

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

v.

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 Ahn Le, in her official capacity  
as a Member of the Georgia State Election Board,

Defendants.

Civ. Act. No. 2020CV343018

**Motion to Intervene as Defendants**

Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. “Sachin” Varghese, Nikema Williams, and Cathy Woolard (collectively, the “Biden Electors”) seek to participate as intervening defendants to defend their interests in protecting their established victory, the rights of Georgia voters who cast ballots in the November 3, 2020 general election, and the integrity of the election process.

For the reasons discussed in the memorandum in support, filed concurrently herewith as Exhibit A, the Biden Electors are entitled to intervene in this case as a matter of right under O.C.G.A. § 9-11-24(a). In the alternative, the Biden Electors request permissive intervention pursuant to O.C.G.A. § 9-11-24(b). In accordance with O.C.G.A. § 9-11-24(c), the Biden Electors’ Proposed Answer to the Petition is attached as Exhibit B. The Biden Electors also submit a Proposed Order granting their Motion to Intervene attached as Exhibit C. The Biden Electors also

submit their Proposed Motion to Dismiss Contestant's Petition, attached as Exhibit D, with a supporting memorandum of law, attached as Exhibit E.

WHEREFORE, the Biden Electors respectfully request that the Court grant them leave to intervene in the above-captioned matter.

Dated: December 3, 2020

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# EXHIBIT

A

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

v.

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 Ahn Le, in her official capacity as a Member of the Georgia State Election Board,

Defendants.

Civ. Act. No. 2020CV343018

**Memorandum in Support of Motion to Intervene**

**I. INTRODUCTION**

Pursuant to O.C.G.A. §§ 9-11-24, 21-2-520, and 21-2-524, Proposed Intervenor Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. “Sachin” Varghese, Nikema Williams, and Cathy Woolard, move to intervene as Defendants in this action. Each of the proposed Intervenor-Defendants are among the slate of sixteen presidential electors nominated by the Democratic Party and certified by Governor Brian Kemp (the “Governor”) after Secretary of State Brad Raffensperger (the “Secretary”) certified the election results to formally declare President-Elect Joseph R. Biden, Jr. the winner of Georgia’s presidential race (collectively the “Biden Electors”). They are now empowered to and intend to cast Georgia’s electoral college votes for President-Elect Biden.

President-Elect Biden won the popular vote in Georgia. The initial reported results were subsequently confirmed by a hand recount of every one of the nearly five million ballots cast in the presidential race. On November 20, the Secretary certified the results of the election. That same day, the Governor certified the slate of Democratic electors, officially appointing the Biden Electors to the Electoral College. Ten days later, Contestant Paul Andrew Boland, an individual voter, filed this extraordinary petition to “contest[] the election results.” Pet. at ¶ 1.

Through this action, Mr. Boland attempts to unilaterally reverse the will of the millions of voters who chose President-Elect Biden as the winner of the presidential race in Georgia. Mr. Boland requests that the Court issue an order decertifying the results of the election and requiring that Defendants conduct an audit to Boland’s personal specifications and satisfaction. *See* Pet. at 9. If the results of his requested audit are not to his satisfaction, Mr. Boland asks the Court to order “a new election.” *Id.* at ¶ 3. This is extraordinary and rightfully unprecedented relief. And Mr. Boland seeks it based on a Petition riddled with fatal procedural flaws that is without foundation in law or fact.

The Biden Electors—who are the proper defendants if this contest moves forward—should be permitted to intervene to protect their own interests, the interests of the candidate they are pledged to support, and the interests of the millions of Georgians who voted for President-Elect Biden.

## **II. STATEMENT OF FACTS**

On November 3, 2020, Georgia’s voters chose former Vice President, and now President-Elect, Biden to be the next President of the United States of America. Georgia’s certified vote

count confirmed that President-Elect Biden defeated Donald J. Trump by 12,670 votes.<sup>1</sup> The Secretary and Governor certified the results, and consequently the Biden Electors were appointed to the Electoral College. *See* O.C.G.A. § 21-2-10 (“At the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as electors of President and Vice President of the United States . . . .”); *see also* O.C.G.A. § 21-2-379.5(e) (“When presidential electors are to be elected, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President.”); O.C.G.A. § 21-2-285(e) (same).

On November 11, the Secretary announced that a statewide hand recount of the presidential election would take place.<sup>2</sup> It began on November 12 and concluded without issue on November 18. No significant irregularities in the original counts or the recount were reported. On November 20, the Secretary confirmed Biden’s victory and certified that the “consolidated returns for state and federal offices are a true and correct tabulation of the certified returns received by this office from each county.”<sup>3</sup> The Governor then certified President-Elect Biden’s slate of sixteen electors.<sup>4</sup>

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<sup>1</sup> Kate Brumback, *Georgia officials certify election results showing Biden win*, AP (Nov. 20, 2020), <https://apnews.com/article/georgia-certify-election-joe-biden-ea8f867d740f3d7d42d0a55c1aef9e69>.

<sup>2</sup> Tal Axelrod, *Georgia secretary of state announces hand recount of presidential race*, The Hill (Nov. 11, 2020), <https://thehill.com/homenews/campaign/525476-georgia-secretary-of-state-announces-hand-recount>.

<sup>3</sup> Michelle Ye Hee Lee, *Georgia certifies election results — the first to do so among states where Trump is mounting legal challenges*, Wash. Post (Nov. 20, 2020), [https://www.washingtonpost.com/politics/georgia-certifies-election-results--the-first-to-do-so-among-states-where-trump-is-mounting-legal-challenges/2020/11/20/66c77530-2b4b-11eb-9b14-ad872157ebc9\\_story.html](https://www.washingtonpost.com/politics/georgia-certifies-election-results--the-first-to-do-so-among-states-where-trump-is-mounting-legal-challenges/2020/11/20/66c77530-2b4b-11eb-9b14-ad872157ebc9_story.html).

<sup>4</sup> Kate Brumback, *Georgia officials certify election results showing Biden win*, AP (Nov. 20, 2020), <https://apnews.com/article/georgia-certify-election-joe-biden-ea8f867d740f3d7d42d0a55c1aef9e69>.

The next day—despite a comprehensive hand recount of every single ballot having just occurred—President Trump’s reelection campaign sought a *third* count of Georgia’s votes. This second recount will be conducted by machine.<sup>5</sup> It must be completed by December 2.<sup>6</sup>

Mr. Boland, an individual voter, filed this action on November 30. He asks this Court to decertify Georgia’s election results, order an audit of the results, and, if he is not satisfied with the results of the audit, order a new election. *See* Pet. at ¶ 3. In support of these sweeping and unprecedented requests, Mr. Boland points to an online video by a former Trump staffer that makes wild and conspiratorial accusations of widespread fraud and complains that not enough votes were rejected. Neither claim is supported by evidence. Mr. Boland conjures illusions of widespread fraud that he contends effectively undermined his ability to elect his preferred candidate, while, ironically, ignoring that his sought-after remedy would effectively negate the power of the votes cast by millions of his fellow voters. In short, Mr. Boland is dissatisfied that President Trump did not win and asks this Court to decertify all of Georgia’s results based on nothing more than pure speculation.

Despite widespread acknowledgement that no fraud occurred, various similar lawsuits have been filed around the country and in Georgia in an attempt to sow confusion and cast doubt on the legitimacy of the election.<sup>7</sup> Indeed, a lawsuit alleging similar improprieties was filed more

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<sup>5</sup> *Trump team requests recount of Georgia’s presidential race*, AP, (Nov. 21, 2020), <https://apnews.com/article/election-2020-joe-biden-donald-trump-georgia-elections-7bba105439653d530ee8023d54d7ec89>.

