IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

John Wood, Contestant, v. Brad Raffensperger, in his official capacity of Secretary of State of the State of Georgia; and Brian Kemp, in his official capacity as Governor of the State of Georgia. Defendants.	Civ. Act. No. 2020CV342959

Proposed Motion To Dismiss Petition for Election Contest

Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Van Johnson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. "Sachin" Varghese, Nikema Williams, and Cathy Woolard (collectively, the "Biden Electors") move to dismiss John Wood's Election Contest.

For the reasons discussed in the memorandum in support filed concurrently herewith, the Biden Electors move to dismiss the contest because it is barred by the doctrine of laches, is prohibited under Georgia law, and fails to state a claim upon which relief can be granted.

WHEREFORE, the Biden Electors respectfully request that the Court grant their motion to dismiss Wood's Election Contest in the above-captioned matter.

Dated: November 30, 2020.

Respectfully submitted,

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Exhibit D

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IN THE SUPERIOR COURT OF FULTON COUNTY
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John Wood,

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Brad Raffensperger, in his official capacity of Secretary of State of the State of Georgia; and Brian Kemp, in his official capacity as Governor of the State of Georgia.

Defendants.

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Brief in Support of Proposed Motion to Dismiss Petition for Election Contest

Exhibit E

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I. INTRODUCTION

President-Elect Joseph R. Biden, Jr. won the popular vote in Georgia in the presidential race. A hand recount of every vote for president cast in Georgia in the November election arrived at the same result. As a result, Secretary of State Brad Raffensperger (the "Secretary") certified the election results to formally declare Mr. Biden the winner, and Governor Brian Kemp in turn certified a slate of 16 presidential electors nominated by the Democratic Party to the electoral college. Those electors include the Intervenors to this action who are now empowered to and intend to cast Georgia's electoral college votes for Biden (collectively the "Biden Electors").

The Contestant who filed this petition is John Wood, a Georgia voter who had hoped that Donald J. Trump would win and be awarded Georgia's votes at the coming meeting of the electoral college, which is required by federal law to take place on December 14. Unhappy with the actual results of the election, Wood now seeks to enlist this Court to undo them, based on claims that have already been thoroughly rejected by other courts (including in a prior case that Wood himself brought), Wood's allegations consist of nothing more than conspiracy theories, speculation, and conjecture, including the truly absurd claims that a social media CEO allegedly dictated the election's outcome. The relief that Wood seeks is as unprecedented and unjustifiable as his extraordinary claims: a judicial declaration that would (1) render the results of Georgia's presidential election "null and void," and (2) permit the General Assembly to subvert democracy by appointing a new slate of presidential electors entirely untethered to the will of Georgia's voters. No less unsound is Wood's alternative request that the Court order a "second Presidential election." And all of the relief that Wood seeks threatens Georgia's ability to meet the federal "safe harbor" deadline (which gives conclusive effect to electoral votes as to which a "final determination of any controversy or contest concerning the appointment of" the electors has been made).

Simply put, Wood attempts to use this Court as a cudgel to fundamentally convert the state's political structure into something deeply undemocratic and unthinkable to generations of Americans who have long held an enduring faith in the fundamental precept that in this country, voters elect candidates—not courts or lawyers (or, in this case, a single litigant, unhappy with the way in which his fellow citizens voted). By all credible accounts, the November 2020 election was one of the most secure in Georgia's history. Nevertheless, there has been a concerted effort by a handful of actors to sow doubt and confusion about its results, both nationally and here in Georgia.

In Georgia alone, voters—including John Wood—have made these same baseless claims and sought the same extraordinary relief in at least two other cases. The courts in both cases handily and decisively struck those arguments down. *See Ga. Voter All. v. Fulton Cnty.*, No. 1:20-CV-4198-LMM, 2020 WL 6589655 (N.D. Ga. Oct. 28, 2020) (Wood's prior case challenging same Center for Technology and Civic Life grants at issue here); *see also Wood v. Raffensperger*, No. 1:20-CV-04651-SDG, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020) (case challenging same March 2020 settlement agreement regarding absentee voting at issue here). [1] As with these other fatally flawed actions, Wood's Petition is riddled with fatal procedural defects and makes claims that cannot be sustained as a matter of law. This Court should dismiss the Petition in its entirety with prejudice.

[1] *Wood v. Raffensperger* was brought by L. Lin Wood who, as far as Intervenors can tell, has no relation to the contestant in the present action. Contestant John Wood was a litigant in *Georgia Voters Alliance v. Raffensperger*.

II. FACTS

A. The 2020 General Election[2]

On November 3, 2020, Georgia voters chose former Vice President and now President-Elect Biden as the United States' next President. The state's certified vote count confirms that President-Elect Biden defeated Donald J. Trump by 12,670 votes in the state of Georgia.[3] As a result, the Biden Electors were certified by the Governor and appointed to the Electoral College. Attorney's Affidavit of Adam M. Sparks, Ex. 1.

On November 11, following unsubstantiated complaints from Republican leaders about the integrity of the election, the Secretary announced that a statewide hand recount of the presidential election would take place.[4] *See* Mot. to Intervene, Exs. 2, 3. The hand recount began on November 12, and it concluded without issue on November 18. No significant irregularities in the original counts or the recount were reported. On November 20, the Secretary certified the results of the election, confirming the Biden Electors' victory and certifying that the "consolidated returns for state and federal offices are a true and correct tabulation of the certified returns received by this

[2] The Court may take judicial notice of these election-related facts from the public record without converting this motion into a motion for summary judgment because they are "not subject to reasonable dispute"; that is, they all are either "[g]enerally known within the territorial jurisdiction of the court" or "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." O.C.G.A. § 24-2-201(b); *see also Hunter v. Will*, 352 Ga. App. 479, 484 (2019) ("[A] trial court may take judicial notice of a fact which is not subject to reasonable dispute . . . ."). "Judicial notice may be taken at any stage of the proceeding." *Id.* (quoting OCGA § 24-2-201(f)).

[3] Kate Brumback, *Georgia officials certify election results showing Biden win,* AP (Nov. 20, 2020), https://apnews.com/article/georgia-certify-election-joe-biden-ea8f867d740f3d7d42d0a55c1aef9e69.

