Office: Counsel for Appellants.
40. Givens, Diane: Member of the Clayton County Board of Elections and Registration and defendant in the underlying case.
41. Good, Myesha: Member of the Douglas County Board of Elections and Registration and defendant in the underlying case.

42. Hall, Dorothy Foster: Member of the Clayton County Board of Elections and Registration and defendant in the underlying case.
43. Hamilton, Kevin J.: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
44. Hancock, Jack Reynolds: Counsel for defendants Diane Givens, Dorothy Foster Hall, Darlene Johnson, Patricia Pullar, and Carol Wesley, members of the Clayton County Board of Elections and Registration, in the underlying case.
45. Hand, Benny G.: Member of the Albany-Dougherty County Joint Board of Registration and Elections and defendant in the underlying case.
46. Hart, Ralph Jonathan: Counsel for defendants Colin Mcrae, Wanda Andrews, William L. Norse and Jon Pannell, members of the Chatham County Board of Registrars, in the underlying case.
47. Hawkins, John Matthew: Counsel for defendants Jesse Evans, Willa Fambrough, Charles Knapper, and Ann Till, members of the Athens-Clarke County Board of Elections and Voter Registration, in the underlying case.
48. Haynie, Litchfield & White, PC: Counsel for defendants Fred Aiken, Neera Bahl, Jessica M. Brooks, Phil Daniell, and Darryl O. Wilson, members of the Cobb County Board of Registration, in the underlying case.
49. Hicks, Darry: Member of the Fayette County Board of Elections and Voter Registration and defendant in the underlying case.
50. Holstein, Stephanie R.: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.

51. Hurry, Maurice: Member of the Douglas County Board of Elections and Registration and defendant in the underlying case.
52. Ingram, Randy: Member of the Forsyth County Board of Registrations and Elections and defendant in the underlying case.
53. Jacoutot, Bryan F.: Counsel for defendants Beauty Baldwin, Stephen Day, John Mangano, Alice O’Lenick, and Ben Satterfield, members of the Gwinnett County Board of Registration and Elections, in the underlying case; and defendants Darry Hicks, Addison Lester, and Aaron Wright, members of the Fayette County Board of Elections and Voter Registration, in the underlying case.
54. James, Karen: Member of the Rockdale County Board of Elections and Voter Registration and defendant in the underlying case.
55. Jarrard & Davis LLP: Counsel for defendants Matthew Blender, Randy Ingram, Barbara Luth, Joel Natt, and Carla Radzikinas, members of the Forsyth County Board of Registrations and Elections in the underlying case; defendants Arch Brown, Andy Callaway, Donna Morris- McBride, Dan Richardson, Mildred Schmelz, Vivian Thomas, and Johnny Wilson, members of the Henry County Board of Elections and Registration, in the underlying case; defendants Phil Johnson, Kelly Robinson, and Dustin Thompson, members of the Newton County Board of Elections and Registration, in the underlying case; and defendants Benny G. Hand, Pamela Middleton, Dontravious Simmons, Annabelle T. Stubbs, and Frederick Williams, members of the Albany-Dougherty County Joint Board of Registration and Elections, in the underlying case.
56. Jaugstetter, Patrick D.: Counsel for defendants Arch Brown, Andy Callaway, Donna Morris-McBride, Dan Richardson, Mildred Schmelz, Vivian Thomas, and Johnny Wilson, members of the Henry County Board of Elections and Registration, in the underlying case.
57. Jenkins, Margaret: Member of the Columbus-Muscogee County Board of Elections and defendant in the underlying case.

58. Jennings, Reagan: Appellee-Plaintiff.
59. Johnson, Aaron: Member of the Fulton County Board of Registration and Elections and defendant in the underlying case.
60. Johnson, Darlene: Member of the Clayton County Board of Elections and Registration and defendant in the underlying case.
61. Johnson, Melanie Leigh: Counsel for Appellants.
62. Johnson, Phil: Member of the Newton County Board of Elections and Registration and defendant in the underlying case.
63. Josey, Virginia Candace: Counsel for defendants Henry Ficklin, Mike Kaplan, Cassandra Powell, Herbert Spangler, and Rinda Wilson, members of the Macon-Bibb County Board of Elections, in the underlying case.
64. Kaplan, Mike: Member of the Macon-Bibb County Board of Elections and defendant in the underlying case.
65. Knapp, Jr., Halsey G.: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
66. Knapper, Charles: Member of the Athens-Clarke County Board of Elections and Voter Registration and defendant in the underlying case.
67. Krevolin & Horst, LLC: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
68. Lake, Brian Edward: Counsel for Appellants.
69. Landmark Legal Foundation: Amicus curiae in the underlying case.
70. LaRoss, Diane Festin: Counsel for defendants Beauty Baldwin, Stephen Day, John Mangano, Alice O'Lenick, and Ben Satterfield,

members of the Gwinnett County Board of Registration and Elections, in the underlying case; and defendants Darry Hicks, Addison Lester, and Aaron Wright, members of the Fayette County Board of Elections and Voter Registration, in the underlying case.

