No. 22O155

IN THE

Supreme Court of the United States

STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA, *et al.*,

Respondents.

On Motion for Leave to File a Bill of Complaint and Motion for Expedited Consideration and for Emergency Injunctive Relief or Stay

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF - WRIT OF CERTIORARI OF L. LIN WOOD AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Pursuant to Supreme Court Rule 37.2(b), L. Lin Wood, Jr. respectfully moves for leave to file the accompanying petition for writ of certiorari as his brief as *amici curiae.* Because of the emergency nature of this action, *Amici* has been unable to secure the consent of the parties.

Amici Curiae L. Lin Wood, Jr., is a voter and donor to the Republican party, and as such, has an interest in this case because it is especially important to uphold the rule of law when selecting the President and Vice President of the United States. "'In the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.'" *Bush v. Gore*, 531 U.S. 98 (2000) (Rehnquist, C.J., joined by Scalia and Thomas, JJ., concurring) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 794-95 (1983) (footnote and alteration omitted).

This brief would be helpful to the Court for several reasons. First, because the Constitution requires Congress to set a specific date for voting in a Presidential election, and because Congress has set that specific date, Defendants' attempts to allow mail-in voting for a long period of time prior to election day or without signature verification violates both Article II, § 1, cl. 4 of the Constitution and 3 U.S.C. § 1.

Second, this brief would be helpful because it addresses an identical issue raised by *Amici* in his previously filed Petition for Writ of Certiorari in this Court, namely, that the State's procedures for mail-in voters violates state election law - which in turn is violative of one or more of the federal requirements for elections (i.e.,

equal protection, due process, and the Electors Clause), which arise under federal law. As set forth in Plaintiffs' brief and complaint, the 2020 election suffered from significant and unconstitutional irregularities, and specifically in *Amici's* home State of Georgia.

Third, as set forth in *Amici's* Petition for Writ of Certiorari, non-legislative actors' purported amendments to Georgia's duly enacted election laws (similar to those of the Commonwealth of Pennsylvania), resulted in unconstitutional modifications to the legislative scheme in violation of *Amici's* Equal Protection rights by infringing on his fundamental right to vote.

In light of the overwhelming voting irregularities in the Defendant States and more particularly, in *Amici's* home State of Georgia, this Court should enjoin the use of unlawful election results without proper review and ratification of each of the Defendant States' legislatures.

Pursuant to this Court's order of April 15, 2020, *Amici Curiae* is hereby filing a single paper copy of this motion on 8 1/2 x 11 inch paper under Rule 33.2.

WHEREFORE, *Amici Curiae*, L. Lin Woods, Jr. respectfully request leave to file the attached brief/writ of certiorari of *Amici Curiae*.

Respectfully submitted December 10, 2020,

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INTEREST OF *AMICI CURIAE*[1]

Amici is L. Lin Wood, Jr., an individual residing in Fulton County, Georgia, and is a qualified, registered "elector" who possesses all of the qualifications for voting in the State of Georgia. *Amici* is also a donor to the Republican party and an attorney licensed to practice in the State of Georgia, as well as in numerous federal courts, including the Supreme Court of the United States. *Amici* has an interest in supporting the rule of law and that the Constitution be interpreted strictly as intended by its Framers, including its application in contentious election cases.

Amici is concerned that the executive branch officials in the Defendant states, which includes *Amici's* home State of Georgia, have violated the United States Constitution, Title 3 U.S.C. § 1, and the American system of fair and orderly elections.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

There are myriad reasons to grant Plaintiff's motion for leave to file a bill of complaint and its motion for a preliminary injunction and temporary restraining order or, alternatively, for a stay and administrative stay. This *amici* brief is filed in support of Plaintiffs' arguments. (See Attached hereto as Appendix A, *Amici Curiae* L. Lin Wood's Petition for Writ of Certiorari filed on December 7, 2020 at 10:15 p.m.).

The Constitution gives Congress the power to set a date for Presidential elections. Congress passed Title 3 U.S.C. § 1 pursuant to that power and chose a

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[1] Because of the emergency nature of this action, amici has been unable to secure the consent of the parties. Pursuant to Rule 37.6, no party or party's counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than amici curiae, or his counsel, contributed money that was intended to fund the preparation or submission of this brief.

specific date for Election Day. While there is no reason to believe that Congress intended to preempt a state's prerogative to allow mail-in or absentee voting under the traditional rules that existed at the time, such as being unable to vote in person because of military service, to be sure, Congress did not sanction, nor did it envision that non-legislative actors, such as a Secretary of State, simply by executive fiat, would be permitted to enact amendments to duly enacted election laws in the respective Defendant States, which have clearly resulted in unconstitutional modifications to the respective legislative schemes in each Defendant State.

ARGUMENT

As Plaintiff State of Texas has correctly observed, the United States Constitution, Article II, Section 1, reserves to the state legislatures the plenary power to set the manner of choosing electors for President and Vice President. Accordingly, Congress has enacted Title 3 U.S.C. § 1, which requires that the "electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President."

Consequently, from this constitutional provision, it is clear that the Constitution contemplates a set nationwide time for choosing Electors, that is, for voting for President and Vice President. Title 3 U.S.C. § 1 makes clear that Congress intended to fix a single day for this election to take place, and that this day should be uniform throughout the United States. It was neither the intent of the Framers nor the intent of Congress that state executive officials, acting without legislative authority, may implement advance voting schemes, or procedures that eliminate

signature verification for mail-in voters, and thus treat in-person voters differently, by requiring identification and signature verification. Moreover, it was neither the intent of the Framers nor Congress that non-legislative officials by executive fiat, would be authorized to enact modifications that would vary widely from one state to another, and/or even vary from county to county within a state.

The Framers of the Constitution in 1787 and those who adopted the Twelfth and Twentieth Amendments, as well as the Congress of 1948 that adopted Title 3 U.S.C. § 1, clearly contemplated a system of uniform dates for holding the Presidential election, assembling the Electors in their respective States to cast the votes, and opening the ballots of the Electors, however, Congress certainly did not intend to open the floodgates to allow persons to vote in a manner that varied dramatically from one state to another, or where in person voters were treated disparately from mail-in voters.

