IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14418

L. LIN WOOD, JR.,

Plaintiff-Appellant

v.

BRAD RAFFENSPERGER, et al.,

Defendants-Appellees

On Appeal from the United States District Court
for the Northern District of Georgia
Case No. 1:20-cv-04651-SDG before the Hon. Steven D. Grimberg

MOTION FOR LEAVE TO FILE *AMICUS* BRIEF BY THE GEORGIA STATE CONFERENCE OF THE NAACP, ET AL.

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT
Wood v. Raffensperger 20-14418

Pursuant to Federal Rule of Appellate Procedure 26.1, proposed *Amici* Georgia State Conference of the NAACP, Inc. ("Georgia NAACP") certifies through the undersigned counsel that it is a non-partisan, nonprofit membership organization and Georgia Coalition for the People's Agenda ("GCPA") certifies through the undersigned counsel that it is a Georgia nonprofit corporation, that both the Georgia NAACP and GCPA do not have a parent corporation, and that no publicly held corporation owns ten percent or more of its stock.

In accordance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, counsel for proposed *amici curiae* hereby certify that, in addition to the persons noted in the *amicus* brief, the following attorneys, persons, associations of persons, firms, partnerships, or corporations may have an interest in the outcome of this case or appeal:

1. Beane, Amanda J. (counsel for Intervenor-Defendants)
2. Blumenfeld, Jeremy P. (counsel for proposed *amici*)
3. Brailey, Emily R. (counsel for Intervenor-Defendants)
4. Butler, Helen (proposed *amica*)
5. Callais, Amanda R. (counsel for Intervenor-Defendants)
6. Carr, Christopher M. (counsel for Defendants)

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7. Clarke, Kristen (counsel for proposed *amici*)
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9. Democratic Congressional Campaign Committee (Intervenor-Defendant)
10. Democratic Party of Georgia, Inc. (Intervenor-Defendant)
11. Democratic Senatorial Campaign Committee (Intervenor-Defendant)
12. Elias, Marc E. (counsel for Intervenor-Defendants)
13. Georgia Coalition for the Peoples' Agenda, Inc. (proposed *amicus*)
14. Georgia State Conference of the NAACP, Inc. (proposed *amicus*)
15. Greenbaum, Jon M. (counsel for proposed *amici*)
16. Grimberg, Hon. Steven D. (U.S. District Judge, Northern District Court of Georgia)
17. Hamilton, Kevin J. (counsel for Intervenor-Defendants)
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24. Law Office of Bryan L. Sells, PC (counsel for proposed *amici*)

25. Lawyers' Committee for Civil Rights Under Law (counsel for proposed *amici*)

26. Le, Anh (Defendant)

27. Lewis, Joyce Gist (counsel for Intervenor-Defendants)

28. Manning, Susan Baker (counsel for proposed *amici*)

29. Mashburn, Matthew (Defendant)

30. McGowan, Charlene S. (counsel for Defendants)

31. Mertens, Matthew J. (counsel for Intervenor-Defendants)

32. Morgan Lewis & Bockius LLP (counsel for proposed *amici*)

33. Perkins Coie LLP (counsel for Intervenor-Defendants)

34. Powers, John M. (counsel for proposed *amici*)

35. Raffensperger, Brad (Defendant)

36. Rosenberg, Ezra David (counsel for proposed *amici*)

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40. Sparks, Adam Martin (counsel for Intervenor-Defendants)

41. Sullivan, Rebecca N. (Defendant)

42. Velez, Alexi M. (counsel for Intervenor-Defendants)

43. Webb, Bryan K. (counsel for Defendants)

44. Willard, Russell D. (counsel for Defendants)

45. Wood, L. Lin (Plaintiff)

46. Woodall, James (proposed *amicus*)

47. Worley, David J. (Defendant)

Dated: December 1, 2020

By: /s/ Bryan L. Sells
Bryan L. Sells
Attorney for Proposed Amici Curiae Georgia State Conference of the NAACP, et al.

Pursuant to the Eleventh Circuit Rule 29, proposed *amici* the Georgia State Conference of the NAACP (the "Georgia NAACP"), the Georgia Coalition for the People's Agenda ("GCPA"), James Woodall, Helen Butler, and Melvin Ivey respectfully ask this Court to grant them leave to file the attached *amicus* brief in support of Defendants-Appellees Brad Raffensperger, et al. ("Defendants") and Intervenor Defendants-Appellees the Democratic Party of Georgia, Inc., et al. ("Intervenor Defendants").

Defendants and Intervenor Defendants have consented to this Motion and the filing of the attached *amicus* brief. Plaintiff-Appellant L. Lin Wood ("Plaintiff") has declined to consent.

A. INTEREST OF PROPOSED *AMICI CURIAE*

Proposed *amici curiae* are two organizations representing Georgia voters, the Georgia NAACP and GCPA, and individual Georgia voters James Woodall, Helen Butler, and Melvin Ivey, all of whom have an interest in this litigation.

The Georgia NAACP and the GCPA (collectively, the "Organizational Amici") are nonpartisan organizations representing the interests of thousands of Georgia members—many of whose votes in the presidential contest would be thrown out if Plaintiff's suit were to succeed—and dedicated to eliminating barriers to voting and increasing civic engagement among their members and in traditionally disenfranchised communities. Both organizations expend substantial resources on

voter education and turnout efforts; for this election, those efforts have included providing accurate information to voters on how to cast mail-in and absentee ballots to ensure that voters have a full and fair opportunity to participate in spite of the unprecedented circumstance of the election taking place during a global pandemic.

The Georgia NAACP is a non-profit advocacy group for civil rights for Black Americans that has approximately 10,000 members. The Georgia NAACP has active branches throughout the state and engages in voter registration, education, turnout, and voter assistance efforts in those counties. The Georgia NAACP has been working to ensure that Black voters in Georgia are educated on different voting methods, including mail-in and absentee voting during the COVID-19 pandemic, and has conducted phone-banking to assist Georgia voters. The Georgia NAACP also has members, including President James Woodall and Rev. Melvin Ivey, who cast votes in the November election. These members are at risk of being disenfranchised if the November election results are not certified or broad swaths of absentee ballots are thrown out.

The GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members, that encourages voter registration and participation, particularly among African-American and other underrepresented communities. The GCPA's support of voting rights is central to its mission. The organization regularly commits its time and resources to conducting voter

registration drives, voter education, voter ID assistance, "Souls to the Polls" operations, and other get-out-the-vote operations throughout Georgia. For the November 2020 election, the GCPA participated in media interviews, sponsored Public Service Announcements, placed billboard ads, conducted phone banking, and engaged in text message campaigns to educate voters and to encourage participation in the 2020 election cycle. All of those efforts would be thwarted, forcing the GCPA to divert additional resources if the November election results are not certified or broad swaths of absentee ballots are thrown out.

James Woodall, Helen Butler, and Rev. Melvin Ivey (collectively, the "Individual Amici") are Georgia voters who are registered to vote in Fulton, Morgan, and Augusta-Richmond Counties, respectively. All three voted in the November 2020 presidential general election. They voted by different means. President Woodall cast his vote in person at State Farm Arena during the early voting period, while Rev. Ivey voted by mail because he is over 65 years old and was concerned about the risk of contracting COVID-19, and Ms. Butler cast an absentee ballot. Because both Rev. Ivey and Ms. Butler cast absentee ballots, their votes in the November 2020 presidential contest are at risk of being invalidated if Plaintiff prevails. Moreover, if Plaintiff succeeded in preventing the certification of the November 2020 election, President Woodall's vote would be invalidated as well.

B. PROPOSED *AMICI* BRING A UNIQUE AND VALUABLE PERSPECTIVE TO THE ISSUES IN THIS CASE

Proposed *amici* submit the proposed *amicus* brief to aid this Court in its consideration of Plaintiff's "emergency" interlocutory appeal and request to reverse in part the district court's ruling in *Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020).

Courts routinely permit non-parties to file amicus curiae briefs in support of the parties in appeals before this court and other courts. Motions for leave to file amicus curiae briefs are granted in recognition that they may be helpful to the Court in understanding the importance of the issues involved, determining the rules of law applicable to the case, and to point out to the court material issues the parties' briefs do not address in detail.

In the district court, Plaintiff sought an emergency injunction that would have prevented the Defendants from certifying the results of the November 2020 general election, in whole or in part.[1] Proposed *amici* filed a Motion to Intervene at the district court level (ECF 22) and seek to file an amicus brief to this court because Plaintiff's suit is a baseless all-out attack on the November 2020 elections in Georgia, and a flagrant attempt to disenfranchise millions of eligible Georgia voters including individual proposed amici and those served by Georgia NAACP and

[1] Plaintiff also sought and was denied declaratory relief related to the recounting of votes. This request for relief and the Due Process claim upon which it was based are not at issue in this appeal.

GCPA.[2] Proposed Intervenors' interests go beyond those of the named Defendants, who have only a generalized public interest in applying Georgia's election code, or those of Defendant-Intervenor's, whose interests concern the Democratic candidates with whom they are affiliated.

As the only participants in the case directly representing the interests of individual Georgia voters who want their votes to be counted, proposed *amici* bring a critical, non-partisan perspective to these matters and are well-situated to address the right of all Georgia voters to cast their ballots safely during this global pandemic.

Plaintiff's request on appeal for a new form of relief only makes proposed *amici*'s perspective that much more important. The district court correctly determined that Plaintiff did not have standing to bring the Equal Protection and Electors and Elections Clauses claims that were the basis of his request, was barred by laches even if he did have standing, that he was not entitled to the requested injunction on the merits because he was not likely to succeed on the merits of his asserted claims, had not shown that he would be irreparably injured, and the extraordinary relief sought by Plaintiff was inequitable and contrary to the public interest. *Wood*, 2020 WL 6817513. Having been denied such relief by the district

[2] Proposed *amici*'s Motion to Intervene is pending before the district court. Without ruling on the Motion to Intervene, Judge Grimberg allowed counsel for proposed *amici* to participate at the November 19, 2020 hearing on Plaintiff's Motion.

court, Plaintiff now explicitly requests that the entire election be *redone*, an unprecedented and extraordinary request that was not presented to the district court.

As set forth in the *amicus* brief, there is no basis for Plaintiff to obtain any relief, let alone the new relief he seeks on appeal. First, Plaintiff's appeal is moot, as the events he sought to enjoin have already occurred, and the relief he now requests would disenfranchise not just the proposed amici, but every Georgia voter. As amici explain, Plaintiff's appeal should be rejected for this reason alone. Second, Plaintiff also lacks standing because he has not suffered any injury in fact, and instead presents only generalized grievances about government conduct that are insufficient to meet the minimum Article III requirements. Third, Plaintiff's Equal Protection and Elections and Electors Clauses claims are barred by laches because Plaintiff failed to take any action for eight months after Defendants and Intervenor-Defendants entered into a March 2020 settlement agreement, which form the basis of his claims, until after the outcome of the Georgia general election was determined. And fourth, the district court was correct in denying Plaintiff's request for relief on the merits, because he cannot succeed on the merits of his claims, will not suffer irreparable injury, and his requested relief is both inequitably and would be profoundly harmful to the public interest.

The Georgia NAACP and GCPA have a vital interest in protecting the right of their members and those who they serve to have their votes counted, and to protect

the outcome of a free and fair election in which they cast votes. President Woodall, Ms. Butler, and Rev. Ivey each have a direct and personal interest in ensuring that the votes they cast in the November election are properly counted. Plaintiff's request to vacate the district court's ruling is a blatant attempt to disenfranchise millions of Georgia voters because his preferred candidate lost. The attached *amicus* brief further explains how the Plaintiff's appeal is without merit, would profoundly harm our electoral system, force the judiciary to intervene in an election in which Plaintiff offers no claim or proof of fraud, and thus the system government of the people, by the people, and for the people that is the bedrock of our democracy.

C. THE PROPOSED *AMICUS* BRIEF IS TIMELY

This motion and the proposed *amicus* brief are timely because they are being filed within the time set by this Court for briefs to be filed by Defendants and Intervenor-Defendants. Thus, the filing of the *amicus* brief will neither delay these appellate proceedings nor unduly prejudice any party. The proposed amicus brief complies with the word limit and other matters of form required by the Federal Rules of Appellate Procedure and the Eleventh Circuit Rules.

