No. _____

In The
Supreme Court Of The United States

L. LIN WOOD, JR.,
Petitioner,

v.

BRAD RAFFENSPERGER, et al.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

L. LIN WOOD, ESQ.
GA Bar No. 774588
L. LIN WOOD, P.C.
P.O. BOX 52584
Atlanta, GA 30305-0584
(404) 891-1402
(404) 506-9111
lwood@linwoodlaw.com

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 as well as the procedures for receiving, opening and processing absentee ballots. The Georgia Secretary of State usurped that power by modifying the Legislature's clear procedures for verifying the identity of mail-in voters. The Secretary also unilaterally changed the procedures for receiving and opening votes. The effect of the Secretary of State's unauthorized procedures 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. The Secretary's unconstitutional modifications to the legislative scheme violated Petitioner's Equal Protection and Due Process 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 and infringes upon his constitutional right to vote. In this regard, the Court of Appeals decision conflicts with relevant decisions of this Court, and as such, calls for an exercise of this Court's supervisory power. The questions presented are:

1. Whether the Petitioner, as a registered voter, has standing to challenge the unconstitutional actions of nonlegislative officials, who unilaterally altered the "manner" of federal elections prescribed by the state legislature, resulting in the

dilution, impairment, and discounting of his vote.

2. Whether nonlegislative officials had the authority to rewrite, change or otherwise determine the "times, places and manner" of federal elections, including the senatorial runoff election, in contravention of the established legislative framework, without the approval of the Georgia General Assembly.

3. Whether Respondents' unauthorized actions in changing the signature verification requirements, time of opening and method of delivering absentee ballots violated Petitioner's Equal Protection and Due Process rights.

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, Inc. and the Democratic Senatorial Campaign Committee ("DSCC").

RELATED PROCEEDINGS

Wood v. Raffensperger, et al., district court case no. 1:20-cv-4651-SDG

Wood v. Raffensperger, et al., 11th Circuit case no. 20-14418

Wood v. Raffensperger, et al., U.S. Supreme Court no. 20-799

TABLE OF CONTENTS

PAGE

INDEX TO APPENDIX

TABLE OF CITED AUTHORITY

CASES **PAGE**

STATUTES AND CONSTITUTIONAL PROVISIONS

RULES

OTHER AUTHORITIES

INTRODUCTION

In December 2020, Petitioner was a registered voter residing in Fulton County, Georgia, possessing all of the qualifications for voting in the State of Georgia. On December 18, 2020, Petitioner filed an action seeking declaratory and injunctive relief in the district court, seeking to enjoin the Respondents from conducting the January 5, 2021 Senatorial Runoff election in an unconstitutional manner, which violated his rights and directly conflicted with the election scheme established by the Georgia State Legislature. Petitioner specifically alleged that Respondents' actions in unilaterally promulgating rules and revising the State's election scheme unconstitutionally contravened the Georgia Legislature's prescribed election procedures in multiple respects. Namely, the signature verification procedures for absentee ballots; the manner for opening and processing absentee ballots; and the installation of unauthorized ballot drop boxes were unconstitutional changes made by Respondents. The state legislature never approved of these changes. As a result of these unlawful and unconstitutional changes to the State's election procedures, Petitioner alleged that his rights under the equal protection and due process clause of the Fourteenth Amendment to the United States Constitution were violated.

Petitioner's Complaint, in addition to seeking declaratory and injunctive relief, sought nominal damages with respect to each count in the complaint. Consequently, Petitioner's claims, contrary to the district court and appellate court's conclusions, involves a live case or controversy and are not moot. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021)

(pending claim for nominal damages precluded a finding of mootness).

In the short period of time this case was pending in the district court, and despite the voluminous record on the court's docket, which included witness and expert affidavits, documentary evidence and exhibits, the district court refused to hold any evidentiary hearings or otherwise address the merits of the claims. Respondents would no doubt reference each and every election challenge Petitioner participated in during the 2020-2021 election cycle, ostensibly to point out that each challenge was summarily rejected, and that this Court should follow suit. Quite the contrary, the validity and appropriateness of those claims has now been recognized by the Georgia Legislature, which on March 25, 2021 passed SB 202, reversing most of the unconstitutional election procedures utilized by Respondents during the 2021 Senatorial runoff election. To be sure, the injury suffered by Petitioner, as recognized by SB 202, is directly traceable to Respondents' conduct and their violation of Petitioner's constitutional rights.

For these reasons, this Court should grant the petition, vacate the opinion below and remand this matter with instructions that the district court address the merits of the claims set forth in the Complaint.