71. Le, Anh: Member of the Georgia State Election Board and Appellant-Defendant.
72. Lester, Addison: Member of the Fayette County Board of Elections and Voter Registration and defendant in the underlying case.
73. Lewis, Anthony: Member of the DeKalb County Board of Registration and Elections and defendant in the underlying case.
74. Lewis, Joyce Gist: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
75. Linkous, III, William J.: Counsel for defendants Aldren Sadler, Sr., Karen James, and Gerald Barger, members of the Rockdale County Board of Elections and Voter Registration, in the underlying case.
76. Luth, Barbara: Member of the Forsyth County Board of Registrations and Elections and defendant in the underlying case.
77. MacDougald, Harry W.: Counsel for Public Interest Legal Foundation and Landmark Legal Foundation, amicus curiae in the underlying case.
78. Mack, Rachel Nicole: Counsel for defendants Sherry T. Barnes, Marcia Brown, Terrence Dicks, Bob Finnegan, and Tim McFalls, members of the Richmond County Board of Elections, in the underlying case.
79. Mangano, John: Member of the Gwinnett County Board of Registration and Elections and defendant in the underlying case.

80. Martin, Megan Nicole: Counsel for defendants Phil Johnson, Kelly Robinson, and Dustin Thompson, members of the Newton County Board of Elections and Registration, in the underlying case.
81. Martin, Talula: Former defendant in the underlying case. Terminated 6-30-2020.
82. Mashburn, Matthew: Member of the Georgia State Election Board and Appellant-Defendant.
83. McFalls, Tim: Member of the Richmond County Board of Elections and defendant in the underlying case.
84. McGowan, Charlene S.: Counsel for Appellants.
85. Mcrae, Colin: Member of the Chatham County Board of Registrars and defendant in the underlying case.
86. Middleton, Pamela: Member of the Albany-Dougherty County Joint Board of Registration and Elections and defendant in the underlying case.
87. Miller, Carey Allen: Counsel for Appellants.
88. Momo, Shelley Driskell: Counsel for defendants Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel E. Tillman, and Baoky N. Vu, members of the DeKalb County Board of Registration and Elections, in the underlying case.
89. Morris-McBride, Donna: Member of the Henry County Board of Elections and Registration and defendant in the underlying case.
90. Motter, Susan: Member of the DeKalb County Board of Registration and Elections and defendant in the underlying case.
91. Natt, Joel: Member of the Forsyth County Board of Registrations and Elections and defendant in the underlying case.

92. Newkirk, Zachary J.: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
93. Noland Law Firm, LLC: Counsel for defendants Henry Ficklin, Mike Kaplan, Cassandra Powell, Herbert Spangler, and Rinda Wilson, members of the Macon-Bibb County Board of Elections, in the underlying case.
94. Noland, William H.: Counsel for defendants Henry Ficklin, Mike Kaplan, Cassandra Powell, Herbert Spangler, and Rinda Wilson, members of the Macon-Bibb County Board of Elections, in the underlying case.
95. Norse, William L.: Member of the Chatham County Board of Registrars and defendant in the underlying case.
96. Nuriddin, Vernetta: Member of the Fulton County Board of Registration and Elections and defendant in the underlying case.
97. O'Lenick, Alice: Member of the Gwinnett County Board of Registration and Elections and defendant in the underlying case.
98. O'Neill, Michael J.: Counsel for Landmark Legal Foundation, amicus curiae in the underlying case.
99. Page Scrantom, Sprouse, Tucker & Ford, P.C.: Counsel for Uhland Roberts, Margaret Jenkins, Diane Scrimshire, and Eleanor White, members of the Columbus-Muscogee County Board of Elections in the underlying case.
100. Pannell, Jon: Member of the Chatham County Board of Registrars and defendant in the underlying case.
101. Paradise, Loree Anne: Counsel for defendants Beauty Baldwin, Stephen Day, John Mangano, Alice O'Lenick, and Ben Satterfield, members of the Gwinnett County Board of Registration and Elections, in the underlying case; and defendants Darry Hicks,

Addison Lester, and Aaron Wright, members of the Fayette County Board of Elections and Voter Registration, in the underlying case.

102. Parker, Linda: Member of the Columbus-Muscogee County Board of Elections and defendant in the underlying case.
103. Perkins Coie-CO: Counsel for Appellees-Plaintiffs, The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
104. Perkins Coie-DC: Counsel for Appellees-Plaintiffs, The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
105. Perkins Coie LLP: Counsel for Appellees-Plaintiffs, The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
106. Perkins Coie-WA: Counsel for Appellees-Plaintiffs, The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
107. Phillips, Kaylan L.: Counsel for Public Interest Legal Foundation, amicus curiae in the underlying case.
108. Pinson, Andrew: Counsel for Appellants.
109. Powell, Cassandra: Member of the Macon-Bibb County Board of Elections and defendant in the underlying case.
110. Proctor, Robert: Member of the Douglas County Board of Elections and Registration and defendant in the underlying case.
111. Public Interest Legal Foundation: Amicus Curiae in the underlying case.
112. Public Interest Legal Foundation-IN: Counsel for Public Interest Legal Foundation, amicus curiae in the underlying case.

