

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRIAN KEMP, et al.,

Defendants.

Civil Action No. 21-cv-02070-JPB

**MOTION FOR PRELIMINARY INJUNCTION, FOR EXPEDITED
BRIEFING AND FOR ORAL HEARING**

Plaintiffs move this Court to enter a preliminary injunction, to grant expedited briefing, and to hold an oral hearing, as follows:

Preliminary Injunction

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs move the Court to preliminarily enjoin Defendants, effectively immediately, from enforcing the following laws:

(A) O.C.G.A. § 21-2-568.1 (the “Elector Observation Felony”), which makes it a felony to “intentionally observe an elector while casting a ballot in a manner that would allow such person to see for whom or what the elector is voting”;

(B) O.C.G.A. § 21-2-386(a)(2)(B)(vii) (the “Gag Rule”), which prohibits “monitors” and “observers,” under penalty of criminal misdemeanor, from “[c]ommunicating any information that they see while monitoring the processing and scanning of the absentee ballots” “to anyone other than an election official who needs such information to lawfully carry out his or her official duties”;

(C) O.C.G.A. §§ 21-2-386(a)(2)(A) and (B)(vi) (the “Estimating Bans”), which make it a misdemeanor for “monitors and observers” to, among other things, tally, tabulate, estimate or attempt to tally, tabulate, or estimate the number of absentee ballots cast or any votes on the absentee ballots cast;

(D) O.C.G.A. § 21-2-568.2 (2)(B) (the “Photography Ban”), which makes it a misdemeanor to “[p]hotograph or record the face of an electronic ballot marker while a ballot is being voted or while an elector’s votes are displayed on such electronic market,” or to “[p]hotograph or record a voted ballot”; and

(E) O.C.G.A. § 21-2-381(a)(1)(A) (the “Eleven Day Rule”), which prohibits applications for absentee ballots to be accepted “less than 11 days prior to the date of the primary or election, or runoff of either.”

Pursuant to Rule 65(d), Plaintiffs have filed with this Motion a proposed order stating the reasons why it should issue, the terms specifically, the acts restrained and required, and the persons to be bound thereby.

Pursuant to Rule 7.1A of the Local Rules of the Northern District of Georgia, and Part III (f) of this Court's Standing Order, Plaintiffs have filed herewith a brief citing legal authorities supporting the motion and the facts relied upon, together with supporting declarations and exhibits. Attached to the brief are the following exhibits:

Exhibit A: Photographs of Presidents and others voting

Exhibit B: Declaration of Marilyn Marks

Exhibit C: Declaration of Jeanne Dufort

Exhibit D: Declaration of Bradley Friedman

Exhibit E: Declaration of Ryan Graham

Exhibit F: Declaration of Barbara Gray

Exhibit G: Declaration of Rhonda Martin

Exhibit H: Declaration of Aileen Nakamura

Exhibit I: Declaration of Priscella Smith

Exhibit J: Declaration of Elizabeth Throop

Exhibit K: Declaration of Andrew Kurish

Motion for Expedited Briefing and Oral Hearing

Pursuant to Local Rules 7.1(D) and 65.2 of the Northern District of Georgia, Plaintiffs move for an order directing expedited briefing, as follows:

- A. Defendants' Response Brief to be due on June 21, 2021; and,
- B. Plaintiffs' Reply Brief to be due seven days after Defendants file their Response Brief.

In support of this Motion for Expedited Briefing, Plaintiffs show that, unless its enforcement is enjoined, the Eleven Day Rule threatens to disenfranchise absentee-by-mail voters in the upcoming July 13, 2021 runoff elections. In addition, unless enjoined, the four Challenged Criminal Laws (the Elector Observation Rule, the Gag Rule, the Estimating Bans, and the Photography Ban), which are plainly unconstitutional, will continue to cause irreparable harm by violating the rights of the Plaintiffs and other citizens, under the First Amendment and the Due Process Clause of the Fourteenth Amendment, in every upcoming election.

Plaintiffs further request an oral hearing on the Motion for Preliminary Injunction because the Motion raises important issues concerning the rights of the Plaintiffs and other citizens under federal constitutional law.

A Proposed Order granting the Motion for Expedited Briefing and Oral Hearing is attached hereto.

Respectfully submitted this 14th day of June, 2021.

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CERTIFICATE OF SERVICE AND CERTIFICATE OF COMPLIANCE WITH
LOCAL RULE 5.1

Pursuant to N.D. Ga. L.R. 5.1(C), I certify that the foregoing was prepared using Times New Roman 14 font. I electronically filed this using CM/ECF, thus electronically serving all counsel of record.

This 14th day of June, 2021.