D. CONCLUSION

For the foregoing reasons, proposed *amici curiae* respectfully ask that the Court grant this Motion for Leave to File *Amicus* Brief.

Dated: December 1, 2020

Respectfully submitted,

By: /s/ *Bryan Sells*

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CERTIFICATE OF COMPLIANCE

I certify that the following statements are true:

1. This motion complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 1,407 words, excluding the parts of the motion that can be excluded.

2. This motion also complies with the typeface requirements of Eleventh Circuit Rule 32(a)(5) and the type style requirements of Eleventh Circuit Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point Times New Roman font.

Dated: December 1, 2020

/s/ Susan Baker Manning
Susan Baker Manning
Counsel for Proposed *Amici Curiae*

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I filed a true and correct copy of this motion with the Clerk of this Court via the CM/ECF system, which will automatically notify all counsel of the record.

Dated: December 1, 2020

/s/ Susan Baker Manning
Susan Baker Manning
Counsel for *Amici Curiae*

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BRIEF OF *AMICI CURIAE* GEORGIA STATE CONFERENCE OF THE NAACP, ET AL.

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In accordance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, counsel for proposed *amici curiae* hereby certify that proposed *amici* are aware of the following attorneys, persons, associations of persons, firms, partnerships, or corporations who may have an interest in the outcome of this case or appeal:

1. Beane, Amanda J. (counsel for Intervenor-Defendants)
2. Blumenfeld, Jeremy P. (counsel for proposed *amici*)
3. Brailey, Emily R. (counsel for Intervenor-Defendants)
4. Butler, Helen (proposed *amica*)
5. Callais, Amanda R. (counsel for Intervenor-Defendants)
6. Carr, Christopher M. (counsel for Defendants)
7. Clarke, Kristen (counsel for proposed *amici*)

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8. Coppedge, Susan P. (counsel for Intervenor-Defendants)

9. Democratic Congressional Campaign Committee (Intervenor-Defendant)

10. Democratic Party of Georgia, Inc. (Intervenor-Defendant)

11. Democratic Senatorial Campaign Committee (Intervenor-Defendant)

12. Elias, Marc E. (counsel for Intervenor-Defendants)

13. Georgia Coalition for the Peoples' Agenda, Inc. (proposed *amicus*)

14. Georgia State Conference of the NAACP, Inc. (proposed *amicus*)

15. Greenbaum, Jon M. (counsel for proposed *amici*)

16. Grimberg, Hon. Steven D. (U.S. Dist. Judge, Northern Dist. of Georgia)

17. Hamilton, Kevin J. (counsel for Intervenor-Defendants)

18. Houk, Julie Marie (counsel for proposed *amici*)

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25. Lawyers' Comm. for Civil Rights Under Law (counsel for proposed *amici*)

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28. Manning, Susan Baker (counsel for proposed *amici*)

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30. McGowan, Charlene S. (counsel for Defendants)

31. Mertens, Matthew J. (counsel for Intervenor-Defendants)

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34. Powers, John M. (counsel for proposed *amici*)

35. Raffensperger, Brad (Defendant)

36. Rosenberg, Ezra David (counsel for proposed *amici*)

37. Sells, Bryan L. (counsel for proposed *amici*)

38. Smith, Ray Stallings, III (counsel for Plaintiff)

39. Smith & Liss LLC (counsel for Plaintiff)

40. Sparks, Adam Martin (counsel for Intervenor-Defendants)

41. Stolley, Martha (counsel for *proposed amici*)

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42. Sullivan, Rebecca N. (Defendant)

43. Velez, Alexi M. (counsel for Intervenor-Defendants)

44. Webb, Bryan K. (counsel for Defendants)

45. Willard, Russell D. (counsel for Defendants)

46. Wood, L. Lin (Plaintiff)

47. Woodall, James (proposed *amicus*)

48. Worley, David J. (Defendant)

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I. INTEREST OF *AMICI CURIAE*

As detailed in the accompanying Motion for Leave to File Brief of *Amici Curiae*, *amici curiae* are two organizations representing Georgia voters and three individual Georgians, each of whom has a strong interest in this litigation. *Amici* moved to intervene in the district court. Although the district court has not yet ruled on the motion, it permitted *amici* to participate in the November 19, 2020 hearing.

The **Georgia State Conference of the NAACP** ("Georgia NAACP") is a non-profit advocacy group for civil rights for Black Americans with approximately 10,000 members. Georgia NAACP has been working to educate Black Georgia voters on different voting methods available during the COVID-19 pandemic and has conducted phone banking to assist Georgia voters. Georgia NAACP also has members, including individual *amici* President **James Woodall** and Rev. **Melvin Ivey**, who voted in the November election and who are at risk of being disenfranchised if the election results are thrown out.

The **Georgia Coalition for the People's Agenda** ("GCPA") is a coalition of more than 30 organizations that encourages voter registration and participation, particularly among African-American and other underrepresented communities. For the November 2020 election, GCPA participated in media interviews, sponsored Public Service Announcements, placed billboard ads, and conducted outreach to educate voters and to encourage participation in the 2020 election cycle. GCPA

members, including *amica* Ms. **Helen Butler**, voted in the November election and are at risk of being disenfranchised if the election results are thrown out.

II. STATEMENT OF THE ISSUES

1. Whether the Plaintiff's appeal is moot because the November election results have been certified by Georgia officials.
2. Whether the Plaintiff lacks standing.
3. Whether the Plaintiff's claims are barred by laches.
4. Whether the district court correctly denied injunctive relief on the merits.

III. AUTHORITY TO FILE BRIEF OF *AMICI CURIAE*

As noted in the accompanying Motion for Leave to File Brief as *Amici Curiae*, Defendants-Appellees Brad Raffensperger, et al. ("Defendants") and Intervenor Defendants-Appellees the Democratic Party of Georgia, Inc., et al. ("Intervenor Defendants") have consented to the filing of this *amicus* brief. Plaintiff-Appellant L. Lin Wood ("Plaintiff") has declined to consent.