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 August 6, 2021, and the petition for rehearing and rehearing *en banc* was denied on November 4, 2021.

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.

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. Moreover, the challenged election procedures were allowed to stand by the Eleventh Circuit despite their illegality and unconstitutional nature, which calls for the exercise of this Court's supervisory power.

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 D 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 and Due Process);
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

Petitioner, 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). Petitioner sought declaratory and injunctive relief from the district court below, among other things, enjoining the January 5, 2021 Senatorial Runoff election from proceeding while the unconstitutional procedures described herein were in place, and declaring the election procedures described herein, constitutionally defective and requiring Respondents to cure their violations.

The named Respondents include Brad Raffensperger, as Secretary of State of Georgia and Chairperson of Georgia's State Election Board, as well as the other members of the State Election Board, all of which were sued in their official capacities - Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board"). The Complaint alleges violations of the United States Constitution and the applicable Georgia Election laws in regard to the January 5,

2021 run-off election for Georgia's United States Senators.

The Georgia Legislature established a clear an efficient process for handling absentee ballots. To the extent that there is any change in that process, that change must, under Article I, Section 4 of the Constitution, be prescribed by the Georgia Legislature.

Specifically, the unconstitutional procedures in this case involved the unlawful and improper processing of absentee ballots. First, the Georgia Legislature instructed county registrars and clerks (the "County Officials") regarding the handling of absentee ballot signature verification O.C.G.A. §§21-2-386(a)(l)(B), 21-2-380.1. The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

> 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)(l)(B) (emphasis added).

The Georgia Legislature also established a clear and efficient process to be used by County Officials if they determine that an elector has failed to sign the oath on the outside envelope enclosing the 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). 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). The Georgia Legislature clearly contemplated the use of written notification by the county registrar or clerk in notifying the elector of the rejection. These legislative pronouncements were legally required to be followed in the runoff election, but they indisputably were not.

In March 2020, Respondents 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 Intervenors Democratic Party of Georgia, Inc. and the Democratic Senatorial Campaign Committee, as well as the Democratic Congressional Campaign Committee (the "Democrat Agencies"), setting forth totally different election procedures and standards to be followed by County Officials in processing absentee ballots in Georgia.

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).

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. 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 made it much more difficult to follow the statute with respect to defective absentee ballots.

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 any 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.

The ***second*** unconstitutional procedure at issue in this case relates to the unlawful opening and/or viewing of absentee ballots (mail-in ballots) in advance of the statutory date set for such opening. As with the identity verification procedures described above, the Respondents have also usurped the Georgia General Assembly's plenary power over the manner of conducting elections by impermissibly changing the laws regarding the time for opening and/or viewing of those ballots.

Particularly, the Legislature promulgated O.C.G.A. §21-2-386(a)(1)(A) which provides "the board of registrars or absentee ballot clerk shall keep safely, unopened, and stored in a manner that will prevent tampering and unauthorized access all official absentee ballots received from absentee electors prior to the closing of the polls on the day of the primary or election." (emphasis added).

Pursuant to the Georgia Legislature's clear directives, "***after the opening of the polls on the day of the primary, election, or runoff***, the registrars or absentee ballot ***clerks shall be authorized to open the outer envelope***" on a mail-in absentee ballot. O.C.G.A. § 21-2-386(a)(2) (emphasis added). Additionally, "a county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff open the inner envelopes in accordance with the procedures prescribed in this subsection and beginning tabulating the absentee ballots [after following certain notice procedures]." *Id.* at (a)(3). In short, mail-in absentee ballots may not be opened before election day under the Georgia Legislative framework for federal elections.

Nonetheless, Respondents usurped the Legislature's power by enacting Rule 183-1-14-0.7-.15 (1). The Respondents adopted that Rule on an emergency basis on or about May 18, 2020. In direct conflict with the General Assembly's above procedures, it provides that

> ***beginning at 8:00 a.m. on the second Monday prior to election day, county election superintendents shall be authorized to open the outer envelope*** of accepted absentee ballots, remove the contents including the absentee ballots, and scan the absentee ballots using one or more ballot scanners, in accordance with this Rule, and may continue until all accepted absentee ballots are processed. (emphasis added).

This emergency rule was enacted for the June 2020 election, but was then extended on or about August 10, 2020 for use in the General Election. Thereafter, on less than 24-hour notice and with no time for meaningful public comment, the Respondents amended the rule to allow absentee ballots to be opened even earlier - three weeks before the election. This rule was in effect and was implemented in the January 5, 2021 senatorial runoff election.