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**BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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I. INTRODUCTION

This lawsuit seeks to preserve the right to vote without unjustified state interference, to protect freedom of speech, and to ensure a meaningful separation of powers – three pillars of liberty. Though the lawsuit generally seeks broader relief, this Motion for Preliminary Injunction focuses specifically on four criminal laws within SB202 that must be enjoined immediately to protect pending elections because they plainly are unconstitutional and defeat the stated goal of SB202, which is to enhance election integrity. These laws have the purpose and the effect of severely obstructing election transparency, degrading election security, and intimidating voters and members of the press who serve the vital role of providing citizen oversight of election administration. These four criminal laws (“the Challenged Criminal Laws”) are:

- (1) O.C.G.A. § 21-2-568.1 (the “Elector Observation Felony”) makes it a felony to “intentionally observe an elector while casting a ballot in a manner that would allow such person to see for whom or what the elector is voting.”
- (2) O.C.G.A. § 21–2–386(a)(2)(B)(vii) (the “Gag Rule”) prohibits “monitors” and “observers,” under penalty of criminal misdemeanor, from “[c]ommunicating any information that they see while monitoring the processing and scanning of the absentee ballots” “to anyone other than an election official who needs such information to lawfully carry out his or her official duties.”
- (3) O.C.G.A. §§ 21-2-386(a)(2)(A) and (B)(vi) (the “Estimating Bans”) make it a misdemeanor for “monitors and observers” to, among other things, tally, tabulate, estimate or attempt to tally, tabulate, or estimate

the number of absentee ballots cast or any votes on the absentee ballots cast.

- (4) O.C.G.A. § 21-2-568.2 (2)(B) (the “Photography Ban”) makes it a misdemeanor to “[p]hotograph or record the face of an electronic ballot marker while a ballot is being voted or while an elector’s votes are displayed on such electronic market,” or to “[p]hotograph or record a voted ballot.”

As explained below, each of these Challenged Criminal Laws violate the First Amendment or the Due Process Clause, or both. Notably, Proposed Intervenor Republican National Committee, et al., while opposing every other count in Plaintiffs’ Complaint, “take no position” on the Challenged Criminal Laws. (Doc. 7-1 at 5).

This Motion also seeks to enjoin the enforcement of a fifth provision, the Eleven Day Rule, O.C.G.A. § 21–2–381(a)(1)(A), which makes it impossible for voters to obtain absentee ballots for runoff elections and constitutes an unconstitutionally unjustified and severe burden on the right to vote. The Eleven Day Rule becomes effective with the July 13, 2021, runoff elections. The Eleven Day Rule, along with the Challenged Criminal Laws, will be collectively referred to as the “Challenged Provisions.”

II. PRELIMINARY ISSUES

A. Plaintiffs Have Standing

In the Complaint and in the declarations filed with this Motion, Plaintiffs have established the requisite Article III standing. With respect to the Challenged

Criminal Provisions, the individual Plaintiffs have standing to bring pre-enforcement suits because they have “alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution.” *Wollschlaeber v. Governor*, 848 F. 3d 1293, 1304 (11th Cir. 2017) (internal quotations and citation omitted).¹ Like the plaintiffs in *Wollschlaeger*, the Plaintiffs here “wish to say and do what they believe [the challenged law] prevents them from saying and doing,” and according have standing to challenge the law. *Id.* See also *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940). Indeed, Plaintiffs have already experienced injury during the conduct of the June 15, 2021, elections beginning May 24, 2021, when early voting began. *See supra* footnote 1.

With respect to the right to vote claims, a plaintiff “need not have the franchise wholly denied to suffer injury.” Here, the voter Plaintiffs have alleged “concrete, particularized, non-hypothetical injury” in the form of burdens on the

¹ As to Plaintiff Shirley, *see* Amended Complaint, Doc. 14, at ¶¶ 168 to 170; Thomas-Clark, *see id.* ¶¶ 178 to 179, 182 to 183; Lang, *see id.* ¶¶ 187 to 188, 191 to 192; Pullar, *see id.* ¶¶ 198 to 199, 202 to 203; McNichols, *see id.* ¶¶ 209 to 210, 213 to 214; Graham, *see id.* ¶ 236; Martin, *see id.* ¶¶ 242 to 247; Dufort, *see id.* ¶¶ 256 to 263; Nakamura, *see id.* ¶¶ 270 to 272, 274 to 275; Throop, *see id.* ¶¶ 283 to 286; and Friedman, *see id.* ¶¶ 293 to 301. *See also* Dufort Decl., Ex. C hereto, at ¶¶ 13, 15, 17, 19, 21; Friedman Decl., Ex. D hereto, at ¶¶ 6 to 10; Martin Decl., Ex. G hereto, at ¶¶ 22, 27 to 30; Nakamura Decl., Ex. H hereto, at ¶¶ 5 to 7; 9 to 13; Throop Decl., Ex. J hereto, at ¶¶ 14-15.

right to vote, which is more than sufficient.² *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir.2005); *Common Cause/Georgia v. Billips*, 554 F.3d 1340, 1350 (11th Cir. 2009) (W. Pryor, J.) (reversing District Court’s dismissal based on standing). With respect to all of the Challenged Provisions, each of the Plaintiff Organizations – Coalition for Good Governance (“CGG”), Jackson County Democratic Committee (“JCDC”), and Georgia Advancing Progress Political Action Committee (“GAPPAC”) – have organizational standing because they are diverting resources activities to educate voters about the Challenged Provisions and to block their enforcement, *see id.*, and have associational standing because their members have individual standing to sue.³

² As to Plaintiff Shirley, *see* Amended Complaint, Doc. 14, at ¶¶ 170, 173; Thomas-Clark, *see id.* ¶¶ 182 to 183; Lang, *see id.* ¶¶ 191 to 192; Pullar, *see id.* ¶¶ 202 to 203; McNichols, *see id.* ¶¶ 213 to 214; Graham, *see id.* ¶¶ 236; Martin, *see id.* ¶¶ 243, 252; Dufort, *see id.* ¶¶ 263, 266; Nakamura, *see id.* ¶¶ 275, 278 to 279; and Throop, *see id.* ¶¶ 283, 291. *See also* Dufort Decl., Ex. C hereto, at ¶¶ 22; Graham Decl. Ex. E hereto, at ¶¶ 11; Martin Decl., Ex. G hereto, at ¶¶ 25; Nakamura Decl., Ex. H hereto, at ¶ 7, ¶¶ 14-15; Throop Decl., Ex. J hereto, at ¶¶ 11 to 13.