IV. SUMMARY OF ARGUMENT

There has been a rash of meritless post-election litigation in swing states seeking to undermine or even invalidate the results of the November 3, 2020 general election. State and federal courts have rejected every one of those cases.[1] As the

[1] *See, e.g.,* Emily Bazelon, *Trump Is Not Doing Well With His Election Lawsuits. Here's a Rundown*, NY Times (updated Nov. 25, 2020), available at https://www.nytimes.com/2020/11/13/us/politics/trump-election-lawsuits.html.

Third Circuit recently wrote in rejecting a case similar to this one: "Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here." *Donald J. Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania*, No. 20-3371, 2020 WL 7012522, *1 (3d Cir. Nov. 27, 2020) (affirming order denying leave to amend in a case concerning the processing of absentee ballots and observing vote tabulations). So too here. The district court properly denied Plaintiff L. Lin Wood's Emergency Motion for Injunctive Relief (ECF 6, the "Motion") as legally and factually baseless, and Plaintiff's case has only gotten weaker in this "emergency" appeal.

Plaintiff's requested injunction would have prevented the State from certifying the results of a presidential election in which nearly five million Georgians voted, an unprecedented step that district court Judge Grimberg characterized as "extraordinary relief." *Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513, *1 (N.D. Ga. Nov. 20, 2020) ("Op."). Pure and simple, Plaintiff's Motion was an effort to disenfranchise not just the individual *amici* and those served by the organizational *amici*, but ***every Georgia voter***.

Plaintiff's objective to disenfranchise all Georgia voters remains the same before this Court, although he now tries a different tack, asking this Court for a form of relief never presented to the district court: an order "that the election must be *re-*

done." Plaintiff-Appellant's Brief ("Br.") at 39 (emphasis added); *see also id*. at 19.[2] This Court's appellate review does not include issues or requests for relief never presented below. Even if it did, only the direst of circumstances might support such sweeping judicial intervention in a completed election, and the recent election does not come close to fitting the bill.

Indeed, there is no basis for Plaintiff to obtain *any* relief. First, Plaintiff's request to enjoin certification of the November election results is moot because they already have been certified. Second, the district court correctly held that Plaintiff lacks standing because he presents only the type of generalized grievance about government conduct that any citizen might have and has not suffered a cognizable injury. Op. at 12–19. Third, even if Plaintiff could satisfy the basic requirements of Article III, as Judge Grimberg held, Plaintiff's claims are barred by laches because of his decision to delay filing suit until after the election results were known. Op. 16–23.

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[2] Mr. Wood apparently also supports re-doing the election by means other than a court order. He has asserted publicly that President Trump "should declare martial law," a statement he made in response to a call by Ohio-based political organization We the People Convention for the president to "exercise the Extraordinary Powers of his office and declare limited Martial Law to temporarily suspend the Constitution and civilian control of these federal elections *in order to have the military implement a national re-vote.*" Lin Wood (@LLinWood) Dec. 1, 2020 (10:00 am), https://twitter.com/LLinWood/status/1333788036815937537 (disseminating link to https://wethepeopleconvention.org/articles/WTPC-Urges-Limited-Martial-Law) (emphasis added).

Additionally, Plaintiff's claims fail on the merits. As the district court correctly held, Plaintiff's Equal Protection claim fails as a matter of law because the state-wide procedures for handling absentee ballots did not subject Plaintiff to disparate treatment or limit in any way his ability to vote in person or to have his vote counted. Op. at 24–28. Plaintiff's Elections and Electors Clauses claim fails because, among other reasons, the absentee ballot procedures at issue are not contrary to Georgia law. Op. at 29–32.

Plaintiff's Emergency Motion for Relief is moot, baseless, and contrary to the bedrock values of our democracy. The district court properly rejected it in its thorough and well-reasoned opinion. *Amici curiae* respectfully urge this Court to affirm the district court's decision.

V. ARGUMENT

A. Plaintiff's Appeal Is Moot.

The only appeal properly before this Court is Plaintiff's request for interlocutory review of certain aspects of the district court's November 19 oral ruling and November 20 written Order (ECF 54) denying Plaintiff's Motion. That appeal is moot because the events Plaintiff sought to prevent have occurred. Accordingly, this Court does not have jurisdiction.

Plaintiff's "emergency" appeal is limited to his Equal Protection (Count I) and Electors and Elections Clauses (Count II) claims, both of which concern Plaintiff's

assertion that the procedures for processing absentee ballots set out in a settlement agreement between Defendants and the Democratic Defendant-Intervenors violate Georgia state law. Amended Complaint (ECF 5) ("Compl.) at ¶¶ 73–80, 86–92; *see also* Motion at 15–20.[3] Plaintiff's Motion sought either of the same two injunctions as relief for each of these claims:

> 1. Prohibiting the certification of the results of the 2020 general election in Georgia on a statewide basis; or
>
> 2. Alternatively, prohibiting the certification of said results which include the tabulation of defective absentee ballots.

Motion at 24.

Pursuant to Georgia law, and after the district court denied Plaintiff's Motion, Georgia officials certified the November election results. Br. at 38 (admitting Georgia certified the election results); Governor Kemp Formalizes Election Certification, Calls for Signature Audit, Endorses Voter ID for Mail-In Balloting (Nov. 23, 2020), https://gov.georgia.gov/press-releases/2020-11-23/governor-

[3] This appeal *does not* concern Plaintiff's Due Process (Count III) claim, which rests on a different theory and seeks different relief. That claim is based entirely on assertions that the non-party Trump Campaign was denied "meaningful access to observe and monitor" the "hand recount" underway when Plaintiff filed suit. Compl. ¶¶ 101-104. On appeal, Plaintiff addresses only his Equal Protection and Electors and Elections Clauses theories, and the words "due process" do not appear in Plaintiff's Brief. Thus, nothing about the counting or recounting of votes is properly before the Court.

kemp-formalizes-election-certification-calls-signature-audit. Thus, Plaintiff's appeal from the district court's Order declining to enjoin certification is now moot.

Plaintiff's arguments against mootness confuse whether the entire *case* is moot with whether his request for emergency *injunctive relief* is moot. Br. at 38 ("The fact that the State has certified the Georgia purported election results does not moot the Plaintiff's lawsuit *because this litigation is ongoing*.") (emphasis added). These are distinct issues. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394 (1981) (regarding preliminary injunction that was mooted by subsequent events while on appeal: "This, then, is simply another instance in which one issue in a case has become moot, but the case as a whole remains alive because other issues have not become moot."); *Ethredge v. Hail*, 996 F.2d 1173, 1174–76 (11th Cir. 1993) (plaintiff's "propensity to criticize Presidential policies" and likelihood of criticizing future presidents did not present a live controversy on appeal where Plaintiff had requested specific relief allowing him to criticize former President Bush).