This emergency rule is in direct contravention of the acts of the Georgia Legislature in its plenary power to direct the manner of the runoff election – the Legislature established its purpose for preventing early opening in the statute

– to "prevent tampering and unauthorized access." The Georgia Election Code expressly prohibits the opening of absentee ballots before election day. In contrast, the Respondents' Rule expressly allows the opening of absentee ballots three-weeks before election day. The Code and the Rule are inconsistent and mutually exclusive. The Rule must be declared invalid and stricken and/or the Respondents should be in enjoined from employing the Rule in the future. The state legislature has never approved these changes to the election law, and in fact has rejected them as shown by the recent amendments mentioned above.

The ***third*** unconstitutional procedure in this case involves the Respondents' establishment of an unlawful method of delivering absentee ballots to election officials.

The Georgia Legislature established a clear procedure for voters to deliver absentee ballots to election officials. O.C.G.A. § 21-2-382 specifies how and where absentee ballots may be delivered to county election officials. Further, O.C.G.A. § 21-2-385(a) requires electors or certain authorized representatives of electors to "personally mail or personally deliver [their absentee ballots] to the board of registrars or absentee ballot clerk."

These statutes, which codify a specific and detailed procedure for requesting, delivering, processing, verifying and monitoring the tabulation of absentee ballots, are designed to protect Georgians from the universally acknowledged dangers of ballot harvesting through widespread mail-in absentee voting, which carries a significant risk of election irregularities and vote fraud.

Specifically, mail-in absentee voting creates opportunities to obscure the true identities of persons fraudulently claiming to be legitimate electors and facilitates the collection of large quantities of purportedly valid absentee ballots by third-parties – commonly called "ballot harvesting" – that results in an extraordinary increase in the number of absentee ballots received by county election officials, which in turn are not received and verified in accordance with the procedure required by applicable Georgia statutes. In fact, the Georgia Legislature set forth the very specific circumstances for returning an absentee ballot, and only authorizes those to be returned by caregivers or close family members. O.C.G.A. §21-2-385(a).

In contravention of the Election Code, Respondents adopted Rule 183-1-14-0.6-.14 authorizing the use of drop boxes in order to provide, as the rule states, "a means for absentee by mail electors to deliver their ballots to the county registrars."

By this rule, Respondents permitted and encouraged the installation and use of unattended drop boxes within Georgia's counties as a means for delivery of absentee ballots, and Respondents receipt thereof. There is no mechanism to ensure that a person who uses a drop box meets the requirements of the Election Code.

Respondents' Rule 183-1-14-0.6-.14 claims that a drop box "shall be deemed delivery pursuant to O.C.G.A. § 21-2-385."

This rule's definition of delivery is in direct conflict with the language of O.C.G.A. § 21-2-385,

which the Georgia General Assembly amended in 2019 specifically to prohibit ballot harvesting.

O.C.G.A. § 21-2-385 now specifies only two options for the submission of an absentee ballot: "the elector shall then personally mail or personally deliver the same to the board of registrars or absentee ballot clerk . . . ."

O.C.G.A. § 21-2-382(a) establishes the precise locations where an election official may receive an absentee ballot from the individual voter or their caregivers or family member. These sites are defined as "additional registrar's offices or places of registration."

> Any other provisions of this chapter to the contrary notwithstanding, the board of registrars may establish additional sites as additional registrar's offices or places of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of voting absentee ballots under Code Section 21-2-385, provided that any such site is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, another government building generally accessible to the public, or a location that is used as an election day polling place, notwithstanding that such location is not a government building.

O.C.G.A. § 21-2-2(27) defines a "polling place" to mean "the room provided in each precinct for voting at a primary or election."

O.C.G.A. § 21-2-382(b) provides that in larger population areas, such as Fulton, DeKalb, Gwinnett, and Cobb counties, the following sites would automatically serve as additional receiving locations for absentee ballots:

> any branch of the county courthouse or courthouse annex established within any such county shall be an additional registrar's or absentee ballot clerk's office or place of registration for the purpose of receiving absentee ballots . . . under Code Section 21-2-385.

A drop box, however, is not included in the list of additional reception sites described in the exercise in O.C.G.A. § 21-2-382(a) and (b) and is not within the meaning of a "registrar's office or places of registration" in O.C.G.A. § 21-2-386.

A "registrar's office or places of registration" contemplates a building with staff capable of receiving absentee ballots and verifying the signature as required by the procedures prescribed in § 21-2-386.