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

<sup>7</sup> *See, e.g.*, Nick Corasaniti, et al., *The Times Called Officials in Every State: No Evidence of Voter Fraud*, N.Y. Times (Nov. 10, 2020), <https://www.nytimes.com/2020/11/10/us/politics/voting-fraud.html>; *Secretary Raffensperger announces completion of voting machine audit using forensic techniques: no sign of foul play*, Ga. Sec’y of State,

than two weeks ago in the U.S. District Court for the Northern District of Georgia. After considering the parties' briefing and argument in a comprehensive two-hour argument, the court denied plaintiff's motion for a temporary restraining order. *See* Opinion and Order, *Wood v. Raffensperger*, No. 20-cv-04651, 2020 WL 6817513 at \*12 (N.D. Ga. Nov. 20, 2020) (denying plaintiff's claim for emergency injunctive relief in part because plaintiff "cannot show a likelihood of success on the merits"). That plaintiff also sought to prevent the certification of the Biden Electors' victory, which the Court called an "extraordinary remedy . . . [that] would breed confusion, undermine the public's trust in the election, and potentially disenfranchise of over one million Georgia voters." *Id.* That court explained that "interfer[ing] with the result of an election that has already concluded would be unprecedented and harm the public in countless ways." *Id.*

### III. ARGUMENT

Georgia courts permit winning candidates to intervene in election contests challenging their victory. *See, e.g., Williams v. Heard*, 302 Ga. 114, 115 (2017) ("[T]he court allowed [the winning candidate] to intervene in the contest action."). The Biden Electors have an undeniable interest in this lawsuit, which seeks to declare their victory null and void. Not only is Mr. Boland's request wholly unwarranted (not least of all because it comes upon the heels of the state's thorough hand recount of all ballots and near the tail end of a *second* recount), but the Biden Electors have particular interests in showing that the allegations in this action are utterly specious and cannot justify the extraordinary relief that Mr. Boland seeks.

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[https://sos.ga.gov/index.php/elections/secretary\\_raffensperger\\_announces\\_completion\\_of\\_voting\\_machine\\_audit\\_using\\_forensic\\_techniques\\_no\\_sign\\_of\\_foul\\_play](https://sos.ga.gov/index.php/elections/secretary_raffensperger_announces_completion_of_voting_machine_audit_using_forensic_techniques_no_sign_of_foul_play) (Nov. 17, 2020); *Joint statement from elections infrastructure government coordinating council & the election infrastructure sector coordinating executive committees*, Cybersecurity & Infrastructure Sec. Agency, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election> (Nov. 12, 2020) ("There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised.").



**A. The Biden Electors have a statutory right to intervene.**

Georgia law permits intervention as a matter of right “[w]hen a statute confers an unconditional right to intervene . . .” O.C.G.A. § 9-11-24(a)(1). Here, the election contest statutes provide the statutory basis for intervention. They clearly state that, in an election contest, the “defendant” means “[t]he person whose . . . election is contested.” O.C.G.A. § 21-2-520(2)(A). The statutes also require the contestant allege “[t]he name of the defendant” and “[t]he name of each person who was a candidate at such . . . election for such . . . office,” each of whom is served by the court clerk. O.C.G.A. § 21-2-524(a)(3)(4), (f). Those defendants and candidates “shall be deemed [] litigant[s] to such proceeding and may set up by way of answer or cross action any right of interest or claim he or she may have.” O.C.G.A. § 21-2-524(f).

Presidential candidates are not elected by the voters of Georgia; rather, Georgia’s electorate selects presidential electors who then vote for presidential candidates on behalf of the state at the Electoral College. Georgia’s Election Code states, “[a]t the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as *electors of President and Vice President* of the United States . . .” O.C.G.A. § 21-2-10 (emphasis added). “When *presidential electors are to be elected*, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President.” O.C.G.A. § 21-2-379.5(e) (emphasis added); *see* O.C.G.A. § 21-2-285(e). The Georgia Supreme Court has confirmed that presidential elections in Georgia are actually “election[s] for presidential electors.” *Rose v. State*, 107 Ga. 697 (1899); *Franklin v. Harper*, 205 Ga. 779, 785 (1949) (describing an “election . . . for presidential electors”); *Moore v. Smith*, 140 Ga. 854 (1913) (same). The U.S. Supreme Court reiterated this understanding in a decision issued earlier this year. *See Chiafalo v. Washington*, 140 S. Ct. 2316, 2319 (2020) (“Every four years,

millions of Americans cast a ballot for a presidential candidate. Their votes, though, actually go toward selecting members of the Electoral College, whom each State appoints based on the popular returns. Those few ‘electors’ then choose the President.”). The Biden Electors are therefore proper “defendants” as “[t]he person[s] whose nomination or election is contested.” O.C.G.A. § 21-2-520(2)(A).

If this contest is to proceed, the Court should permit the Biden Electors to exercise their statutory right to appear before the Court. Granting the Biden Electors’ intervention motion per their statutory right is necessary to the fairness and validity of this contest.

**B. The Biden Electors are otherwise entitled to intervene as a matter of right under O.C.G.A. § 9-11-24(a)(2).<sup>8</sup>**

Even absent their statutory right to intervene, the Biden Electors easily meet Georgia’s traditional test for motions to intervene as of right. O.C.G.A. § 9-11-24(a)(2) provides that after timely application “anyone *shall* be permitted to intervene” in an action “[w]hen the applicant claims an interest relating to” the subject matter of the action and the applicant “is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”<sup>9</sup> O.C.G.A. §

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<sup>8</sup> The Georgia Supreme Court has clarified that “[t]he [Civil Practice Act (CPA)] ‘shall apply to all special statutory proceedings except to the extent that specific rules of practice and procedure in conflict [with it] are expressly prescribed by law.’” *Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193, 210 (2019) (quoting O.C.G.A. § 9-11-81). Thus, it follows that “the CPA provides background [procedural] rules in election contests—which are civil actions—except to the extent the Election Code sets forth ‘specific rules of practice and procedure’ that conflict with the CPA.” *Id.* The Election Code does not provide intervention rules that conflict with the CPA’s intervention provisions; rather, it only grants certain statutory rights to intervene that are *already contemplated* by O.C.G.A. § 9-11-24. *See, e.g.*, O.C.G.A. §§ 21-2-32(a); 21-2-524(f).

<sup>9</sup> “[W]hether a motion to intervene is timely is a decision entrusted to the sound discretion of the trial court.” *Kroger v. Taylor*, 320 Ga. App. 298, 298 (2013) (quoting *Payne v. Dundee Mills, Inc.*, 235 Ga. App. 514, 515(1) (1998)). “But where intervention appears before final judgment, where the rights of the intervening parties have not been protected, and where the denial of intervention

9-11-24(a)(2) (emphasis added). Georgia courts have described this as a three-part inquiry, consisting of “[1] interest, [2] impairment resulting from an unfavorable disposition, and [3] inadequate representation.” *See Baker v. Lankford*, 306 Ga. App. 327, 329 (2010). The Biden Electors satisfy each prong.

*First*, the Biden Electors clearly have a direct interest in defending the certification of their own electoral victory from frivolous attacks. Under Georgia law, “the interest of the intervenor must be of such a direct and immediate character that he will either gain or lose by the direct effect of the judgment, and must be created by the claim in suit.” *State Farm Mut. Auto. Ins. Co. v. Jiles*, 115 Ga. App. 193, 195 (1967). There is no question that the Biden Electors will “gain or lose by the direct effect of [a] judgment” in this suit that seeks to prevent their appointment to the Electoral College in direct contravention of the decision of Georgia’s electorate. *See id.* The Biden Electors also have a direct interest in defending and supporting the will of the 2,474,507 Georgia voters who supported their election. *See, e.g., Bay Cnty. Democratic Party v. Land*, 347 F. Supp. 2d 404, 422 (E.D. Mich. 2004) (“[P]olitical parties and candidates have standing to represent the rights of voters”); *Penn. Psychiatric Soc’y v. Green Spring Health Servs., Inc.*, 280 F.3d 278, 288 n.10 (3d Cir. 2002) (“[C]andidates for public office may be able to assert the rights of voters”); *Walgren v. Bd. of Selectmen of Amherst*, 519 F.2d 1364, 1365 n.1 (1st Cir. 1975) (same).<sup>10</sup>

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would dispose of the intervening parties’ cause of action, intervention should be allowed and the failure to do so amounts to an abuse of discretion.” *Id.* This request for intervention was filed only five days after Mr. Boland filed his petition, the same day he filed his supporting exhibits, and before any hearing in this contest. Accordingly, it is timely.

