No. 23-1172

In the Supreme Court of the United States

KRISTEN LOVELL,

Petitioner,

v.

BRAD RAFFENSPERGER, ET AL.,

Respondents.

LORI TULLOS AND VIRGINIA MCFADDIN,

Petitioner,

v.

BRAD RAFFENSPERGER, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The case before this Honorable Court concerns the misapplication of the grant of sovereign immunity for elections officials in Georgia that have failed to perform their legal and ministerial duties in regards to funding, equipping, implementing, conducting and administering State and Federal elections in compliance with the laws and Constitutions of Georgia and the United States ("US"). The improper granting of this doctrine has resulted in the Petitioners' being deprived of their constitutionally protected right to redress their grievances, right to vote and right to privacy. This case also concerns the effective federalization of our elections in violation of Article 1, Sections 1, 4 and 8, the Ninth and Tenth Amendments, via an illegal fiat by then Secretary of Homeland Security, Jeh Johnson, in January 2017, in which he characterized elections as 'critical infrastructure'. Additionally, in 2002, the Georgia Secretary of State ("SOS"), Cathy Cox, also perpetrated an illegal and unconstitutional fiat which moved the entire voting system in Georgia to an electronic system without the statutorily and constitutionally required referendum votes of the electors.

The questions presented are as follows:

1. Whether the granting of the defense of sovereign or official immunity for employees or officials that are acting outside of the authority of their office, unlawfully, or in contravention to the Georgia or U.S. Constitutions is in violation of rights protected by the First, Ninth and Fourteenth Amendments of the U.S. Constitution and Article I, Section I, Paragraphs I, II, VII, IX and XXVIII of the GA Constitution?

2. Whether an action is brought within a Federal *or* State Court, does the protection of sovereign or official immunity apply when officers and/or employees of a State are participating in conduct that is *ultra vires* or in violation of Federal and State laws and Constitutions? Based on this answer, if the State Courts are responsible for adjudicating conduct that is in violation of Federal laws and the rights protected by the U.S. Constitution, should the State Courts be applying the rules of *Ex parte Young* prior to granting sovereign or official immunity to the errant officials?

3. Whether the Court erred in its failure to apply proper analysis, and by not giving proper consideration to the arguments of the Action, in their determination that the case at bar was against the State versus an Action against the Defendants, as officers who were negligent in performing, or failing to perform, their ministerial duties or functions, acting outside of the authority of their offices, unlawfully, and/or unconstitutionally?

4. Whether the Court erred when it failed to consider the constitutional, textual language of Article I, Section II, Paragraph IX(d) itself, and within its appropriate historical context?

5. Whether the Court's question regarding the position or character of the Defendants is relevant?

6. Whether the Court erred when it failed to consider the ruling of Federal District Judge Amy Totenberg, Northern District Georgia, in which she declared the ballots produced by the current Georgia voting system are unconstitutional and non-compliant with Georgia election law in October 2020?

7. Whether the voting systems in Georgia were illegally and unconstitutionally implemented and installed pursuant to State and Federal laws and Constitutions?

8. Whether the Secretary of the Department of Homeland Security had the authority to effectively federalize our elections by designating them 'Critical Infrastructure'?

PARTIES TO THE PROCEEDINGS

The Supreme Court of Georgia consolidated the appeals of the Petitioners.

Columbia County Case

Petitioner Pro Se

- Kristen Lovell

Respondents

- Georgia Secretary of State in his official capacity: Brad Raffensperger
- Columbia County Election Officials in their official capacity: Ann Cushman, Wanda Duffie, Nancy Gay, Jarthurlynn Hosley, Jamese Walker, Larry Wiggins

Morgan County Case

Petitioners Pro Se

- Lori Tullos
- Virginia S. McFaddin

Respondents

- Georgia Secretary of State in his official capacity: Brad Raffensperger
- Morgan County Georgia Board of Elections and Registration Officials in their official capacity: Jennifer Doran, James Woodard, Barry Broadmax, Tim Carter, Mary Kay Clyburn, Kirby Hayes

LIST OF PROCEEDINGS

Supreme Court of Georgia

No. S23A0887, S23A1151

Lovell v. Raffensperger et al.

Tullos et al. v. Raffensperger et al.

Date of Final Order: January 17, 2024

Superior Court of Morgan County

No. 2022SUCA193

Lori Tullos, and Virginia McFaddin, *Petitioners,* v. Brad Raffensperger in his official capacity as Secretary of State of Georgia, Morgan County Georgia Board of Elections and Registration, Jennifer Doran, Director; James Woodard, Barry Broadmax, Tim Carter, Mary Kay Clyburn, and Kirby Hayes, *Respondents.*

Date of Final Order: June 26, 2023

Superior Court of Columbia County

No. 2022ECV0610

Kristen Lovell, *Petitioner,* v. Brad Raffensperger in his official capacity as Georgia Secretary of State, Columbia County Board of Elections, Ann Cushman, Wanda Duffie, Nancy Gay, Jarthurlynn Hosley, Jamese Walker, Larry Wiggins, *Respondents.*

Date of Final Order: March 16, 2023

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The opinion of the Supreme Court of Georgia is reported at S23A0887. *Lovell v. Raffensperger et al.* S23A1151. *Tullos et al. v. Raffensperger et al.*, Decided January 17, 2024. (App.1a).

There were two dismissal orders at the district court. The opinion of the Superior Court of Columbia County is reported at Civil Action No. 2022-ECV-0610, *Lovell v. Raffensperger et. al.*, Signed March 16, 2023. (App.10a). The opinion of the Superior Court of Morgan County is reported at Civil Action No. 2022-SU-CA-193, *Tullos et.al. v. Raffensperger et.al.*, Signed June 26, 2023. (App.10a).