A drop box cannot be deemed a location to apply for an absentee ballot "in person in the registrar's or absentee ballot clerk's office" as prescribed by § 21-2-381 nor can it be a location for an elector to appear "in person" to present the absentee ballot to the "board of registrars or absentee ballot clerk," as prescribed by § 21-2-385.

Throughout the Georgia Election Code, the Legislature clearly contemplated a staffed office or building for voter registration, receipt of absentee ballot applications, and receipt of absentee ballots so that the voter can deliver the ballot "in person" or through their designated statutory agent. See e.g., O.C.G.A. § 21-2-385.

Drop boxes make it easier for political activists to conduct ballot harvesting to gather votes. When they are used there is a break in the chain of custody of those authorized by statute to collect and deliver absentee ballots, which produces opportunities for political activists to submit fraudulent absentee ballots, and the opportunity for illicit votes to be counted is significantly increased.

The break in the chain of custody caused by the use of drop boxes increases the chances that an absentee voter will cast his or her vote under the improper influence of another individual and enhances opportunities for ballot theft or submission of illicitly generated absentee ballots.

The procedures outlined above dilute the Petitioner's fundamental right to vote, treat his vote in a disparate manner and violate his constitutional rights to Equal Protection and Due Process under the U.S. Constitution.

Importantly, Georgia's Legislature has not approved or ratified the above material changes to statutory law mandated by the Respondents.

On December 28, 2021, before the runoff election, without first conducting an evidentiary hearing or considering the merits of the extensive sworn evidence presented, the District Court denied the Petitioner relief and determined that he

lacked standing as a voter to challenge the unconstitutional procedures adopted by the Secretary of State and Election Board. A Final Judgment dismissing the case was entered by the Clerk on the same date. A week later, the January 5, 2021 Senatorial Runoff came and went without any judicial intervention, and the constitutionally defective procedures were used. As a result, the Petitioner's voting rights were diluted, and his constitutional rights violated.

While the Complaint was dismissed on December 28, 2020, the underlying issue that permeates this appeal—whether the Respondent's election procedures in the runoff violate the Petitioner's constitutional rights—will be repeated and will continue to evade review. Additionally, nominal damages were pled in the Complaint and formed the basis for relief. These constitutional violations are ongoing. As such, this appeal involves a live case or controversy or in the alternative fits squarely within the exception to mootness as a case involving an issue capable of repetition, yet evading review. Accordingly, Petitioner appealed the District Court's ruling to the Eleventh Circuit, which affirmed.

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. Further, there is a danger the same unconstitutional procedures will be used in the future.

A. The Petitioner Has Standing to Challenge the Unconstitutional Actions of Nonlegislative Officials Who Unilaterally Altered Election Procedures Which Diluted, Impaired and Infringed on his Constitutional Right to Vote In a Federal Election.

The right to vote derives from the right of individuals to associate for the advancement of political beliefs that is at the core of the First Amendment and is protected from state infringement by the Fourteenth Amendment. *E.g., Williams v. Rhodes*, 393 U.S. 23, 30–31, 89 S. Ct. 5, 21 L.Ed.2d 24 (1968); *NAACP v. Button*, 371 U.S. 415, 430, 83 S. Ct. 328, 9 L.Ed.2d 405 (1963).

> Writing for a unanimous Court in *NAACP v. Alabama* [357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958)], Justice Harlan stated that it 'is beyond debate that freedom to engage in

> association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.'

Anderson v. Celebrezze, 460 U.S. 780, 786-87 (1983) (internal citation omitted). Petitioner expressed a strong preference to cast his vote in person and did not want to be shunted out of the regular exercise of the shared political experience of voting with his fellow citizens at their local precinct location. The First and Fourteenth Amendments afford them this right to associate for the advancement of political beliefs by exercising the franchise at the voting booth and to cast their votes effectively. *See generally, Anderson*, 460 U.S. at 788, 103 S. Ct. 1564; *Williams v. Rhodes*, 393 U.S. 23, 30-31, 89 S. Ct. 5, 21 L.Ed.2d 24 (1968); *Reynolds v. Sims*, 377 U.S. 533, 563, 84 S. Ct. 1362, 12 L.Ed.2d 506 (1964).

"Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds*, 377 U.S. at 562, 84 S. Ct. 1362.

The requirements for standing under Article III of the Constitution, are three-fold: First, the plaintiff must have suffered, or must face an imminent and not merely hypothetical prospect of suffering, an invasion of a legally protected interest resulting in a "concrete and particularized" injury. Second, the injury must have been caused by the

defendant's complained-of actions. Third, the plaintiff's injury or threat of injury must likely be redressable by a favorable court decision. *Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1159 (11th Cir. 2008). An injury sufficient for standing purposes is "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

In the voting context, "voters who allege facts showing disadvantage to themselves as individuals have standing to sue," *Baker v. Carr*, 369 U.S. 186, 206, (1962), so long as their claimed injuries are "distinct from a 'generally available grievance about the government,'" *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018)(quoting *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam)).