<sup>10</sup> Georgia courts regularly apply principles from federal caselaw to the scope of a party’s interest in litigation, for example, to determine whether a party’s injury is sufficient to confer standing to litigate a case. *See Feminist Women’s Health Ctr. v. Burgess*, 282 Ga. 433, 434 (2007) (collecting Georgia cases that look to federal law to resolve issues of standing); *Aldridge v. Ga. Hosp. & Travel Ass’n*, 251 Ga. 234, 235 (1983) (reviewing federal precedent to determine “associational standing”). Though the interest required for intervention is less than that required for standing, this Court should still look to instructive federal case law.

*Second*, there is no question that this action threatens to impair the Biden Electors' interests. Mr. Boland asks the Court to rescind certification of an election that has *already been certified* as a victory for the Biden Electors. He also asks the Court to order an additional auditing process after the votes have been counted three times and duly certified by the Governor and the Secretary. If his requested audit does not meet with his approval—presumably the overturning of the election and the crowning of his preferred candidate as winner—Mr. Boland asks this court to order a new election. Such measures would only delay and obstruct the finality of this election, which the Biden Electors won. Put simply, the Biden Electors have been elected by the voters of Georgia to cast Georgia's sixteen electoral votes for President-Elect Biden. The Court should not permit Mr. Boland, a single voter disappointed in that outcome, to use the state judiciary as a prop in his efforts to subvert the democratic process by disenfranchising the millions of Georgians who preferred a different candidate.

*Finally*, the Biden Electors' interests cannot adequately be represented by the State Defendants, who are not proper defendants in this suit to begin with. *See Martin*, 307 Ga. at 193 n.1 (noting the trial court's dismissal of Georgia Secretary of State as a defendant in an election contest); *see also* Br. of Amicus Curiae Sec'y of State, *Coal. of Good Governance v. Fulton Cnty. Bd. of Registration & Elections*, No. S19A0769, 2019 WL 2010128, at \*1 n.1 (Ga. May 2, 2019), *Martin*, 307 Ga. 193 (noting "the superior court's dismissal of the Secretary as an improper party to [an] election contest petition"). To the extent they remain parties to the lawsuit, their stake in this lawsuit is defined solely by their statutory duties to implement the electoral process. The Secretary of State, as the chief elections officer, is responsible for the general administration of the state laws affecting voting. *See* O.C.G.A. §§ 21-2-50, 21-2-384. Because the State is not institutionally designed to be an advocate for electing the President-Elect or protecting individual

voters' rights, it cannot adequately represent the interests of the Biden Electors, whose mission is just that.

**C. In the alternative, the Biden Electors request the Court grant them permission to intervene under O.C.G.A. § 9-11-24(b).**

If the Court does not grant intervention as a matter of right, the Biden Electors respectfully request that the Court exercise its discretion to allow them to intervene under O.C.G.A. § 9-11-24(b). Permissive intervention is appropriate “[w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” O.C.G.A. § 9-11-24(b)(2). “In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*

The Biden Electors easily meet the requirements for permissive intervention. *First*, the Biden Electors and the State will inevitably raise common questions of law and fact in defending this lawsuit and the elections process. *Second*, given the early stage of this litigation, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. To the contrary, the Biden Electors are prepared to proceed in accordance with any schedule the Court establishes and have an interest in moving as expeditiously as possible. Their intervention will only serve to contribute to the full development of the factual and legal issues before the Court.

#### **IV. CONCLUSION**

For the reasons stated above, the Biden Electors respectfully request that the Court grant their motion to intervene as a matter of right under O.C.G.A. § 9-11-24(a) or, in the alternative, permit them to intervene under O.C.G.A. § 9-11-24(b).

Dated: December 3, 2020

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# **EXHIBIT**

**B**

IN THE SUPERIOR COURT OF FULTON COUNTY  
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Paul Andrew Boland,

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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 Ahn Le, in her official capacity as a Member of the Georgia State Election Board,

Defendants.

Civ. Act. No. 2020CV343018

**Proposed Intervenor-Defendants' Proposed Answer to Contestant's Verified Complaint**

Proposed Intervenor-Defendants, Proposed Intervenors Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. "Sachin" Varghese, Nikema Williams, and Cathy Woolard ("Intervenors") by and through their attorneys, answer the Verified Complaint (hereafter, "Complaint" or "Contestant's Petition") as set forth below. Unless expressly admitted, each allegation in the petition is denied, and the Intervenors demand strict proof thereof.

**NATURE OF THE ACTION**

1. The Intervenors admit that the Contestant contests the election results on the grounds set forth in Paragraph 1 of Contestant's Petition. The Intervenors deny the substance of the grounds set forth in Paragraph 1 and each other or different allegation.
2. The Intervenors deny that Contestant is entitled to any relief.



3. The Intervenors deny that Contestant is entitled to any relief.

**PARTIES, JURISDICTION, AND VENUE**

4. The Intervenors deny that Contestant is an aggrieved voter qualified to contest the election. The Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4 and, on that basis, deny the same.

5. The Intervenors deny that the Court has jurisdiction pursuant to O.C.G.A. § 21-2-524, including because this contest is not timely. The remaining allegations contain characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

6. The Intervenors admit that Brad Raffensperger is the Secretary of State of Georgia with certain responsibilities as described by law. To the extent Contestant's characterization and interpretation of Defendant Raffensperger's responsibilities differs from the text of the provisions setting forth his responsibilities, the Intervenors deny the allegations. The Intervenors admit that the Secretary of State certified the results for the Presidential electors on November 20, 2020 and that a recount was ongoing at the time Contestant filed his petition. The recount concluded on December 2.

7. The allegations in Paragraph 7 contain characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

**COUNT I: OUT OF STATE VOTERS**

1. Denied.

2. In response to the allegations explaining the process used to analyze data in the video cited in the footnote to Paragraph 2, the Intervenor state that the video speaks for itself. The Intervenor deny each other or different allegation.

3. The allegations in Paragraph 3 contain characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

4. The Intervenor admit that the quoted language in the first sentence of Paragraph 4 is from O.C.G.A. § 21-2-210. The Intervenor deny that the quoted language in the remainder of Paragraph 4 is from 42 U.S.C. § 1973gg-6(a)(4) and affirmatively state that this language is from 42 U.S.C. § 20507. The remaining allegations contain characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

5. Denied.

#### **COUNT 2: LACK OF SIGNATURE VERIFICATION**

6. The Intervenor admit that Georgia law requires absentee ballot voters to sign an oath and requires that their signature match the one on file. The Intervenor lack knowledge and information sufficient to form a belief as to the truth of sentence two of Paragraph 6 and, on that basis, deny the same. Intervenor deny the remaining allegations.

7. To the extent the Contestant relies on information from the cited article in Paragraph 7, the document speaks for itself. The Intervenor deny any other or different allegation in Paragraph 7 under Count 2.

8. The Intervenors lack knowledge and information sufficient to form a belief about the truth of the substance of the cited data or any other or different allegation in Paragraph 8 and, on that basis, deny the same.

9. The Intervenors admit that Joseph R. Biden, Jr. won the presidential election in Georgia by thousands of votes. The Intervenors lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9 and, on that basis, deny the same.

10. To the extent that the Contestant relies on information in the cited press release in Paragraph 10, the document speaks for itself. The Intervenors deny any other or different allegation in Paragraph 10.

11. The Intervenors lack knowledge and information sufficient to form a belief about the substance of the cited information in Paragraph 11 and, on that basis, deny the same.