³ As to CGG, *see* Amended Complaint, Doc. 14, at ¶¶ 151 to 162 (organizational) and ¶¶ 302 (associational). As to JCDC, *see id.* ¶¶ 345 to 346 (organizational); ¶¶ 339, 344, 347 (associational). As to GAPPAC, *see id.* ¶¶ 224 to 227 (organizational) and ¶ 348 (associational). *See also* Marks Decl., Ex. B hereto, at ¶¶ 13, 28; Throop Decl., Ex. J hereto, at ¶¶ 16 to 17; Gray Decl., Ex. F hereto, at ¶¶ 9 – 14; Smith Decl., Ex. I hereto, at ¶¶ 6 to 11.

The Plaintiff Organizations also have organizational standing because the Criminal Provisions directly injure their ability to act on information about elections.⁴

B. No Immunities Apply

This case is against state officials challenging the federal constitutionality of state laws and accordingly is not a suit against the State for purposes of Eleventh Amendment immunity. *Ex parte Young*, 209 U.S. 123 (1908); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984).

III. LEGAL STANDARDS

A. Granting of a Preliminary Injunction

Chief Justice Roberts summarized the familiar test for the granting of a preliminary injunction in *Winter v. NRDC*, 555 U.S. 7, 20 (2008):

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

These are not rigid requirements to be applied by rote. “The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mold each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

B. Procedure and Evidence

⁴ Marks Decl., Ex. B hereto, at ¶¶ 19 to 20; ¶21; ¶¶ 25-27; ¶¶ 29; ¶¶ 33-37; and ¶ 39; Dufort Decl., Ex. C hereto, at ¶¶ 15-19, ¶21; Nakamura Decl., Ex. H hereto, at ¶¶ 10,12-13; Throop Decl., Ex. J hereto, at ¶ 14.

Though discovery in this case has not formally opened and the Defendants have not answered the Complaint, this Motion is not premature. “The grant of a temporary injunction need not await any procedural steps perfecting the pleadings or any other formality attendant upon a full-blown trial of this case.” *United States v. Lynd*, 301 F.2d 818, 823 (5th Cir. 1962) (Tuttle, J.). In considering this Motion, the Court also is permitted to rely upon hearsay and upon declarations in lieu of live testimony. *Levi Strauss & Co. v. Sunrise Int’l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (at the “preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction”).

IV. SUCCESS ON THE MERITS

A. O.C.G.A. § 21-2-568.1 (the “Elector Observation Felony”)

O.C.G.A. § 21-2-568.1 makes it a felony to “intentionally observe an elector while casting a ballot in a manner that would allow such person to see for whom or what the elector is voting” (the “Elector Observation Felony”). A person convicted of this felony can be imprisoned for up to ten years. O.C.G.A. § 21-2-600.

Given the size, brightness, and upright orientation of the Dominion ballot marking device touchscreens, it is hardly possible to enter a polling place in Georgia without potentially committing this felony. The photographs below show polling places in Cartersville and the State Farm Arena in Atlanta.



Any voter, member of the press, poll worker or poll watcher entering into either polling place could be charged with the Elector Observation Felony. As these and other photographs in the record show,⁵ walking to a voting station requires the voter to pass other voters and hence observe “an elector while casting a ballot.” In addition, because a voter’s choices on the BMD touchscreens can be seen from more than 20 feet away,⁶ to observe an elector is to do so “in a manner that would allow such person to see for whom or what the elector is voting.” O.C.G.A. § 21-2-568.1. For walking into a polling place and unavoidably seeing another person voting on a giant screen – a voter can be sent to prison for up to ten years, and the mandatory minimum is one year of incarceration. *See supra* note 1.

⁵ *See* Mark Decl., Ex. B hereto, Ex 1.

⁶ *See* Marks Decl., Ex. B hereto, ¶¶ 7 to 9; Martin Decl., Ex. G hereto, ¶¶ 16-20; Throop Decl., Ex. J hereto, ¶¶ 5, 9, 13.

1. **Unconstitutional Burden on the Right to Vote**

The Elector Observation Felony plainly violates the Due Process Clause of the Fourteenth Amendment because it constitutes an unjustifiable burden on the right to vote under the test set forth by the Supreme Court in *Anderson v.*

Celebrezze, 460 U.S. 780 (1983), and *Burdick v. Taksuhi*, 504 U.S. 428 (1992).

The test requires that the court weigh

‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interest put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’

Id. at 438 (quoting *Anderson*, 460 U.S. at 789). As Judge William Pryor stated in *Jacobson v. Fla. Sec’y of State*, 974 3d 1236, 1264 (11th Cir. 2020), “[i]f the statute burdened voting or associational rights even slightly . . . [u]nder *Anderson* and *Burdick*, we would weigh the burden imposed by the law against the state interests justifying that burden.”