Pennsylvania's scheme of early voting, adopted by executive fiat rather than by an act of the Legislature or an amendment to the State Constitution, clearly violates both the spirit and the letter of the United States Constitution and Title 3 U.S.C. § 1. In *Kelly v. Commonwealth of Pennsylvania*, ___U.S.___ (2020), the trial court held that this executive usurpation of legislative power violated both Pennsylvania law and the Pennsylvania Constitution, but the Pennsylvania Supreme Court reversed on the basis of laches, without in any way disputing the trial judge's legal and constitutional analysis. But as Pennsylvania Supreme Court Chief Justice Saylor said in his dissent, "laches and prejudice can never be permitted to amend the Constitution." *Kelly v. Commonwealth*, No. MAP 2020(Pa. Nov. 28, 2020) (Saylor,

C.J., concurring and dissenting). *Amici* observes that it is anomalous to apply laches to a statute that is only about a year old, and to a voting system that was later implemented by executive usurpation, especially when the harm occurred only a few weeks ago and a pre-election challenge to the voting scheme likely would have been dismissed for lack of ripeness, or for lack of standing (i.e., an injury in fact that only occurred as a result of the election).

Similar usurpation occurred in *Amici's* home State of Georgia, in which the Secretary of State, Brad Raffensperger, unilaterally abrogated the Legislature's requirement concerning signatures and verification of absentee ballots and thereby set aside or "amended" state law. *See* Appendix A.

CONCLUSION

For the reasons stated above, and the reasons stated in *Amici Curiae's* Petition for Writ of Certiorari attached hereto at Appendix A, this Court should grant Plaintiffs' Motions. This relief will ensure that the election process is conducted in a manner consistent with the United States Constitution. Furthermore, it would promote public confidence in the results of the election.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been electronically filed with this Court via CM/ECF and was furnished to all counsel on December 10th, 2020:

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APPENDIX A

S. Ct. Case No. _____

11th Cir. Case No. 20-14418
N.D. Ga. Case No. 20-cv-04651-SDG

IN THE

SUPREME COURT OF THE UNITED STATES

L. LIN WOOD, JR.

Petitioner,

vs.

BRAD RAFFENSPERGER, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

On Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals.

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QUESTIONS PRESENTED FOR REVIEW

The Georgia Legislature has plenary authority to set the "Times, Places and Manner" of Federal Elections and has clearly set forth the procedures to be followed in verifying the identity of in-person voters as well as mail-in absentee ballot voters. The Georgia Secretary of State usurped that power by entering into a Settlement Agreement with the Democratic Party earlier this year and issuing an "Official Election Bulletin" that modified the Legislature's clear procedures for verifying the identity of mail-in voters. The effect of the Secretary of State's unauthorized procedure is to treat the class of voters who vote by mail different from the class of voters who vote in-person, like Petitioner. That procedure dilutes the votes of in-person voters by votes from persons whose identities are less likely to verified as required by the legislative scheme. The Secretary's unconstitutional modifications to the legislative scheme violated Petitioner's Equal Protection rights by infringing on his fundamental right to vote. The Eleventh Circuit has held that Petitioner does not have standing to challenge State action that dilutes his vote and infringes upon his constitutional right to Equal Protection. The questions presented are:

1. Whether the Petitioner/voter has standing to challenge state action based on the predicate act of vote dilution where the underlying wrong infringes upon a voter's right to vote.

2. Whether a weakening of State Legislature's signature verification procedures for mail-in voters violates Petitioner's right to Equal Protection as an in-person voter.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner is L. Lin Wood, Jr., individually, is a voter and donor to the Republican party. Petitioner was the Plaintiff at the trial court level. Petitioner is not a corporate entity.

Respondents are BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, REBECCA N. SULLIVAN, in her official capacity as Vice Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a Member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a Member of the Georgia State Election Board, and ANH LE, in her official capacity as a Member of the Georgia State Election Board, et al. The Respondents were the Defendants at the trial court level.

The intervenors at the trial court level and the Eleventh Circuit are the Democratic Party of Georgia, the DSCC, the DCCC, James Woodhall, Helen Butler, Melvin Ivey, the Georgia State Conference of the NAACP and the Georgia Collation for the People's Agenda.

List of Directly Related Proceedings

Wood vs. Raffensperger, et al., Case No. 1:20-cv-046451-SDG (N.D. Ga.) - opinion and order dated November 20, 2020.

Wood vs. Raffensperger, et al. Case No. 20-14418 (11th Cir.) - opinion and judgment dated December 5, 2020.

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INTRODUCTION

The 2020 presential election was run by the Georgia Secretary of State, who used a procedure regarding mail-in absentee voter identification that was different from and in conflict with those procedures promulgated by the Georgia Legislature. The Secretary's procedure treated the in-person voters different from the mail-in voters by loosening the standards for mail-in voters, as indicated by a sharp fall-off in ballots rejected for lack of signatures, oaths, or a signature mis-match. The Georgia Legislature has plenary power to set the "Times, Places and Manner" of the Federal elections and these changes wrought by the Secretary of State, together with other changes not currently the subject of this suit, were not authorized by any act of the Georgia Legislature.

The Petitioner has been injured by this change. His vote and the votes of all other in-person voters will be given less weight in comparison to mail-in voters in a manner that was not intended by the election framework adopted by the Georgia Legislature. During this election year, when mail-in balloting increased nearly seven times over the amount in the last general election, this dilution is particularly severe. The change by the Secretary denies the Petitioner and all in-person voters their rights under the scheme authorized under the Elections Clause in viola. U.S. CONST., Art. I, Sec. 4.

The Respondents, who effected the change in the legislative scheme, are complicit in this constitutional violation and are before the Court with unclean hands.

They now argue that they have rights to validate their change and that Petitioner has waited too long to bring a complaint against a process that has just now unfolded.