12. The Intervenors lack knowledge and information sufficient to form a belief about the substance of the cited information in Paragraph 12 and, on that basis, deny the same.

13. Admitted.

14. Denied.

15. Denied.

16. Paragraph 16 contains legal contentions, characterizations, and opinions to which no response is required. To the extent a response is required, the Intervenors deny the same.

17. The Intervenors admit that O.C.G.A. §§ 21-2-386(a)(1)(B), 21-2-380.1 address absentee ballots. The Intervenors admit that the Democratic Party of Georgia, Inc., the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee and Brad Raffensperger, Rebecca N. Sullivan, David J. Worley, Seth Harp, and

Anh Le entered into Compromise Settlement Agreement on March 6, 2020. That Agreement speaks for itself. The Intervenor deny each other or different allegation.

18. Paragraph 18 contains legal contentions, characterizations, and opinions to which no response is required. To the extent a response is required, the Intervenor deny the same.

19. Denied.

20. Denied.

### **PRAYER FOR RELIEF**

21. The Intervenor deny that Contestant is entitled to any of the requested relief set forth in the Prayer for Relief section of Contestant's petition.

### **AFFIRMATIVE DEFENSES**

The Intervenor assert the following affirmative defenses without accepting any burdens regarding them:

#### **FIRST AFFIRMATIVE DEFENSE**

The Contestant's claims are barred in whole or in part because this Court lacks jurisdiction to adjudicate Contestant's claims.

#### **SECOND AFFIRMATIVE DEFENSE**

Contestant lacks standing to assert his claims.

#### **THIRD AFFIRMATIVE DEFENSE**

Contestant's Petition fails, in whole or in part, to state a claim upon which relief can be granted.

#### **FOURTH AFFIRMATIVE DEFENSE**

Contestant's claims are barred by the doctrine of laches.

The Intervenors reserve the right to assert any further defenses that may become evident during the pendency of this matter.

**PROPOSED INTERVENORS' REQUEST FOR RELIEF**

Having answered Contestant's Petition, the Political Party Committees request that the Court:

1. Deny Contestant is entitled to any relief;
2. Dismiss Contestant's Petition with prejudice;
3. Award the Political Party Committees their costs and attorneys' fees incurred in defending against Contestant's claims in accordance with 42 U.S.C. § 1988; and
4. Grant such other and further relief as this Court deems just and proper.

[signature block on following page]

Dated: December 3, 2020

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Amanda R. Callais\*  
Jacob D. Shelly\*  
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*Counsel for Proposed Intervenor-Defendants*

*\*Pro Hac Vice Application Forthcoming*

## VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Cathy Woolard and who on oath, does depose and say that she has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from her own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

*Catheren Martha Woolard*

State of Florida

County of Broward

By: Cathy Woolard

Sworn to and subscribed before me

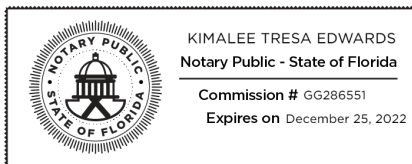
This 3<sup>rd</sup> day of December 2020.

by Catheren Martha Woolard

*Kimalee Tresa Edwards*

Notary Public Kimalee Tresa Edwards

Commission expires 12-25-2022



Notarized online using audio-video communication

## VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Manoj S. "Sachin" Varghese and who on oath, does depose and say that he has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

*Manoj Sam Varghese*

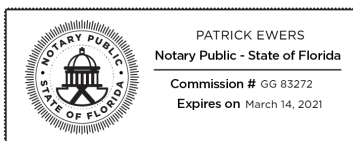
By: Manoj S. "Sachin" Varghese

Sworn to and subscribed before me

This \_\_\_rd day of December 2020. 12/03/2020

*Patrick Ewers*

Notary Public



Notarized online using audio-video communication



## VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Robert Trammell Jr. and who on oath, does depose and say that he has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

*Robert Trammell Jr.*

---

By: Robert Trammell Jr.

STATE OF TEXAS, COUNTY OF TARRANT

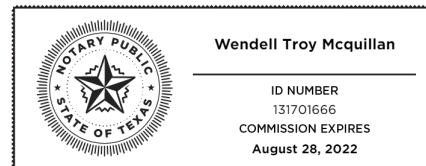
Sworn to and subscribed before me

This 3rd day of December 2020.

*Wendell Troy McQuillan*

---

Notary Public



Notarized online using audio-video communication

## VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Ben Myers and who on oath, does depose and say that he has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

Ben E Myers

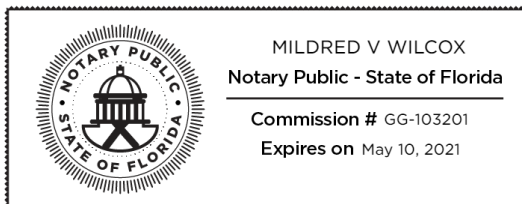
By: Ben Myers

State of Florida, County of Duval  
Sworn to and subscribed before me  
This 3rd day of December 2020.  
by Ben Myers, signer produced Georgia Driver License

Mildred V. Wilcox

Notary Public Mildred V Wilcox

Notarized online using audio-video communication



## VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Stephen Henson and who on oath, does depose and say that he has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from his own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

*Stephen Bradley Henson*

By: Stephen Henson

Sworn to and subscribed before me  
This 3rd day of December 2020.

*Aliza Yvette Brown*

Notary Public

Notarized online using audio-video communication



Virginia  
Fairfax  
Aliza Yvette Brown  
04/30/2024  
7733337

## VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Gloria Butler and who on oath, does depose and say that she has reviewed the foregoing PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT with regard to the facts contained therein, and that the facts set forth therein are true and correct where derived from her own knowledge and are believed to be true and correct where derived from the knowledge of others or from documents that are maintained in the course of business.

This 3rd day of December 2020.

*Gloria A Butler*

---

By: Gloria Butler

State of Virginia  
Hampton County  
Sworn to and subscribed before me  
This 3rd day of December 2020.

*Tiffany Griffith*  
\_\_\_\_\_  
Notary Public  
Electronic Notary Public



Notarized online using audio-video communication

**EXHIBIT**

**C**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

PAUL ANDREW BOLAND,

Contestant,

v.

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,

Defendants.

Civil Action No. 2020CV343018

**[Proposed] Order Granting Motion to Intervene**

Presently before the Court is the Motion to Intervene by Proposed Intervenor-Defendants. The Court having considered the Motion, the Memorandum of Law in support thereof, and any opposition thereto, it is hereby ORDERED that the Motion is GRANTED.

It is further ORDERED that the proposed pleadings to the Motion to Intervene shall constitute the initial pleadings of the Proposed Intervenor-Defendants and shall be deemed to have been filed this date.

IT IS SO ORDERED, this \_\_\_ day of December, 2020.

---

The Hon. Emily Richardson  
Judge, Fulton County Superior Court

Prepared by:

/s/ Adam M. Sparks

Halsey G. Knapp, Jr.

Georgia Bar No. 425320

Joyce Gist Lewis

Georgia Bar No. 296261

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*Counsel for Proposed Intervenor-Defendants*

# **EXHIBIT**

## **D**



IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

v.

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 Ahn Le, in her official capacity  
as a Member of the Georgia State Election Board,

Defendants.

Civ. Act. No. 2020CV343018

**Proposed Motion To Dismiss Verified Complaint**

Gloria Butler, Bobby Fuse, Deborah Gonzalez, Stephen Henson, Pedro Marin, Fenika Miller, Ben Myers, Rachel Paule, Calvin Smyre, Robert Trammell Jr., Manoj S. “Sachin” Varghese, Nikema Williams, and Cathy Woolard (collectively, the “Biden Electors”) move to dismiss Paul Boland’s Verified Complaint.

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

WHEREFORE, the Biden Electors respectfully request that the Court grant their motion to dismiss Boland’s Complaint in the above-captioned matter.