[4] Tal Axelrod, *Georgia secretary of state announces hand recount of presidential race,* The Hill (Nov. 11, 2020), https://thehill.com/homenews/campaign/525476-georgia-secretary-of-state-announces-hand-recount.

office from each county."[5] The Governor then issued final certificates of ascertainment declaring that the Biden Electors "were appointed Electors of President and Vice President of the United States for the State of Georgia . . . ." Sparks Aff., Ex. 1.

The next day—despite a comprehensive hand recount of every single ballot having just occurred—President Trump's reelection campaign issued a "Recount Demand" to the Secretary, "pursuant to O.C.G.A. § 21-2-495 (c) and State Board Rule 183-1-15.03," in which it sought a second recount of the presidential election results, this time to be conducted by machine. Sparks Aff., Ex. 4. The machine recount, which will utilize ballot scanners, will be the *third* time votes are counted in the presidential race. It is already underway and must be completed by December 2.[6]

B. The Petition and its Factual Predicates

On November 25, Wood filed this Petition challenging the results of the presidential election under O.C.G.A. §§ 21-2-520 *et seq*., Georgia's election-contest statute, and naming the Secretary and Governor as Defendants. The Petition—which, contrary to the Georgia contest statute, was not verified, *id.* § 21-2-524(d)—offers a conspiracy theory that a 501(c)(3) organization's grants to assist localities in conducting safe elections is actually a "'shadow government' operation" through which a social media CEO allegedly dictated the outcome of the election, Pet. at 4; an unsupported "estimated number of illegal votes counted," based only on

[5] Michelle Ye Hee Lee, *Georgia certifies election results — the first to do so among states where Trump is mounting legal challenges*, Wash. Post (Nov. 20, 2020), https://www.washingtonpost.com/politics/georgia-certifies-election-results--the-first-to-do-so-among-states-where-trump-is-mounting-legal-challenges/2020/11/20/66c77530-2b4b-11eb-9b14-ad872157ebc9_story.html.

[6] Kate Brumback, *Georgia counties set to start recount requested by Trump*, AP (Nov. 23, 2020), https://apnews.com/article/election-2020-joe-biden-donald-trump-georgia-state-elections-352e729f14a243b98fdefda94ff164ce.

"statistical extrapolation," *id*. at 3, ¶ 70; and conclusory, baseless allegations that election officials failed to follow state and federal law. *See generally id*. He brings his specific claims under Georgia's due process and equal protection clauses as well as the Elections and Electors Clauses of the U.S. Constitution. *See* Pet. ¶¶ 79-81. These claims are based on the four factual predicates, which Wood claims warrant the wholesale nullification of Georgia's presidential election results as well as the selection of a new slate of presidential electors by the General Assembly or, alternatively, holding a second presidential election. Pet. at 26-27.

1. Grants from the Center for Tech and Civic Life

Wood alleges that Fulton County and approximately twelve other Georgia counties entered into agreements with the Center for Tech and Civil Life ("CTCL") to receive monetary grants to administer the 2020 presidential election. Pet. ¶¶ 29, 33-34. He asserts, in pertinent part, that (1) these grants were only made available to certain counties," (2) they were only provided if "the local municipality agree[d] to run the election according to CTCL preferences," *id.* ¶ 37, and that (3) counties that received CTCL grants had more drop-boxes per square mile than did the rest of the state, *id.* at ¶ 43. From these allegations Wood concludes that "numerous electors in the State of Georgia were not able to benefit from CTCL's private federal election grants making it easier to vote in-person and absentee." *Id.* ¶ 38.

This is not the first time that similar claims have been brought concerning CTCL grants. In fact, it is not even the first time that *Wood himself* has brought litigation making these allegations. In each prior case, courts have quickly rejected the arguments that Wood seeks to make again here. *See Ga. Voters All.*, 2020 WL 6589655, at *1-2. In fact, the court in *Georgia Voters Alliance* drew several conclusions that effectively foreclosed Wood's claims, including that, "Georgia law leaves it to counties to fund election expenditures that exceed federal and state funds" and, "[b]y applying for and accepting the CTCL grant, [a c]ounty is merely exercising its

prerogative of locating funding." *Id.* at *3. After losing on his motion for temporary restraining order, Wood voluntarily dismissed his case. Notice of Voluntary Dismissal, *Ga. Voter All.*, No. 1:20-cv-04198, Doc. 19 (Nov. 4, 2020). As least seven other such cases have been brought across the country. None have succeeded.[7]

2. Settlement Agreement Regarding Absentee Voting

a. The Petition's Allegations

Wood also evokes as a basis for his contest a March 2020 settlement agreement (the "Settlement Agreement") entered into by the Secretary and the State Election Board (the "Board"), on the one hand, and the Democratic Party of Georgia, DSCC, and DCCC (collectively, the "Political Party Committees"), on the other. He asserts that the signature matching process resulting from the Agreement made it more difficult to reject absentee ballots, Pet. ¶ 56, and is out of line with Georgia's election code, *id.* ¶ 57. Much like Wood's failed CTCL case, his attack on the Settlement Agreement has also already been made in and rejected by another Georgia court. *See infra* Sections II.B.2.b, IV.A.

[7] *See Texas Voters All. v. Dall.as Cnty.*, No. 4:20-CV-00775, 2020 WL 6146248, at *4 (E.D. Tex. Oct. 20, 2020) (denying motion for preliminary injunctive relief based on, among other things, failure to establish both standing and likelihood of success on the merits); *see also id.* (E.D. Tex. Nov. 17, 2020) (subsequently voluntarily dismissing case); *Pa. Voters All. v. Ctr. Cnty.*, No. 4:20-CV-01761, 2020 WL 6158309, at *1 (M.D. Pa. Oct. 21, 2020), *aff'd* (3d. Cir. Nov. 23, 2020); *Election Integrity Fund v. City of Lansing*, No. 1:20-CV-950, 2020 WL 6605987, at *3 (W.D. Mich. Oct. 19, 2020) (denying preliminary injunctive relief based on, among other things, failure to establish standing); *Iowa Voter All. v. Black Hawk Cnty.*, No. C20-2078-LTS, 2020 WL 6151559, at *5 (N.D. Iowa Oct. 20, 2020) (denying motion for preliminary injunctive relief based on failure to establish likelihood of success on the merits); *Minn. Voters All. v. City of Minneapolis*, No. CV 20-2049 (MJD/TNL), 2020 WL 6119937, at *8 (D. Minn. Oct. 16, 2020) (denying motion for preliminary injunctive relief based on failure to establish standing); *S.C. Voter's All. v. Charleston Cnty.*, No. 2:20-3710-RMG (D.S.C. Oct. 26, 2020) (denying motion for preliminary injunctive relief based on, among other things, failure to establish likelihood of success on the merits); *see also id.* (D.S.C. Nov. 17, 2020 subsequently voluntarily dismissing case).

b. The Underlying Settlement Agreement

The Settlement Agreement resolved a case the Political Party Committees filed in November 2019 challenging Georgia's signature-matching and cure procedures under the U.S. Constitution. The Political Party Committees asserted that Georgia's arbitrary and unreliable procedures for comparing absentee ballot signatures and rejecting absentee ballots unconstitutionally deprived Georgians of their right to vote. Compl., *Democratic Party of Ga., Inc. v. Raffensperger*, No. 1:19-cv-5028, Doc. 1 (N.D. Ga. Nov. 6, 2019).