Contrary to the District Judge and Eleventh Circuit's conclusion, Petitioner, consistent with several constitutional provisions specified in the Complaint and herein, established an injury sufficient for standing. Specifically, under the Fourteenth Amendment of the U.S. Constitution, a state may not "deny to any person within its jurisdiction the equal protection of the laws" or deny "due process." U.S. Const. amend. XIV. The Fourteenth Amendment is one of several constitutional provisions that "protects the right of all qualified citizens to vote, in state as well as federal elections." *Reynolds*, 377 U.S. at 554. Because the Fourteenth Amendment protects not only the "initial allocation of the franchise," as well as "the manner of its exercise," *Bush v. Gore*, 531 U.S. 98, 104, (2000), "lines may not be drawn which are inconsistent with

the Equal Protection Clause...." *Id*. at 105 (citing *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966)).

This Court has identified two theories of voting harms prohibited by the Fourteenth Amendment. First, the Court has identified a harm caused by "debasement or dilution of the weight of a citizen's vote," also referred to "vote dilution." *Reynolds*, 377 U.S. at 555. Petitioner presented a dilution claim below.

This Court has found that the Equal Protection Clause is violated where the state, "[h]aving once granted the right to vote on equal terms," through "later arbitrary and disparate treatment, value[s] one person's vote over that of another." *Bush*, 531 U.S. at 104-05 (2000); see also *Baker v. Carr*, 369 U.S. 186, 208 (1962) ("A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, or by a refusal to count votes from arbitrarily selected precincts, or by a stuffing of the ballot box.") (internal citations omitted). Petitioner supplied evidence in the form of numerous affidavits outlining numerous irregularities in the actual re-counting of votes including attributing the votes of one candidate to the other, the failure of counters to compare signatures on absentee ballots with other signatures on file, processing of absentee ballots that appear to be counterfeit because they had no creases indicative of having been sent by mail, and the manner in which they were bubbled in, not allowing observers sufficient access to meaningfully observe the counting and concluding fraudulent conduct occurred during the vote counting. These procedures

were in effect during the Runoff but were never approved by the state legislature. These irregularities rise to the level of an unconstitutional impairment and dilution of the Petitioner's vote.

The second theory of voting harm requires courts to balance competing concerns around access to the ballot. On the one hand, a state should not engage in practices which prevent qualified voters from exercising their right to vote. A state must ensure that there is "no preferred class of voters but equality among those who meet the basic qualifications." *Gray v. Sanders*, 372 U.S. 368, 379-80, 83 (1963). On the other hand, the state must protect against "the diluting effect of illegal ballots." *Id*. at 380. Because "the right to have one's vote counted has the same dignity as the right to put a ballot in a box," *id*., the vote dilution occurs only where there is both "arbitrary ***and*** disparate treatment." *Bush*, 531 U.S. at 105. To this end, states must have "specific rules designed to ensure uniform treatment" of a voter's ballot. *Id*. at 106.

In *Bush*, this Court held that, "[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." 531 U.S. at 104-05. Petitioner argued below that he has been subjected to arbitrary and disparate treatment because he voted under one set of rules, and other voters, through the guidance in the unlawful consent agreement and Election Bulletin, were permitted to vote invalidly under a different and unequal set of rules, and that this is a concrete and particularized injury.

For the purposes of determining whether Petitioner has standing, it is not "necessary to decide

whether [Petitioner's] allegations of impairment of his vote" by Respondents' actions "will, ultimately, entitle them to any relief," *Baker*, 369 U.S. at 208; whether a harm has occurred is best left to this Court's analysis of the merits of Petitioner's claims. Instead, the appropriate inquiry is, "[i]f such impairment does produce a legally cognizable injury," whether Petitioner "is among those who have sustained it." *Baker*, 369 U.S. at 208.

For purposes of standing, a denial of equal treatment is an actual injury even when the complainant is able to overcome the challenged barrier:

> When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.

New Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville, Fla., 508 U.S. 656, 666 (1993).

This Court has rejected the argument that an injury must be "significant"; rather, a small injury, "an identifiable trifle," is sufficient to confer standing. *United States v. Students Challenging Regulatory*

Agency Procedures (SCRAP), 412 U.S. 669, 689 n.14 (1973). Petitioner submits that he has suffered an injury sufficient to confer standing. "A plaintiff need not have the franchise wholly denied to suffer injury. Any concrete, particularized, non-hypothetical injury to a legally protected interest is sufficient." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005).