Petitioner did not suffer actionable harm until his vote was impaired during the election. It is an ongoing constitutional violation, and it will be repeated again on January 5, 2021 during the runoff election for the two Georgia U.S. Senate seats. The ongoing nature of the constitutional violation and the possibility that this unconstitutional scheme cannot be legislatively rectified before the January 5, 2021 election (which is already ongoing) renders false that any argument that this matter is moot.

Because of the fundamental nature of the right to vote, courts have recognized voter dilution standing for individuals who are part of an aggrieved group, political parties and political groups, candidates, and Electoral College Electors. However, in contravention of this Court's precedent, the Eleventh Circuit has ruled that the Petitioner lacks standing to challenge an unconstitutional change in the election scheme adopted by the State Legislature. Timing is critical and the State Legislature has not been convened by the Governor to consider this matter. Other parties that might have standing to bring this case have given notice, but the Secretary of State has certified the election results despite the challenges being brought. Time is of the essence.

There is urgency attached to this relief because the District Court and Court of Appeals' "handling of the important constitutional issue raised by this matter has needlessly created conditions that could lead to serious post-election problems." As

stated more fully below, the Georgia Secretary of State has issued a rule "that squarely alters an important statutory provision enacted by the [] legislature pursuant to its authority under the constitution of the United States to make rules governing the conduct of elections for Federal office." *See Republican Party of Pennsylvania v. Boockvar*, 2020 WL 6304626 *1 (October 28, 2020)(Alito, J.)(citations omitted).

Petitioner should be granted the relief sought below, namely, a declaration that the election results were defective and in need of the cure by the Secretary of State or the State Legislature; and that the use of the unconstitutional procedure be enjoined during the runoff election. Based on the current posture of the case, Petitioner is also requesting the decertification of the Presidential Election results so that the State Legislature can effect a constitutional remedy for the violation.

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

The Eleventh Circuit's Opinion of which Petitioner seeks review, and the Judgment thereon were entered and filed in that court's general docket on December 5, 2020.

This Court has jurisdiction over this Petition for Writ of Certiorari under 28 U.S.C. §1254(1), 28 U.S.C. §2101(c), and Supreme Court Rules 10, 12 and 13.

Any party may petition for Certiorari. Although the Court's review in this instance is discretionary, there are compelling reasons why this Petition should be granted. As stated more fully below, the Eleventh Circuit Court of Appeals has improperly denied vote dilution standing to a voter, the owner of the fundamental right, whose vote was diluted and whose right has been impaired by the State action at issue. That court decided this important federal constitutional question in a way that conflicts with relevant decisions of this Court. Additionally, and in the alternative, the Eleventh Circuit has entered a decision in conflict with other decisions of Circuit Courts of Appeal on the same important matter. Additionally, and in the alternative, an exercise of this Court's supervisory power is appropriate. *See* Supreme Court Rule 10.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The full text of the following constitutional provisions, statutes and the Secretary of State's unconstitutional procedures are attached as Appendix A to this Petition:

1. Article I, Section 4, Clause 1, of the United States Constitution (Elections Clause);
2. Amendment XIV, Section 1, United States Constitution (Equal Protection);
3. O.C.G.A, Section 21-2-386;
4. O.C.G.A., Section 21-2-417;
5. Georgia State Board of Elections, Official Election Bulletin, May 1, 2020.

CONCISE STATEMENT OF THE CASE

The Northern District of Georgia had jurisdiction over Petitioner's claim in the first instance pursuant to 28 U.S.C. §§1331, 1343 and 42 U.S.C. §1983.

Petitioner/Plaintiff, an individual residing in Fulton County, Georgia, is a qualified, registered "elector" who possesses all of the qualifications for voting in the State of Georgia. See O.C.G.A. §§ 21-2-2(7), 21-2-216(a); (*see also* Verified Am. Compl. for Decl. and Inj. Relief (APP. B, the "Complaint", at 8). Plaintiff sought declaratory relief and an emergency injunction from the district court below, among other things, halting the certification of Georgia's results for the November 3, 2020 presidential election because it was conducted in a "Manner" that differed from the election scheme established by the State Legislature and diminished the rights of the Petitioner's rights to Equal Protection. As a result of the Respondents/Defendants' violations of the United States Constitution and that election scheme, Plaintiff alleged below the Georgia's election tallies were created in an unconstitutional manner and must be cured in a constitutional manner.

On November 13, 2020, Plaintiff filed his original Verified Complaint for Declaratory and Injunctive Relief, which was subsequently amended. The named defendants include Defendant Brad Raffensperger, in his official capacity as Secretary of State of Georgia and as Chairperson of Georgia's State Election Board, as well as the other members of the State Election Board in their official capacities - Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board"). (*See* APP. B, Compl., at 9-10.) The Complaint alleges violations of the United States Constitution and the amendments thereto in regards

to the November 3, 2020 general election, as well as the "full hand recount" of all ballots cast in that election, to be completed by November 18, 2020 (the "Hand Recount"), with those same violations certain to occur again in the January 5, 2021 run-off election for Georgia's United States Senators. (See generally *id.*)

The Georgia Legislature established a clear and efficient process for handling absentee ballots, in particular for resolving questions as to the identity/signatures of mail-in voters. To the extent that there is any change in that process, that change must, under Article I, Section 4 of the Constitution, be prescribed only by the Georgia Legislature. *(See* APP. B Compl., at 17-18.)

Specifically, the unconstitutional procedure in this case involved the unlawful and improper processing of mail-in ballots. The Georgia Legislature set forth the manner for handling of signature/identification verification of mail-in votes by county registrars and clerks (the "County Officials"). O.C.G.A. §§ 21-2-386(a)(1)(B), 21-2-380.1. *(See* APP. B Compl., at 19.) Those individuals must follow a clear procedure for verifying signatures to verify the identity of mail-in voters in the manner prescribed by the Georgia Legislature:

> Upon receipt of each [absentee] ballot, a registrar or clerk ***shall*** write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk ***shall*** then compare the identifying information on the oath with the information on file in his or her office, ***shall*** compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and ***shall,*** if the information and signature appear to be valid and other identifying information appears to be correct, 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) (emphasis added); *(see* APP. B Compl., at 20). O.C.G.A. § 21-2-417 establishes an equivalent procedure for a poll worker to verify the identity of an in-person voter.