113. Pullar, Patricia: Member of the Clayton County Board of Elections and Registration and defendant in the underlying case.
114. Pyne, Beverly: Appellee-Plaintiff.
115. Radzikinas, Carla: Member of the Forsyth County Board of Registrations and Elections and defendant in the underlying case.
116. Raffensperger, Brad: Georgia Secretary of State, Chair of the Georgia State Election Board, and Appellant-Defendant in the underlying case.
117. Richardson, Dan: Member of the Henry County Board of Elections and Registration and defendant in the underlying case.
118. Roberts, Uhland: Member of the Columbus-Muscogee County Board of Elections and defendant in the underlying case.
119. Robbins Ross Alloy Belinfante Littlefield LLC: Counsel for Appellants.
120. Robin, Kenneth Paul: Counsel for defendants Matthew Blender, Randy Ingram, Barbara Luth, Joel Natt, and Carla Radzikinas, members of the Forsyth County Board of Registrations and Elections in the underlying case; defendants Arch Brown, Andy Callaway, Donna Morris- McBride, Dan Richardson, Mildred Schmelz, Vivian Thomas, and Johnny Wilson, members of the Henry County Board of Elections and Registration, in the underlying case; defendants Phil Johnson, Kelly Robinson, and Dustin Thompson, members of the Newton County Board of Elections and Registration, in the underlying case; and defendants Benny G. Hand, Pamela Middleton, Dontravious Simmons, Annabelle T. Stubbs, and Frederick Williams, members of the Albany-Dougherty County Joint Board of Registration and Elections, in the underlying case.

121. Robinson, Kelly: Member of the Newton County Board of Elections and Registration and defendant in the underlying case.
122. Ross, Hon. Eleanor L.: United States District Judge for the Northern District of Georgia and judge in the underlying case.
123. Russo, Jr., Vincent Robert: Counsel for Appellants.
124. Ruiz, Christian Ramses: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
125. Ruth, Kathleen: Member of the Fulton County Board of Registration and Elections and defendant in the underlying case.
126. Sadler, Sr., Aldren: Member of the Rockdale County Board of Elections and Voter Registration and defendant in the underlying case.
127. Satterfield, Ben: Member of the Gwinnett County Board of Registration and Elections and defendant in the underlying case.
128. Schmelz, Mildred: Member of the Henry County Board of Elections and Registration and defendant in the underlying case.
129. Scrimshire, Diane: Member of the Columbus-Muscogee County Board of Elections and defendant in the underlying case.
130. Simmons, Dontravious M.: Member of the Albany- Dougherty County Joint Board of Registration and Elections and defendant in the underlying case.
131. Slay, Randolph: Member of the Chatham County Board of Registrars and defendant in the underlying case.
132. Smith, Dele Lowman: Member of the DeKalb County Board of Registration and Elections and defendant in the underlying case.

133. Smith, K'shaani: Former counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne, in the underlying case. Terminated 8-17-2020.
134. Snipes, Alan G.: Counsel for Uhland Roberts, Margaret Jenkins, Diane Scrimshire, and Eleanor White, members of the Columbus-Muscogee County Board of Elections in the underlying case.
135. Sowell, Gregory C.: Counsel for defendants Jesse Evans, Willa Fambrough, Charles Knapper, and Ann Till, members of the Athens-Clarke County Board of Elections and Voter Registration, in the underlying case.
136. Spangler, Herbert: Member of the Macon-Bibb County Board of Elections and defendant in the underlying case.
137. Sparks, Adam Martin: Counsel for Appellees-Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
138. Stubbs, Annabelle T.: Member of the Albany-Dougherty County Joint Board of Registration and Elections and defendant in the underlying case.
139. Sullivan, Rebecca N.: Member of the Georgia State Election Board and Appellant-Defendant.
140. Taylor English Duma LLP: Counsel for defendants Beauty Baldwin, Stephen Day, John Mangano, Alice O'Lenick, and Ben Satterfield, members of the Gwinnett County Board of Registration and Elections, in the underlying case; and defendants Darry Hicks, Addison Lester, and Aaron Wright, members of the Fayette County Board of Elections and Voter Registration, in the underlying case.
141. The New Georgia Project: Appellee-Plaintiff.
142. Thomas, Vivian: Member of the Henry County Board of Elections and Registration and defendant in the underlying case.