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on January 17th, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Key constitutional provisions, statutes, and judicial rules are reproduced at App.50a-65a, including some of the following, which are pertinent to this petition:

U.S Constitution

Article 1, Sections 1, 4 and 8; First; Fourth; Ninth; Tenth; and Fourteenth Amendments of the United States Constitution;

Georgia Constitution

Article I, Section I, Paragraphs I, II, VII, IX, XII and XXVIII; Article I, Section II, Paragraphs I, II, III, V, IX (b) and (d); Article II, Section I, Paragraph I; Article III, Section VI, Paragraphs I, III, V(c) and VI; and Article IX, Section V, Paragraph I(a) of the Georgia Constitution;

Federal Statutes

HAVA; 52 U.S.C. § 10307 *et.seq.*; 52 U.S.C. § 10308 *et.seq.*; 52 U.S.C. § 10310(c);

52 U.S.C. § 20971(a)(1), (b)(2)(A); 52 U.S.C. § 21081 *et.seq.*; 52 U.S.C. § 21083 *et.seq.*; 2 U.S.C. § 9; Privacy Act of 1974; 42 U.S.C. § 1983;

Georgia Statutes

O.C.G.A. 1-2-6 *et.seq.*; O.C.G.A. 1-3-5; O.C.G.A. 13-8-2; O.C.G.A. 9-2-3; O.C.G.A. 9-4-1; O.C.G.A. 9-4-2;

Georgia Code Title 21 including: 21-2-70; 21-2-280; 21-2-281; 21-2-284; 21-2-285;

21-2-290; 21-2-300; 21-2-321; 21-2-344; 21-2-365(6) and (8); 21-2-368(c); 21-2-379;

21-2-379.22(6); 21-2-480;

Georgia Code Title 50 including: 50-13-20; 50-14-1 through 6; 50-18-70 through 77; 50-14-1 (b)(1); 50-18-71; 50-18-72 (a)(20)(B)(iii); 50-18-72 (a)(21); and O.C.G.A. 51-1-1

STATEMENT OF THE CASE

This case presents a recurring question of great, nationwide, political and economic importance. The higher Courts of Georgia have varied and conflicting rulings regarding the question of sovereign or official immunity when petitioners are attempting to hold employees and/or officials of the State accountable to performing their duties in compliance with Federal and State laws and Constitutions. The Petitioners have presented a multitude of violations and proof of unconstitutional and *ultra vires* actions by the Defendants. These actions have led to the deprivation of Petitioners' constitutionally protected right to vote and to privacy. Questions regarding unconstitutional and illegal actions by Administrative Officials of Federal and State Executive branches were also raised in this case. This Honorable Court, through this case, has the ability to put the questions raised to rest. The judiciary is the last line of defense the Petitioners and the People of the U.S. have to achieve effective redress and remedy of grievances as is our constitutionally protected right on both Federal and State levels. The basis of this statement stands on the foundational

premise of the judiciary, *see* William Blackstone (1768), "Where there's a right there must be a remedy." (*See also* O.C.G.A. 9-2-3). It is the responsibility of the judiciary to hold errant officials to account when constitutionally protected rights are deprived or infringed due to an official's *ultra vires,* illegal, or unconstitutional actions.

1. Grant of Sovereign Immunity Causes Deprivation of Rights

The protection provided by granting sovereign or official immunity to officials acting outside of the authority of their office, unlawfully or in contravention of the Constitutions, deprives the right of the Petitioners to effectively redress their grievances. It also allows for officials conducting themselves in this manner to deprive the people of their constitutionally protected rights with impunity, and infringes on the separation of powers between the legislative or executive branches and the judiciary. The Court, throughout history, has determined that individuals do, in fact, have the ability to invoke judicial power to vindicate the violation of public rights, thus precluding a defense of sovereign or official immunity in these cases. The ability of the courts to adjudicate violations or deprivations of constitutionally protected rights by public officials should not be hindered, regardless of whether a petitioner brings suit in an individual or official capacity. If a petitioner is being deprived of their rights due to an official's negligent performance or failure to perform ministerial duties or if due to the official's contravention of the laws and Constitutions, the judiciary is tasked to hold these errant officials to account. *See Low v. Towns*, 8 Ga. 360, 368 (1850) (the judiciary is the "legitimate and

appropriate" branch to adjudicate the "vested rights of individuals, when acquired under the Constitution and laws of the land"); and in or cited within "Sons", "Voters may be injured when elections are not administered according to the law or when elected officials fail to follow the voters' referendum for increased taxes to fund a particular project, so voters may have standing to vindicate public rights."; "Thus, what has been deemed essential to invoking the judicial power of Georgia courts is not the nature or extent of a plaintiff's damages, but the violation of a right, as adjudicating these rights is what holds a defendant accountable."; "Our use of the term "taxpayers" in Montgomery, combined with our use of the term "residents," is best understood as capturing the interest that community stakeholders have in ensuring that their local governments follow the law and the cognizable injury to the members of that community when such a government does not."; and *Ferguson v. Randolph County*, 211 Ga. 103, 84 S.E.2d 70 (1954), "Taxpayer may bring suit to enjoin county officials from doing unauthorized or illegal acts.". For violations of privacy rights *see*, *Ambles v. State*, 259 Ga. 406, 408 (2)(b) (383 SE2d 555) (1989), "In this state, privacy is considered a fundamental constitutional right and is 'recognized as having a value so essential to individual liberty in our society that [its] infringement merits careful scrutiny by the courts." ("*Ambles*"); and *King v. State*, 272 Ga. 788, 535 S.E.2d 492 (2000), "Because the right of privacy is itself premised upon the due process clause of our constitution, that concept is necessarily subsumed into a constitutional challenge on privacy grounds. Thus, the privacy issue having been raised in the trial court, the principles of due process are applicable on appeal." ("*King*"). The

conduct of the Defendants, as alleged by the Petitioners throughout this Action, describes the deprivation, abridgment and/or dilution of rights protected by the First, Fourth, Ninth and Fourteenth Amendments of the U.S. Constitution and Article I, Section I, Paragraphs I, II, VII, IX and XXVIII of the GA Constitution. *See Providence Constr. Co. v. Bauer*, 229 Ga. App. 679, 494 S.E.2d 527 (1997), *cert. denied*, 525 U.S. 1069, 119 S. Ct. 799, 142 L. Ed. 2D 660 (1999),

> "It is in the public interest to encourage participation by the citizens of Georgia in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for redress of grievances. The General Assembly of Georgia further finds and declares that the valid exercise of [these] constitutional rights . . . should not be chilled through abuse of the judicial process."

2. Grant of Sovereign Immunity Precluded

The repercussions of the conduct by the Defendants, under color of law or office, is far-reaching and affects the entirety of the U.S. The unconstitutional, illegal, *ultra vires* actions by the Defendants preclude their enjoyment of sovereign or official immunity. Election laws in Georgia are required to be strictly construed (*see Schloth v. Smith*, 134 Ga. App. 529, 215 S.E. 2d 292 (1975), "The election law is in derogation of the common law and must be strictly construed."), and have long been determined to be mandates and ministerial duties for election officials, *see Mead v. Sheffield et al.*, No. S04A1982, 601 S.E.2d 99, 278 Ga. 268 (2004) ("*Mead*"), "As a matter of law, therefore, the 481 Laurens County absentee ballots did not

comply with the mandate of O.C.G.A. § 21-2-284(c).";
Moon v. Seymour, 182 Ga. 702 (186 S.E. 744) (1936)
("*Moon*"),

> "But where there is such an utter disregard of the provisions of the statute, as to an essential element of the election, by the election officials as to infect the election as a whole with the taint of illegality, such provisions can not be held directory merely, but must be held to be mandatory."