The Georgia Legislature also established a clear and efficient process to be used by a poll worker if he/she determines that an elector has failed to sign the oath on the outside envelope enclosing the mail-in absentee ballot or that the signature does not conform with the signature on file in the registrar's or clerk's office (a "defective absentee ballot"). *See* O.C.G.A. § 21-2-386(a)(1)(C); (APP. B Compl., at 22.) With respect to defective absentee ballots:

> *If the elector has failed to sign the oath, or if the signature does not appear to be valid,* or if the elector has failed to furnish required information *or information so furnished does not conform with that on file in the registrar's or clerk's office,* or if the elector is otherwise found disqualified to vote, the registrar or clerk *shall* write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk *shall* promptly *notify the elector of such rejection,* a copy of which notification *shall* be retained in the files of the board of registrars or absentee ballot clerk for at least one year.

O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added) *(see* APP. B Compl., at 23). The Georgia Legislature clearly contemplated the use of written notification by the county registrar or clerk in notifying the elector of the rejection. *(See* APP. B Compl., at 24.) This was the legislatively set *manner* for the elections for Federal office in Georgia.

In March 2020, Defendants, Secretary Raffensperger, and the State Election

Board, who administer the state elections (collectively the "Administrators") entered into a "Compromise and Settlement Agreement and Release" (the "Litigation Settlement") with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (the "Democrat Agencies"), *setting forth totally different standards to be followed a poll worker processing absentee ballots in Georgia.* (*See* APP. B Compl., 25-26.) See also *Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division, Doc. 56-1 (APP. C, 30-35).

Although Secretary Raffensperger is authorized to promulgate rules and regulations that are "conducive to the fair, legal, and orderly conduct of primaries and elections," all such rules and regulations must be "consistent with law." O.C.G.A. § 21-2-31(2); *(see* APP. B Compl., at 28).

Under the Litigation Settlement, the Administrators agreed to change the statutorily prescribed process of handling absentee ballots in a manner that was not consistent with the laws promulgated by the Georgia Legislature. *(See* APP. B Compl., at 28.) The Litigation Settlement provides that the Secretary of State would issue an "Official Election Bulletin" to County Officials overriding the prescribed statutory procedures. The unauthorized Litigation Settlement procedure, set forth below, is more cumbersome, and makes it much more difficult to follow legislative framework with respect to defective absentee ballots. *(See* APP. B, Compl., at 30-32.)

Under the Litigation Settlement, the following language added to the pressures and complexity of processing defective absentee ballots, making it less likely that they would be identified or, if identified, processed for rejection:

> County registrars and absentee ballot clerks *are required,* upon receipt of each mail-in absentee ballot, to compare the signature or make of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21- 2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot.
>
> ***If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match and of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under O.C.G.A. § 21-2-386(a)(1)(C).*** Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

(See APP. B Compl., paragraph 33; *see* Ex. A, Litigation Settlement, p. 3-4, paragraph 3, "Signature Match" (emphasis added).)

Petitioner filed suit in the United States District Court for the Northern District of Georgia arguing, among other things, that the Settlement Agreement and Official Election Bulletin were unconstitutional and a usurpation of the Georgia Legislature's plenary authority to set the time, place and manner of elections; that the Secretary's procedure resulted in the disparate treatment of the Petitioner's vote and the dilution thereof; and the procedure violated Petitioner's rights to Equal Protection under the U.S. Constitution (APP. B). Petitioner sought injunctive relief including enjoining the certification of the Presential election results arrived at by unlawful tally; declaring the results of the 2020 election defective; requiring the Secretary to cure the Constitutional violations, and prohibiting them from using the unconstitutional procedures in connection with the Senatorial runoff election in January of next year. (APP. B and C).

The District Court issued an Opinion and Order (APP. M) that denied Petitioner relief, and among other things, determined that he lacked standing as a voter to challenge the unconstitutional procedures adopted by the Secretary of state and the State Election Board. It also ruled that Petitioner's claims were barred by laches. The following day, although Petitioner's appellant remedies were not exhausted, the Secretary initially certified the results of the 2020 Presidential Election. (APP. T at 2).

Thereafter, Petitioner appealed the District Court's ruling to the Eleventh Circuit Court of Appeals. That court affirmed the District Court's decision determining that Petitioner lacked standing and also held that his requests for relief were "moot to the extent they concern the 2020 Election". Petitioner now seeks relief from this Court.

ARGUMENT AND REASONS FOR GRANTING THE WRIT

This Court has held that the right to vote is a "fundamental political right," "preservative of all rights." *Yick Wo v. Hopkins*, 6 S. Ct. 1064 (1886); *see also United States v. Anderson*, 481 F.2d 685, 699 (4th Cir. 1973). This right extends not only to "the initial allocation of the franchise," but also to "the manner of its exercise." *Bush v. Gore*, 121 S. Ct. 525 (2000). Infringement of fundamental constitutional freedoms such as the right to vote "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 96 S. Ct. 2673 (1976); *see also Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). Respondents' ongoing violations of Petitioner's constitutional rights unlawfully infringe upon the Petitioner's fundamental right to vote. The constitutional violation is ongoing; Amendment XX of the Constitution sets forth a timeline for action in the Presidential contest that does not permit delay. Further, the same unconstitutional procedures will be used in the ongoing election for two U.S. Senators. The harm to Petitioner is immediate, and cannot be remedied by monetary relief. Petitioner requests that the Respondents follow the legislative scheme enacted by the State Legislature to correct and prevent immediate and irreparable injury to Petitioner.

A. Petitioner, as the holder of the fundamental right to vote, has standing to maintain his Constitutional challenge to Respondents' signature verification procedures because they violate his constitutional right to Equal Protection.