Dated: December 3, 2020

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*Counsel for Proposed Intervenor-Defendants*

*\*Pro Hac Vice Application Forthcoming*

**EXHIBIT**

**E**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

PAUL ANDREW BOLAND,

Contestant,

v.

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,

Defendants.

Civil Action No. 2020CV343018

**Brief in Support of Proposed Motion to Dismiss Verified Complaint**

## I. INTRODUCTION

A parade of litigants has been marching through state and federal courts since the November 3 election, here in Georgia and across the country. The plaintiffs all sing a similar tune, asking the judiciary to use its powers of compulsion to force states to reject the will of the electorate and declare President Donald Trump the winner of election contests that he very definitively lost. The latest participant in this drawn-out pageant is Paul Boland, who claims that Georgia officials failed to purge roughly 20,000 voters from the registration rolls, and that this election's rejection rate for mail ballots stemming from signature failures just cannot be true. Like those before him, he engages in statutory and constitutional acrobatics in service of extraordinary goals: delay, decertification, and ultimately an election do-over. This show cannot go on. Boland's claims come much too late, and are barred by the doctrine of laches. The election contest he seeks is not permitted by Georgia law. And his legal arguments are contradicted by the very statutes he cites and elementary constitutional doctrine. The Complaint should be dismissed with prejudice.

## II. BACKGROUND

### A. Electors pledged to President-elect Biden win the November 3 election in Georgia.

On November 3, 2020, Georgia voters chose Joseph R. Biden, Jr. as the next President of the United States and the rightful recipient of Georgia's 16 electoral college votes. A few days later, in response to unsubstantiated complaints from Republican leaders about the integrity of the elections, Georgia undertook a statewide full manual audit of all votes cast, which arrived at the same result.<sup>1</sup> On November 20, Secretary of State Brad Raffensperger officially certified

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<sup>1</sup> *Historic First Statewide Audit of Paper Ballots Upholds Result of Presidential Race* (Nov. 19, 2020), available at [https://sos.ga.gov/index.php/elections/historic\\_first\\_statewide\\_audit\\_of\\_paper\\_ballots\\_upholds\\_result\\_of\\_presidential\\_race](https://sos.ga.gov/index.php/elections/historic_first_statewide_audit_of_paper_ballots_upholds_result_of_presidential_race).

President-elect Biden's victory, and Governor Brian Kemp certified the Democratic Party's slate of presidential electors, appointing them to the electoral college.<sup>2</sup> On November 22, President Donald Trump's campaign formally requested that the ballots be counted a third time.<sup>3</sup> This recount was completed on December 2.<sup>4</sup>

## **B. Boland objects to the election results.**

On November 30, Boland filed a Verified Complaint against Secretary Raffensperger and members of the State Election Board (the "Board") stating two counts, both in search of a means to reject the will of the electorate and deliver the state of Georgia to Boland's preferred candidate, President Trump. First, Boland claims 20,312 voters should have been removed from the registration rolls under the National Voter Registration Act ("NVRA") for allegedly changing their residency out of state. Second, he alleges that a Settlement Agreement entered into by Secretary Raffensperger and the Board in March of this year that affected procedures for processing mail ballots resulted in (what he believes to be) a suspiciously low rejection rate for signature failures and usurped the State Legislature's authority to regulate election procedures. Boland requests "an order decertifying any results from the General Election for the electors to the Presidency" until Secretary Raffensperger audits and verifies the residency of 20,311 flagged individuals and the signatures on the more than one million absentee ballots that were cast in the November 3 election. If this relief is not granted or the results of the audit and verification are not to Boland's liking, he

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<sup>2</sup> Kate Brumback, *Georgia Officials Certify Election Results Showing Biden Win*, NPR (Nov. 20, 2020), available at <https://apnews.com/article/georgia-certify-election-joe-biden-ea8f867d740f3d7d42d0a55c1aef9e69>.

<sup>3</sup> Stephen Fowler, *Trump Requests Georgia Recount, Meaning 5 Million Votes Will Be Tabulated a 3rd Time*, NPR (Nov. 22, 2020), available at <https://www.npr.org/sections/biden-transition-updates/2020/11/22/937739336/trump-requests-georgia-recount-meaning-5-million-votes-will-be-tabulated-a-3rd-t>.

<sup>4</sup> As of 7:00 p.m. on December 3 the results of this recount have not been fully reported.

demands “decertification of the results of the Election and that a new election be ordered.” Compl. ¶ 3.

**C. A March 2020 Settlement Agreement results in revised absentee balloting procedures.**

Because the Settlement Agreement supplies the factual predicate for Count II of Boland’s Complaint, Intervenor’s offer this background on the Agreement and related litigation. The Settlement Agreement resolved a case that Democratic Party committees filed in November 2019 challenging Georgia’s signature-matching and cure procedures as unconstitutionally arbitrary and unreliable. Compl., *Democratic Party of Ga., Inc. v. Raffensperger*, No. 1:19-cv-5028, ECF No. 1 (N.D. Ga. Nov. 6, 2019). On March 6, 2020, the parties entered into the Settlement Agreement, which was publicly docketed that same day. As memorialized therein, the Secretary and the Board maintained that Georgia’s laws and processes were constitutional, and they did not agree to modify Georgia’s elections statutes. *See Wood v. Raffensperger*, No. 1:20-cv-04651, ECF No. 5-1 at 1-2 (N.D. Ga. Nov. 17, 2020).

Rather, the Board implemented a revised absentee ballot cure process by way of State Election Board Rule 183-1-14-.13. *See* O.C.G.A. § 50-13-4. Under this rule, which was adopted after multiple rounds of formal rulemaking, including public comment, counties are to contact voters about rejected mail ballots within three business days after receipt of the absentee ballot and within one business day for any ballots rejected within eleven days of election day. *See* Ga. Comp. R. & Regs. 183-1-14-.13 (Amended March 22, 2020); Ga. Comp. R. & Regs. 183-1-14-.13 (May 21, 2020); Ga. Comp. R. & Regs. 183-1-14-.13 (Aug. 31, 2020). In addition, on May 1, the Secretary issued an Official Election Bulletin addressing the signature matching procedures, providing that after an election official makes an initial determination that the signature on the absentee ballot envelope does not match the signature on file for the voter pursuant to

O.C.G.A. § 21-2-386(a)(1)(B) and (C), two additional registrars, deputy registrars, or absentee ballot clerks should also review the envelope. *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6694033, at \*3 (N.D. Ga. Nov. 13, 2020). When two officials agree the signature does not match, the ballot is rejected. *Id.*

The Board's rule and the Secretary's guidance were widely publicized and in place for several subsequent elections, including the June 9 primary, the August 11 primary runoff, and the November 3 general elections. Ballots were rejected for signature mismatches in all elections; indeed, "the percentage of absentee ballots rejected for missing or mismatched information and signature is the exact same for the 2018 [general] election and the [2020 g]eneral [e]lection." *Id.*, 2020 WL 6817513, at \*10.

A few weeks ago, L. Lin Wood, Jr., another private Georgia voter, objected in federal court to the certification of election results on similar grounds as here, alleging that the Settlement Agreement resulted in a "cumbersome process" for matching signatures that allegedly usurped the Legislature's authority to make election laws. Am. Compl., *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6694033 (N.D. Ga. Nov. 13, 2020). On November 20, Judge Grinberg of the U.S. District Court for the Northern District of Georgia denied Wood's motion for a temporary restraining order for reasons that support dismissing Boland's Complaint as well.