Perhaps the best evidence of this appeal's mootness is that Plaintiff *does not ask this Court to order the relief* he sought in the district court. Rather, he seeks very different and much broader relief:

> As a result, this Court should reverse the district court and enter, or direct that the district court enter, an injunction declaring that the election results are defective, and ordering the Defendants to cure their constitutional violations *by re-doing the election* in a manner consistent with the requirements of the United States Constitution.

Br. at 19 (emphasis added). This request is breathtaking and unprecedented in a presidential election and would disenfranchise millions of voters—and, importantly for present purposes, it is relief that Plaintiff *did not seek in the district court*. It is axiomatic that a plaintiff cannot seek relief on appeal that he never sought in the district court or claim the district court abused its discretion by denying injunctive relief that the plaintiff never sought. *Wakefield v. Church of Scientology of Cal.*, 938 F.2d 1226, 1229 n.1 (11th Cir.1991) ("Parties may make alternative claims, change claims, sometimes file inconsistent claims, but parties may not do so in the appellate court. This court reviews the case tried in the district court; it does not try ever-changing theories parties fashion during the appellate process."). Nor can Plaintiff create subject matter jurisdiction or avoid mootness by seeking different injunctive relief on appeal than he sought below. *Ethredge*, 996 F.2d at 1174–76; *Cafe 207, Inc. v. St. Johns County*, 989 F.2d 1136, 1136–37 (11th Cir. 1993) ("The case reaches us ... as an interlocutory appeal from an order denying a preliminary injunction. Consequently, only the action on the preliminary injunction is presently reviewable."); *Bayou Liberty Ass'n, Inc. v. U.S. Army Corps of Engineers*, 217 F.3d 393, 398 (5th Cir. 2000) ("this court may not fashion relief not requested below in order to keep a suit viable").

As the Court recognized in its Jurisdictional Questions to the parties, this Court's subject matter jurisdiction is limited: once a case or controversy becomes

moot, this Court lacks jurisdiction to decide it. *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011); *Brooks v. Ga. State Bd. of Elections*, 59 F.3d 1114, 1118 (11th Cir. 1995) (an appeal is moot where it is "impossible for the court to grant any effectual relief whatever to a prevailing party"). Importantly, that applies to requests for preliminary injunctive relief, regardless of whether the underlying dispute is ongoing or other forms of relief remain available in the district court. *Tropicana Product Sales, Inc. v. Phillips Brokerage Co.*, 874 F.2d 1581, 1583 (11th Cir. 1989) (plaintiff's arguments "demonstrate that [plaintiff's] claim on the merits is not mooted" but "do not save [plaintiff's] appeal from its motion for a preliminary injunction from being dismissed as moot"); *Caddo Nation of Oklahoma v. Wichita and Affiliated Tribes*, 877 F.3d 1171, 1176 (10th Cir. 2017) ("But though a case may not be moot because partial relief is still possible, a specific request for an injunction may become moot."). Here, Plaintiff's claim is moot and, therefore, his appeal should be dismissed for lack of subject matter jurisdiction.

B. Standard of Review

This Court reviews a district court's ruling on a motion for injunctive relief for abuse of discretion. *Sanders v. Dooly Cnty., Ga.*, 245 F.3d 1289, 1291 (11th Cir. 2001). "A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous."

United States v. Estrada, 969 F.3d 1245, 1261 (11th Cir. 2020) (internal quotation omitted). This Court's "review under this standard is very narrow and deferential." *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1270 (11th Cir. 2020) (internal quotation omitted).

C. Plaintiff Lacks Standing

"The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance." *Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004). To avoid dismissal on standing grounds, a plaintiff must show (1) an "injury in fact," meaning "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) a causal connection between the injury and the defendant's conduct, and (3) a likelihood the injury will be redressed by a favorable decision. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)); *accord Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020). A "particularized" injury is one that "affect[s] the plaintiff in a personal and individual way." *Lujan*, 504 U.S. at 561 n.1. Put another way, Plaintiff must demonstrate "a personal stake in the outcome of the controversy" presented because federal courts have a "properly limited" role "in a democratic society" and are "not a forum for generalized grievances." *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (internal citations and quotations omitted).

Plaintiff cannot obtain preliminary relief—and cannot maintain suit—because his complaints about Defendants' processing of absentee ballots do not show an injury in fact. His complaints are at most generalized grievances about government conduct, which are insufficient to confer standing.

1. Plaintiff's Equal Protection Claim is Based on a Generalized Grievance that Does Not Give Him Standing

Before the district court, Plaintiff's alleged injury rested solely on the unsupported assertion that alleged state law violations rendered (1) Georgia's election results "improper and suspect"; (2) "resulting in Georgia's electoral college votes going to Joseph R. Biden"; which is allegedly (3) "contrary to the votes of the majority of Georgia qualified electors." Motion at 22. But Plaintiff did not provide any evidence, or even allege, that *his* vote was not tabulated appropriately. Nor did he offer anything more than speculation that other qualified electors' votes might not have been tabulated appropriately, or that an unqualified elector's vote was incorrectly tabulated. Op. at 27. Plaintiff's disappointment in the election results is not a cognizable injury, much less one that a court may remedy.

On appeal, Plaintiff makes two new arguments. First, he claims that there were a variety of "irregularities" in the vote recount. Br. at 22–23. Even if Plaintiff had presented more than speculation on this point, supposed vote counting irregularities do not confer standing because they do not harm Plaintiff "in a personal and individual way." *Lujan*, 504 U.S. at 561 n.1. Plaintiff's claim that "the law ... has not

been followed ... is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past. It is quite different from the sorts of injuries alleged by plaintiffs in voting rights cases where we have found standing." *Dillard v. Chilton County Comm'n*, 495 F.3d 1324, 1332–33 (11th Cir. 2007) (citing *Baker v. Carr*, 369 U.S. 186, 207–08 (1962)); *see also Lance v. Coffman*, 549 U.S. 437, 440–41 (2007) ("a generalized grievance that is plainly undifferentiated and common to all members of the public" is not sufficient to confer standing).[4]

Second, Plaintiff now asserts he suffered an injury because "he voted under one set of rules, and other voters, through the guidance in the unlawful [Settlement Agreement], were permitted to vote invalidly under a different and unequal set of rules." Br. at 24. Here again is a speculative statement that other votes may have been counted improperly, not that Plaintiff's vote was not counted. This too is merely a claim that the law has not been followed, which is insufficient to confer standing. *Dillard*, 495 F.3d at 1332–33.