This Court recognized in *Baker v. Carr*, 82 S. Ct. 691, 703-704 (1962) that a group of qualified voters had standing to challenge the constitutionality of a redistricting statute. An individual's "right of suffrage" is "denied by a debasement or

dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (abridgment of Equal Protection rights); see also C*rawford v. Marion Cty. Elec. Bd.*, 472 F.3d 949, 952 (7th Cir. 2007), aff'd, 553 U.S. 181 (2008); *Fla. State Conf. of the NAACP v. Browning*, 569 F. Supp. 2d 1237, 1251 (N.D. Fla. 2008). Voters therefore have a legally cognizable interest in preventing "dilution" of their vote through improper means. *Baker v. Reg'l High Sch. Dist.*, 520 F.2d 799, 800 n.6 (2d Cir. 1975) ("It is, however, the electors whose vote is being diluted and as such their interests are quite properly before the court.") This applies to prevent votes from being cast by persons whose signatures have not been verified in the manner prescribed by the Georgia Legislature .

Similarly, in *Gray v. Sanders*, 83 S. Ct. 801 (1963), this Court observed that any person whose right to vote was impaired by election procedures had standing to sue on the ground the system used in counting votes violated the Equal Protection Clause. Indeed, every voter's vote is entitled to be correctly counted once and reported, and to be protected from the diluting effect of illegal ballots. *Id.* at 380. See also, *McLain v. Mier*, 851 F. 2d 1045, 1048 (8th Cir. 1988)(voter had standing to challenge constitutionality of North Dakota ballot access laws); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1333 (N.D. Ga. 2018)(individual voters whose absentee ballots were rejected on the basis of signature mismatch had standing to assert constitutional challenge to absentee voting statute).

The court in *Roe v. Alabama*, 43 F. 3d 574, 580, 581 (11th Cir. 1995) held that a voter sufficiently alleged the violation of a right secured by the Constitution to support a section 1983 claim based on the counting of improperly completed absentee ballots. In *Roe*, the voter and two candidates for office sought injunctive relief preventing enforcement of an Alabama circuit court order requiring that improperly completed absentee ballots be counted. This Court stated that failing to exclude these defective absentee ballots constituted a departure from previous practice in Alabama and that counting them would dilute the votes of other voters. *Id.* 581. Recognizing that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise, this court modified but affirmed the preliminary injunction issued by the district court in that case and enjoined the inclusion in the vote count of the defective absentee ballots. *Id.*

Further, in *Common Cause/Georgia v. Billups*, 554 F. 3d 1340, 1351 (11th Cir. 2009) the Eleventh Circuit held that voters had standing to challenge the requirement of presenting government issued photo identification as a condition of being allowed to vote. The plaintiff voters in that case did not have photo identification, and consequently, would be required to make a special trip to the county registrar's office that was not required of voters who had identification. *Id.* 1351. There was no impediment to the plaintiff's ability to obtain a free voter identification card. Although the burden on the Plaintiff voters was slight in having to obtain identification, the Eleventh Circuit held that a small injury, even "an

identifiable trifle" was sufficient to confer them standing to challenge the election procedure. *Id.*

In *George v. Haslam*, 112 F. Supp. 3d 700, 709 (M.D. Tenn. 2015), registered voters were found to have standing to sue the state governor and others based on the allegation that the method by which votes cast in the election were counted violated their rights to Equal Protection. That court observed that citizens have a constitutionally protected right to participate in elections on an equal basis with other citizens, and the equal protection clause prohibited the state from valuing one person's vote over that of another. *Id.*

In *New Ga. Project v. Raffensperger*, 2020 WL 5200930 (N.D. Ga. August 31, 2020), registered voters had standing to sue the Georgia Secretary of State and the State Election Board challenging policies governing Georgia's absentee voting process in light of dangers presented by Covid-19.

Further, the district court in *Middleton v. Andino*, 2020 WL 5591590 at *12 (D.S.C. September 22, 2020) ruled that a voter had standing to challenge an absentee ballot signature requirement and a requirement that absentee ballots be received on election day in order to be counted. Notably, the court observed that the fact that an injury may be suffered by a large number of people does not by itself make that injury a non-justiciable generalized grievance, as long as each individual suffers particularized harm, and voters who allege facts showing disadvantage to them have standing to sue. *Id.*

In the instant case, the Eleventh Circuit, while denying that the Petitioner/voter had standing to challenge the Secretary's unauthorized procedures and the vote dilution they caused, it recognized that "a candidate or political party would have standing" to make the challenge (APP. T at 16). Most respectfully, the reasoning below gives less protection to a private voter's right to vote than to the rights of candidates and pollical parties who are not the holders of the fundamental right to vote. Only the voter holds this fundamental right. When the voter is treated in a disparate manner whereby his right to vote is impaired, he must be deemed to have standing to seek redress from the courts.

Indeed, the Petitioner has shown below that as a voter and as a financial supporter of the Republican Party, he has legal standing to maintain the challenge to the Respondents' unconstitutional signature verification requirements implemented and used in the 2020 election. *Accord Citizens for Legislative Choice v. Miller*, 993 F. Supp. 1041, 1044-1045 (E.D. Mich. 1998)(voters who wished to vote for specific candidates in an election had standing to challenge constitutionality of a state constitutional amendment establishing term limits for state legislators).

To be sure, Petitioner Wood has standing in this case. As discussed below, the Respondents' procedure for verifying signatures and rejecting absentee ballots was unconstitutional. It valued absentee votes more than in person votes, and impermissibly diluted the Petitioner's in person vote. Accordingly, the trial court and the Court of Appeals erred in concluding the Petitioner lacked standing.