First, the Court determined Wood lacked standing to assert his claims because private citizens do not have standing to assert claims under the Elections and Electors Clauses, and because Wood's theory of vote dilution was "a textbook generalized grievance" that failed to state a concrete and particularized injury. *Wood*, 2020 WL 6817513, at \*5. Second, the court determined the doctrine of laches independently barred Wood's claims because the Settlement Agreement was executed on March 6, 2020, and Wood had no excuse for his prejudicial delay in waiting to



challenge the Agreement. *Id.* at \*7-\*8. Third, the court concluded Wood’s claims failed on the merits because his statistical argument that invalid ballots must have been accepted was “belied by the record.” *Id.* at \*10. Next, the court held that Secretary Raffensperger did not usurp the General Assembly’s power because “[t]he Settlement Agreement is a manifestation of Secretary Raffensperger’s statutorily granted authority.” *Id.* The court concluded, “To interfere with the result of an election that has already concluded would be unprecedented and harm the public in countless ways.” *Id.* at \*13. “Granting injunctive relief here would breed confusion, undermine the public’s trust in the election, and potentially disenfranchise of over one million Georgia voters.” *Id.*

### **III. LEGAL STANDARD**

An election contest “vests in trial courts broad authority to manage the proceeding” to “balance[] citizens’ franchise against the need to finalize election results, which, in turn, facilitates the orderly and peaceful transition of power that is a hallmark of our government.” *Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193, 194 (2019). An election may be contested for misconduct, fraud, irregularity, or illegal votes only where the error “is sufficient to change or place in doubt the result.” O.C.G.A. § 21-2-522. Under Georgia law, an action can be dismissed because the litigant failed to state a claim upon which relief can be granted. O.C.G.A. § 9-11-12(b); *see, e.g., DeLaGal v. Burch*, 273 Ga. App. 825 (2005) (upholding dismissal of election challenge for failure to state a claim).

### **IV. ARGUMENT**

Intervenors respectfully request that the Court grant their motion to dismiss Boland’s Complaint. The Complaint is barred by laches; it falls outside the scope of Georgia’s election contest statute; and it fails to state a claim upon which relief can be granted.

**A. Boland's Complaint is barred by laches.**

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

Boland's delay in bringing this action is considerable and patently unreasonable. Boland challenges the validity of the presidential election after it has already been conducted based on procedures, adopted through formal rulemaking processes long before the election, upon which elections officials and voters alike relied. The State expended substantial resources in ensuring that the election took place in a secure and lawful manner. Untold numbers of Georgians devoted countless hours, at personal risk during a pandemic, to prepare for and hold the election, and then to tally the vote not once, not twice, but *three times*. And Georgia voters' only fault was in casting their ballots as directed in accordance with the law in place at the time. Boland now asks this Court to undo all of those efforts and abrogate the fundamental right to vote for all Georgians based on *post hoc* challenges to the Secretary's voter registration list maintenance program and the Settlement Agreement, both of which have been in place for months.

The NVRA provides that States shall complete their programs to remove ineligible voters from the official lists "not later than 90 days prior to the date of a primary or general election for Federal office." 52 U.S.C. § 20507(c)(2)(A). Thus, any objection Boland maintained against the State's list maintenance program for the November 3 election should have been raised well before the general election, and in any event by August 5. A State program to remove names for change of residency after that date is barred by federal law. Boland was free at any time to purchase postal

service change of address information and notify Secretary Raffensperger of any perceived irregularities. *See id.* § 20510(b) (requiring a person who is aggrieved by a violation of the NVRA to provide notice to the state’s chief election official). But what Boland may not do is save his analysis for *after* the election, and then ambush state officials with a grievance related to residency changes.

Similarly, the Settlement Agreement was entered six months before election day, and Boland did not seek to intervene or challenge the Settlement Agreement before it was closed. *Wood*, 2020 WL 6817513, at \*3. In rejecting a virtually identical post-election challenge to the Settlement Agreement, Judge Grinberg recently concluded the plaintiff’s claims were barred by laches because the plaintiff “could have, and should have, filed his constitutional challenge much sooner than he did, and certainly not two weeks *after* the General Election.” *Wood v. Raffensperger*, No. 1:20-CV-04651-SDG, 2020 WL 6817513, at \*7 (N.D. Ga. Nov. 20, 2020). This conclusion is equally applicable to Boland’s challenge here. As in *Wood*, Boland’s claims “were ripe the moment the parties executed the Settlement Agreement,” and did not depend on the outcome of the November 3 election. *Id.*

Nor can there be serious doubt that Boland’s unjustifiable delay has prejudiced not only elections officials, but millions of Georgia voters, who dutifully cast their votes according to the rules and practices that Boland could have challenged prior to the election. Indeed, courts regularly find that even pre-election challenges that are brought too close to an election are barred. Here, Boland waited until the election and then some. This Court should find that laches firmly bars this action. *See, e.g., Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (“In the context of elections . . . any claim against a state electoral procedure must be expressed expeditiously” because, “[a]s time passes, the state’s interest in proceeding with the election increases in

importance as resources are committed and irrevocable decisions are made.”); *see also Clark v. Reddick*, 791 N.W.2d 292, 294-96 (Minn. 2010) (declining to hear ballot challenge when petitioner delayed filing until 15 days before absentee ballots were to be made available); *Knox v. Milwaukee Cty. Bd. of Election Comm’rs*, 581 F. Supp. 399, 402 (E.D. Wis. 1984) (denying preliminary injunction where complaint was filed seven weeks before election).

That these claims are raised in the context of an election contest does not alter the required result. Typically, an election contest is brought to challenge some alleged error or impropriety in the election that could not reasonably have been predicted before the election. *See, e.g., McIntosh Cnty. Bd. of Elections v. Deverger*, 282 Ga. 566 (2007) (successful contest where original election was decided by four votes and challenger identified four votes that were erroneously rejected); *Whittington v. Mathis*, 253 Ga. 653, 324 S.E.2d 727 (1985) (successful contest where original election was decided by two votes and challenger identified four voters who were wrongfully turned away from voting because of poll worker error). Here, by contrast, the bases of Boland’s contest—the Secretary’s voter registration list maintenance program and the Settlement Agreement regarding absentee voting—were well known long before the election. By the time Boland filed this action, the presidential election had been over for four weeks, and more than 5 million Georgians had voted. Boland had an affirmative obligation to air his concerns before the election to avoid precisely these after-the-fact, could-have should-have complaints about what election officials might have done differently. As federal courts have held, “the law imposes the duty on parties having grievances . . . to bring the grievances forward for pre-election adjudication.” *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973). “[T]he failure to require prompt pre-election action in such circumstances as a prerequisite to post-election relief,” the court explained, “may permit, if not encourage, parties who could raise a claim ‘to lay by and gamble

upon receiving a favorable decision of the electorate’ and then, upon losing, seek to undo the ballot results in a court action.” *Id.* Numerous courts have likewise denied extraordinary relief in election-related cases due to laches or similar considerations.<sup>5</sup> As the Pennsylvania Supreme Court said last week in rejecting a similar post-election challenge, “The want of due diligence demonstrated in this matter is unmistakable.” *Kelly v. Commonwealth*, No. 68 MAP 2020, 2020 WL 7018314, at \*1 (Pa. Nov. 28, 2020).

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

Boland’s Complaint, which sounds in the nature of a petition for election contest, should also be dismissed because it falls outside the scope of the election contest statute. Presidents are not directly elected by Georgia voters; rather, Georgia’s electorate selects presidential electors who then vote for presidential candidates on behalf of the state at the Electoral College. Georgia’s Election Code states, “[a]t the November election to be held in the year 1964 and every fourth year thereafter, there shall be elected by the electors of this state persons to be known as *electors of President and Vice President* of the United States.” O.C.G.A. § 21-2-10 (emphasis added). Boland recognizes as much: “The office contested is for the electors for the Presidency of the United States.” Compl. ¶ 5; *see also id.* Prayer for Relief ¶ 1 (seeking “an order decertifying any results

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

from the General Election for the electors to the Presidency”). As Georgia law provides, “[w]hen *presidential electors are to be elected*, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President.” O.C.G.A. § 21-2-379.5(e) (emphasis added). The Georgia Supreme Court has confirmed that Georgia presidential elections are actually “election[s] for presidential electors.” *Rose v. State*, 107 Ga. 697 (1899); *Franklin v. Harper*, 205 Ga. 779, 785 (1949) (describing an “election . . . for presidential electors”); *Moore v. Smith*, 140 Ga. 854 (1913) (same). The U.S. Supreme Court reiterated this understanding in a decision issued earlier this year. *See Chiafalo v. Washington*, 140 S. Ct. 2316, 2319 (2020) (“[M]illions of Americans cast a ballot for a presidential candidate. Their votes, though, actually go toward selecting members of the Electoral College, whom each State appoints based on the popular returns. Those few ‘electors’ then choose the President.”).