On March 6, 2020, the parties entered into the Settlement Agreement, which was publicly docketed that same day. As memorialized therein, the Secretary and Board maintained that Georgia's laws and processes were constitutional. Am. Compl. Ex. A, *Wood v. Raffensperger.*, No. 1:20-cv-04651, Doc. 5-1 at 1-2 (N.D. Ga. Nov. 17, 2020). They did not agree to modify Georgia's elections statutes. *See id*. Rather, the Board implemented its revised absentee ballot cure process by way of State Election Board ("S.E.B.") Rule 183-1-14-.13. *See* O.C.G.A. § 50-13-4. Under this rule, which was adopted after multiple rounds of formal rulemaking and public comment, counties are to contact voters about rejected mail ballots within three business days after receipt of the absentee ballot and within one business day for any ballots rejected within eleven days of election day. *See* Ga. Comp. R. & Regs. 183-1-14-.13 (Amended March 22, 2020); Ga. Comp. R. & Regs. 183-1-14-.13 (May 21, 2020); Ga. Comp. R. & Regs. 183-1-14-.13 (Aug. 31, 2020).

On May 1, the Secretary issued an Official Election Bulletin ("OEB") addressing the signature matching procedures, providing that after an election official makes an initial determination that the signature on the absentee ballot envelope does not match the signature on file for the voter pursuant to O.C.G.A. §21-2-386(a)(1)(B) and (C), two additional registrars, deputy registrars, or absentee ballot clerks should also review the envelope. *Wood*, 2020 WL

6817513 at *3. When two officials agree the signature does not match, the ballot is rejected. *Id.* These changes were widely publicized and in place for several subsequent elections, including the June 9 primary, the August 11 primary runoff, and the November 3 general elections. Ballots were rejected for signature mismatches in all elections; indeed, "the percentage of absentee ballots rejected for missing or mismatched information and signature is the exact same for the 2018 [general] election and the [2020 g]eneral [e]lection." *Wood*, 2020 WL 6817513 at *10. Notably, just weeks ago the Settlement Agreement was challenged on virtually the same grounds in federal court. *Wood*, 2020 WL 6817513 at *1-2. The court in that case thoroughly rebuked the plaintiff's claims, concluding:

> Wood seeks an extraordinary remedy: to prevent Georgia's certification of the votes cast in the General Election, after millions of people had lawfully cast their ballots. To interfere with the result of an election that has already concluded would be unprecedented and harm the public in countless ways. Granting injunctive relief here would breed confusion, undermine the public's trust in the election, and potentially disenfranchise of over one million Georgia voters. Viewed in comparison to the lack of any demonstrable harm to Wood, this Court finds no basis in fact or in law to grant him the relief he seeks.

Id. at 13 (citations omitted).

3. Enforcement of Residency Requirements and Prohibition on Double Voting

The Petition's third and fourth premises are that Georgia's election officials did not enforce state law residency requirements on voters who changed addresses before the November 3, 2020 election, and that Georgia's election officials did not enforce state law against double voting. But the Petition does not allege any specific facts regarding either of these alleged failures, *see* Pet. ¶¶ 62-64 (residency requirements); ¶¶ 65-67 (double-voting).

III. LEGAL STANDARD

An election contest "vests in trial courts broad authority to manage the proceeding" to "balance[] citizens' franchise against the need to finalize election results, which, in turn, facilitates

the orderly and peaceful transition of power that is a hallmark of our government." *Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193, 194 (2019). Under Georgia law, an action can be dismissed because the litigant failed to state a claim upon which relief can be granted. O.C.G.A. § 9-11-12(b). Intervenors respectfully request that the Court grant their motion to dismiss Wood's petition. It is barred by laches. It falls outside the scope of Georgia's election contest statute. And it fails to state a claim upon which relief can be granted and is not well-grounded in fact or warranted by existing law.

IV. ARGUMENT

A. Wood's Petition is barred by laches.

The Petition is barred by the equitable doctrines of laches. Laches may bar a claim when time has lapsed such that it would be inequitable to permit the claim against the defendant to be enforced. *See Waller v. Golden*, 288 Ga. 595, 597 (2011). Under Georgia law, laches may bar a complaint when (1) the lapse of time and (2) the claimant's neglect in asserting rights (3) prejudiced the adverse party. *Id.* All three elements are satisfied here.

Wood's delay in challenging the CTCL grants and Settlement Agreement until after the presidential election are patently unreasonable. Wood challenges the validity of the presidential election and asks this Court to change the rules that applied to it after it has already been conducted. But the State expended substantial resources in ensuring that the election took place in a secure and lawful manner. Untold numbers of Georgians devoted countless hours, at significant personal risk during a pandemic, to prepare for and hold the election, and then to tally the vote not once, not twice, but *three times*. And Georgia voters relied upon the election procedures in casting their ballots as directed. Wood now asks this Court to undo all of those efforts and abrogate the fundamental right to vote for all Georgians based on constitutional challenges to the CTCL grants and the Settlement Agreement, both of which Wood has known about for months.

Wood himself filed a case in federal district court right before the election and sought a temporary restraining order to prevent one Georgia county from using its CTCL grant money in the November election. The district court denied Wood's motion, finding that "Georgia law leaves it to counties to fund election expenditures that exceed federal and state funds" and that "[b]y applying for and accepting the CTCL grant, Fulton County is merely exercising its prerogative of locating funding. Plaintiffs have not clearly shown that Fulton County's chosen source of funding undermines Georgia's power to set the time, place, and manner of elections." *Ga. Voter All.*, 2020 WL 6589655, at *3. Wood could have continued to litigate this claim, but instead he dismissed. *See supra* 6. After waiting more than two weeks—through the pendency of *two* recounts—Wood now seeks to bring the same challenge again, wrapped up in a package that would disenfranchise millions of Georgia voters if granted.