143. Thompson, Dustin: Member of the Newton County Board of Elections and Registration and defendant in the underlying case.
144. Till, Ann: Member of the Athens-Clarke County Board of Elections and Voter Registration and defendant in the underlying case.
145. Tillman, Samuel E: Member of the DeKalb County Board of Registration and Elections and defendant in the underlying case.
146. Timmermann, Lilian Margarita: Counsel for Appellees- Plaintiffs The New Georgia Project, Reagan Jennings, Candace Woodall, and Beverly Pyne.
147. Tyson, Bryan P.: Counsel for defendants Beauty Baldwin, Stephen Day, John Mangano, Alice O'Lenick, and Ben Satterfield, members of the Gwinnett County Board of Registration and Elections, in the underlying case; and defendants Darry Hicks, Addison Lester, and Aaron Wright, members of the Fayette County Board of Elections and Voter Registration, in the underlying case.
148. Vander Els, Irene B.: Counsel for defendants Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel E. Tillman, and Baoky N. Vu, members of the DeKalb County Board of Registration and Elections, in the underlying case.
149. Vu, Baoky N.: Member of the DeKalb County Board of Registration and Elections and defendant in the underlying case.
150. Webb, Bryan K.: Counsel for Appellants.
151. Wesley, Carol: Member of the Clayton County Board of Elections and Registration and defendant in the underlying case.
152. White, Daniel Walter: Counsel for defendants Fred Aiken, Neera Bahl, Jessica M. Brooks, Phil Daniell, and Darryl O. Wilson, members of the Cobb County Board of Registration, in the underlying case.

153. White, Eleanor: Member of the Columbus-Muscogee County Board of Elections and defendant in the underlying case.
154. Willard, Russell D.: Counsel for Appellants.
155. Williams, Frederick: Member of the Albany-Dougherty County Joint Board of Registration and Elections and defendant in the underlying case.
156. Wilson, Jr., Darryl O.: Member of the Cobb County Board of Registration and Elections and defendant in the underlying case.
157. Wilson, Johnny: Former defendant in the underlying case. Terminated 6-17-2020.
158. Wilson, Rinda: Member of the Macon-Bibb County Board of Elections and defendant in the underlying case.
159. Wingate, Mark: Member of the Fulton County Board of Registration and Elections and defendant in the underlying case.
160. Wood, June: Former defendant in the underlying case. Terminated 6-17-2020.
161. Woodall, Candace: Appellee-Plaintiff.
162. Worley, David J.: Member of the Georgia State Election Board and Appellant-Defendant.
163. Wright, Aaron: Member of the Fayette County Board of Elections and Voter Registration and defendant in the underlying case.
164. Zimmermann, Daniel: Member of the Douglas County Board of Elections and Registration and defendant in the underlying case.
165. Michael Best & Friedrich LLP and Stefan Passantino, Attorneys for Amici Curiae.

166. Consovoy McCarthy PLLC, Jeffrey M. Harris and Cameron T. Norris, Attorneys for Amici Curiae.
167. The Republican National Committee, Amicus Curiae.
168. Georgia Republican Party, Inc., Amicus Curiae.
169. Holtzman Vogel Josefiak Torchinsky PLLC, Jason Torchinsky, Kenneth C. Daines, Dallin B. Holt, Attorneys for Amicus Curiae.
170. The Honest Elections Project, Amicus Curiae.

The Honest Elections Project does not have a parent corporation or a corporation that owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	xix
INTEREST OF AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	2
I. VOTING RIGHTS ARE NOT IMPLICATED BECAUSE GEORGIA’S LAW IS FACIALLY NEUTRAL AND THERE IS NO RIGHT TO AN ABSENTEE BALLOT.....	2
II. ALTERNATIVELY, THE DISTRICT COURT FAILED IN APPLYING <i>ANDERSON/BURDICK</i> TO GEORGIA’S REASONABLE MAIL-IN VOTING DEADLINE	4
A. COVID-19 Is Not a State-Imposed Burden Under <i>Anderson/Burdick</i>	5
B. Because Georgia’s Ballot Deadline Imposes Only a Neutral, Incidental Burden, It Is Not Severe—Less Exacting Review Thus Applies	7
C. Georgia’s Law Is Reasonably Justified By Its Important Regulatory Interests	9
CONCLUSION	11
CERTIFICATE OF COMPLIANCE.....	13
CERTIFICATE OF SERVICE	14