The inability of a voter to pay a poll tax, for example, is not required to challenge a statute that imposes a tax on voting, *see Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966), and the lack of an acceptable photo identification is not necessary to challenge a statute that requires photo identification to vote in person. Because Petitioner has demonstrated that the unlawful "Consent Agreement" as well as the illegal drop boxes and early opening of absentee ballots subjected him to arbitrary and disparate treatment, vis-à-vis, other voters (i.e. absentee ballot voters), he has clearly suffered a sufficient injury. See also *Roe v. Alabama*, 43 F.3d 574, 580-581 (11th Cir. 1995)(voter and candidates in statewide election had standing to allege violation of their constitutional rights based on the counting of improperly completed absentee ballots, which diluted votes of the voters who went to the polls on election day.) *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). The lower court, while denying that the Petitioner/voter had standing to challenge the Secretary's unauthorized procedures and the vote dilution they

caused, stated that "the alleged injuries are paradigmatic generalized grievances unconnected to Petitioner's individual vote" and "he would need to show an 'individual burden[]' on his right to due process" to demonstrate that he has standing to pursue his due process claims.. Most respectfully, the reasoning below fails to provide ***any*** protection to Petitioner, or any individual citizen's fundamental right to vote. Petitioner has alleged more than just an "individual burden[]' on his right to due process". As the holder of the fundamental right to vote, Petitioner must be deemed to have standing to seek redress for vote dilution and impairment.

The Respondents' procedures for verifying signatures and rejecting absentee ballots was unconstitutional, and it impermissibly diluted the Petitioner's in person vote.

The Eleventh Circuit held that Petitioner has not suffered aninjury-in-fact because he failed to show how the unlawful procedures implemented by Respondents specifically disadvantaged his vote rather than impacting the proportional effect of every vote. Moreover, it concluded that Petitioner failed to show how he was personally harmed as an individual, when his asserted injuries were "shared identically by [all] Georgians who voted in person."

To the contrary, Petitioner consistent with several constitutional provisions specified in the complaint and in his pleadings, established that as an individual voter he suffered an injury in fact based on the associational and aggregate harm that resulted when the unlawful procedures unilaterally implemented by Respondents, permitted the counting of fraudulent votes, which harmed him, his party, and his candidate of choice. The Eleventh Circuit's opinion

exhibited confusion between a *generalized* grievance with a grievance that, although widely shared, is *personal* to each person who shares it. This Court has repeatedly sought to dispel this confusion, explaining in *Spokeo v. Robbins*, 136 S. Ct. 1540 (2016), for instance: "[t]he fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. The victims' injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm." *Id.* at 1548, n.7. As in *Spokeo*, the Supreme Court in *FEC v. Akins*, 524 U.S. 11 (1998), recognized that one may have Article III standing where the "asserted harm … is one which is shared in substantially equal measure by *all or a large class of citizens*." *Id.* at 23 (emphasis added; citations and quotation marks omitted). The distinction that the *Akins* Court drew between cases in which a plaintiff did, versus did not, have Article III standing with respect to a widely shared injury is fully applicable in the present case:

> Whether styled as a constitutional or prudential limit on [Article III] standing, the Court has sometimes determined that where large numbers of Americans suffer alike, the political process, rather than the judicial process, may provide the more appropriate remedy for a widely shared grievance.
>
> The kind of judicial language to which the *FEC* points, however, [in arguing against Article III standing]

> invariably appears in cases where the harm at issue is not *only* widely shared, but *also* of an *abstract and indefinite nature* – for example, harm to the "common concern for obedience to law."
>
> ***
>
> *Often* the fact that an interest is *abstract* and the fact that it is *widely shared* go *hand in hand*. But their association is *not in variable*, and *where harm is concrete, though widely shared, the Court has found "injury-in-fact."*

Id. at 23, 24 (emphases added; citations omitted).

Under the Eleventh Circuit's reasoning, the government could make an announcement that it is going to imprison every single person in the United States, and no one would have Article III standing to seek judicial relief against such edict, even though the panel presumably would agree that a person would have Article III standing if he were the only person, or one of a small number of persons, that the government had targeted. However, as *Akins* recognized, the fact that a harm is widely shared is not relevant by itself; rather, a widely shared harm is *often* abstract, but, when it is, it is the *abstract nature* of the harm, rather than the fact that it is widely shared, that precludes Article III standing; thus, an abstract harm experienced by only one person would preclude such person from having Article III standing. In the present case, Petitioner's asserted

harm may be widely shared, but it is *not* abstract, thus the Petitioner has standing.