see also, Alexander v. Ryan, supra at 583(3), 43 S.E.2d 654 (1947) ("*Alexander*"); *State of Ga. v. Carswell*, 78 Ga.App. 84, 88(2), 50 S.E.2d 621 (1948) ("*Carswell*"); and *Sons of Confederate Veterans et al. v. Henry County Board of Commissioners*. S22G0045, *Sons of Confederate Veterans et al. v. Newton County Board Of Commissioners*, S22G0039 decided October 25th, 2022 ("*Sons*"),

> " . . . Georgia has long recognized that members of the community, whether as citizens, residents, taxpayers or voters, may be injured when their local government fails to follow the law. Government at all levels has a legal duty to follow the law; a local government owes that legal duty to its citizens, residents, taxpayers, or voters (*i.e.*, community stakeholders), and the violation of that legal duty constitutes an injury . . . "

Also as previously determined, States have little leeway when it comes to infringing voting rights as it is considered violative of both the First and Fourteenth Amendments. *See Duncan v. Poythress*, 515 F. Supp.

327 (N.D. Ga.), *aff'd*, 657 F.2d 691 (5th Cir. 1981) ("*Duncan*"),

> "The right to vote is clearly fundamental, and is protected by both the due process and equal protection guarantees of U.S. Const., amend. 14. In either case, any alleged infringement of the right to vote must be carefully and meticulously scrutinized, for a state has precious little leeway in making it difficult for citizens to vote."

3. Sovereign Immunity Waived for Failure to Perform Ministerial Duties

The Court's rulings regarding the waiver of immunity for the negligent performance, or negligent failure to perform, ministerial duties by employees and officials of Georgia are clear. *See Smith v. McDowell*, No. A08A0645, 666 S.E.2d 94 (2008),

> "In a recent decision, the Georgia Supreme Court reiterated that a ministerial duty is 'simple, absolute, and definite, arising under conditions admitted or proved to exist, and requiring merely the execution of a specific duty,' while a discretionary duty requires 'the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed.'" (Citations omitted).

The argument made by Defendant Raffensperger ("Raffensperger") was that the choosing of the voting system is a discretionary duty. Though that may be true, it is his legal and ministerial duty to ensure the installation, implementation and ballots produced by

this voting system is in compliance with Georgia and U.S. laws and Constitutions. *See Murphy v. Bajjani*, 282 Ga. 197, 199(1), 647 S.E.2d 54 (2007), "As we observed in *Joyce v. Van Arsdale*, 196 Ga.App. 95, 395 S.E.2d 275 (1990), we must distinguish between "rule making or deliberation" in a supervisory capacity and "a specific task which became necessary after the discretionary decision" was made." *Id.* at 97, 395 S.E.2d 275. "[T]he execution of a specific task is characterized as ministerial even though the manner in which it is accomplished is left to the employee's discretion." (Citation omitted.) *Id.*; *City of Atlanta v. Mitcham*, S14G0619, 296 Ga. 576 (2015), noted by Judge Branch's concurrence in this case, "it is important for both courts and litigants not to confuse the term "ministerial duties" as it pertains to the question of official immunity with the term "ministerial functions" as it is used in determining the waiver of sovereign immunity . . . ". The Court's decisions, both historic and contemporary, demonstrate that public officials do not enjoy immunity for the negligent performance of, or negligent failure to perform their ministerial duties. Though the Petitioners raised Article I, Section II, Paragraph V(b)(1) in their initial Complaint, Article I, Section II, Paragraph IX(d) of the Georgia Constitution was raised within the filing of their Brief to the Court, which is the Article applicable to this case. Thus, the Court erred in their failure to apply proper analysis before rendering its decision and failed to give proper consideration to the arguments of this Action. By the Court's own rulings, this is required when petitioners allege within their complaints that officials negligently performed, or negligently failed to perform, their legal or ministerial duties, acted *ultra vires*, unlawfully, and/or unconstitutionally. The

Petitioners' calling attention to the inapplicable Article in their initial Complaints should have had no bearing on the Court's responsibility of 'proper analysis', especially since the Article that does apply was raised within the Brief to the Court.

4. Failure of Consideration Error

The Court has overturned appellate court rulings due to the failure of consideration error, and historically only required a petitioner to *allege* such misconduct in order to warrant review. *See Primas v. City of Milledgeville*, 296 Ga. 584, 769 S.E.2d 326 (2015),

> "Judgment of the appellate court affirming the trial court's grant of summary judgment to a city based on sovereign immunity was vacated because the appellate court, like the trial court's ruling on the city's motion, gave no consideration to whether the alleged negligence by the city occurred in the performance of a governmental function and did not acknowledge or apply the definitions of governmental and ministerial functions as those terms relate to the city's sovereign immunity, we vacate the judgment of the Court of Appeals and remand to that court for its reconsideration in light of this opinion and our decision today in S14G0619, *City of Atlanta et al. v. Mitcham*, 296 Ga. 576"

See also A.A.A. Parking, Inc. v. Bigger, 113 Ga. App. 578, 149 S.E.2d 255 (1966), "Nature of an action is to be determined, not by the designation of the pleader, but by the intrinsic contents of the petition, its recitals of fact, the nature of the wrong sought to be remedied, and the kind of relief sought."

5. Sovereign Immunity No Bar for Injunctive Relief

Georgia courts have routinely determined that sovereign immunity does not bar suits in which petitioners sought injunctive relief to stop alleged illegal or *ultra vires* acts of officials and employees of the State. *See Int'l Bus. Machs. Corp. v. Evans*, 453 S.E.2d 706 (Ga. 1995) ("*IBM*"), "Holding that sovereign immunity does not bar suits seeking injunctive relief to curtail alleged illegal or ultra vires acts of government entities." And "Concluding that sovereign immunity did not protect Department of Administrative Services from injunctive relief, and noting that "[t]o avoid the harsh results sovereign immunity would impose, the court has often employed the legal fiction that such a suit is not a suit against the state, but against an errant official, even though the purpose of the suit is to control state action through state employees". *See also "Sons"*; *Chilivis v. Nat'l Distrib. Co.*, 238 S.E.2d 431 (Ga. 1977); *Enger v. Erwin*, 245 Ga. 753, 267 S.E.2d 25 (1980) ("*Enger*"); and *Irwin v. Crawford*, 78 S.E.2d 609 (Ga. 1953) ("*Irwin*"). Further, though early precedent highlighted a difference between actions brought against State officials as individuals versus in their official capacities, later precedent discarded that legal fiction. Instead, the rule that developed centered upon whether the acts in question were legal or illegal. Even when personal liability was implied, the courts distinguished that, unlike actions seeking monetary damages, actions pursuing injunctive relief were not against the State, but instead the errant official. Based on the Court's rulings, illegal or *ultra vires* acts by public officials do not constitute "state acts" and officials that perpetrate such acts are

stripped of the protection of sovereign or official immunity. Thus, Georgia Constitution Article I, Section II, Paragraph IX(d) is the controlling Article in this case since it deals with *ultra vires* actions and unlawful conduct by officials of the State. The Court erred in its failure to apply proper analysis and give proper consideration to the Petitioners' allegations which are proved within their filings. The Court's grant of sovereign immunity for these 'errant officials' is in itself unconstitutional and allows the Defendants, under color of law (*see* 42 U.S.C. § 1983), to deprive the Petitioners of their constitutionally protected rights with impunity. *See Undercofler v. Seaboard Air Line R.R. Co.*, 152 S.E.2d 878, 882 (Ga. 1966),