B. The Secretary of State's actions through the Settlement Agreement and 2020 Official Election Bulletin violate the U.S. Constitution

The Elections Clause of the United States Constitution states that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives *shall be prescribed in each State by the Legislature thereof;* but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators." U.S. Const. Art. I, § 4, cl. 1 (emphasis added); *(see* APP. B Compl., at 12). Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." *Smiley v. Holm,* 285 U.S. 355, 367 (1932); *see also Arizona St. Leg. v. Arizona Indep. Redistricting Comm 'n,* 576 U.S. 787, 807-08 (2015); *(see* APP. B Compl. at 13). In Georgia, the "legislature" is the General Assembly (the "Georgia Legislature"). *See* Ga. Const. Art. III, § I, Para. I; *(see* APP. B Compl., at 14).

The Supreme Court of Georgia has recognized that statutes delegating legislative authority violate constitutional nondelegation and separation of powers. *Premier Health Care Investments, LLC. v. UHS of Anchor,* LP, 2020 WL 5883325 (Ga. 2020). The non-delegation doctrine is rooted in the principle of separation of powers in that the integrity of the tripartite system of government mandates the general assembly not divest itself of the legislative power granted to it by the State Constitution. *Department of Trans. v. City of Atlanta,* 260 Ga. 699, 703 (Ga. 1990)(finding OCGA § 50-16-180 through 183 created an impermissible delegation of legislative authority). See also *Mitchell v. Wilkerson, 258 Ga. 608, 610 (Ga.*

1988)(election recall statute's attempt to transfer the selection of the reasons to the applicant amounted to an impermissible delegation of legislative authority.)

Because the Constitution reserves for state legislatures the power to set the times, places, and manner of holding federal elections, state executive officers have no authority to unilaterally exercise that power, much less flout or ignore existing legislation. *(See* APP. B Compl., at 15.) While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," it does hold states accountable to their chosen processes in regulating federal elections. *Arizona St. Leg.,* 135 S.Ct. at 2677, 2668.

In *North Fulton Med. Center v. Stephenson*, 269 Ga. 540 (Ga. 1998), a hospital outpatient surgery center which had already relocated to a new site and commenced operations applied to the State Health Planning Agency for a certificate of need under the agency's second relocation rule, which certificate was provided by the agency. A competitor sought appellate relief and the Georgia Supreme Court held that the agency rule conflicted with the State Health Planning Act, and thus, was invalid and had to be stricken. Additionally, the court held that the rule was the product of the agency's unconstitutional usurpation of the general assembly's power to define the thing to which the statute was to be applied. *Id.* at 544. See also *Moore v. Circosta*, 2020 WL 6063332 (M.D.N.C. October 14, 2020)(North Carolina State Board of Elections exceeded its statutory authority when it entered into consent

agreement and eliminated witness requirements for mail-in ballots).

The Framers of the Constitution were concerned with just such a usurpation of authority by State administrators. In Federalist No. 59, Alexander Hamilton defended the Elections Clause by noting that "a discretionary power over elections ought to exist somewhere (emphasis supplied) and then discussed why the Article 1, Clause 4 "lodged [the power]... primarily in the [State legislatures] and ultimately in the [Congress]." He defended the right of Congress to have the ultimate authority, observing that even though granting this right to states was necessary to secure their place in the national government, that power had to be subordinate to the Congressional mandates to prevent what could arise as the "sinister designs in the leading members of a few of the State legislatures."

Hamilton feared that the state legislatures might conspire against the Union but also that "influential characters in the State administrations" might "prefer[] their own emolument and advancement to the public weal." But in concluding his defense of this constitutional compromise, Hamilton noted that the Clause was designed to commit to the guardianship of election "those whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust."

The procedures for processing and rejecting ballots employed by the Respondents during the election constitute a usurpation of the legislator's plenary authority. This is because the procedures are not consistent with-

and in fact conflict with the statute adopted by the Georgia Legislature governing the identity/signature verification and rejection process for absentee ballots. *(See* APP. B Compl., 34.) First, the Litigation Settlement overrides the clear statutory authority granted to singular County Officials and forces them to form a committee of three if any one official believes that an absentee ballot is a defective absentee ballot. *(See* APP. B Compl., 35.) Such a procedure creates a cumbersome bureaucratic procedure to be followed with each defective absentee ballot - and makes it likely that such ballots will simply not be identified by the County Officials. *(See Id.,* 36.)

Second, the Litigation Settlement allows a County Official to compare signatures in ways not permitted by the statutory structure created by the Georgia Legislature. *(See Id.,* 37.) The Georgia Legislature prescribed procedures to ensure that any request for an absentee ballot must be accompanied by sufficient identification of the elector's identity. *See* O.C.G.A. § 21-2-381(b)(1) (providing, in pertinent part, "In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot at the clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417..."); *(see* APP. B Compl., 38.) Under O.C.G.A. § 21-2-220(c), the elector must present identification, but need not submit identification if the electors submit with their application information such information that the County Officials are able to match the elector's information with the state database, generally referred to as the eNet system. *(See* APP. B

Compl., 39.) The system for identifying absentee ballots was carefully constructed by the Georgia Legislature to ensure that electors were identified by one poll worker confirming acceptable identification, but at some point in the process, the Georgia Legislature mandated the system whereby the elector be identified for each absentee ballot. *(See* APP. B Compl., 40.) Under the Litigation Settlement, any determination of a signature mismatch would lead to the cumbersome process described in the settlement and the Bulletin, which was not intended by the Georgia Legislature, which expressly authorized those decisions to be made by single election officials. *(See Id.,* 41.) The Georgia Legislature also provided for the opportunity to cure (again, different from the opportunity to cure in the Litigation Settlement), but did not allocate funds for three County Officials for every mismatch decision. *(See id.,* 42.)

Finally, under paragraph 4 of the Litigation Settlement, the Administrators delegated their responsibilities for determining when there was a signature mismatch by considering "additional guidance and training materials" drafted by the "handwriting and signature review expert" of the Democrat Agencies. *(See* APP. B Compl., at 47; *see* Ex. A, Litigation Settlement, p. 4, at 4, "Consideration of Additional Guidance for Signature Matching."). Allowing a single political party to write rules for reviewing signatures is not "conducive to the fair conduct of primaries and elections" or "consistent with law" under O.C.G.A. § 21-2-31. *(See* APP. B Compl., at 48.). In-person voter identity remains subject to verification by a single poll worker, not three like

absentee ballots, hence the disparate treatment of Petitioner's vote and violation of his Equal Protection rights.