[4] In addition, Plaintiff's claims about the recount and observers pertain to the Due Process claim (Count III) not before the Court, *see* Compl. ¶¶ 97–107, and cannot be the basis for standing to assert an Equal Protection claim. In any event, there is no constitutional right to observe vote counting." *Donald J. Trump for President, Inc.*, 2020 WL 7012522, at *6.

2. Plaintiff Has No Standing to Bring a Claim Under the Electors and Elections Clauses

As a private citizen, Plaintiff has no standing to assert claims under the Electors and Elections Clauses asserting Georgia officials purportedly failed to follow state election law. Plaintiff asserts he has standing because he is a registered elector who "brings this suit in his capacity as a private citizen." Compl. ¶ 8. But "private plaintiffs lack standing to sue for alleged injuries attributable to a state government's violations of the Elections Clause." *Bognet v. Sec'y of Commonwealth*, No. 20–3214, 2020 WL 6686120 at *6 (3d Cir. Nov. 13, 2020). In *Lance v. Coffman*, the Supreme Court rejected the standing of four private citizens to bring an Elections Clause claim. 549 U.S. 437, 442 (2007). The Court held: "The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past." *Id*.[5] The same is true here.

D. Plaintiff's Claims Are Barred by Laches

Even if Plaintiff's Equal Protection and Electors and Elections Clauses claims were otherwise viable—and Plaintiff never explains why they are—they would still

[5] "Because the Elections Clause and the Electors Clause have considerable similarity," they are properly interpreted in the same way. *Bognet*, 2020 WL 6686120 at *7; *Foster v. Love*, 522 U.S. 67, 69 (1997) (characterizing Electors Clause as Elections Clause's "counterpart for the Executive Branch").

be barred by laches. The equitable doctrine of laches applies in the context of elections to prevent gamesmanship and the very kind of mass disenfranchisement Plaintiff seeks.

Laches applies where a plaintiff has (1) "delay[ed] in asserting a right or a claim," (2) without excuse, (3) that would result in undue prejudice. *AmBrit, Inc. v. Kraft, Inc*., 812 F.2d 1531, 1545 (11th Cir. 1986). The doctrine applies in election cases as in other actions. *See, e.g., Sanders v. Dooly Cnty., Ga.*, 245 F.3d, 1291 (affirming laches finding); *Detroit Unity Fund v. Whitmer*, 819 F. App'x 421, 422 (6th Cir. 2020) (affirming denial of motion for injunctive relief made two hours before ballot initiative filing deadline as "barred by laches, considering the unreasonable delay on the part of [p]laintiffs and the consequent prejudice to [d]efendants").

1. Plaintiff's delay was unreasonable.

The settlement agreement Plaintiff objects to was executed and subject to extensive publicity in March 2020, eight months before the November general election.[6] The regulations contemplated by the settlement agreement were adopted

[6] *See, e.g.*, Mark Niesse, *Lawsuit settled, giving Georgia voters time to fix rejected ballots*, The Atlanta Journal-Constitution (Mar. 7, 2020), https://www.ajc.com/news/state--regional-govt--politics/lawsuit-settled-giving-georgia-voters-time-fix-rejected-ballots/oJcZ4eCXf8J197AEdGfsSM/ (last visited Nov. 19, 2020).

after a public notice and comment period.[7] Yet Plaintiff did nothing until his displeasure with the election *results* prompted him to challenge the *procedures* by which the election was conducted.

Had Plaintiff timely asserted these claims—however frivolous—Defendants or a court would have had the opportunity to address them. Instead, Plaintiff waited eight months, until after these procedures had been used in three different elections, millions of ballots had been processed under the procedures, and the outcome of the general election—which Plaintiff disliked—had been announced. Plaintiff still offers no coherent excuse for this delay. Challenges to election procedures are to be raised *before* the election is conducted. *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973) ("[T]he law imposes the duty on parties having grievances based on discriminatory practices to bring the grievances forward for pre-election adjudication.").

2. An injunction would cause extreme prejudice.

The common-sense rule mandating pre-election challenges protects voters and the integrity of our system of government: it allows problems to be fixed *before* the election is held, without disrupting votes *after* they have been cast. *Southwest*

[7] Georgia State Elections Board, Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14 and Notice of Public Hearing (Mar. 5, 2020), https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf (scheduling public hearing for Apr. 15, 2020).

Voter Registration Educ. Project v. Shelley, 344 F.3d 914, 919 (9th Cir. 2003) ("Interference with impending elections is extraordinary, and interference with an election after voting has begun is unprecedented.").

Overturning the results of an election is an extraordinary intervention by the judiciary into democratic processes; a challenge to election procedures should be brought when there is still time to correct those procedures. *Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration and Elections*, 446 F. Supp. 3d 1111, 1126–27 (N.D. Ga. 2020) ("Plaintiffs were not faced with a binary choice and should have sought court intervention sooner."); *Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396, 404–05 (E.D. Pa. 2016) (declining to enjoin aspects of Pennsylvania's poll-watcher statute in a case filed "eighteen days before the election" because "Plaintiffs unreasonably delayed filing their Complaint and Motion, something which weighs decidedly against granting the extraordinary relief they seek").

Were the law otherwise, parties could "lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action." *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973); *see also Carlson v. Ritchie*, 830 N.W.2d 887, 892 (Minn. 2013) ("[P]etitioners cannot wait until after elections are over to raise challenges that could have been addressed before the election."); *Lewis v. Cayetano*, 823 P.2d 738, 741 (Haw. 1992) (laches barred post-election challenge where voters had constructive notice of ballot form

for a month prior to the election). "Courts have been wary lest the granting of post-election relief encourage sandbagging on the part of wily plaintiffs." *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988).