> "The rule that the State may not be sued without its consent is not applicable to an action where injunction is sought to prevent the commission of an alleged wrongful act by an officer of the State acting under color of office but without lawful authority and beyond the scope of official power.";

See Ramsey, 182 S.E. at 396; *Dennison Mfg. Co. v. Wright*, 120 S.E. 120, 122 (Ga. 1923), "a suit against a state employee based on unauthorized or illegal acts "would not be an action against the state."

6. Sovereign Immunity Historically No Bar for Injunctions

Historically, the higher courts of Georgia have held that sovereign immunity is meant to protect the public purse, shielding the state from suits seeking damages and that the doctrine is not applicable when a party seeks only injunctive relief. *See IBM* and citing

Justice Hunt's concurring opinion in *IBM* that, "[s]overeign immunity does not protect the state when it acts illegally and a party seeks only injunctive relief." *In re A.V.B.*, 482 S.E.2d 275 (Ga. 1997). Georgia's higher court rulings, even when damages were the result, was sovereign immunity is no bar. *See Cary v. Department of Children & Youth Servs.*, 235 Ga. App. 103, 508 S.E.2d 469 (1998), "Waiver of the state's sovereign immunity for the torts of the state's officers and employees did not extend to losses resulting from conduct that was not within the scope of their official duties or employment." There has been no textual changes to the Georgia Constitution or laws that would cause the Court's interpretation of what actions disqualify officials and employees from the protection of sovereign or official immunity, thus, there is no reason for the change from its historical precedents. The Court determined that rules governing immunity which previously existed, cannot be changed or modified by the Court. *See Sheley v. Board of Public Education for Savannah*, 212 S.E.2d 627 (Ga. 1975), "Because of the adoption of [the 1974] constitutional amendment, and it is now effective as a part of our Constitution, we hold that the immunity rule as it has theretofore existed in this state cannot be abrogated or modified by this court." The Court went beyond their own ruling regarding this moratorium as evidenced by its decision in this Action. The Court noted in *IBM*, that courts had "scrutinized the challenged act and if the act is legal, found sovereign immunity applies; on the other hand, if the act is illegal, then [courts have] held that sovereign immunity is no bar." The Court's conclusion in *IBM* held that suits seeking injunctive relief based on alleged illegal acts are not suits against the state. *Id.* (noting, after discussing

the legal fiction, that "[i]n other instances" courts had focused on the legal versus illegal determination). Thus, the Court historically applied the consideration of the legality of an act with this 'legal fiction' and relied on the basis of whether or not the act was legal to determine whether it was an act of the State, much like *Ex Parte Young* in federal proceedings. Concurrence with this analysis is apparent within the opinion of J. Hill in *Evans v. Just Open Government*, 251 S.E.2d 546, 552 (Ga. 1979) (Hill, J., concurring), "So long as the state and its officials obey the constitution and law they are immune from liability but neither the state nor its officials can violate the constitution or law and successfully claim immunity."; and *Department of Revenue v. Kuhnlein*, 646 So. 2D 717 (1994), "Sovereign immunity does not exempt the State from a challenge based on violation of the federal or state constitutions, because any other rule self-evidently would make constitutional law subservient to the State's will. Moreover, neither the common law nor a state statute can supersede a provision of the federal or state constitutions.". Therefore, the Court made the Constitutions subservient to the State's will without the required proper review and analysis of the Petitioners' allegations.

7. Historical Precedent Disregarded

The Court's error in disregarding its own historical precedent began with its tortuous ruling in *Sustainable Coast*, 755 S.E.2d 184, 189 (Ga. 2014) ("*Sustainable*"). In this ruling, the Court failed to apply its own well established qualifications for granting sovereign immunity, which up to this point had been no bar in the event of injunction. The Court's ruling in *Sustainable* is convoluted and in opposition of its own rulings of

whom enjoyed the protection of sovereign immunity. Even within this decision, the Court provided the reasons for which immunity should not be granted by stating, " . . . but, where such officer acts contrary to and derogatory thereof, his acts are illegal and unauthorized, and a suit against him to recover damages, for an injunction, or to compel him to obviate the effect of his actions in the premises, would not be an action against the state." *Id.* (citation omitted). Georgia Constitution Article I, Section II, Paragraph IX(d) includes the term "officers" as being subject to suit. This Article denotes the ability to hold 'officers' and employees of the state or its departments and agencies accountable, "subject to suit and liable for injuries and damages caused by the negligent performance of, or negligent failure to perform, their ministerial functions." Nowhere in this Article is there a requirement of whether an action must be brought against the officer in their individual or official capacity. The only requisite to bringing suit is whether the officer or employee is negligently performing or negligently failing to perform ministerial functions or duties. The Court's decision in this Action renders the word "officers" in this Article superfluous, *see Powell v. Alabama*, 287 U.S. 45,46 (1932), "The rule that no part of the Constitution shall be treated as superfluous", and any legislation that corrupts this language is also unconstitutional. *See also*, *Sustainable* (alteration in original),

> "[T]his Court must honor the plain and unambiguous meaning of a constitutional provision. Our duty is to construe and apply the Constitution as it is now written. Where

> the natural and reasonable meaning of a constitutional provision is clear and capable of a natural and reasonable construction, courts are not authorized either to read into or read out that which would add to or change its meaning."

Quoting *Blum v. Schrader*, 637 S.E.2d 396, 397-98 (Ga. 2006)).

8. Conflicting Rulings

The Court has issued numerous conflicting rulings regarding their granting of sovereign immunity as well as issued rulings in conflict with other higher courts. The Court has ruled that the failure to perform ministerial acts must have legal consequences or the decision to grant sovereign immunity would abrogate the constitutional right of citizens to seek redress for injuries inflicted by these actions. *See Smith v. McDowell*, 666 S.E.2d 94 (2008); *Curling v. The State Election Board, et. al.*, Defendants (2019), United States Court of Appeals, Eleventh Circuit, No. 18-13951, decided February 07, 2019, "*Ex parte Young's* test for determining exception is typically straightforward, asking only whether the 'complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective" *Verizon Md, Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002)" and "As long as the plaintiff alleges ongoing violations of federal law and seeks injunctive or declaratory relief, or both, against state officials in their official capacity, plaintiffs usually face no hurdles in clearing *Ex parte Young*."