B. The Respondents Instituted Procedures for Receiving, Opening and Processing Absentee Ballots That Conflict with State Law and are Unconstitutional.

The Constitution gives each state legislature authority to determine the "Manner" of federal elections. Art. I, § 4, cl. 1. However, the authority given to state legislatures does not authorize nonlegislative officials to unilaterally rewrite the rules concerning the conduct of federal elections, without obtaining legislative approval. See *Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732 (2021) (Thomas, J., dissenting). 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). 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 State Leg. v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 807-08 (2015). In Georgia, the "legislature" is the General Assembly (the "Georgia Legislature"). *See* Ga. Const. Art. III, § I, Para. I; *(see id*).

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 does not divest itself of the legislative power granted to it by the State Constitution. See *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 time, place, and manner of holding federal elections, state executive officers have no authority to unilaterally exercise that power, much less flout or ignore existing legislation. 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. State 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 supreme 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 (MDNC 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" and then discussed why the Article I, 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."

The procedures 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 processing of absentee ballots. First, the Litigation Settlement overrides the clear statutory authorities granted to County Officials individually and forces them to form a committee of three if any one official believes that an absentee ballot is a defective absentee ballot. Such a procedure creates a cumbersome bureaucratic procedure to be followed with each defective absentee ballot – and such ballots simply will not be identified by the County Officials.

Additionally, the Litigation Settlement allows a County Official to compare signatures in ways not permitted by the statutory structure created by the Georgia Legislature. 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. § 21-2-38l (b)(l) (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 clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 ..."). 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 that the County Officials are able to match the elector's information with the state database, generally referred to as the eNet system.

The system for identifying absentee ballots

was carefully constructed by the Georgia Legislature to ensure that electors were identified by acceptable identification, but at some point in the process, the Georgia Legislature mandated the system whereby the elector be identified for each absentee ballot. Under the Litigation Settlement, any determination of a signature mismatch will lead to the cumbersome process described in the settlement, which was not intended by the Georgia Legislature, which authorized those decisions to be made by single election officials.

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. Neither it nor any of the activities spawned by it were authorized, approved or ratified by the Georgia Legislature, as required by the United States Constitution.

"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. 367, 388 (1992).

C. The Respondents' Procedures for Receiving, Opening and Processing Absentee Ballots Violates Petitioner's Rights to Equal Protection under the United States Constitution.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a state from "deny[ing] to any person within

its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1. This constitutional provision requires "that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).

And this applies to voting. "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). The Respondents have failed to ensure that Georgia voters are treated equally regardless of whether they vote in person or through absentee ballot. Under the Equal Protection Clause of the Fourteenth Amendment, a state cannot utilize election practices that unduly burden the right to vote or that dilute votes.

When deciding a constitutional challenge to state election laws, the flexible standard outlined in *Anderson v. Celebrezze,* 460 U.S. 780 (1983) and *Burdick v. Takushi,* 504 U.S. 428 (1992) applies. Under *Anderson* and *Burdick,* courts must "weigh the character and magnitude of the burden the State's rule imposes on those rights against the interests the State contends justify that burden and consider the extent to which the State's concerns make the burden necessary." *Timmons v. Twin Cities Area New Party,* 520 U.S. 351, 358 (1997) (citations and quotations omitted). "[E]ven when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden." *Democratic Exec. Comm. of Fla. v. Lee,* 915 F.3d 1312, 1318-19 (11th Cir. 2019).

"To establish an undue burden on the right to vote under the *Anderson-Burdick* test, Plaintiffs

need not demonstrate discriminatory intent behind the signature-match scheme or the notice provisions because we are considering the constitutionality of a generalized burden on the fundamental right to vote, for which we apply the *Anderson-Burdick* balancing test instead of a traditional equal protection inquiry." *Lee,* 915 F.3d at 1319.

Petitioner's Equal Protection claim is straightforward: states may not, by arbitrary action or other unreasonable impairment, burden a citizen's right to vote. *See Baker v. Carr,* 369 U.S. 186, 208 (1962) ("citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution"). "Having once granted the right to vote on equal terms, the state may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush,* 531 U.S. at 104-05. Among other things, this requires "specific rules designed to ensure uniform treatment" in order to prevent "arbitrary and disparate treatment to voters." *Id.* at 106-07; *see also Dunn v. Bloomstein,* 405 U.S. 330, 336 (1972) (providing that each citizen "has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction").