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

Various provisions of state law fortify the conclusion that a presidential elector in Georgia is neither a state nor federal officer. For example, O.C.G.A. § 21-2-153, which describes the qualifications of candidates in state primaries, has one subsection that pertains to “[a]ll qualifying for federal and state offices” and a separate subsection that addresses “[a]ll qualifying for the office of presidential elector.” Similarly, O.C.G.A. § 21-2-132, which pertains to filing a notice of candidacy, provides one set of procedures for “[e]ach elector for President or Vice President of the United States” and a separate procedure for “[e]ach candidate for United States Senate, United States House of Representatives, or state office.” Presidential electors cannot be state or federal officers; otherwise language that separates *all* electors from *all* federal and state officers would be meaningless. “[I]t is well established that a statute ‘should be construed to make all its parts harmonize and to give a sensible and intelligent effect to each part.’” *Premier Health Care Invs., LLC v. UHS of Anchor, L.P.*, No. S19G1491, 2020 WL 5883325, at \*9 (Ga. Oct. 5, 2020) (quoting *Hall Cnty. Bd. of Tax Assessors v. Westrec Props., Inc.*, 303 Ga. 69, 77 (2018)).

If the General Assembly wishes to make elections for presidential electors available for contest, it may do so, provided that the parameters of those contests do not violate federal law. But because the plain text of the Election Code reveals that Georgia’s General Assembly has not done so, this contest must be dismissed.

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

Even if Boland’s Complaint could be brought under O.C.G.A. § 21-2-521 (and for the reasons discussed above, it cannot), it must independently be dismissed because it fails to state a claim upon which relief can be granted. Boland’s contest is based on the premise that the election is in doubt because the voter rolls were not properly maintained, and because election officials did not properly verify voter signatures. But even if believed, Boland’s factual allegations do not

plausibly support his claims. To the contrary, they rest on nothing more than rank speculation and conspiracy theories attempting to masquerade as duly pled facts. They cannot, as a matter of law, sustain this litigation.

**1. Boland’s unsupported guess that ineligible individuals may have voted cannot support an election contest.**

Boland thinks 20,312 people may have voted illegally because he watched a YouTube video. Compl. ¶ 1. But nothing in that video, let alone in his allegations, supports the accusation. The figure Boland cites from the video was calculated by “matching Georgia’s list of early and absentee voters to the United States Postal Service’s (‘USPS’) National Change of Address (‘NCOA’) database.” *Id.* ¶ 2. This methodology is not sufficient to support a claim of illegal voting and throw an election in doubt.

First, the generally-available NCOA database is notoriously unreliable, which is why the NVRA allows states to rely on change-of-address information for list maintenance only if the information is supplied by USPS through one of its NCOA licensees, *see* 52 U.S.C. § 20507(c)(1)(A), and only after following extensive procedures that mitigate the risk of erroneous removal, *see id.* § 20507(c)(2)(A) (prohibiting states from systematically removing names from the registration lists on the basis of residency change within 90 days of a federal election); § 20507(d) (prohibiting states from removing names from the registration lists on the basis of residency change unless the person confirms the change of address in writing or fails to respond to a special notice and does not vote in two subsequent elections for federal office). In other words, Secretary Raffensperger would be *prohibited* by federal law from relying on Boland’s methodology to determine the eligibility of registered voters; thus, the same suspect methodology clearly cannot support an action to overturn the results of a presidential election.



Boland’s allegations suffer from a second fundamental flaw: the fact that a voter requests mail to be forwarded out of state does not in any way render him ineligible to vote. While the place that a person receives significant mail, such as personal bills, may be evidence of the person’s residency for voter registration purposes, O.C.G.A. § 21-2-217(15), both the Election Code and federal law enumerate legitimate reasons that a person may change their mail address out of state without forfeiting their eligibility to vote, including:

- Any citizen who begins residence in another state within 30 days of the presidential election may vote in Georgia if the person is not permitted to register in the new state, § 21-2-216(e);
- “A person shall not be considered to have lost such person’s residence who leaves such person’s home and goes into another state or county or municipality in this state, for temporary purposes only, with the intention of returning, unless such person shall register to vote or perform other acts indicating a desire to change such person’s citizenship and residence,” § 21-2-217(a)(2)<sup>6</sup>;
- “The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention,” § 21-2-217(a)(9);
- “If a person removes to the District of Columbia or other federal territory, another state, or foreign country to engage in government service, such person shall not be considered to have lost such person’s residence in this state during the period of such service; and the

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<sup>6</sup> Boland alleges that a subset of 4,926 Georgia voters moved and registered to vote in another state. Even if true, this fails to allege illegal votes “sufficient to change or place in doubt the result” as the election contest statute requires. O.C.G.A. § 21-2-522(3).

place where the person resided at the time of such person's removal shall be considered and held to be such person's place of residence," § 21-2-217(a)(11);

- "Each State shall . . . permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 52 U.S.C. § 20302(a)(1).

Thus, any voter who moves out of state for a few months to take college classes, or to care for a sick parent, or to work a summer job, or to engage in government service, or any other number of perfectly valid reasons may request to receive mail outside of Georgia without forfeiting the right to vote in Georgia. Boland's allegations make no mention of if or when any voter actually moved, which would be critical for any threshold determination of the voter's eligibility. And also fatally for his claim, it is *impossible* to deduce from NCOA data *why* a voter filed a change of address with the USPS. There is nothing irregular or unusual about out-of-state voting; indeed, the availability of absentee voting accommodates exactly that. *See* O.C.G.A. § 21-2-380(b). If the certified results of an election can be contested any time a voter alleges that some people voted from out-of-state, which is not illegal, then *every single election* will become embroiled in desperate litigation just like this one.

Boland's claim that Secretary Raffensperger failed "to carry out the duties required by the NVRA and the Elections Law" by not removing these 20,312 voters from the registration rolls for allegedly moving out of state, Compl. ¶ 5, further ignores that federal law clearly prohibits the voter purge that Boland demands.<sup>7</sup> As Boland points out, the NVRA instructs states to "conduct a

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<sup>7</sup> Rather than being too lax in his voter registration list maintenance program, Secretary Raffensperger may have been unlawfully aggressive in purging voters from the rolls based on inaccurate change-of-address data. *See* Complaint, *Black Voter's Matter Fund v. Raffensperger*, No. 1:20-cv-04869-SCJ (N.D. Ga. Dec. 2, 2020), ECF No. 1.

general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of . . . a change in the resident of the registrant, in accordance with subsections (b), (c), and (d).” Compl. ¶ 4, quoting 52 U.S.C. § 20507(a)(4). Notably, this provision only requires states to make a “reasonable effort,” not a perfect effort, and Boland has not alleged any reason to believe a purported failure to cull a few thousand names from the rolls in a state with over 7.2 million registered voters is “unreasonable.”<sup>8</sup> What’s more, Boland ignores the text of the provision he quotes, which explicitly precludes the relief he is seeking.