9. Characterization of Parties

The Court's position regarding the question of granting sovereign immunity and the characterization of the parties has been addressed within its own rulings. *See Murdock v. Perkins et al. Peters et al. v. Perkins et al.*; and *vice versa.* 22361, 22379, 22380., 219 Ga. 756 (1964), "The real test of whether or not an action is one against the State is stated in *Georgia Public Service Commission v. Atlanta Gas Light Co.*, *760 205 Ga. 863 (55 SE2d 618), as follows:

> "In determining whether the action is one against the State where the suit is against an agency or officer of the State, the nature of the suit or relief prayed must be considered, and not merely the position or character of the agency or officer against whom the action is brought. The question is, does the action affect a contract or property right of the State, so that a judgment against the State agency or officer will bind the State or control future State action? The State's interest must be of such substantial nature that the result of the action affects it as a sovereign entity."

And, this Honorable Court agrees. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991), "Our cases establish that, in the context of lawsuits against state and federal employees or entities, courts should look to whether the sovereign is the real party in interest to determine whether sovereign immunity bars the suit.", and *Ex Parte New York*, 256 U.S. 490, 500-502 (1921), "In making this assessment, courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the

sovereign." Therefore, historically, the Court has maintained the substance of the suit, rather than the characterization or position of the named defendant, governs if and how the suit should be adjudicated. In *Irwin,* plaintiff's filed against the defendants "as members of" establishing that the suit was brought against the members in their official capacities. *See Ramsey v. Hamilton*, 182 S.E. 392, 396 (Ga. 1935) (holding that a suit brought against defendant "as comptroller-general of the State of Georgia" was "manifestly" an official capacity suit because the description was "the antithes[i]s of *descriptio personae*"); *Contra Dennison Mfg. Co. v. Wright*, 120 S.E. 120, 122 (Ga. 1923), (holding that a suit brought against defendant, "who is comptroller general of the state of Georgia," was solely *descriptio personae*). The Court did not refuse to consider these cases on the grounds of sovereign immunity, instead the Court implies if the conduct and actions of the county boards are contrary to law, the courts will intervene in order to prevent these actions or conduct. *See, Irwin*, 78 S.E.2d at 611 (citing *Colston v. Hutchinson*, 67 S.E.2d 763 (Ga. 1951)), "it is consistently said that the county boards of education have jurisdiction of these local controversies and that courts will not interfere provided the proposed action is not illegal or contrary to law."; "There is no doubt but that equity will exercise jurisdiction to restrain acts or threatened acts of public corporations or of public officers, boards, or commissions which are ultra vires and beyond the scope of their authority, outside their jurisdiction, unlawful or without authority. . . . ", and "This court has many times recognized the right of a taxpayer to apply to a court of equity to prevent public officers from taking action or performing acts which they have no authority

to do." *Id.* (citations omitted). Justice Benham stated in *Sustainable* that *Irwin* may no longer be cited authoritatively in light of the 1991 amendment, *see Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc.*, 755 S.E.2d 184, 190-91 (Ga. 2014), yet Justice Benham himself cited *Irwin* as authority in the 1994, *Powell v. Studstill*, case. Justice Benham, in *Powell*, wrote for the majority, that the trial court erred in issuing an injunction against a school board, but " . . . would have been justified in doing so had the board's action been contrary to law or outside its authority." *See Powell v. Studstill*, 441 S.E.2d 52, 54 (Ga. 1994) (citing *Irwin*, 78 S.E.2d at 611). This ruling by Justice Benham in *Powell* was affirmed by him again in 1995 in yet another opinion. *See Wilcox Cnty. Sch. Dist. v. Sutton*, 461 S.E.2d 868, 870 (Ga. 1995). The Court has consistently ruled that defendants are to be held accountable if they are violating the rights of the People. *See Sons*, "Thus, what has been deemed essential to invoking the judicial power of Georgia courts is not the nature or extent of a plaintiff's damages, but the violation of a right, as adjudicating these rights is what holds a defendant accountable."; *BFI Waste Systems of North America v. DeKalb County*, 303 F. Supp. 2d 1335 (N.D. Ga. 2004); and unpublished order in *Douglas v. DeKalb County*, No. 1:06-CV-0584-TWT, 2007 WL 647291 (N.D. Ga. Feb. 26, 2007).

10. Federal Judge Rulings Disregarded

Judge Totenberg, Northern District Georgia, in October 2020, concluded the voting system should, "allow voters to cast ballots that are solely counted based on their voting designations and not on unencrypted, humanly unverifiable QR codes that can be subject to external manipulation and does not allow

proper voter verification and ballot vote auditing.", *Curling v. Raffensperger*, Case 1:17-cv-02989-AT, 493 F. Supp 3d 1264 (2020). Also, O.C.G.A. 21-2-365(8) which states that tabulators are required to record correctly and accurately every vote cast, not interpret an unlawful 2d/QR bar code. *See Alexander*,

> "The voter was entitled to understand that the ballot was legal as presented, and in thus voting it he acted upon a mistaken assumption, and this is enough to vitiate such ballots . . . Nothing could possibly be more important than the sanctity of the ballot. It transcends in gravity far beyond any question as to who in any given case might be entitled to a particular office."

Judge Totenberg ruled that the ballots being presented to the voters in Georgia, were not compliant with Georgia law in October 2020. Since that ruling, forty months and three elections ago, neither Raffensperger nor the members of the county Boards of Elections ("BOE") have done anything to remedy these illegal ballots. Thus, the Defendants have created the scenario that every election conducted using these ballots can be overturned, rendered invalid or void as proved by the Court's own precedent. *See Kemp v. Mitchell County Democratic Executive Comm.*, 216 Ga. 276, 116 S.E.2d 321 (1960) (*See also* O.C.G.A. 9-5-1), "Where there is no authority to hold the election, or where statutory requirements pertaining to the holding of an election are not complied with, the election is void and injunction is a proper remedy."; *Mead*; *Moon*; *Alexander*; *Carswell*; and *Sons*. The use of these unlawful, and thereby unofficial, ballots creates a constitutional crises that affects the entirety

of the U.S. since only votes on Official Ballots, ballots that are compliant with the State and Federal laws, are to be counted or have any effect for elections. *See* O.C.G.A. 21-2-280 and 2 U.S.C. § 9. *See also, Teigen et. al. v. Wisconsin Elections Commission et. al.*, No. 2022AP91, L.C. No.2021CV958, Wisconsin Supreme Court, July 8, 2022, "If elections are conducted outside of the law, the people have not conferred their consent on the government. Such elections are unlawful, and their results are illegitimate.": Duncan, "Qualified citizens not only have a constitutionally protected right to vote, but also the right to have their votes counted, a right which can neither be denied outright, nor destroyed by alteration of ballots, nor diluted by ballot box stuffing.".