In short, the Litigation Settlement by itself has created confusion, misplaced incentives, and undermined the confidence of the voters of the State of Georgia in the electoral system. *(See* APP. B Compl., at 49.) Neither it nor any of the activities spawned by it were authorized by the Georgia Legislature, as required by the Constitution. *(See* APP. B Compl., at 50.)

"A consent decree must of course be modified, if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under Federal law." *Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367388 (1992). As such, the decision below should be reversed and the injunction requested should be granted.

Moreover, the Litigation Settlement should be deemed invalid for the additional reason that on its face it was not signed by the parties themselves. (See APP. C-1 at p. 6). By its very terms, the agreement was to take effect "when each and every party has signed it, as of the date of the last signature." *Id.* at p.1. However, the signature page fails to contain any party's signature; instead, only the electronic signatures of counsel for the parties appear.

Finally, the new procedures created through the Litigation Settlement were illegally implemented by Respondents because, as conceded by the Respondents and Intervenors, the rules were not promulgated pursuant to official rule making procedures. Accordingly, the settlement parties, and Respondents in particular, took

it upon themselves to bypass the customary requirement for public notice and comment that is attendant to official rulemaking. Rather, this new and different procedure, which changed the clear legislative framework for elections, was disseminated under the guise of an "Official Election Bulletin." However, such Bulletins are not a substitute for formal rulemaking, assuming arguendo the rule were constitutional. Therefore, the Litigation Settlement and the new rules for signature verification it generated are unconstitutional for these additional reasons. The Elections Clause of the Constitution expressly reserves this legislative domain to the elected representatives of the electoral and not to a single official. The fact that the wrong was committed by an official of one's own party is irrelevant. Thus, the court below erred in refusing to grant Petitioner relief.

C. The Respondents' change of the procedures for rejecting absentee ballots impermissibly diluted the Petitioner's vote and resulted in mail-in absentee ballots being valued more than in person ballots in violation of his Equal Protection rights.

As shown on their face, the procedures applicable to voter identification verification in connection with the actual voting process treat in-person voters like Petitioner, different from mail-in absentee voters. Pursuant to O.C.G.A. § 21-2-417(a), an in-person voter must "present proper identification to a poll worker" before their vote may be cast. (emphasis added). Similarly, the voter identification procedure provided by OCGA Section 21-2-386 provides that absentee ballots would be received and reviewed by "a registrar or clerk." (emphasis added). *See* O.C.G.A. § 21-2-386(a)(1)(B). If the signature does not appear to be valid or does not conform with the signature on file, "the registrar or clerk shall write across the face of the envelope

"Rejected" giving the reason therefore." See O.C.G.A § 21-2-386(a)(1)(C). As such, before the Respondents and political party committee Intervenors entered into the unconstitutional settlement agreement, one poll worker was charged with verifying the voter's identity before their ballot was cast regardless of whether the vote was in person or by mail-in absentee ballot.

The Respondents and political party committee intervenors changed the clear statutory procedure for confirming voter identity at the time of voting, so that rather than one poll worker reviewing signatures, a committee of three poll workers was charged with confirming that absentee ballot signatures were defective before rejecting a ballot.

This new procedure treated in-person voter identification verification different from mail-in absentee voter identification verification at the time of casting the vote. By designating a committee of three to check mail-in absentee voter identification but having a single poll worker check in person voter identification, the challenged procedure favors the absentee ballots, treats the absentee voters differently from in-person voters and values absentee votes more than the ballots of in-person voters. Indeed, when a question of voter identity arises, one poll worker resolves it for an in-person voter, but any questions regarding mail-in absentee voter identification is resolved by three poll workers. Evidence has been presented that the Litigation Settlement led to a decrease in challenged signatures. Thus, the challenged procedure violates the Petitioner's rights to equal protection and cannot be allowed to stand.

It is well established that a state may not arbitrarily value one person's vote over that of another. *Obama For America v. Husted*, 697 F. 3d 423 428 (6th Cir. 2012). The Equal Protection Clause prohibits a state from treating voters in disparate ways. *Id.* 428. *See also Bush*, 121 S. Ct. 525 (having granted the right to vote on equal terms, the state may not later arbitrarily value one person's vote over another, such disparate treatment is a violation and a dilution of a citizen's vote). Before the settlement agreement, one poll worker resolved questions of voter identification regardless of whether the vote was in-person or by mail-in absentee ballot. The Settlement Agreement resulted in a later arbitrary change that improperly treated the in-person votes differently than the mail-in absentee ballots. This is unconstitutional.

D. The doctrine of Laches does not bar Petitioner's claim and is inapplicable to cases like this, involving ongoing constitutional violations and immanent further violations

The Petitioner's legal action accrued after he suffered harm following the presidential election. A federal court's jurisdiction can be invoked only when the plaintiff himself has suffered some threatened or actual injury. *Warth v. Seldin*, 95 S. Ct. 2197, 2205 (1975). A litigant has standing to challenge the constitutionality of a law only if the law has an adverse impact on the litigant's own rights. *Feminist Women's Health Center v. Burgess*, 282 Ga. 433 (Ga. 2007).