Under *Anderson* and *Burdick*, the first consideration is the “character and magnitude of the asserted injury” to Plaintiffs’ First and Fourteenth Amendment rights. *Anderson*, 460 U.S. at 789. “Burdens are severe if they go beyond the merely inconvenient.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring in the judgment). In this case, Plaintiffs are not merely inconvenienced; to vote in person, Plaintiffs must subject themselves to the

risk of being prosecuted, convicted of a felony, and imprisoned. This is a severe burden on the right to vote by any measure.

When, as here, the rights of voters are subjected to “severe” restrictions, the regulation must be “‘narrowly drawn to advance a state interest of compelling importance.’” *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). The only governmental interest that could possibly be served by this law is protecting electors’ ballot secrecy. But as long as the Defendant Secretary of State orders the use the BMDs, electors’ ballot secrecy will be severely compromised anyway. Moreover, Georgia law already makes it a felony to go “into the voting compartment or voting machine booth while another is voting,” interfere “with any elector making his or her ballot,” or disclose “to anyone how another elector voted,” O.C.G.A. § 21-2-568, and a misdemeanor to allow someone else to see his or her ballot “for a fraudulent purpose.” O.C.G.A § 21-2-579. The Elector Observation Felony is not narrowly tailored and does not advance a compelling governmental interest. Defendants cannot meet their burden of justifying such a severe restriction of the right to vote.

2. Void for Vagueness

The Elector Observation Rule also is unconstitutional because it does not “define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage

arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The Elector Observation Rule “contains no standard for determining what a suspect has to do” to avoid disobeying the law. *Id.* at 358. If a voter goes into a polling place, there is little he or she can do to avoid violating the law.

The vagueness of the law is particularly egregious because it addresses “activities [that] are historically part of the amenities of life as we have known them.” *Papachristou v. City of Jacksonville*, 405 U.S. 156, 164 (1972) (holding vagrancy law void for vagueness). Every person who attempts to vote in-person in Georgia is no longer simply a patriotic citizen, but a potential suspect, chargeable with a felony at the whim of the authorities or political opponents. The law permits ““a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.”” *Kolender*, 461 U.S. at 358 (citation omitted). “A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

For the foregoing reasons, Plaintiffs are likely to succeed in their challenge to the Elector Observation Rule as an unconstitutional burden on the right to vote and as unconstitutionally vague.

B. O.C.G.A. § 21–2–386(a)(2)(B)(vii) (the “Gag Rule”)

1. Statutory Context

The Gag Rule and the related Estimating Bans are also attempts to silence critics and curtail unfavorable press about the administration of elections in Georgia. The Gag Rule, addressed in this Part B, and the Estimating Bans, addressed separately below in Part C, are contained in Section 29 of SB202 and codified in revisions to O.C.G.A. § 21–2–386. Section 29 addresses generally the processing of voted absentee ballots. These provisions are effective July 1, 2021. *See* SB202, Section 52, and will apply to the July 13 runoff elections.

Subsection (a)(2) describes the process for opening and scanning of the absentee ballots. Significantly, although only election officials actually open the envelopes and scan the ballots, absentee ballot processing is required to be a very public process. “The proceedings set forth in this paragraph shall be open to the view of the public, but no person except one employed and designated by the superintendent shall touch any ballot or ballot container.” O.C.G.A. § 21–2–386(a)(2)(B).

2. The Gag Rule Violates the First Amendment

The Gag Rule, O.C.G.A. § 21–2–386(a)(2)(B)(vii) prohibits “monitors” and “observers” from:

Communicating any information that they see while monitoring the processing and scanning of the absentee ballots, whether intentionally or inadvertently, about any ballot, vote, or selection to anyone other

than an election official who needs such information to lawfully carry out his or her official duties.

Any person who violates this provision is guilty of a misdemeanor, O.C.G.A. § 21-2-598, subject to fines up to \$1,000 and imprisonment not to exceed 12 months. O.C.G.A. § 21-2-599.⁷

The Gag Rule by its terms applies to “observers,” that is, members of the press or public who observe the scanning and processing of the absentee ballots in the weeks leading up to election day, and “monitors,” the persons selected by the political parties or, in the case of referendum questions, the superior court of the county. This vague statute prohibits members of the public and the monitors from communicating to anyone (other than specified officials) at any time what they learn from their observation and monitoring of the absentee ballot processing and scanning process, preventing the reporting to law enforcement and the public of discrepancies, irregularities, and fraud.

In determining whether the criminalization of speech is constitutional, the first question is whether the regulation is content-based. The Gag Rule is content-based on its face because it prohibits speech that has the content of “information that they [monitors and observers] see while monitoring” and does not prohibit

⁷ O.C.G.A. § 21-2-33.1 gives the Secretary the authority to impose civil sanctions, including monetary penalties of up to \$5,000, for every violation.

speech that does not have such content. “Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz.*, 575 U.S. 155, 163 (2015).⁸

Because the Gag Rule is content-based, the usual presumption of constitutionality of state laws is reversed, and the government has the burden of proving that the law is “narrowly tailored to serve compelling state interests.” *Wollschlaeger*, 848 F.3d at 1331. Defendants cannot carry their burden of justifying the content-based Gag Rule. There is nothing in SB202 itself that would suggest a legitimate governmental interest in the Gag Rule. *See* SB202, Section 2.