Sandbagging is precisely what Plaintiff has done here. Indeed, he tacitly concedes that he delayed, acknowledging that delay is just one factor in the analysis. Br. at 39. But he offers no argument as to why his delay was excusable and not prejudicial. *Id.*

As the district court noted, Plaintiff's requested relief "could disenfranchise a substantial portion of the electorate and erode the public's confidence in the electoral process." Op. at 23. To grant such relief would be extremely prejudicial to Georgia voters, including *amici*, who took all necessary steps to ensure that their votes were legally cast. Having failed to rebut any element of laches, Plaintiff cannot show the district court abused its discretion.

E. The District Court Correctly Denied Interim Injunctive Relief on the Merits.

The preliminary injunction standard is a familiar one. The movant "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The balance of equities and public interest factors "merge when the Government is the opposing party." *Nken v. Holder*,

556 U.S. 418, 435 (2009). Here, each factor weighs strongly against Plaintiff's request for relief.

1. Plaintiff Does Not Have a Valid Constitutional Claim Based on the Settlement Agreement.

a. Equal Protection

Plaintiff argues that the Settlement Agreement "created an arbitrary, disparate, and ad hoc process for processing defective absentee ballots, and for determining which such ballots should be 'rejected,' contrary to Georgia law." Br. at 36. This theory does not and cannot support an Equal Protection claim.

Although Plaintiff asserted for the first time at the hearing on the Motion that he relied on a vote dilution theory, his objections to the Settlement Agreement in no way relate to the weighting of the votes of one group versus another. *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964); *Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1185 (11th Cir. 2008) ("When a state adopts an electoral system, the Equal Protection Clause of the Fourteenth Amendment guarantees qualified voters a substantive right to participate *equally* with other qualified voters in the electoral process.") (citing *Reynolds*, 377 U.S. at 566) (finding unconstitutional voter matching system that differed across counties). Plaintiff does not allege that he has been disadvantaged contrary to the "one person, one vote" maxim. As the district court correctly observed:

> At the starting gate, the additional safeguards on signature and identification match enacted by Defendants did not burden Wood's ability to cast his ballot at all. Wood, according to his legal counsel during oral argument, did not vote absentee during the General Election. And the "burden that [a state's] signature-match scheme imposes on the right to vote...falls on vote-by-mail and provisional voters' fundamental right to vote."

Op. at *9 (quoting *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019)).

Nor has Plaintiff articulated any way in which Georgia has allegedly "value[d] one person's vote over that of another" through "arbitrary and disparate treatment." *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000). While he alludes to some sort of "disparate treatment," Br. at 36, he provides no explanation and, in fact, previously conceded that the regulations adopted in relation to the Settlement Agreement applied *uniformly* statewide. Compl. ¶ 25.

Plaintiff cannot shoehorn the processing of absentee ballots in alleged violation of Georgia elections law into a Fourteenth Amendment Equal Protection claim. *Donald J. Trump for President, Inc*., 2020 WL at *6 (equal protection claims "require not violations of state law, but discrimination in applying it").

b. **Electors and Elections Clauses**

Plaintiff argues that "[t]he procedures for processing and rejecting ballots employed by the Defendants in this election ... constitute a usurpation of the legislator's plenary authority" because they allegedly conflict with O.C.G.A. § 21-

2-381(b)(1), which governs how absentee ballots are to be processed. In fact, there is no conflict.

Under the Settlement Agreement, Secretary Raffensperger agreed to issue an Official Election Bulletin to county officials on the procedures for reviewing signatures on absentee ballot envelopes. Pl's Ex. A (ECF 6–1) ¶ 3. Per that Bulletin, if a registrar or clerk believed a signature did not match the elector's signature on file, "two other registrars, deputy registrars, or absentee ballot clerks" evaluated the signature. *Id*. ¶ 3. If a majority of the reviewers determined the signature did not match, the absentee ballot was to be rejected. *Id.*

This straightforward process is consistent with the signature verification procedures provided under Georgia law, which reads in pertinent part: upon receiving an absentee ballot, "[t]he register or clerk shall compare the signature or mark on the oath with the signature or mark" on file, and "shall if the information and signature appear to be valid ... so certify by signing or initialing his or her name below the voter's oath." O.C.G.A. § 21-2-386(a)(1)(B). If, however, "the signature does not appear to be valid ... the registrar or clerk shall write across the face of the envelope 'Rejected,' giving the reason therefor." O.C.G.A. § 21-2-386(a)(1)(C).

Plaintiff argues the Bulletin stripped county election officials of the authority to determine "individually" the validity of absentee ballot signatures and allowed officials to "compare signatures in a way not permitted" by statute. Br. at 30.

However, as the district court observed, Plaintiff's Motion "does not articulate how the Settlement Agreement is not 'consistent with law' other than it not being a verbatim recitation of the statutory code." Op. at 11.

Plaintiff's argument on appeal is equally flawed. The thrust of Plaintiff's argument appears to be that the Settlement Agreement provides for three people, not one, to be involved in the review of any potentially defective absentee ballot. Br. at 30–31. Although §§ 21-2-386(a)(1)(B)–(C) refer to "clerk and "register" in the singular, this does not prohibit more than one "clerk" or one "register" from being involved in evaluating the validity of a signature on an absentee ballot envelope. In interpreting a statute, "the singular or plural number each includes the other, unless the other is expressly excluded." O.C.G.A. § 1-3-1(d)(6); *see Reid v. Morris*, 309 Ga. 230, 236 n.3 (2020) (applying O.C.G.A. § 1-3-1(d)(6) to determine statutory use of the term "defendant" does not mean only one defendant may be liable for punitive damages). In drafting O.C.G.A. § 21-2-386 (a)(1)(B)–(C), the Legislature did not preclude registers, deputy registers, and clerks from working together to evaluate questionable signatures.

Plaintiff concedes, as he must, that the Georgia Legislature has authorized the State Election Board to issue election rules and regulations that are "conducive to the fair, legal, and orderly conduct of ...elections" and "consistent with law." Br. at 16 (quoting O.C.G.A. § 21-2-31(2)). This is exactly what the Settlement Agreement

achieved through provisions that are in no way contrary to Georgia law.