The election results demonstrated the real-world effect of the new methodology imposed by the Litigation Settlement and diluted the Plaintiff's votes, giving rise to this cause of action. Very shortly thereafter, he instituted the district court action. Under these circumstances, courts have recognized laches does not bar a

constitutional challenge. *Democratic Executive Committee of Florida v. Lee*, 915 F. 3d 1312, 1326 (11th Cir. 2019)(laches did not bar claims challenging Florida's vote by mail ballot rejection rules where action was initiated about one year after the state's rule was adopted); *Democratic Party of Georgia v. Crittenden*, 347 F. Supp. 3d 1324 1338-1339 (N.D. Ga. 2018)(organization's constitutional claims challenging rejection of absentee ballots in pending general election and statutory framework for curing and counting provisional ballots were not barred by doctrine of laches as many issues regarding voter's experiences did not arise until after election day); *Public Citizen, Inc. v. Miller*, 813 F. Supp. 821, 827 (N.D. Ga. 1993)(claims by plaintiff voters who voted for senatorial candidate who received plurality vote but lost runoff election were not barred by laches, despite being brought four weeks after runoff election because they were not ripe prior to the runoff.) Accordingly, Petitioner's claims and request for injunctive relief were not ripe until the election and are not barred by laches. The District Court erred in ruling that they were.

Indeed, the Respondents' violations of the Petitioner's constitutional right to Equal Protection is an ongoing violation. Since the same procedures challenged herein are to be employed in the January Senatorial runoff election, the constitutional violation can only be characterized as ongoing. Federal courts have recognized that laches is inapplicable to cases where the injury is continuing. *League of Women Voters of Michigan v. Benson*, 373 F. Supp 3d 867, 908-909 (E.D. Mich. 2019) (recognizing laches does not apply to ongoing or recurring harms), vacated on other grounds, *Chatfield v. League of Women Voters of Michigan*, 140 S. Ct. 429

(2019); *Smith v. Clinton*, 687 F. Supp. 1310, 1312-1313 (E.D. Ark. 1988)(laches did not bar challenge by black registered voters in dual member state legislative district despite being filed 7 years after the apportionment plan because constitutional injury was a continuing injury).

Had the Petitioner filed suit when the settlement agreement was publicly filed, the Respondents no doubt would have then argued Wood lacked standing because any injury he could have claimed at that time was merely hypothetical and/or not ripe. As such, Petitioner claims are not barred by laches.

E. Petitioner's complaint and motion for injunctive relief are not moot

The Eleventh Circuit's holding that Petitioner's claims for injunctive relief are moot should be reversed. First, the Eleventh Circuit in *Siegel v. Lepore*, 234 1172-1173 F. 2d 1139 (11th Cir. 2000), held that a suit challenging the vote tabulation procedure in a presidential election was not rendered moot when the manual recounts were completed, and the vote tabulations certified. In that case, as in the present controversy, the presidential candidate and others were contesting the election results in various lawsuits in numerous courts. *Id.* at 1173. Based on the complex and ever shifting circumstances in *Siegel*, that court found laches did not apply. The reasoning in *Siegel* squarely applies in this case. As such, the Court of Appeals erred in finding mootness barred Petitioner's requested relief.

Indeed, Petitioner brought this action before the Respondent certified the state election results. Respondent nonetheless certified the election, with full awareness that this litigation was ongoing. By insisting on certifying the election results in the face of an ongoing constitutional challenge, on which appellate remedies had not been

exhausted, Respondent did so at their peril. Respondent cannot thereby cure the constitutional violations at issue in this case.

Finally, there is a runoff election scheduled in January 2021 for two U.S. senatorial seats in Georgia, and if the challenged procedures are employed, it will further aggravate the Petitioner's continuing constitutional injury. The constitutional violation will repeat without having been reviewed. Accordingly, this controversy is not moot.

F. The Eleventh Circuit's decision conflicts with the decisions of this Court and of other Circuit Courts of Appeals regarding voter standing.

As set forth more fully in point A of the Argument, *supra*, the Petitioner has standing as a voter to challenge voter dilution. The cases cited therein, including specific authority from this Court, was cast aside by the Court of Appeals in determining that Petitioner had no standing. Although the Eleventh Circuit opinion recognizes in one breath "[t]o be sure, vote dilution can be a basis for standing" (APP. T at 11), in the next it goes on to deny Petitioner, a voter, standing to challenge an unconstitutional procedure that operates to violate, impair and interfere with his fundamental right to vote. This Court must clarify: does the voter have standing for a constitutional challenge to a procedure that dilutes his vote? Petitioner submits the answer, based on this Court's past decisions in *Baker,* 82 S. Ct., 691 and *Gray*, 83 S. Ct. 801, is a resounding "yes". Afterall, it is voters themselves who are the holders of the fundamental right to vote. It would be incongruent with Petitioner's rights to allow organizational standing to political parties and political organizations, to allow standing to candidates, but to deny it

to the aggrieved voter whose rights have been violated. Certainly, that cannot be the law. The Eleventh Circuit decision is inconsistent with this Court's above precedent. It is also inconsistent with or conflicts with certain of its own precedent, *e.g. Roe,* 43 F. 3d, 574 and *Billups*, 554 F. 3d 1340. Cf. *Carson v. Simon*, 978 F. 3d 1051 (8th Cir. 2020)(electors had standing); *Bush*, 121 S. Ct. 525 (minimum requirement for non-arbitrary treatment of voters must be satisfied under Equal Protection clause).

CONCLUSION

For the reasons stated above, and the reasons stated in Petitioner's Initial and Reply Briefs before the Court of Appeals, the Eleventh Circuit Opinion and Judgment should be reversed, and this Court should grant or instruct the lower court to grant the Petitioner an injunction determining that the results of the 2020 general election in Georgia are defective as a result of the above described constitutional violations and requiring the Respondents to de-certify the results and to cure said deficiencies in a manner consistent with the Constitution and the legislative framework established thereunder, and not in accordance with the improper procedures established in the Litigation Settlement. Further, this Court should enjoin, or instruct the lower court to enjoin the Defendants from employing the constitutionally defective in the upcoming Senatorial runoff election. This relief will ensure that the election process is conducted in a manner consistent with the United States Constitution. Further, it would promote public confidence in the results of the election.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Petition complies with the word limitations under Rule 33. The word count of the Petition totals 7,431, according to Microsoft Word.

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I HEREBY CERTIFY that a true copy of the foregoing has been electronically filed with this Court via CM/ECF and was furnished to all counsel on the attached service list by e-mail on December 7th, 2020:

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