Indeed, the fact that the Gag Rule applies to communications to “anyone other than an election official who needs such information to lawfully carry out his or her official duties,” gives it away: the Gag Rule serves no “governmental interest”; it only serves the purely private interest of the election official who does not want anyone else to know about his or her malfunctioning scanners,

⁸ It is no defense that the Gag Rule uniformly applies to speech about the processing and scanning of absentee ballots regardless of the viewpoint of the speaker. “The First Amendment’s hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.” *Consol. Edison Co. v. Public Service Comm’n*, 447 U.S. 530, 537 (1980).

dysfunctional operations, inaccurate tabulations, or violations of law.

Additionally, if what the monitor or observer sees is the failure of such election officials to properly discharge their duties, the Gag Rule will facilitate a cover-up of that failure.

Furthermore, the Gag Rule criminalizes speech that is vital to the establishment and preservation of “election integrity” – the stated purpose of SB202.⁹ A clear example of how the Gag Rule (as well as the Estimating Bans and the Photography Ban, discussed below) work to defeat election integrity comes from the work of Plaintiff Jeanne Dufort. While a member of the Vote Review Panel for Morgan County in the June 2020 Primaries, Ms. Dufort observed that the Dominion scan and tabulation software was leaving some valid votes uncounted on some mail ballots. (Dufort Decl., Ex. C hereto, at ¶ 6). After making this discovery, Ms. Dufort took a number of highly reasonable and responsible actions that have been criminalized under SB202: she alerted a Dominion technician of the problem (who initially denied the problem); discussed her observations with other members of the bi-partisan Vote Review Panel; and discussed her observations with CGG and Harri Hursti, a nationally recognized expert in ballot scanning

⁹ Section 1 of SB202 states that the Act “shall be known and may be cited as the ‘Election Integrity Act of 2021.’” Section 2, paragraph 4 states that the “changes made in the legislation are designed to address the lack of elector confidence in the election system.”

technologies. Along the way, Ms. Dufort gave her best estimate of the quantity of the discrepancies that she observed. Based on Mr. Hursti's initial conclusions, Ms. Dufort reported the issue to Morgan County officials and the State Election Board. (*Id.* at ¶ 8, 10).

The Secretary of State's office initially denied that there were any problems and accused Ms. Dufort of being an "activist with an axe to grind." (*Id.* at ¶ 8). The Associated Press, however, published a photo of examples of votes that were not counted, which was later included in an order by Judge Totenberg in *Curling v. Raffensperger*, No. 17-cv-2989 (Doc. 964 at 100 - 111) after Ms. Dufort testified in that case. Based on Ms. Dufort's discoveries, the State Board of Elections enacted a rule changing the scanner settings to include more votes. (*Id.*, at ¶¶ 7-10). Ms. Dufort's action undoubtedly improved election integrity. Had the Gag Rule, Estimating Bans, or Photography Ban been in effect, however, Ms. Dufort could not have taken most of these actions without committing multiple crimes.

The Gag Rule also runs counter to the stated government interest in election integrity. It is a content-based law that cannot be squared with the First Amendment.

3. The Gag Rule is Void for Vagueness

The Gag Rule, like the Elector Observation Rule also is unconstitutional because it does not "define the criminal offense with sufficient definiteness that

ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender*, 461 U.S. at 357. The Gag Rule is indefinite in that it is vague as to the duration of the prohibited activities. On the one hand, the introductory sentence in the main paragraph seems only to prohibit speech *during* the viewing and monitoring process, but not prohibiting speech thereafter: “While viewing or monitoring the process set forth in this paragraph, monitors and observers shall be prohibited from” On the other hand, the provision is broad enough that a zealous State Election Board investigator or prosecutor could charge a citizen for communicating the information at any time. The Gag Rule is not nearly definite enough to give fair notice as to its scope and, because of its vagueness, lends itself “to arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U.S. at 358.

Plaintiffs are therefore likely to prevail on the merits of their claim that the Gag Rule is unconstitutional under either the First Amendment or the Due Process Clause, or both.

C. O.C.G.A. § 21-2-386(a)(2)(A) and (B) (vi) (the “Estimating Bans”) are Void for Vagueness

The Estimating Bans appear in both Subsection A (concerning both ballots and votes) and Subsection B (concerning votes) of O.C.G.A. § 21-2-386(a)(2). Each section has a slightly different scope. The Subsection A Estimating Ban states that:

[N]o person shall tally, tabulate, estimate, or attempt to tally, tabulate, or estimate or cause the ballot scanner or any other equipment to produce any tally or tabulate, partial or otherwise, of the absentee ballots cast until the time for the closing of the polls on the day of the primary, election, or runoff except as provided in this Code section.

Subsection B(vi) prohibits “monitors and observers” “[w]hile viewing or monitoring the process set forth in this paragraph” from:

Tallying, tabulating, estimating, or attempting to tally, tabulate, or estimate, whether partial or otherwise, any of the votes on the absentee ballots cast.

O.C.G.A. § 21-2-386(a)(2)(B)(vi).

The Subsection A Estimating Ban defines the duration of the prohibition – until the closing of the polls. The Subsection B Estimating Ban, however, like the Gag Rule, is unconstitutionally indefinite because it does not define the duration of the prohibition: it could be limited to “[w]hile [they are] viewing or monitoring,” as the introductory sentence says, or forever.