11. Georgia SOS Illegally Moved to Electronic Voting

The installation, implementation and use of the machine voting systems in Georgia infringes, deprives, dilutes and abridges the rights of the Petitioners which are protected by the Georgia Constitution Articles I, II, III, VI and IX, and the U.S. Constitution First, Ninth, and Fourteenth Amendments and Article 1, Sections 1, 4 and 8. In 2002, the Georgia SOS, by an illegal and unconstitutional fiat, moved Georgia elections from hand-marked paper ballots to machine voting. The statutorily and constitutionally mandated referendum votes, *see* O.C.G.A. 21-2-321(2002) and Georgia Constitution Article XI, Section V, Paragraph I(a), required to move from paper ballots to machine voting, and for the cost of said move, were never conducted. This was not only outside of the SOS scope of authority, but the County BOE's were required to conduct the referendum votes prior to funding or

implementing this voting scheme. *See Duffee v. Jones*, 68 S.E.2d 699, 704 (Ga. 1952), (holding that where a county "through its members, acts beyond the scope of its lawful jurisdiction and commits an actionable wrong, the act so committed is not 'county action,' and in such a case a suit may be maintained in the courts of this State against the wrongdoers") and *Sons*," Voters may be injured when elections are not administered according to the law or when elected officials fail to follow the voters' referendum for increased taxes to fund a particular project . . . "; Georgia Constitution Article III, Section VI, Paragraph VI states " . . . the General Assembly shall not have the power to grant any donation or gratuity or to forgive any debt or obligation owing to the public . . . ", (the Court has held that this section applies to state, county and municipal governing authorities and that its purpose is to prevent the 'extravagant outlay' of taxpayer funds), *see Grand Lodge of Ga. I.O.O.F. v. City of Thomasville*, 226 Ga. 4, 172 S.E.2d 612 (1970), *Mayor of Athens v. Camak*, 75 Ga. 429, 435 (1885)); *Enger*, "A constitutional Act of the General Assembly has been found to be the equivalent of a contract and the rights created thereby may not be impaired by subsequent legislation."; 21-1271 *Moore v. Harper* (6/27/2023) ("*Moore*"), "This Court held that the Governor's veto did not violate the Elections Clause, reasoning that a state legislature's 'exercise of . . . authority' under the Elections Clause 'must be in accordance with the method which the State has prescribed for legislative enactments.'" *Id.*, at 367. The Court highlighted that the Federal Constitution contained no "provision of an attempt to endow the legislature of the State with power to enact laws in any manner other than that in which the constitution

of the State has provided that laws shall be enacted." *Id.*, at 368.; also in *Moore*, "Thus, when a state legislature carries out its federal constitutional power to prescribe rules regulating federal elections, it acts both as a lawmaking body created and bound by its state constitution, and as the entity assigned particular authority by the Federal Constitution. Both constitutions restrain the state legislature's exercise of power." and "Arizona State Legislature said much the same, emphasizing that, by its text, nothing in the Elections Clause offers state legislatures carte blanche to act 'in defiance of provisions of the State's constitution.'" 576 U.S., at 818.

12. Unconstitutional Federalization of Elections

The 'critical infrastructure' designation by Jeh Johnson, then Department of Homeland Security ("DHS") Secretary, was an overstep of authority by an unelected official of an administrative agency of the Executive Branch. This overstep has far-reaching political and economic implications. DHS cites no specific statutory authority allowing it to transform the way the States conduct elections. On the contrary, this Honorable Court has previously determined this conduct to be unconstitutional. *See Printz v. United States*, 521 U.S. 898 (1997), " . . . the Court's jurisprudence makes clear that the Federal Government may not compel the States to enact or administer a federal regulatory program. *See, e.g., New York, supra,* at 188." and "A "balancing" analysis is inappropriate here, since the whole object of the law is to direct the functioning of the state executive, and hence to compromise the structural framework of dual sovereignty; it is the very principle of separate state sovereignty that such a law offends. *See, e. g., New York, supra,* at

187. Pp. 925-933."; *W.Va. v. EPA*, 985 F. 3d 914 (06/30/2022), ("*W.Va*"), " . . . this Court has said that the major questions doctrine may apply when an agency seeks to "intrud[e] into an area that is the particular domain of state law." *Ibid.* and "When an agency claims the power to regulate vast swaths of American life, it not only risks intruding on Congress's power, it also risks intruding on powers reserved to the States. *See SWANC*, 531 U.S., at 162, 174."; *Davis v. Wechsler*, 263 U.S. 22, 24, "Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them."; *Norton v. Shelby County*, 118 U.S. 425 p. 442; and *Marbury v. Madison*, 5th U.S. (2 Cranch) 137, 174, 176, (1803). This sweeping, national characterization of our election systems was/is in violation of Article 1, Sections 1, 4 and 8, the Ninth and Tenth Amendments of the Constitution. Only Congress can make law to alter election regulations. This 'critical infrastructure' designation of our elections, by an unelected official via an illegal and unconstitutional fiat, removed from the States the manner of holding elections. Our elections, therefore, have been federalized by placing them under the wing of the DHS and also requires the States bear the burdens of this unconstitutional overreach. *See W.Va*, "this Court has said that an agency must point to clear congressional authorization when it seeks to regulate "a significant portion of the American economy," *ante*, at 18 (quoting *Utility Air*, 573 U.S., at 324), or require "billions of dollars in spending" by private persons or entities, *King v. Burwell*, 576 U.S. 473, 485 (2015).

REASONS FOR GRANTING THE PETITION

This case is a superior vehicle for resolving conflicting decisions on legal issues of exceptional, political and economic, importance that affects the entirety of the US. There is no issue more exceptional or of more national importance than the deprivation of voting rights. The granting of immunity by the Court violates Petitioners' right to redress their grievances. The Court's grant of immunity for 'errant' officials and employees cloaks them with amnesty and grants them the ability to deprive petitioners of their constitutionally protected rights without fear of repercussions. This Honorable Court, in granting Certiorari in this case, would ensure that the courts consider the proper sovereign and official immunity analysis for cases in which state officials and employees are violating Federal and State laws and Constitutions. This case also allows this Honorable Court to rule on the aforementioned overstep of authority perpetrated by both Federal and State administrative officials. This case was filed as a Declaratory Judgment with Injunctive Relief and has no significant defects as a vehicle for addressing the questions presented as Petitioners were seeking only prospective relief. A summary of the merits proving sovereign immunity was erroneously granted by the Court follows.