Plaintiff also asserts that Defendants violated Georgia law by allowing a single political party to "write rules for reviewing signatures." Br. at 32. The Settlement Agreement itself refutes his claim. The State Defendants agreed to "consider" providing county registers and absentee ballot clerks training materials on evaluating voter signatures that a handwriting expert retained by the plaintiffs in the underlying litigation had prepared. *See* Settlement Agreement (ECF 6-1) ¶ 4. The Settlement Agreement did not identify the materials nor did it impose any requirement on distributing those materials. Further, Plaintiff does not allege what, if any, materials were distributed; nor does he explain how they would have constituted "rules for reviewing signatures." Thus, Plaintiff has not established that the Settlement Agreement violated Georgia election law.

2. Plaintiff Will Not Suffer Irreparable Injury, or Any Injury At All, in the Absence of Injunctive Relief.

For the same reasons that Plaintiff lacks standing to sue, *see supra* § IV(B), he also fails to make the more substantial showing of irreparable injury required for injunctive relief.

3. Plaintiff's Requested Election Do-Over is Inequitable and Contrary to the Public Interest.

Plaintiff's previous request to enjoin certification of the election results, and current request for an election do-over, are wildly disproportionate to any purported

injury he allegedly suffered and would violate the rights of millions of Georgia voters. No court has ever granted relief of the nature and scope that Plaintiff requests under any set of facts, let alone that averred in the Motion. This is a glaring example of "the cure [being] worse than the alleged disease, at least insofar as the professed concern is with the right of voters to cast effective ballots in a fair election." *Baber v. Dunlap,* 349 F. Supp. 3d 68, 76 (D. Me. 2018).

Even if Plaintiff's allegations could support a finding of error in election administration—which the district court roundly rejected (Op. at 28-31)—tossing out millions of votes in the presidential election would violate established law. Courts have refused to "believe that the framers of our Constitution were so hypersensitive to ordinary human frailties as to lay down an unrealistic requirement that elections be free of any error." *Powell v. Power,* 436 F.2d 84, 88 (2d Cir. 1970). A finding that "the election process itself reaches the point of patent and fundamental unfairness … must go well beyond the ordinary dispute over the counting and marking of ballots." *Duncan v. Poythress,* 657 F.2d 691, 703 (5th Cir. 1981) (quoting *Griffin v. Burns,* 570 F.2d 1065, 1077 (1st Cir. 1978)). The Eleventh Circuit has observed that, "[i]n most cases, irregularities in state elections are properly addressed at the state level, whether through state courts or review by state election officials." *Burton v. State of Ga.,* 953 F.2d 1266, 1268 (11th Cir. 1992). Only the most egregious election misconduct could justify the mass disenfranchisement

Plaintiff seeks. *McMichael v. Napa County,* 709 F.2d 1268, 1273–94 (9th Cir. 1983) (Kennedy, J., concurring) (invalidation of election results "has been reserved for instances of willful or severe violations of established constitutional norms"). Plaintiff's allegations fall woefully short of that standard.

The Georgia Supreme Court similarly has stated that "[i]t is not sufficient to show irregularities which simply erode confidence in the outcome of the election. ***Elections cannot be overturned on the basis of mere speculation***." *Meade v. Williamson,* 745 S.E.2d 279, 285 (Ga. 2013) (emphasis added) (quoting *Middleton v. Smith,* 539 S.E.2d 163 (Ga. 2000)). In this vein, in a case where Atlanta voters registered to vote at locations that were not authorized by state law and voted in the 1981 Atlanta mayoral election, that Court held "the remedy of disenfranchisement of voters registered in violation of the statute is so severe as to be unpalatable where the good faith of the registrars is not disputed." *Malone v. Tison,* 282 S.E.2d 84, 89 (Ga. 1981).

Moreover, a judicial order nullifying Georgia's election results and "re-doing" the election would be grossly inequitable and would effectively deprive Georgia of *any* role in selecting the 46th president of the United States. The presidential election results must be determined by December 8, 2020 to benefit from the safe-harbor provision of the federal election code and in any event no later than December 14, 2020, the day that the Electoral College electors meet to cast their votes. 3 U.S.C.

§§ 5, 7; O.C.G.A. § 21-2-11 (electors must meet at noon the day directed by Congress); *see also Bush v. Gore*, 531 U.S. at 110–111 (ordering remedy in light of deadline for selection of electors). The briefing on this "emergency" appeal will be complete on December 3, 2020. Even if this Court were to rule the next day and grant Plaintiff the do-over he seeks, there would be no time for a second presidential election in Georgia in the ten days left to seat a slate of presidential electors. As a consequence, Georgia would not participate in the Electoral College vote and the president would be chosen by the other 49 states and the District of Columbia. To disenfranchise every Georgia voter would be unprecedented and unjust, and would gravely undermine public confidence in the conduct of the presidential election and in the rightful winner.

As a matter of law, the Motion—which does not demonstrate any specific instances of fraud, systemic or otherwise—cannot support the extreme relief requested. Even if Plaintiff had shown that a few isolated *election workers* violated certain election laws, that could not justify the wide-scale disenfranchisement of *Georgia voters*. Rather than curing any constitutional violation, Plaintiff's requested injunction would *create* grave constitutional violations by invalidating the legal and valid votes of millions of Georgia citizens. *See Northeast Ohio Coalition for Homeless v. Husted*, 696 F.3d 580, 595, 597–98 (6th Cir. 2012) (holding that rejecting ballots invalidly cast due to poll worker error likely violates due process).

Because Plaintiff's attempt to circumvent the will of the Georgia electorate "has no essential or important relationship to the claim for relief," his requested relief must be denied. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993).

VI. CONCLUSION

For these reasons, *Amici Curiae* respectfully suggest that the Court affirm the district court's order.

Dated: December 1, 2020

Respectfully submitted,

By: /s/ Bryan L. Sells

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FED. R. APP. P. 29(A)(4)(E) STATEMENT

No party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel contributed money intended to fund the preparation of this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae certify that *amici curiae* the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda are nonprofit organizations, neither of which has a parent corporation or issues public stock.

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) and 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 6,043 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft Office 365 in Times New Roman 14-point font.

Dated: December 1, 2020

/s/ Bryan L. Sells
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on December 1, 2020. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: December 1, 2020

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