Section 20507(a)(4) requires the state’s list maintenance program to be conducted “in accordance with,” as relevant here, subsections (c) and (d). Subsection (c) provides that “A State shall complete, *not later than 90 days prior to the date of a primary or general election for Federal office*, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A). This rule applies to removals where an individual is believed ineligible due to a change of residence. *Id.* § 20507(c)(2)(B) (emphasis added). Thus, as discussed above in Part III.A, Secretary Raffensperger was *prohibited* from removing any voter from the rolls after August 5 based on Boland’s alleged change of address data. Even if this Court granted Boland’s extraordinary request for a new election, the 90-day restriction on list maintenance means Secretary Raffensperger *still* would not be permitted under federal law to systematically remove the names of any voters based on alleged change of residency.

Additionally, section 20507(d) provides that “A State *shall not remove* the name of a registrant from the official list of eligible voters in elections for Federal office *on the ground that the registrant has changed residence* unless the registrant” confirms in writing the change of

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<sup>8</sup> Voter Registration Statistics, available at [https://sos.ga.gov/index.php/Elections/voter\\_registration\\_statistics](https://sos.ga.gov/index.php/Elections/voter_registration_statistics).

address, or fails to respond to written notice and does not vote in two subsequent general elections. (Emphasis added.) Of the 20,312 voters that Boland disputes, then, Secretary Raffensperger could have removed (prior to August 5) only those who either a) expressly confirmed their change of address, or b) moved years ago, received official notice from the State prior to 2016, and then failed to vote in the 2016 and 2018 elections. Because nothing in Boland’s Complaint alleges that this subset of voters exceeds President-elect Biden’s margin of victory in Georgia, the Complaint fails to state a ground for judicial intervention. *See* O.C.G.A. § 21-2-522(3) (permitting election contest where challenged votes are “sufficient to change or place in doubt the result”); *see also Hughes v. Griner*, 208 Ga. 47, 50 (1951) (“in the absence of an allegation that, when all votes at those precincts are thrown out, the result of the election would be changed, this complaint would be an insufficient ground for equity intervention”).

Boland has not alleged that Secretary Raffensperger’s list maintenance program was “unreasonable.” He has not alleged that a number of electors sufficient to determine the outcome of the presidential election in Georgia could lawfully have been removed on the basis of residency by Secretary Raffensperger. He has not alleged that any relief available now could cure the purported problem of non-resident individuals remaining on the registration rolls for the 2020 presidential election. And just two months ago, a judge on this Court held that private electors cannot compel election officials to remove voters from the registration lists based on alleged non-residency in any way that conflicts with the NVRA. *See* Final Order Granting Motion to Dismiss Without Prejudice, *Schmitz v. Fulton Cnty. Bd. of Registration and Elections*, No. 2020-cv-339337-JCB (Ga. Super. Ct. Oct. 1, 2020). Because Boland seeks to do precisely that, he has failed to state a claim for which relief may be granted. Count I of Boland’s Complaint must be dismissed.

**2. Boland's challenges to Georgia's signature verification procedures do not state a claim for relief.**

Boland's untimely challenge to the processing procedures for absentee ballots agreed to in the Settlement Agreement has no basis in law. He asserts that the signature-matching process resulting from the Agreement made it more difficult to reject absentee ballots, is inconsistent with Georgia's election code, and violates the federal constitution. Compl. ¶ 17. All of these arguments have already been offered and rejected in court.

In *Wood*, the court expressly rejected statistical assertions similar to those offered by Boland that the rejection rate for signature errors was mysteriously lower this election. To the contrary, the district court found that, "the percentage of absentee ballots rejected for missing or mismatched information and signature *is the exact same* for the 2018 election and the General Election (.15%). This is despite a substantial increase in the total number of absentee ballots submitted by voters during the General Election as compared to the 2018 election." 2020 WL 6817513, at \*10 (citations omitted) (emphasis added). But even if the Court were to take Boland's allegations as true and assume that the rejection were lower for the November 3 election, that would not support an allegation of impropriety, and certainly not with the precision that could allow this court to conclude that illegal votes were received "sufficient to change or place in doubt the result" of the election. O.C.G.A. § 21-2-522(3). In fact, given the policy changes required by the Settlement Agreement, fewer signature rejections should have been expected—not because illegal votes are somehow evading review, but because subjecting signatures to verification by more than one official and permitting voters to cure suspected errors should reduce the number of *lawful* ballots that are improperly thrown out. Boland has alleged no more than that the election was conducted just as it should have been.

Further, it is not true that the Settlement Agreement represented some kind of legislative action by Secretary Raffensperger that is the exclusive prerogative of the General Assembly under state law and the federal constitution’s Elections Clause. As *Wood* explained, “State legislatures—such as the Georgia General Assembly—possess the authority to delegate their authority over elections to state officials in conformity with the Elections and Electors Clauses.” 2020 WL 6817513, \*10 (collecting cases). The General Assembly has empowered Secretary Raffensperger as “the state’s chief election official,” O.C.G.A. § 21-2-50(b), and has made it the duty of Secretary Raffensperger and the State Election Board to “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(2). Thus, the court in *Wood* concluded, the “Settlement Agreement is a manifestation of Secretary Raffensperger’s statutorily granted authority. It does not override or rewrite state law. It simply adds an additional safeguard to ensure election security by having more than one individual review an absentee ballot’s information and signature for accuracy before the ballot is rejected.” 2020 WL 6817513, at \*10. Taking at face value the argument that any policy reached by Secretary Raffensperger and the State Election Board is unlawful unless it is a verbatim recitation of the statutory code “renders O.C.G.A. § 21-2-31(2) superfluous. A state official—such as Secretary Raffensperger—could never wield his or her authority to make rules for conducting elections that had not otherwise already been adopted by the Georgia General Assembly.” 2020 WL 6817513, at \*10. This carefully reasoned and persuasive opinion reveals the terminal flaws with Count II of Boland’s Complaint.<sup>9</sup>

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<sup>9</sup> *Wood*’s conclusion that the plaintiff there did not have standing under the Elections Clause to challenge the Settlement Agreement is also instructive here. *See* 2020 WL 6817513, at \*10; *see also Bognet v. Sec’y Commonwealth of Pa.*, No. 20-3214, 2020 WL 6686120, at \*6 (3d Cir. Nov. 13, 2020) (“[P]rivate plaintiffs lack standing to sue for alleged injuries attributable to a state government’s violations of the Elections Clause.”); *cf. Feminist Women’s Health Ctr. v. Burgess*,

An election contest is a grave matter and should be reserved for the timely presentation of grave unlawfulness. That is not present in this case. If Boland receives his requested relief, partisans will know to stow away any conceivable objection to election procedures until after the results are clear, and then cry for a redo if their candidate loses. If an election contest is indulged every time a litigant objects to voter registration list maintenance or the state's chosen procedures for verifying ballots, then we can expect that every election will be decided not by voters in polling booths but by lawyers in courtrooms. *See Donald J. Trump for President, Inc. v. Pennsylvania*, No. 20-3371, 2020 WL 7012522, at \*9 (3d Cir. Nov. 27, 2020) (“Voters, not lawyers, choose the President. Ballots, not briefs, decide elections.”). Decertification of the State's presidential electors on these grounds will produce confusion and cynicism, inviting Georgians to question the point of their participation in democracy's defining event. The law does not require this; indeed, here the law does not allow it.

## V. CONCLUSION

For the foregoing reasons, the Court should dismiss Boland's Verified Complaint with prejudice.

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282 Ga. 433, 434 (2007) (collecting Georgia cases that look to federal law to resolve issues of standing). Allowing a plaintiff such as Boland to bring claims under the guise of an election contest that would otherwise be barred for lack of standing would greenlight a pernicious gamesmanship, whereby litigants could evade the usual rules of justiciability by saving their generalized and undifferentiated grievances for after the election.

Dated: December 3, 2020

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IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

Paul Andrew Boland,

Contestant,

v.

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 Ahn Le, in her official capacity  
as a Member of the Georgia State Election Board,

Defendants.

Civ. Act. No. 2020CV343018

**Certificate of Service**

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court via *Odyssey eFileGA*, which will provide notice and service to all counsel of record:

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This 3rd day of December 2020.

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