I. VOTING SYSTEMS ARE NOT CERTIFIED

The electronic voting systems nationwide have not been legally certified by the Election Assistance Commission ("EAC"), as is mandated pursuant to O.C.G.A. 21-2-300(a)(3), 52 U.S.C. § 20971, and HAVA,

since 2017. This caused the question to be raised as to the constitutionality of implementing this voting system since Georgia Constitution Article II, Section I, Paragraph I, reads: Method of voting. – Elections by the people shall be by secret ballot and shall be conducted in accordance with procedures provided by law. This issue also violates Article 1, Section 4, of the U.S. Constitution. The Petitioners show and prove within this case that the voting systems in Georgia, and across the US, are not legally certified due to the Voting System Testing Laboratories ("VSTL"), Pro V&V and SLI Gaming, not being lawfully accredited through the EAC. *See* VSTL manual:

> 3.6 Grant of Accreditation. Upon a vote of the EAC Commissioners to accredit a laboratory, the Program Director must inform the laboratory of the decision, issue a Certificate of Accreditation, and post information regarding the laboratory on www.eac.gov.;
>
> 3.6.1 Certificate of Accreditation. A Certificate of Accreditation will be issued to each accredited laboratory. The certificate will be signed by the Chair of the Commission . . . ; and
>
> 3.8 Expiration and Renewal of Accreditation. – A grant of accreditation is valid for a period not to exceed two years.

No valid vote has been held by the EAC to accredit any VSTL since 2016, as they have not had a quorum since then. No 'Chair of the Commission' has signed the Certificates since at least 2015. These 'Certificates' contain invalid expiration dates pursuant to the Voluntary Voting System Guidelines 2.0 ("VVSG"). These voting systems also contain built-in network

cards allowing their connection to the internet in violation of the VVSG, Federal and State laws, rules and regulations. Therefore, the Pro V&V and SLI Gaming VSTL's accreditation is invalid, and any voting system certifications issued by them are void.

Defendants implemented ERIC, KnowInk poll pads and voter access cards which have never been EAC certified yet are part of the Georgia voting system. Georgia and EAC Rules and regulations require,

> GA Rule 183-1-12-.02 (o)– "Voting system" or "voting system components" shall include electronic ballot markers, printers, ballot scanners, election management systems, electronic poll books, and voter access cards.;
>
> GA Rule 183-1-12-.05 (2)– Electronic ballot markers, ballot scanners, and election management systems shall not be connected to the internet.;
>
> External Network Connections–VVSG 2.0-does not permit devices or components using external network connections to be part of the voting system. The external network connection leaves the voting system vulnerable to attacks, regardless of whether the connection is only for a limited period or if it is continuously connected.; and
>
> GA Rule 590-8-1-.01.(d)(1) Certification of Voting Systems the Qualification tests shall comply with the specifications of the Voting Systems Standards published by the EAC.

Therefore, voting systems cannot be able to connect, or have external network connections. Any system

that includes network connection cards do not meet the minimum requirements of EAC VVSG, are not, and cannot be, legally certified. *See Standard v. Hobbs*, 263 Ga.App. 873 (1) (589 S.E.2d 634) (2003), "when a government department creates its own policy requiring certain actions under certain situations, then the actors for that department have a ministerial duty to follow the policy."; and *Simmons v. Block*, 782 F.2d 1545, 1550 (11th Cir. 1986), "A court must overturn agency actions which do not scrupulously follow the regulations and procedures promulgated by the agency itself.".

Raffensperger has thereby signed an illegal contract for this system since it effectuates the corruption of legislation. *See* O.C.G.A. 13-8-2; *see also Glosser v. Powers*, 209 Ga. 149, 71 S.E.2d 230 (1952), "Contracts against policy of the law are void and unenforceable even absent fraud in their procurement."

II. VOTING SYSTEMS ABLE TO AND CONNECTED TO INTERNET

Petitioners proved the Georgia voting system not only is illegally able to connect, but actually is connected to the internet and provided proof this system was accessed remotely, which allowed bad actors to delete voting data. Raffensperger has been aware of these issues since at least October 2020. Petitioners provided emails, within exhibits to the Court, as evidence that Georgia's SOS office was aware that a voting system laptop was remotely accessed, that entire batch files of absentee ballots were deleted and later determined to be unrecoverable, and also provided proof that this voting system allows for the same ballot to be scanned, undetected, through the tabulators multiple times. These systems were proved

to be easily hacked in a report authored by J. Alex Halderman in August 2021 during the *Curling* case, and he demonstrated this in court in January 2024. It took him six seconds and a ball point pen to take control of the voting system and change votes without detection. This violates EAC VVSG 9.1- An error or fault in the voting system software or hardware cannot cause an undetectable change in election results., and 9.2- The voting system produces readily available records that provide the ability to check whether the election outcome is correct and, to the extent possible, identify the root cause of any irregularities. These issues, as well as Judge Totenberg's ruling that this system produces ballots that are non-compliant with Georgia law, should have triggered Raffensperger's legal and ministerial duty to immediately revoke this system's approval, as well as prevent any such electronic voting system to be used in Georgia thereafter, pursuant to O.C.G.A. 21-2-368(c). Judge Totenberg ruled that the ballots produced by this voting system were inauditable, which is also in violation of Federal Rules and Regulations. *See* EAC VVSG Principle 9: AUDITABLE – The requirements include ensuring that an error in the voting system cannot cause an undetectable change in the election results. The voting system is auditable and enables evidence-based elections; and 4 – Auditable means the voting system generates records that enable external auditors to verify that ballots are correctly tabulated. During the Curling trial, J. Alex Halderman testified that vote stealing malware would not be detectable by any of the defenses the SOS, Pro V&V or Dominion purports to practice. He described how malware defeats the QR code authentication, logic and accuracy testing, on screen hash validation, and

external APK validation which was used after the November 2020 election.

The patent for the Dominion voting system, (Patent No.: U.S. 9,202,113 B2, Dec. 1, 2015), not only proves the ability, but the necessity of being connected to a network, states that every system has built-in network cards and that it was specifically designed for remote incursion in order to change votes. Petitioners provided the entire patent, and notable excerpts, to the Court within their Reply Brief to Raffensperger's Response Brief.

The lack of lawful VSTL accreditation affects every voting system across the US. No voting systems have been lawfully 'certified' since 2017 due to the vendors not being legally accredited.