TABLE OF AUTHORITIES

CASES

<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983).....	3, 7, 8
<i>Armour v. City of Indianapolis</i> , 566 U.S. 673 (2012)	11
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992).....	3, 7, 8
<i>Clarno v. People Not Politicians</i> , No. 20A21 (Aug. 11, 2020).....	7
<i>Crawford v. Marion Cty. Election Bd.</i> , 553 U.S. 181 (2008).....	<i>passim</i>
<i>DCCC v. Ziriox</i> , 2020 U.S. Dist. LEXIS 170427 (D. Ok., Sept. 17, 2020)	9
<i>Democratic Exec. Comm. Of Fla. v. Lee</i> , 915 F.3d 1312 (11th Cir. 2019).....	10
<i>Dudum v. Arntz</i> , 640 F.3d 1098 (9th Cir. 2011)	7
<i>Friedman v. Snipes</i> , 345 F. Supp. 2d 1356 (S.D. Fla. 2004).....	9
<i>Grossman v. Sec'y of the Commonwealth</i> , 485 Mass. 541 (2020).....	9
<i>Jacobson v. Florida Secretary of State</i> , No. 19-14552, 2020 U.S. App. LEXIS 28078 (11th Cir. Sept. 3, 2020).....	2, 4
<i>Little v. Reclaim Idaho</i> , No. 20A18 (July 30, 2020).....	6
<i>McDonald v. Bd. of Election Comm'rs</i> , 394 U.S. 802 (1969)	4, 10
<i>Merrill v. People First Of Ala.</i> , No. 19A1063 (July 2, 2020)	6
<i>Munro v. Socialist Workers Party</i> , 479 U.S. 189 (1986).....	9
<i>New Georgia Project v. Raffensperger</i> , No. 1:20-CV-01986-ELR, 2020 U.S. Dist. LEXIS 159901 (N.D. Ga. Aug. 31, 2020) (ECF No. 134)	5, 6, 9, 10
<i>Republican Nat'l Comm. v. Democratic Nat'l Comm.</i> , 140 S. Ct. 1205 (Apr. 6, 2020)	6

Rubin v. City of Santa Monica, 308 F.3d 1008 (9th Cir. 2002).....8

Sarvis v. Alcorn, 826 F.3d 708 (4th Cir. 2016).....7, 9, 10

Tex. Democratic Party v. Abbott, No. 19A1055 (June 26, 2020)7

Thomas v. Andino, 2020 U.S. Dist. LEXIS 90812 (D. S.C. May 25, 2020)9

Thompson v. DeWine, No. 19A1054 (June 25, 2020)7

Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997).....5, 8, 10

VoteVets Action Fund v. Detzner, No. 4:18-cv-524-MW/CAS) (N.D. Fla.
Nov. 16, 2018.....9

OTHER AUTHORITIES

O.C.G.A. § 21-2-386(a)(1)(F).....8

INTEREST OF AMICUS CURIAE¹

The Honest Elections Project is a nonpartisan organization devoted to supporting the right of every lawful voter to participate in free and honest elections. The Project supports commonsense voting rules and opposes efforts to reshape elections for partisan gain. It thus has a significant interest in this case.

The Project submits this brief supporting the granting of a stay of the District Court's Order granting Plaintiffs-Appellees' requested injunctive relief because the District Court erred in applying the *Anderson/Burdick* framework.

SUMMARY OF THE ARGUMENT

Although precedent makes clear there is no right to vote via absentee ballot, the District Court still conducted *Anderson/Burdick* analysis to determine that Georgia's absentee ballot receipt deadline unduly burdens the right to vote, and Plaintiffs had shown a likelihood of success on the merits of their claim. By so deciding, the District Court erred in at least two ways. First, the District Court incorrectly found that Georgia's ballot receipt deadline implicated voting rights. Second, in the event *Anderson/Burdick* is implicated, the District Court also incorrectly balanced the deadline's minimal burden on voting rights against Georgia's important interests.

¹ No party's counsel authored this brief in whole or in part, and no one besides Amicus and its counsel contributed money to fund the brief's preparation or submission.

This Court should therefore stay the District Court’s Order because Defendants-Appellants are likely to succeed on the merits of their appeal.

ARGUMENT

I. VOTING RIGHTS ARE NOT IMPLICATED BECAUSE GEORGIA’S LAW IS FACIALLY NEUTRAL AND THERE IS NO RIGHT TO AN ABSENTEE BALLOT

As this matter involves absentee ballots and a provision of Georgia election law, Plaintiffs and the District Court reflexively presumed *Anderson/Burdick* applied. This presumption was incorrect. *Anderson/Burdick* only applies when a court is asked to “evaluate a law respecting the right to vote.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 204 (2008) (Scalia, J., concurring).

As this Court recently noted in *Jacobson v. Florida Secretary of State*, not every claim related to elections falls under the rubric of *Anderson/Burdick*. No. 19-14552, 2020 U.S. App. LEXIS 28078, at *58-60 (11th Cir. Sept. 3, 2020). As *Jacobson* held, “[i]f the statute burdened voting or associational rights even slightly, we could apply legal standards to determine whether the burden was unconstitutional [B]ecause the statute does not burden the right to vote, we cannot engage in that kind of review.” *Id.* at *60. Here, just as in *Jacobson*, the challenged provision does not implicate the right to vote as it does not preclude anyone from voting—therefore, analysis under *Anderson/Burdick* is improper.

Stated differently, Georgia’s mail-in ballot deadline is a longstanding, facially neutral law. There is nothing in the challenged deadline that prohibits or unduly inhibits any voter from voting in-person *or* via mail-in ballot. Plaintiffs essentially complain about the impact of forces largely outside the State’s control on the timeliness of ballot delivery: *e.g.*, absentee voters who forget to mail in their ballots sufficiently early to allow for timely receipt, absentee voters who are not aware of the ballot-receipt deadline, or COVID-19’s alleged impact on timely postal delivery, each of which could cause ballots to arrive later than the Election Day deadline. But these occurrences are separate from the State’s deadline (which by itself has no impact on an individual’s ability to vote), and do not involve any State action.