Both Estimating Bans are unconstitutional because they are vague as to what conduct they criminalize. The Estimating Bans criminalize pure thought. They do not prohibit visual access to the voted absentee ballots. Indeed, the observers and monitors, who by law are authorized to monitor the absentee ballot processing and scanning activity, are authorized to see, and do see, “votes on the absentee ballots cast.” The crime also does not require a showing that results of any estimating of ballots processed or tallying of votes were recorded or disclosed; the crime is

complete once the perpetrator has silently and mentally tallied, tabulated, or estimated, or attempted to do so.

The Estimating Bans criminalize how the monitors and observers think about what they are authorized to see, but it will be impossible for any observer or monitor to tell when their thinking about the voted absentee ballots crosses the line into criminal conduct. Viewing even a single ballot will register with the observer or monitor some kind of impression that might be deemed at least an attempted tally, even if it is not remembered long enough to be tabulated with the results of any other absentee ballot that is observed. If an observer thinks to him or herself - “This absentee ballot being scanned shows one vote for Smith and no votes on the referendum” – is that a crime? Or does the observer cross the line when the next absentee ballot is observed, when the observer thinks: “Now there are two votes for Smith and still no votes for the referendum.” Would Ms. Dufort have crossed the line by keeping a mental note of how many uncounted votes she was observing while trying to determine the magnitude of the scanning and tabulating problem?

The potential criminalization of such thoughts appears so absurd that it may be hard to take seriously, but if not enjoined the law will have seriously detrimental real-world consequences. This vague criminal law will continue to chill the good faith efforts by the political parties and the public to observe absentee ballot

processing and scanning, a crucial election process that must be subject to public oversight.

Further, the mail ballot scanner system automatically displays a real time “public counter” of the number of ballots scanned, which is intended to be a public reference the number of ballots scanned, although the Estimating Ban (Subsection A) prohibits making a tally or an estimate of that number.

In addition to not sufficiently defining the crime, the Estimating Bans will encourage “arbitrary and discriminatory enforcement.” With no observable or objective indicia of criminal conduct, law enforcement officials or the SEB can prosecute any observer or monitor with the accusation that the perpetrator appeared to be attempting to tally or estimate either votes or ballots. In a polarized political environment, it is not difficult to imagine political opponents using the statute to accuse each other of criminal activity in the tallying and estimating of votes or ballots—it is almost guaranteed.

Plaintiffs therefore are likely to succeed on the merits of their claim that the Estimating Bans are void for vagueness because they do not “define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited” or in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender*, 461 U.S. at 358.

D. O.C.G.A. § 21-2-568.2 (2)(B) (the “Photography Ban”) Violates the First Amendment

The Photography Ban makes it a misdemeanor to “[p]hotograph or record the face of an electronic ballot marker while a ballot is being voted or while an elector’s votes are displayed on such electronic marker,” or to “[p]hotograph or record a voted ballot.” O.C.G.A. § 21-2-568.2 (2)(B).

The Photography Ban criminalizes what has for at least a century been a staple of coverage of American elections. Americans expect to see their civic leaders at the polls with their ballots, or officials counting the ballots. A few examples of these photos, including of President Taft, President Reagan, Martin Luther King, Jr., the first women voters, and others are attached as Exhibit A. The Photography Ban would make such ubiquitous photography a crime.

The Photography Ban violates the First Amendment. Audio and visual recordings are protected by the First Amendment as recognized “organ[s] of public opinion” and as a “significant medium for the communication of ideas.” *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952) (extending First Amendment protection to movies). Prohibiting citizens from photographing or recording election activity has a direct impact on how citizens are able to obtain access to and present information and accordingly infringes on expressive conduct protected by the First Amendment. *Blackston v. State of Alabama*, 30 F.3d 117, 120 (11th Cir. 1994). *Fields v. City of Philadelphia*, 862 F.3d 353, 358 (3d Cir. 2017) (“The First

Amendment protects actual photos, videos, and recordings ... and for this protection to have meaning the Amendment must also protect the act of *creating* that material.”)

The Photography Ban is presumptively unconstitutional because it is explicitly content-based: it prohibits photographs and recordings based upon the information that they capture. It may be justified only if the government proves that the Ban is “narrowly tailored to serve compelling state interests.” *Reed*, 575 U.S. at 163. The Ban serves no compelling state interest. Ballot secrecy is not the justification because the law is not limited to prohibiting photographs that identify specific electors. Moreover, the ban on photographing or recording a “voted ballot” is plainly contrary to any governmental interest because SB202 makes such ballot images “public records” under the Georgia Open Records Act. O.C.G.A. § 50-18-71(k).

Plaintiffs are likely to succeed on the merits of their challenge to the Photography Ban.

E. Runoff Absentee Voting Statute

Prior to the enactment of SB202, there was no stated deadline to apply for an absentee ballot. However, officials were not (and are not) permitted to issue absentee ballots on Election Day or the day prior. O.C.G.A. § 21-2-384(a)(2) (2020). In SB202, the General Assembly established an application deadline for

absentee ballots of 11 days prior to the election. O.C.G.A. § 21-2-381(a)(1)(A) (effective July 1, 2021). Where there is a runoff, this change has the effect of disenfranchising citizens who vote absentee-by-mail because the deadline for the Secretary’s certification of an election (which will determine whether there will be a runoff and who will be in a runoff) is 11 days prior to the date of the runoff election.¹⁰ There is no Georgia law allowing for absentee ballot applications to be submitted, accepted, or issued *before* an election is officially set. Thus, if the Secretary certifies an election at the deadline for doing so, and there is a runoff, no citizen will be able to apply for or obtain an absentee-by-mail ballot for the runoff election.