Wood was also certainly aware of the Settlement Agreement before the election. That Agreement was entered into six months before election day. In a post-election constitutional challenge to the Settlement Agreement that another litigant brought in federal court, the judge concluded that identical claims about the Settlement Agreement were barred by laches because the plaintiff "could have, and should have, filed his constitutional challenge much sooner than he did, and certainly not two weeks *after* the General Election." *Wood*, 2020 WL 6817513 at *7. This conclusion is, of course, equally applicable to Wood's challenge here.

Nor can there be serious doubt that Wood's unjustifiable delay has prejudiced not only elections officials, but millions of Georgia voters, who dutifully cast their votes according to the rules and practices that Wood could have challenged prior to the election. Indeed, courts regularly find that even pre-election challenges that are brought too close to an election are barred. Here, Wood waited until the election and then some. This Court should find that laches firmly bars this

action. *See, e.g.*, *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) ("In the context of elections … any claim against a state electoral procedure must be expressed expeditiously" because, "[a]s time passes, the state's interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made."); *see also Clark v. Reddick*, 791 N.W.2d 292, 294-96 (Minn. 2010) (declining to hear ballot challenge when petitioner delayed filing until 15 days before absentee ballots were to be made available); *Knox v. Milwaukee Cty. Bd. of Election Comm'rs*, 581 F. Supp. 399, 402 (E.D. Wis. 1984) (denying preliminary injunction where complaint was filed seven weeks before election).

That these claims are raised in the context of a contest does not alter the result. Typically, an election contest is brought to challenge some alleged error or impropriety in the election that could not have been reasonably predicted before the election. Here, by contrast, the bases of Wood's contest—CTCL grants to some Georgia counties and the Settlement Agreement regarding absentee voting—were known by Wood well before the election. By the time Wood filed this action, the presidential election had been over for three weeks, and more than 5 million Georgians had voted. Numerous courts have likewise denied extraordinary relief in election-related cases due to laches or similar considerations.[8] As one court explained, "[a]s time passes, the state's interest

[8] *See, e.g.*, *Clark v. Reddick*, 791 N.W.2d 292, 294-296 (Minn. 2010); *see also Nader v. Keith*, 385 F.3d 729, 736 (7th Cir. 2004) ("It would be inequitable to order preliminary relief in a suit filed so gratuitously late in the campaign season."); *Fulani*, 917 F.2d at 1031 (denying relief where plaintiffs' delay risked "interfer[ing] with the rights of other Indiana citizens, in particular the absentee voters"); *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) (laches barred claims where candidate waited two weeks to file suit and preliminary election preparations were complete); *McCarthy v. Briscoe*, 539 F.2d 1353, 1354-1355 (5th Cir. 1976) (denying emergency injunctive relief where election would be disrupted by lawsuit filed in July seeking ballot access in November election); *Navarro v. Neal*, 904 F. Supp. 2d 812, 816 (N.D. Ill. 2012) ("By waiting so long to bring this action, plaintiffs 'created a situation in which any remedial order would throw the state's preparations for the election into turmoil.'"), *aff'd*, 716 F.3d 425 (7th Cir. 2013); *State ex rel. Schwartz v. Brown*, 197 N.E.2d 801 (Ohio 1964) (dismissing mandamus complaint to place candidate on ballot after ballot form was certified).

in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made, and the candidate's claim to be a serious candidate who has received a serious injury becomes less credible by his having slept on his rights." *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980). That principle applies with even greater force here, where the election is not merely imminent, but over.

B. Georgia law does not permit a contest for the election of presidential electors.

Presidents are not directly elected by Georgia voters; rather, Georgia's electorate selects presidential electors who then vote for presidential candidates on behalf of the state at the Electoral College. Georgia's Election Code states, "[a]t the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as *electors of President and Vice President* of the United States . . . ." O.C.G.A. § 21-2-10 (emphasis added). Wood purports to contest the "result of the November 3, 2020 general election for President and Vice President," but no such election exists. Rather, "[w]hen *presidential electors are to be elected*, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President." O.C.G.A. § 21-2-379.5(e) (emphasis added). The Georgia Supreme Court has confirmed that Georgia presidential elections are actually "election[s] for presidential electors." *Rose v. State*, 107 Ga. 697 (1899); *Franklin v. Harper*, 205 Ga. 779, 785 (1949) (describing an "election . . . for presidential electors"); *Moore v. Smith*, 140 Ga. 854 (1913) (same). The U.S. Supreme Court reiterated this understanding in a decision issued earlier this year. *See Chiafalo v. Washington*, 140 S. Ct. 2316, 2319 (2020) ("[M]illions of Americans cast a ballot for a presidential candidate. Their votes, though, actually go toward selecting members of the Electoral College, whom each State appoints based on the popular returns. Those few 'electors' then choose the President.").

Georgia's election contest statutes only apply to "federal, state, county, or municipal office[s]." *See* O.C.G.A. § 21-2-521. The Petition should be dismissed outright because Wood does not—and cannot—show that presidential electors fall into any of these categories. A presidential elector is obviously not a municipal or county officer, as they serve no local role and are selected on a statewide basis. Further, federal presidential electors are not state officers—they are appointed pursuant to and act pursuant to the U.S. Constitution. *See* U.S. Const. art. II, § 1, cl. 2 ("Each State shall appoint … a Number of Electors,"); *see also id.* amend. XII; 3 U.S.C. § 3 (setting forth the number of Electors by state). Rather than serving as state officers, the U.S. Supreme Court has found that "[t]he presidential electors exercise a federal function in balloting for President and Vice-President . . . ." *Ray v. Blair*, 343 U.S. 214, 224 (1952). The Supreme Court went on to clarify that electors are *also* not federal officers. *See id.* ("The presidential electors . . . are not federal officers or agents . . . .").