The challenged provision is thus unlike the restrictive ballot-access laws in *Anderson* and *Burdick* that would have outright denied supporters of certain candidates the ability to vote. *See Anderson v. Celebrezze*, 460 U.S. 780, 782, 792 (1983); *Burdick v. Takushi*, 504 U.S. 428, 430 (1992). Further, it is unlike the voter ID requirement in *Crawford* that allegedly made it harder for certain individuals to vote. 553 U.S. at 185-87. Nothing about the complained-of provision makes it more difficult in any way for an individual to cast their ballot—a voter can still vote in person, or if they prefer, via mail-in ballot, so long as they submit their mail-in ballot sufficiently early to allow for timely receipt. This is more akin to the

analysis applied by this Court in *Jacobson*, holding that *Anderson/Burdick* does not apply to the challenged claims. 2020 U.S. App. LEXIS 28078, at *60.

Additionally, there is no fundamental right to vote via absentee or mail-in ballot. *McDonald v. Bd. of Election Comm'rs*, 394 U.S. 802, 807-09 (1969). When fundamental rights are not involved, *Anderson/Burdick* does not apply, and minimal scrutiny is appropriate. *Crawford*, 553 U.S. at 189-91. Under minimal scrutiny analysis, the challenged statute need only bear “some rational relationship to a legitimate state end” and will only be struck down as constitutionally invalid if it is “based on reasons totally unrelated to the pursuit of that goal.” *McDonald*, 394 U.S. at 809. Here, Plaintiffs’ only complaints involve mail-in ballots—a non-fundamental right. *Id.* at 807-09. Therefore, minimal scrutiny applies. *See Crawford*, 553 U.S. at 189-91. As there is a clear rational relationship between the State’s interests and its laws surrounding the deadline for receipt of mail-in ballots, the District Court should not have substituted its judgment for the Legislature’s by adding a judicial amendment to the Georgia election code. *McDonald*, 394 U.S. at 809.

II. ALTERNATIVELY, THE DISTRICT COURT FAILED IN APPLYING ANDERSON/BURDICK TO GEORGIA’S REASONABLE MAIL-IN VOTING DEADLINE

In the alternative, even if *Anderson/Burdick* does apply here, Plaintiffs’ claims still fail because Georgia’s ballot receipt deadline imposes a

“[l]esser burden[.]” on the right to vote, subjecting it to less exacting scrutiny. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Instead, the District Court incorrectly determined Georgia’s law imposes a severe burden on voting rights and subjected it to strict scrutiny. *New Georgia Project v. Raffensperger*, No. 1:20-CV-01986-ELR, 2020 U.S. Dist. LEXIS 159901 (N.D. Ga. Aug. 31, 2020) (ECF No. 134) (hereinafter the “Order”). Given the law’s minimal burden on voting, the District Court should have applied “less exacting review” and deferred to the Legislature’s reasoned judgments. Georgia’s numerous important regulatory interests are more than sufficient to justify its generally applicable and nondiscriminatory voting law that only incidentally burdens voting. *See Timmons*, 520 U.S. at 358. Defendants’ motion for stay should therefore be granted.

A. COVID-19 Is Not a State-Imposed Burden Under *Anderson/Burdick*

As an initial matter, this Court must “identify a burden before [the Court] can weigh it.” *Crawford*, 553 U.S. at 205 (Scalia, J., concurring). The District Court’s Order focuses heavily on the unique circumstances presented by COVID-19 for this election cycle. *See, e.g.*, Order at *27 (discussing the uncertainty and “strains on Georgia’s election administration infrastructure” resulting from the pandemic); *id.* at *7 (describing how a “surge of absentee voting applications has led to well-documented delays concerning the delivery of absentee ballot

applications”); *see also id.* (discussing concerns about the burden on voters from the “current complications of the COVID-19 pandemic”). And Plaintiffs only “contest the constitutionality of [O.C.G.A. § 21-2-386(a)(1)(F)] as . . . applied during the November 2020 election cycle in light of the COVID-19 pandemic.” *Id.* at *2.

However, *Anderson/Burdick* applies only to *state-imposed* burdens—COVID-19 is not a burden caused or imposed by the State of Georgia. *See Crawford*, 553 U.S. at 205 (Scalia, J., concurring) (When applying *Anderson/Burdick*, “the first step is to decide whether a *challenged law* severely burdens the right to vote.” (emphasis added)).² Because the pandemic was neither caused nor facilitated by Georgia’s Election Day deadline, the Court should view the Virus’s burdensome effects separately from the state action at issue here for purposes of *Anderson/Burdick*.³

² It also goes without saying that any voting burdens created by action (or inaction) of the U.S. Postal Service, including undue delay in the delivery of mail-in ballots, are not burdens imposed by the State of Georgia or the challenged deadline here.