"The right to vote extends to all phases of the voting process, from being permitted to place one's vote in the ballot box to having that vote actually counted. Thus, the right to vote applies equally to the initial allocation of the franchise as well as the manner of its exercise. Once the right to vote is granted, a state may not draw distinctions between voters that are inconsistent

with the guarantees of the Fourteenth Amendment's equal protection clause." *Pierce v. Allegheny County Bd. of Elections*, 324 F.Supp.2d 684, 695 (W.D. Pa. 2003) (citations and quotations omitted). "[T]reating voters differently "thus "violate[s] the Equal Protection Clause" when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros v. Bd. of Elections,* 249 F.3d 941, 954 (9th Cir. 2001). Indeed, a "minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote]." *Bush,* 531 U.S. at 105.

Simply put, Respondents are not part of the Georgia Legislature and cannot exercise legislative power to enact rules or regulations regarding the handling of defective absentee ballots that are contrary to the Georgia Election Code. By entering the Litigation Settlement, establishing ballot drop boxes, and opening mail-in ballots early, however, Respondents unilaterally and without authority altered the Georgia Election Code. Indeed, the district court, while denying that the Petitioner/voter had standing to challenge the Secretary's unauthorized procedures and the vote dilution they caused, acknowledged that "vote dilution under the Equal Protection Clause is concerned with votes being weighted *differently*." (citing *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019). In the instant case, the result is that absentee ballots have been processed *differently* by County Officials than the process created by the Georgia Legislature and set forth in the Georgia Election Code.

Thus, the rules and regulations set forth in the Litigation Settlement created an arbitrary, disparate, and ad hoc process for processing

defective absentee ballots, and for determining which of such ballots should be "rejected," contrary to Georgia law. *See* O.C.G.A. § 21-2-386. This disparate treatment is not justified by, and is not necessary to promote, any substantial or compelling state interest that cannot be accomplished by other, less restrictive means. As such, Petitioner has been harmed by Respondents' violations of his equal protection rights, and the lower court committed error when it dismissed his claims and failed to recognize his standing to maintain his Constitutional challenges.

If the same procedures continue in future elections, then Georgia's election results will continue to be improper, illegal, and therefore unconstitutional. The fact that the January 5, 2021, election procedures with respect to which Petitioner seeks relief has already occurred does not moot the Petitioner's lawsuit. The Petitioner's fundamental right to vote continues to be impaired, and the constitutionally improper procedures may be implemented in future elections, absent Court intervention. *Siegel v. LePore,* 234 F.3d 1163, 1372 (11th Cir. 2000).

D. The Respondents' Election Procedures Violated Due Process.

The procedures utilized in the runoff election as described in the Verified Complaint violate the Petitioner's right to due process. The abrogation of the absentee ballot signature verification statute, of the requirement that absentee ballots not be opened before election day, and the installation of unauthorized ballot drop boxes, when considered

singularly and certainly when considered collectively, render the election procedures for the runoff so defective and unlawful as to constitute a violation of Petitioner's right to procedural due process under the Fourteenth Amendment to the Constitution.

This Court and other federal courts have repeatedly recognized that when election practices reach the point of patent and fundamental unfairness, the integrity of the election itself violates Petitioner's substantive due process right. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th Cir. 1995); *Roe v. State of Ala.*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*, 19 F.3d 873, 878 (3d Cir. 1994).

The Respondents' unconstitutional rule making discussed above represents an intentional failure to follow election law as enacted by the Georgia Legislature. These unauthorized acts violate Petitioner's procedural due process rights. *Parratt v. Taylor*, 451 U.S. 527, 537-41 (1981), overruled in part on other grounds by *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 532 (1984). Accordingly, the District Court erred, as did the Eleventh Circuit Court of Appeals.

CONCLUSION

For the foregoing reasons this Court should grant the petition, vacate the Eleventh Circuit's Opinion and Judgment and remand to the lower court, with instructions to grant the Petitioner an

evidentiary hearing in order to cure the above described constitutional violations and the procedures established in violation of Georgia's legislative framework. Further, this Court should enjoin, or instruct the lower court to enjoin the Respondents from employing the constitutionally defective procedures in the future, and to award Petitioner nominal damages. 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 elections.

Respectfully submitted,

/s/ Lin Wood, Jr.
L. Lin Wood, Esq.
GA Bar No. 774588
L. LIN WOOD, P.C.
P.O. BOX 52584
Atlanta, GA 30305-0584
(404) 891-1402
(404) 506-9111
lwood@linwoodlaw.com