III. BALLOTS NON-COMPLIANT WITH LAW

This voting system does not produce ballots that are compliant with Georgia election laws regarding the 'Form of Official Election Ballot'. This prevents these votes from having any effect for State or Federal elections, resulting not only in the deprivation of Petitioners' right to vote, but the ability of Federal and State elections to be lawfully certified. The mandates for Georgia's 'Form of Official Election Ballot' (*see* O.C.G.A. 21-2-284, 285 and 480), and requirement that only votes contained on 'Official Ballots' can be counted (*see* O.C.G.A. 21-2-280 and 2 U.S.C. § 9), precludes the use of the ballot marking devices ("BMD"), and current tabulators.

Defendants' have willfully, knowingly, illegally and unconstitutionally implemented and continued to use a voting system that does not, and cannot, produce

a legal ballot, nor that can legally, safely or accurately, count the votes upon these ballots.

IV. INFRINGEMENT OF PRIVACY

Defendants' are depriving Petitioners of their constitutionally protected right of privacy and right to a secret ballot. These violations are detailed throughout this Action with evidence proving the Defendants have provided outside sources such as ERIC, who then forwards Petitioners' private identifying information ("PII") to other end users (as detailed in the *Tullos et.al.*, Brief's to the Court), CEIR and SCYTL, in violation of 52 U.S.C. § 21083(a)(B)(3), O.C.G.A. 50-18-72(a)(20)(B)(iii), O.C.G.A. 50-18-72(a)(21) , and the Privacy Act of 1974 which states, "no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains". *See Ambles*; *King*; *also*, O.C.G.A. 21-2-365(6); and, GA Constitution, Article II, Section I, Paragraph I.

Defendants are authorized to acquire this information for the administrative purpose of a voter registration database, but they are prohibited from forwarding that information to another source without express written authorization.

These actions, are in violation of Article I, Section I, Paragraph I, and Article I, Section I, Paragraph XIII of the Georgia Constitution and the Fourth Amendment of the U.S. Constitution. *See Miller v. Kilpatrick, supra* at 194, 230 S.E.2d 328. (*"Miller"*), "It is basic in the American democratic process of elections that an individual voter's right to privacy as to how he cast his

ballot is inviolate. It is improper and erroneous for courts to engage in presumptions of any kind in that exclusive area of privacy."

V. UNCONSTITUTIONAL ELECTION LAW ADMINISTRATION AND CREATION OF MONOPOLY

Defendants' falsely claimed throughout their filings in this case that these voting systems were 'statutorily mandated', while Petitioners consistently argued that the plain language of the statute proves they are not. O.C.G.A. 21-2-300 clearly states that other voting systems could be used as long as they were authorized by law. The SOS office threatened counties that voted to move to hand-marked paper ballots with exorbitant fines if they dared to change, as evidenced by Petitioners within the filed exhibits. The SOS narrative changed during the closing arguments of the *Curling* trial, when his counsel admitted that the counties are the responsible party in their choice of voting system. Though, this is not what the SOS tells the counties. This admission was only made in an attempt to have Raffensperger removed from *Curling* as an improper Defendant. During closing arguments in *Curling* (*Id.* pg 110), Raffensperger's counsel Tyson, admitted that 21-2-300 does not mandate BMD's and that counties could choose whether to use them or not. His defense also claimed that keeping Raffensperger as a defendant runs headlong into a Jacobson problem (*Id.* pg 127). *See Pearson v. Kemp*, No. 1:20-cv-4809-TCB ("*Pearson*"), defendant's counsel argued, "the Secretary of State has no lawful authority over county election officials", citing *Jacobson v. Florida Secretary of State*, 974 F.3d 1236, 1256-58 (11th Cir. 2020). In *Pearson* it was ruled that the SOS has no authority over the county BOE's.

Tyson also testified that Raffensperger only 'gives assistance' and that the counties are ultimately responsible for ensuring that their independent legal obligations are met regarding how their elections are conducted (*Id.* pg 108-109). Though, to this day, the SOS website claims he is in charge of elections and the county BOE's and attorneys that contact the SOS office are still told these machines are 'mandated'. Petitioners' detail within their filing how O.C.G.A. 21-2-300 is being illegally administrated. It also violates Georgia Constitution Article III, Section VI, Paragraph V(c) which states, "The General Assembly shall not have the power to authorize any contract or agreement which may have the effect of or which is intended to have the effect of defeating or lessening competition, or encouraging a monopoly, which are hereby declared to be unlawful and void.". The current voting system is a monopoly in Georgia. Pursuant to O.C.G.A. 21-2-300, if a county chooses to utilize an electronic voting system, they can only use this particular electronic voting system throughout the State. Therefore, O.C.G.A 21-2-300 intended the effect of, and has had the effect of, defeating competition by only allowing this one electronic voting system, thereby encouraging a monopoly. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 441 (2008), "State and local laws that unconstitutionally burden the right to vote are impermissible."

VI. SOVEREIGN IMMUNITY NOT INTENDED AS AMNESTY

The foundational principle, that sovereign immunity may not be used by employees or officials of the State to clothe themselves in amnesty, is a solid, fundamental and long standing rule. *See Georgia R.R. &*

Banking Co. v. Redwine, 342 U.S. 299, 72 S. Ct. 321, 96 L. Ed. 335 (1952), "A suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the state."; *Warnock v. Pecos County, Texas*, 116 F.3d 776-No.96-50869 Summary Calendar, July 3, 1997,

> "When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

VII. SUPERIOR VEHICLE FOR ADDRESSING QUESTIONS PRESENTED

The Petitioners have proven throughout their filings and with evidence provided within their exhibits, that the listed Defendants are in violation of state and federal laws, have and are acting in contravention to the Constitutions and are depriving, abridging, and diluting the constitutionally protected rights of the Petitioners. Holding state officials accountable to following the laws and acting within the confines of the Constitution is a protected fundamental right in which the grant of immunity infringes. The Ninth Amendment, in conjunction with the Fourteenth Amendment, protects a petitioner's right to seek remedy for the deprivation of rights by state and federal officials. These rights qualify for heightened judicial protection as they are fundamental liberties that are "implicit in the concept of ordered liberty" and

"neither liberty nor justice would exist if [they] were sacrificed". *See Griswold v. Connecticut,* 381 U.S. 479 (1965); *Palko v. Connecticut,* 302 U.S. 319, 302 U.S. 325,(1937); *Moore v. East Cleveland,* 431 U.S. 494, 431 U.S. 503 (1977) (opinion of Powell, J.). This case is a superior vehicle for addressing the questions presented.

CONCLUSION

The rights of the Petitioners are not, and have not been, vindicated. *See Gill v. Whitford*, 585 U.S. ____ (2018), "The Court's constitutionally prescribed role is to vindicate the individual rights of the people appearing before it.". Therefore, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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