³ Importantly, the Supreme Court has stayed or overturned nearly every effort in federal court to alter a state’s election laws in light of the Virus over the opposition of state government officials. *See, e.g., Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205 (Apr. 6, 2020) (granting stay of district court order requiring Wisconsin to count late postmarked absentee ballots for primary election); *Merrill v. People First Of Ala.*, No. 19A1063 (July 2, 2020) (granting stay of district court order enjoining Alabama’s duly enacted photo identification and witness requirements for absentee voting during the pandemic); *Little v. Reclaim Idaho*, No. 20A18 (July 30, 2020) (granting stay of district court orders

B. Because Georgia’s Ballot Deadline Imposes Only a Neutral, Incidental Burden, It Is Not Severe—Less Exacting Review Thus Applies

The Supreme Court has recognized that a state’s election regulations will “inevitably affect[]—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.” *Anderson*, 460 U.S. at 788. Such “burdens” on voting rights, however, do not rise to the level of constitutional violations *per se*. *Id.* The Supreme Court has thus articulated a balancing test to determine the appropriate level of scrutiny for ascertaining their constitutionality. *See Burdick*, 504 U.S. at 434.

When a challenged law “severe[ly]” burdens voting rights, heightened scrutiny applies, and the law in question must be “narrowly drawn to advance a state interest of compelling importance.” *Burdick*, 504 U.S. at 434 (internal citation omitted). However, “voting regulations are rarely subjected to strict scrutiny.” *Dudum v. Arntz*, 640 F.3d 1098, 1106 (9th Cir. 2011). This is because “[s]ubjecting too many laws to strict scrutiny would unnecessarily ‘tie the hands of States seeking to assure that elections are operated equitably and *efficiently*.’” *Sarvis v.*

relaxing Idaho’s rules for ballot initiatives); *Clarno v. People Not Politicians*, No. 20A21 (Aug. 11, 2020) (granting stay of district court order relaxing Oregon’s election procedures because of the pandemic); *Thompson v. DeWine*, No. 19A1054 (June 25, 2020) (denying application to vacate Sixth Circuit stay of district court order suspending Ohio’s enforcement of in-person signature requirements and extending filing deadlines for initiative campaigns); *Tex. Democratic Party v. Abbott*, No. 19A1055 (June 26, 2020) (denying application to vacate Fifth Circuit stay of district court order forcing Texas to implement no-excuse absentee voting).

Alcorn, 826 F.3d 708, 717 (4th Cir. 2016) (quoting *Burdick*, 504 U.S. at 433) (emphasis added).

Accordingly, lesser burdens on voting “trigger less exacting review, and a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.” *Timmons*, 520 U.S. at 358 (internal quotation marks omitted). An election law imposing “only ‘reasonable, nondiscriminatory restrictions’” upon voters’ rights is “generally” justified by “the State’s important regulatory interests.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788). After all, there is no constitutional right to be free from “the usual burdens of voting.” *Crawford*, 553 U.S. at 198. Non-severe voting restrictions include “generally applicable, even-handed, politically neutral [restrictions] . . . [that] protect the reliability and integrity of the election process.” *See Rubin v. City of Santa Monica*, 308 F.3d 1008, 1014 (9th Cir. 2002).

Georgia’s requirement that mail-in ballots be received after the closing of polls on Election Day at 7:00 p.m., O.C.G.A. § 21-2-386(a)(1)(F), constitutes exactly the kind of “ordinary and widespread burden[.]” requiring only “nominal effort of everyone,” and that the law thus treats as minimal. *See Crawford*, 553 U.S. at 205 (Scalia, J., concurring) (internal quotation marks omitted). In-person voters must similarly take care to ensure they don’t miss the poll-closing deadline due to traffic or other unforeseen delays. Any additional contributing burdens created by COVID-19 are not burdens imposed by Georgia itself.

Finally, numerous courts around the country have denied similar attempts to extend ballot return deadlines amid the COVID-19 pandemic or otherwise. *See e.g., Thomas v. Andino*, 2020 U.S. Dist. LEXIS 90812 (D. S.C. May 25, 2020); *DCCC v. Ziriak*, 2020 U.S. Dist. LEXIS 170427 (D. Ok., Sept. 17, 2020); *Grossman v. Sec’y of the Commonwealth*, 485 Mass. 541 (2020); *VoteVets Action Fund v. Detzner*, No. 4:18-cv-524-MW/CAS) (N.D. Fla. Nov. 16, 2018); *Friedman v. Snipes*, 345 F.Supp.2d 1356 (S.D. Fla. 2004).

Accordingly, the District Court erred in finding a severe burden.

C. Georgia’s Law Is Reasonably Justified By Its Important Regulatory Interests

Here the District Court disregarded the important regulatory interests that Georgia proffered to justify the deadline’s burden on voting. The District Court’s aggressive second-guessing of whether Georgia’s chosen means of pursuing its interests was justified was inappropriate. *See* Order at *81. The State need not justify the regulation by making a particularized showing of how its interests will be furthered, *Munro v. Socialist Workers Party*, 479 U.S. 189, 194-96 (1986), or that its justifications are weighty. Holding otherwise would “invariably lead to endless court battles” over the quality of the State’s evidence, *id.* at 195, and to a “corresponding loss of certainty over the rules by which we select our [] government,” *Sarvis*, 826 F.3d at 719.