This is a severe burden on the right to vote that is not justified by a compelling government interest. Instructive by comparison is the Eleventh Circuit’s recent decision in *New Georgia Project v. Raffensperger*, 976 F3d 1278 (11th Cir. 2020). In that case, the Court held that Georgia’s “decades-old” law requiring that absentee ballot be received by election day (as opposed to being post-marked by election day) was *not* a severe burden on the right to vote because “Georgia has provided numerous avenues to mitigate chances that voters will be unable to cast their ballots.” These included allowing voters to request absentee

¹⁰ Georgia law provides that election results for state races must be certified within 17 days of an election and that runoffs are 28 days after the election. O.C.G.A. § 21-2-499(b).

ballots “as early as 180 days before the election” and returning their ballots through “the mail, hand-delivery, or a drop box.” 976 F.3d at 1281.

Here, there is no mitigation whatsoever. Voters cannot apply early for an absentee ballot for an election that has not been announced. And, if the Secretary certifies an election at the deadline for doing so, and there is a runoff, it is too late for voters to obtain an absentee ballot. This is a severe burden on the right to vote for everyone who votes absentee-by-mail. It also cruelly discriminates against those who are physically unable to vote in person, particularly the elderly and the disabled and others whose medical condition makes it dangerous to vote in person, particularly during a pandemic.¹¹ It also is a severe burden on those who choose to vote absentee because they want to avoid the risk of being accused of the Elector Observation Felony,¹² to protect their personal identifying information,¹³ or desire to exercise their right to vote a secret ballot.

There is no reason for this change to Georgia law, much less the compelling justification that the Constitution requires. *Burdick*, 504 U.S. at 433. Allowing voters to apply for absentee ballots within the 11-day period in advance of an election imposes no administrative burden on the State, smooths out county

¹¹ See Nakamura Decl., Ex. H hereto, at ¶ 14.

¹² See Martin Decl., Ex. G hereto, at ¶¶ 25; Dufort Decl., Ex. C hereto, at ¶¶ 17, 22.

¹³ See Graham Decl., Ex. E hereto, at ¶¶ 14 to 15.

administrative processing workload, and does not implicate any concern relating to election integrity. Plaintiffs are therefore likely to succeed on the merits of their claim that the law is unconstitutional.

V. Plaintiffs will be Irreparably Harmed if Injunction is Denied

Plaintiffs are likely to suffer irreparable harm in the absence of preliminary injunctive relief. As to the abridgement of the right to vote claims, the “denial of an opportunity to cast a vote that a person may otherwise be entitled to cast- even once- is an irreparable harm.” *Jones v. Governor of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020). *See also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental right to vote therefore constitutes irreparable injury.”)

Vague criminal law laws that violate Due Process “inflict[] *per se* irreparable harm.” *SisterSong Women of Color Reprod. Just. Collective v. Kemp*, 472 F. Supp. 3d 1297, 1327 (N.D. Ga. 2020). *See also Am. C.L. Union of Georgia v. Miller*, 977 F. Supp. 1228, 1235 (N.D. Ga. 1997) (self-censorship for fear of criminal prosecution under law that was void for vagueness constituted a substantial threat of irreparable harm). The loss of First Amendment rights, “for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

VI. Balance of Equities and Public Interest Favor Granting the Injunction

The balance of equities tips heavily in Plaintiffs’ favor. On the one hand, no right is more precious in a free country than the right to vote. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Id.* The Defendants, on the other hand, will not be injured if they are unable to enforce the Challenged Provisions because they still have laws that they may use to enforce to protect the integrity of the election process without trampling on citizens’ constitutional rights. *ACLU v. Miller*, 977 F. Supp. 1228, 1235 (N.D. Ga. (granting injunction, finding balance of equities weighed heavily in plaintiffs’ favor because, *inter alia*, “Georgia already has in place many less restrictive means to address fraud and misrepresentation—the interests defendants claim the act at issue promotes”).

Granting injunctive relief is also in the public interest “because the public has an interest in having representatives elected in accordance with the Constitution.” *Wright v. Sumter Cty. Bd. Of Elections and Registration*, 361 F. Supp. 1296, 1303 (M.D.Ga. 2018).

For the foregoing reasons, the Motion should be granted.

Respectfully submitted this 14th day of June, 2021.

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CERTIFICATE OF SERVICE AND CERTIFICATE OF COMPLIANCE WITH
LOCAL RULE 5.1

Pursuant to N.D. Ga. L.R. 5.1(C), I certify that the foregoing was prepared using Times New Roman 14 font. I electronically filed this using CM/ECF, thus electronically serving all counsel of record.

This 14th day of June, 2021.