Various provisions of state law fortify the conclusion that a presidential elector in Georgia is neither a state nor federal office. For example, O.C.G.A. § 21-2-153, which describes the qualifications of candidates in state primaries, has one subsection that pertains to "[*a*]*ll* qualifying for federal and state offices" and a separate subjection that addresses "[*a*]*ll* qualifying for the office of presidential elector . . . ." Similarly, O.C.G.A. § 21-2-132, which pertains to filing a notice of candidacy, provides one set of procedures for "[e]ach elector for President or Vice President of the United States" and a separate procedure for "[e]ach candidate for United States Senate, United States House of Representatives, or state office." Presidential electors cannot be state or federal officers, otherwise language that separates *all* electors from *all* federal and state officers would be meaningless. "[I]t is well established that a statute 'should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part.'" *Premier Health Care Invs.,*

LLC v. UHS of Anchor, L.P., No. S19G1491, 2020 WL 5883325, at *9 (Ga. Oct. 5, 2020) (quoting *Hall Cnty. Bd. of Tax Assessors v. Westrec Props., Inc.*, 303 Ga. 69, 77 (2018)).

Election contests under O.C.G.A. § 21-2-521 are limited to elections for federal, state, county, or municipal officers, but electors are none of these. This contest must be dismissed.

C. The Petition fails to state a claim upon which relief can be granted.

Even if Wood's Petition could be brought under O.C.G.A. § 21-2-521 (and for the reasons discussed above, it cannot), it must independently be dismissed because it fails to state claim upon which relief can be granted. Wood's entire contest is based on the premise that the presidential election is in doubt because Georgia election officials allegedly violated the Georgia Constitution's due-process and equal-protection clauses and the U.S. Constitution's Elections and Electors clauses. But none of the factual predicates underlying these claims give way to the alleged constitutional violations supporting Woods contest.[9]

1. The Petition fails to state a due process claim.

None of Wood's allegations support even the inference that his (or any other Georgia voter's) due process rights were violated in the 2020 general election. Georgia's due-process clause prohibits the state from depriving any person of life, liberty, or property without due process of law. *Atlanta City Sch. Dist. v. Dowling*, 266 Ga. 217, 218 (1996) (citing Ga. Const., Art. I, Sec. I, Par. I). To state a due process claim, a litigant must show that they were deprived of a liberty or

[9] To the extent that Wood would point to the "evidence" submitted with his position for support for any of his factual predicates, all Petitioner's exhibits are unsworn declarations or other reports and as such are not competent evidence under Georgia law. *See, e.g.*, Davis & Shulman's Ga. Prac. & Proc. Sec. 23:18 (2020-2021 ed.) (citing inter alia *McPherson v. McPherson*, 238 Ga. 271, 272(1), 232 S.E.2d 552 (1977) (noting requirement that affidavits in support of dispositive motion be sworn was a codification of common law requirement of same); *Sambor v. Kelley*, 271 Ga. 133, 134(1), 518 S.E.2d 120 (1999) ("Such document does not constitute a valid affidavit and has no probative value, because it was not sworn to before a notary public.").

property interest without notice or the opportunity for a hearing. *See Dansby v. Dansby*, 222 Ga. 118, 120 (1966); *see also Wood*, 2020 WL 6817513 at *11 ("The party invoking the Due Process Clause's procedural protections bears the 'burden . . . of establishing a cognizable liberty or property interest.'" (quoting *Richardson v. Tex. Sec'y of State*, 978 F.3d 220, 229 (5th Cir. 2020))). None of these requirements are alleged here.

First, Georgia counties' receipt of CTCL grants does not give rise to a due-process violation and the Petition thoroughly fails to adduce facts that would support such a conclusion, even if the Petition's factual allegations are taken as true for the purposes of this motion to dismiss. Indeed, nothing in the Petition even attempts to explain how the CTCL grants deprived Wood, or any other voter for that matter, of a cognizable liberty or property interest, or inflicted any injury at all. *See* Pet. ¶¶ 26-43. Rather, the Petition alleges that the grants were "to be used exclusively for the public purpose of planning safe and secure election administration," *id.* ¶ 30, increasing election staffing, *id.* ¶ 31, encouraging absentee voting during a national health crisis, *id.* ¶ 36, making elections safer, *id.*, engaging historically disenfranchised populations, *id.*, supporting voters with disabilities, *id.*, improving access for displaced voters, *id.*, and "install[ing] additional drop boxes in areas that would make it easier for voters to cast their absentee ballots," *id.* ¶ 40. It is unclear how improvements in election administration and the facilitating of voting could deprive someone of a right. And neither Wood nor any other voter has a valid liberty interest in discouraging lawful voters from voting. Accordingly, the CTCL grants did not deprive any Georgian of due process and cannot sustain Wood's due process claim.

Second, neither the Settlement Agreement nor the resulting signature matching procedures can support a due process claim. In fact, quite the opposite is true. The Petition alleges that the additional protections for absentee voters agreed upon in the Settlement Agreement— "makes it

difficult to reject ballots." *Id.* at 56. Thus, if anything, on the face of the Petition voters are not deprived of any liberty interest; rather their liberty interest is far more likely to be preserved as their votes are more likely to be counted. To be sure, Wood asserts that the process of reviewing signatures "creates delay and a cumbersome, unnecessary and expensive bureaucratic protocol to be followed," *id*., but he has not actually alleged that that process *deprived* anyone of anything. And as for Wood's allegation that the Settlement Agreement's procedure "makes it difficult to reject ballots," neither Wood nor any other voter has a liberty interest in rejecting lawful ballots. Thus, here, too, the Petition fails to state a due process claim.

Third, Wood's contentions that election officials failed to enforce voter residency requirements and the prohibition on double voting do not state a due-process claim. The seven lines that the Petition dedicates to each contention are devoid of specific facts. *See* Pet. ¶¶ 62-67. And merely making the conclusory allegations that "Georgia election officials had residency information to verify that an actual person was voting according to their residence" and "violated Georgia law in not applying this change of address information to enforce residency requirements," *id.* ¶¶ 63-64, that "Georgia election officials have access to information to prevent double voting" and that they "violated Georgia law in not applying this information to enforce Georgia's prohibition on double voting," *id.* ¶¶ 66-67, are certainly not enough. *See, e.g.*, *Brown v. Wetherington*, 250 Ga. 682, 685 (1983) ("[Appellants] argue that appellees' petition contained only conclusory allegations which were insufficient to put them on notice of the specific charges against them, and that the trial court erred in denying their motion to dismiss on this ground. We agree.").

Because the Petition fails to allege specific facts demonstrating the deprivation of a protected liberty or property interest, let alone that such a deprivation occurred without notice or a hearing, it does not state a claim of a due-process violation.