Under less exacting review, courts only ask whether the State “articulate[d] its asserted interests.” *Id.* (internal quotation marks and citation omitted). This is “not a high bar.” *Id.* The challenged statute will only be struck down as constitutionally invalid if it is “based on reasons totally unrelated to the pursuit of [the legislature’s] goal.” *See McDonald*, 394 U.S. at 809.

In applying *Anderson/Burdick*’s less exacting review of the burdens and State’s interests to a ballot-ordering law, the Fourth Circuit articulated how simple this test is in application:

Here our job is easy—this case is one of the “usual[.]” variety in which the “State’s important regulatory interests . . . justify reasonable, nondiscriminatory restrictions.” *Timmons*, 520 U.S. at 358 We leave further resolution of this controversy to a different and better set of arbiters: the people, and through them, the political branches.

Sarvis, 826 F.3d at 721 (cleaned up).

Georgia has offered four “important regulatory interests,” *Timmons*, 520 U.S. at 358, it maintains were served by the challenged deadline: (1) fraud prevention; (2) conducting an efficient election; (3) orderly administration of elections; and (4) quickly certifying election results. Order at *81. As the District Court acknowledges, the State has “strong” and “important” interests in each of these. *Id.* This Circuit also recognizes these strong interests. *See, e.g., Democratic Exec. Comm. Of Fla. v. Lee*, 915 F.3d 1312, 1322-23 (11th Cir. 2019) (acknowledging a State has a “legitimate and strong interest” in “protecting public

confidence in the legitimacy of the election,” and “an important interest in structuring and regulating its elections to avoid chaos and to promote the smooth administration of its elections.”).

Additionally, Georgia has easily met its burden of showing a logical nexus between these important interests and its ballot receipt deadline. In reference to the nexus between any regulation’s burden on voting rights and a state’s justification for that burden, the Supreme Court instructed: “The Constitution does not require the [state] to draw the perfect line nor even to draw a line superior to some other line it might have drawn. It requires only that the line actually drawn be a rational line.” *Armour v. City of Indianapolis*, 566 U.S. 673, 685 (2012). Under less exacting review, Georgia only needed to show the articulated connection between the deadline and the interests to be served was related and logical. This is easily satisfied here.

Georgia’s deadline should have been subjected to less exacting review; had the District Court done so, the law would have easily survived this most deferential level of scrutiny. The District Court erred in determining Plaintiffs were likely to succeed on the merits of their *Anderson/Burdick* claim.

CONCLUSION

For these reasons, the preliminary injunction should be stayed pending appeal.

Respectfully submitted,

/s/ Jason Torchinsky

HOLTZMAN VOGEL
JOSEFIAK TORCHINSKY PLLC
Jason Torchinsky
Kenneth C. Daines
Dallin B. Holt
15405 John Marshall Hwy
Haymarket, VA 20169
Phone: (540) 341-8808
Fax: (540) 341-8809
Email: jtorchinsky@hvjt.law
Email: kdaines@hvjt.law
Email: dholt@hvjt.law

*Counsel for Amicus Curiae
The Honest Elections Project*

CERTIFICATE OF COMPLIANCE

I certify that pursuant to Federal Rules of Appellate Procedure 29, 32(a)(5), and 32(a)(7), the foregoing *amicus curiae* brief is proportionally spaced, has a typeface of 14 point Times New Roman, and contains 2,595 words, excluding those sections identified in Fed. R. App. P. 32(f).

/s/ Jason Torchinsky

HOLTZMAN VOGEL
JOSEFIAK TORCHINSKY PLLC
Jason Torchinsky
Kenneth C. Daines
Dallin B. Holt
15405 John Marshall Hwy
Haymarket, VA 20169
Phone: (540) 341-8808
Fax: (540) 341-8809
Email: jtorchinsky@hvjt.law
Email: kdaines@hvjt.law
Email: dholt@hvjt.law

*Counsel for Amicus Curiae
The Honest Elections Project*

CERTIFICATE OF SERVICE

I certify that on September 28, 2020, the foregoing amicus curiae brief was served on all parties or their counsel of record through the CM/ECF system.

/s/ Jason Torchinsky

HOLTZMAN VOGEL
JOSEFIAK TORCHINSKY PLLC
Jason Torchinsky
Kenneth C. Daines
Dallin B. Holt
15405 John Marshall Hwy
Haymarket, VA 20169
Phone: (540) 341-8808
Fax: (540) 341-8809
Email: jtorchinsky@hvjt.law
Email: kdaines@hvjt.law
Email: dholt@hvjt.law

*Counsel for Amicus Curiae
The Honest Elections Project*