2. The Petition fails to state an equal protection claim.

The Petition also fails to state a claim that election officials violated voters' equal-protection rights under the Georgia Constitution. Georgia's equal-protection clause is "substantially equivalent" to the federal equal-protection clause, and provides a cause of action if the State treats the claimant differently than those similarly situated to the claimant. *Henry v. State*, 263 Ga. 417, 417, 418 (1993); *see also Am. Subcontractors Ass'n, Ga. Chapter, Inc. v. City of Atlanta*, 259 Ga. 14, 20 (1989) (relying on federal equal protection cases to analyze "equal protection under our state constitution"). However, unless the claimant is being treated differently in regard to a fundamental right or because of a suspect classification (such as race or nationality), the challenged state action will survive an equal-protection challenge if it "bears a rational relationship to a legitimate government interest." *Henry*, 263 Ga. at 418. None of Wood's allegations establish such unlawful treatment.

First, Georgia counties' receipt of grants from CTCL does not demonstrate an equal-protection violation. The Petition does not allege that, as a result of counties accepting CTCL grants, Wood or any other Georgia voter was treated differently because of a suspect classification. Neither does the Petition allege that any Georgia voter was treated differently than similarly situated voters and thereby deprived of a fundamental right. Certainly, the right to vote is fundamental, but nowhere in the Petition does Wood claim that any Georgians' right to vote was deprived or even burdened by certain counties' receipt of CTCL grants. Rather, the Petition simply claims that the CTCL grants were used by recipient Georgia counties to encourage all eligible

voters to vote, particularly in light of the COVID-19 pandemic's strain on the administration of the election. *See* Pet. ¶¶ 33-35.

To the extent that the Petition implies that CTCL itself discriminate by offering grants only to certain counties—a contention that the federal district court presiding over Wood's first case rejected, *see Ga. Voter All.*, 2020 WL 6589655 at *1 ("Any jurisdiction is eligible to apply that is 'responsible for administering election activities covered by the grant.'")—that does not amount to an equal protection claim. Only a state actor is beholden to the equal protection clause. And, more fundamentally, there are no allegations in the Petition supporting the inference that the counties that did not receive grants even applied for them, much less needed them. If anything, the only inference that can be drawn from the Petition is that larger counties—like Fulton, Cobb, Gwinnett, and Dekalb, *see* Pet. ¶¶ 39-43—with a larger share of voters sought and received assistance ostensibly placing them on equal footing with smaller counties that did not need such assistance.[10] Providing funding to the residents of one county to promote the exercise of their right to votes does not impose an injury on out-of-county residents who do not need such benefits in the first place.

For largely the same reasons, the Petition's allegation that CTCL funding was used to place more drop boxes in heavily populated counties does not demonstrate an equal protection-violation. *See* Pet. ¶¶ 39-43. Nowhere in the Petition does Wood claim that any Georgians' right to vote was deprived or even burdened by certain counties' use of drop boxes. Rather, he asserts the opposite, stating that "Georgia counties utilized CTCL funding to install additional drop boxes in areas that

[10] According to the U.S. Census, Fulton (population of 1,063,937), Gwinnett (936,250), Cobb (760,141), and DeKalb (759,297) are the four most populous counties in Georgia. The election administration needs of Fulton County, with over a million residents, are obviously different from those of a county like Taliaferro, which has a population of 1,537.

would make it easier for voters to cast their absentee ballot." *Id.* ¶ 41. Critically, Wood fails to allege or demonstrate that less populated counties with fewer drop boxes needed more. The Petition merely demonstrates that Georgia's most populous counties had more drop boxes than the state's less populous counties; this is hardly surprising. Differing numbers of drop boxes does not amount to a disparate burden on voters.

Second, as a federal district court in Georgia recently concluded, the Settlement Agreement and resulting signature matching procedures does not establish an equal-protection violation because they applied "in a wholly uniform manner across the entire state." *Wood*, 2020 WL 6817513 at *9. The Petition concedes this point. *See* Pet. ¶ 55 ("[T]he Settlement Agreement overrides the clear statutory authorities granted to County Officials individually and forces them to form a committee of three (3) if any one official believes that an absentee ballot is a defective absentee ballots . . . ."). And it does not allege that the Settlement Agreement resulted in any voter being denied the right to vote, let alone denied that right while it was exercised by those similarly situated. *See id.* ¶¶ 44-61; *see also Wood*, 2020 WL 6817513 at *8-10.

Third, Wood's contention that election officials failed to enforce voter residency requirements and, *fourth*, Wood's contention that election officials failed to enforce the prohibition on double voting do not state an equal-protection claim for the same reason they do not state a due-process claim: the Petition includes no specific facts and only conclusory statements to support their theories. *See* Pet. ¶¶ 62-67; *see also, e.g.*, *Brown*, 250 Ga. at 685.

While not explicit in Wood's Petition, to the extent that he is asserting that he and other Georgia voters suffered an equal protection violation because their votes were diluted by votes cast in counties that received CTCL grants, or as a result of the Settlement Agreement, or purported double or non-resident voters, this also fails to state an equal protection claim. Vote dilution is a

viable basis for equal protection claims only in certain contexts, such as when laws structurally devalue one community's votes over another's. *See, e.g.*, *Bognet v. Sec'y Commonwealth of Pa.*, No. 20-3214, 2020 WL 6686120, at *11 (3rd Cir. Nov. 13, 2020) ("[V]ote dilution under the Equal Protection Clause is concerned with votes being weighed differently."). But Wood's "conceptualization of vote dilution—state actors counting ballots in violation of state election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth Amendment." *Id.* at *11; *see also Wood*, 2020 WL 6817513, at *8–10 (concluding that vote-dilution injury is not "cognizable in the equal protection framework"). It is merely a string of unsubstantiated speculations in which Wood attempts to "transmute allegations that state officials violated state law into a claim that his vote was somehow weighted differently than others," a theory that has been "squarely rejected." *Id.*

Because the Petition fails to allege specific facts demonstrating that any Georgia voter was deprived of a fundamental right that was otherwise granted to those similarly situated, Wood fails to adequately state his claim that the presidential election results are in doubt because of an equal-protection violation.

3. The Petition fails to state a claim that election officials violated the Elections or Electors Clauses in the U.S. Constitution.

The Petition fails to state a claim under the Elections and Electors Clauses of the U.S. Constitution. The Elections and Electors Clauses vest authority in "the Legislature" of each state to regulate "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives," U.S. Const. art. I, § 4, cl. 1., and to direct the manner of selecting presidential electors, U.S. Const. art. II, § 1, cl. 2, respectively. The Supreme Court has held, however, that state legislatures can delegate this authority to state officials, like the Secretary. *See, e.g.*, *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 807 (2015) (noting that

Elections Clause does not preclude "the State's choice to include" state officials in lawmaking functions so long as such involvement is "in accordance with the method which the State has prescribed for legislative enactments") (quoting *Smiley v. Holm*, 285 U.S. 355, 367 (1932)); *Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018) ("The Supreme Court interprets the words 'the Legislature thereof,' as used in that clause, to mean the lawmaking processes of a state.") (quoting *Ariz. State Legislature*, 576 U.S. at 816). Accordingly, Georgia election officials' actions could only constitute plausible violations of the Elections and Electors clauses if such actions exceeded the authority granted to those officials by the Georgia General Assembly. None of the Petition's factual allegations demonstrate an election official acting in excess of their authority.

First, the receipt of CTCL grants does not violate the Elections and Electors Clauses, as the federal district court concluded in Wood's previous challenge. *See Ga. Voter All.*, 2020 WL 6589655 at *3 ("[T]he Elections Clause does not, on its own, provide Plaintiffs with a basis to sue [Georgia election officials] . . . . [and e]ven if the Elections Clause did provide a vehicle to sue, Plaintiffs are not likely to show that [Georgia election officials'] actions would violate the clause. . . . [because] acceptance of private funds, standing alone, does not impede Georgia's duty to prescribe the time, place, and manner of elections, and Plaintiffs cite no authority to the contrary."). The General Assembly delegated the local administration of election to county election officials, O.C.G.A. § 21-2-70, who are free to "exercis[e their] prerogative of locating funding" to carry out their duties. *See id.* The Petition's claim to the contrary has been uniformly rejected by courts around the country. *See supra* at II.B.1.b n.1.

Second, the Settlement Agreement and the resultant OEB issued by the Secretary on signature-matching processes for absentee voting do not violate the Elections and Electors Clauses.

As U.S. District Court Judge Grimberg recently concluded, the Secretary is the chief election official for the state pursuant to Georgia law, and the General Assembly has granted him the power and authority to manage Georgia's election system, including its absentee voting system. *See Wood*, 2020 WL 6817513 at *10 (citing O.C.G.A § 21-2-50(b)); *see also Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251 (N.D. Ga. 2019); Ga. Op. Att'y Gen. No. 2005-3 (Apr. 15, 2005) (recognizing the Secretary's authority to manage Georgia's election system). Additionally, the Secretary is the Chair of the Board, which is the governmental body responsible for uniform election practice in Georgia. O.C.G.A. § 21-2-31; *see also Curling v. Raffensperger*, 403 F. Supp. 3d 1311, 1345 (N.D. Ga. 2019) ("[T]he [] Board is charged with enforcing Georgia's election code under state law."). In both roles, the Secretary has significant statutory authority to train local election superintendents and registrars and to set election standards. *See New Ga. Project v. Raffensperger*, No. 1:20-CV-01986-ELR, 2020 WL 5200930 at *8 (N.D. Ga. Aug. 31, 2020). Thus, "[t]he Settlement Agreement is a manifestation of Secretary Raffensperger's statutorily granted authority. It does not override or rewrite state law. It simply adds an additional safeguard to ensure election security by having more than one individual review an absentee ballot's information and signature for accuracy before the ballot is rejected." *Wood*, 2020 WL 6817513 at *10.

The Secretary also exercised his rightful authority when, pursuant to the Settlement Agreement, he issued the OEB outlining procedures for the signature matching process. The OEB in question accords with O.C.G.A. §§ 21-2-31 and 21-2-300(a), which empower the Secretary—as the chief elections official and Board Chair—to obtain uniformity in the practices of local elections officials in administering Georgia's election law. *See* O.C.G.A. § 21-2-50(a), (b); *see also Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). The OEB expressly required all

counties to continue to verify absentee voter identity by comparing signatures as Georgia law requires. *See* Pet. ¶ 53. The Secretary's issuance of the OEB was entirely congruent with his delegated authority to obtain the uniform administration of elections in Georgia. "[I]f anything, [the Secretary's] actions in entering into the Settlement Agreement sought to achieve consistency among the county election officials in Georgia, which furthers Wood's stated goals of conducting '[f]ree, fair, and transparent public elections.'" *Wood*, 2020 WL 6817513, at *10.

And *third*, Wood's contention that election officials failed to enforce voter residency requirements and, *fourth*, Wood's contention that election officials failed to enforce the prohibition on double voting do not state claims under the Elections and Electors Clauses because they include no specific facts and only conclusory statements to support their theories. *See* Pet. ¶¶ 62-67; *see also, e.g.*, *Brown*, 250 Ga. at 685.

Notwithstanding the above, even if Wood were able to state a claim under the Electors and Elections Clauses, even in the context of an election contest he could not bring it as he does not have standing to raise this claim. Wood's Elections and Electors Clause claims "belong, if they belong to anyone, only to the [Georgia] General Assembly." *Bognet*, 2020 WL 6686120, at *7. Wood has no authority to assert the rights of the General Assembly.[11]

[11] To the extent Wood intends to raise any of his constitutional claims independently from his election contest, he has no standing to maintain them because he has not suffered an injury in fact. Federal case law is instructive here. *See Feminist Women's Health Ctr. v. Burgess*, 282 Ga. 433, 434 (2007) (collecting Georgia cases that look to federal law to resolve issues of standing). When the injury alleged "is that the law . . . has not been followed[,]" it is "the kind of undifferentiated, generalized grievance about the conduct of government" that is not an injury for standing purposes. *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1332-33 (11th Cir. 2007) (citing *Lance v. Coffman*, 549 U.S. 437 (2007). This is precisely the case here, where Wood provides no allegations demonstrating how he has been harmed; rather, his recurring grievance is that election authorities allegedly did not follow the law. *See* Pet. at Prayer for Relief (citing only "Georgia election officials' material violations of Georgia election law" as source of constitutional violation). Wood does not even purport to argue that *his* due process or equal protection rights were violated; rather,

Accordingly, Wood's Election and Elector Clause claims must be dismissed.

4. Even if the Petition stated a claim, the requested relief cannot be granted.

This Court is not empowered to grant the relief requested because the relief it seeks—a declaratory judgment "null[ifying]" the results of the presidential election, as well as an injunction that would prevent certification of the lawfully elected slate of presidential electors and require the Governor to certify a slate chosen by the Legislature, Pet. 26-27—would violate state and federal law including: (1) federal and state constitutional law regarding the selection of electors, (2) constitutional protection of the fundamental right to vote, (3) the Due Process Clause, and (3) the First Amendment. *See Glisson v. Glob. Sec. Servs., LLC*, 653 S.E.2d 85, 86 (2007) ("Abuse [of discretion] results if a trial judge awards injunctive relief . . . contrary to the law and equity.'"); *Attaway v. Republic Servs. of Ga., LLP*, 558 S.E.2d 846, 847 (2002) (same).

First, The U.S. Constitution empowers state legislatures to choose the "Manner" of appointing presidential electors, U.S. Const. art. II, § 1, cl. 2, pursuant to their lawmaking authority. Under that provision, the Georgia General Assembly has chosen to appoint electors according to popular vote, who are certified by the Governor through a certificate of ascertainment. *See* O.C.G.A § 21-2-499(b). Because the legislature has determined that the "Manner" of appointing presidential electors is by popular vote on election day, the U.S. Constitution's Electors Clause requires that the presidential election be conducted in accordance with that chosen "Manner." *See Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam) ("When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed

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he asserts that election officials "violated *the voters'*" rights generally. *See id*; *see Wood*, 2020 WL 6817513, at *4-6 (finding that individual Georgia voter lacked standing to challenge results of 2020 election under the Elections Clause, Electors Clause, Equal Protection Clause, and Due Process Clause based on a "generalized grievance regarding a state government's failure to properly follow" the law).

is fundamental."). Neither Wood nor this Court can upend this process by replacing the State's duly selected "Manner" of choosing electors with a different one.

Congress has also provided that electors "shall be appointed in each State, on the Tuesday next after the first Monday in November, in every fourth year," *i.e.*, on Election Day. 3 U.S.C. § 1. Georgia held its election on election day. But granting Wood's relief now would violate that directive, as Georgia's electors would be chosen *after* election day.

Second, the relief Wood seeks would also violate Georgians' fundamental right to vote under the U.S. and Georgia constitutions under their equal protection, due process, and free speech and association clauses by disenfranchising millions of Georgians. *See, Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) ("There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted."); Ga. Const. art. II, § 1, ¶ II (right-to-vote provision in Georgia Constitution).

Similarly, substituting a different slate of electors for the Biden-Harris slate chosen by a majority of Georgia voters would violate the equal-protection rights of all such voters who chose the winning slate. Presidential electors are chosen by popular vote in Georgia, as they are in every other state. *See* O.C.G.A. § 21-2-10. Because Georgia has chosen to empower its citizens to choose its presidential electors at the ballot box, the equal-protection clause forbids "later arbitrary and disparate treatment . . . valu[ing] one person's vote over that of another." *Bush*, 531 U.S. at 104-05; *see also Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966) ("[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause."). Disregarding Georgians' popular vote would flout that principle, arbitrarily and disparately favoring Trump-Pence voters and violating the rights of Biden-Harris voters to

equal protection. There is no rational or non-arbitrary reason—let alone a compelling reason—to impose that disparate treatment.

Third, Wood's proposal that the Court invalidate millions of ballots lawfully cast under the rules in place at the time, with no opportunity to cure would violate voters' due process rights. Such an "application of [a] new . . . rule to nullify previously acceptable" election procedures, "without prior notice," is quintessentially "unfair and violate[s] due process." *Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1971); *see also, e.g.*, *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1054 (D.N.D. 2020) (holding plaintiffs likely to succeed on procedural due process claim because signature-matching requirement failed "to provide affected voters with notice and an opportunity to cure a signature discrepancy before a ballot is rejected"); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 222 (D.N.H. 2018) (granting summary judgment on procedural due process claim because signature-matching requirement was not accompanied by notice or opportunity to cure); *cf. PHH Corp. v. CFPB*, 839 F.3d 1, 48 (D.C. Cir. 2016) (Kavanaugh, J.) (explaining that government may not "officially and expressly" tell citizens that they are "legally allowed to do something," only later to tell them "just kidding"), *rev'd on other grounds*, 881 F.3d 75 (2018) (en banc).

And it is beyond question that invalidating ballots after the election because of election officials' alleged errors would be fundamentally unfair, infringing affected voters' right to substantive due process. *See, e.g.*, *Holton v. Hollingsworth*, 270 Ga. 591, 592-93 (1999) (holding that voter cannot be disenfranchised because of mistake made by election officer); *Malone v. Tison*, 248 Ga. 209, 214 (1981) (same); *Roe v. Alabama*, 43 F.3d 574, 580-81 (11th Cir. 1995) ("If . . . the election process itself reaches the point of patent and fundamental unfairness, a violation of

the due process clause may be indicated." (internal quotation marks omitted)); *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978) (same).

Finally, invalidating Georgians' votes based on Wood's post-election legal challenges would violate voters' First Amendment rights. The U.S. Supreme Court has recognized individuals' right "to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). The Court has also held that "limiting the choices available to voters . . . impairs the voters' ability to express their political preferences." *Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). Here, granting the requested relief would result in Georgians' votes being not only disfavored, but rendered "null" and "void." Pet. at 26-27. This would ignore those voters' choices, severely burdening their First Amendment rights without any compelling or even rational justification. *See, e.g., Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (discussing the "right of qualified voters, regardless of their political persuasion, to cast their votes effectively"); *Dart v. Brown*, 717 F.2d 1491, 1504 (5th Cir. 1983) (noting First Amendment right "to cast a meaningful vote for a candidate of one's choice"); *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 180 (4th Cir. 1983) ("The Constitution protects the right of qualified citizens to vote and to have their votes counted as cast."). As the Eleventh Circuit noted in *Democratic Executive Committee of Florida v. Lee*, 915 F.3d 1312, 1321 (11th Cir. 2019), "it is a basic truth that even one disenfranchised voter—let alone several thousand—is too many." *Id.* (internal quotation marks omitted). Here, Wood seeks disfranchisement of *millions* of Georgia voters, a result far more concrete, severe, and intolerable than the result in *Lee*. The requested relief is untenable under the First Amendment.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss Wood's Petition for Election Contest with prejudice.

Dated: November 30, 2020.

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