/s/ Bruce P. Brown

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Exhibit Re: Photography Ban (voted ballots)



Wyoming women voting. (BHP Images)

Women Voting in Wyoming 1870



Martin Luther King Voting 1964



President Taft Voting 1908



Ronald Reagan Voting 1980



Eisenhower Voting 1952



George W. Bush Voting 2000



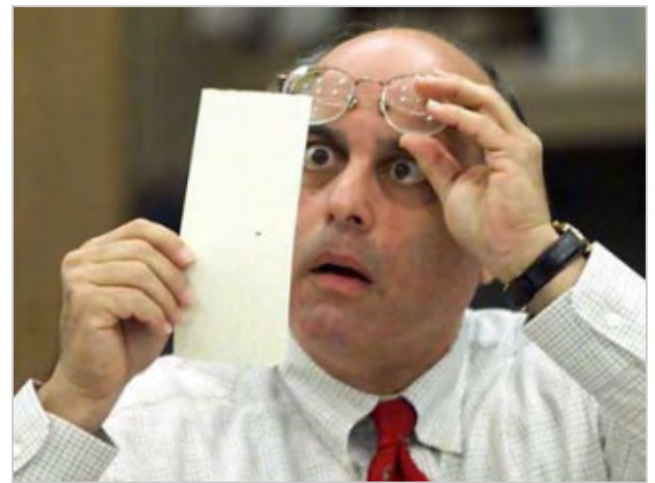
Hillary Clinton Voting 2016



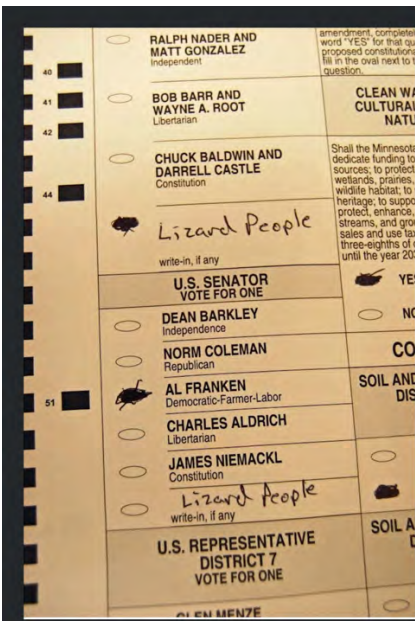
Cobb County Audit Nov. 2020



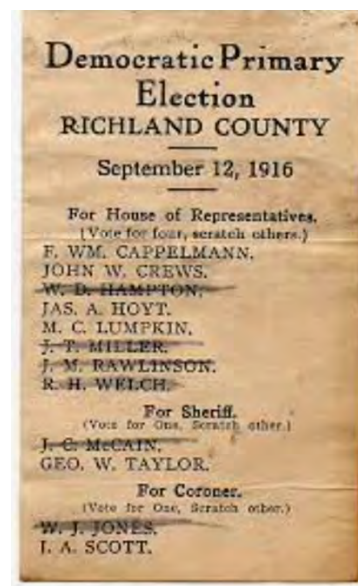
2008 Franken-Coleman Recount Ballot



Florida Recount 2000



Franken-Coleman 2008 "Lizard People Ballot"



1916 Primary Ballot

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070 JPB

DECLARATION OF MARILYN MARKS

I, MARILYN MARKS, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over the age of 18 and have personal knowledge of all facts stated in this declaration and, if called to testify, I could and would testify competently thereto.
2. I am the Executive Director of Coalition for Good Governance (“CGG”).
3. CGG through its members and volunteers is actively involved in citizen oversight of elections, including acting as election observers, appointed by political parties or candidates, or acting as public observers. CGG members and volunteers have acted as official observers in dozens of Georgia counties and many

elections since October 2017 and have conducted poll watcher training for other citizens.

4. I have personally observed election activities in scores of elections as an appointed or public observer in several states since 2009, and in Georgia elections since 2017. I understand the role, rights and responsibilities of poll watchers, election monitors and public observers, as well as the observation norms across multiple states and jurisdictions.

5. I have been appointed as a poll watcher and mail ballot monitor by Plaintiff Ryan Graham on behalf of the Libertarian Party of Georgia for several elections in a number of counties beginning in 2018.

Elector Observation Felony

6. A typical duty of a poll watcher is to note any voting equipment malfunctions, difficulty voters may be having operating the equipment, or signs of equipment tampering. Additionally, we often record the number of ballots printed as reported on the public counter on the face of the BMD and the precinct scanner for later comparison to the precinct reports. Such activities involve observing activity at the machines and approaching the machines at close distances to record the public counter data.

7. In the dozens of Georgia polling places I have visited since the first Dominion BMD installations in October 2019, I have seen the large touchscreen

displays of voters' selections, discernable from a distance of 30 feet in some cases. I have observed touchscreen displays of voters' selections from the sidewalk outside polling places with large glass windows.

8. Every poll watcher from whom we have received a report since the BMD system deployment has reported that they could routinely see for which candidates or ballot measures voters were voting, without effort to attempt to look. Multiple poll watchers reported conditions at some locations that displayed votes could be seen through the windows from the parking lot or on the sidewalk outside the polling place. Exhibit 1 is a set of true and correct photographs taken by me, CGG members or interns working under my supervision. The photographs represent a sample of polling places in which the CGG observers reported being able to see voters' vote selections from *outside* the polling place. One PBS photo is also included to demonstrate a typical sightline of voters, poll watchers, poll workers and press inside a polling place that I have seen scores of times in Georgia polling place elections.

9. Given the large, bright, upright displays of the voters' selections on the screen that make the voter's ballot a non-secret ballot, it is almost impossible to conduct meaningful observation work in the polling places without seeing voters' displayed votes, or without risking being perceived as intentionally observing such touchscreen displays.

10. After SB202's "Elector Observation Felony" provision was passed, CGG has stopped actively organizing or training poll watchers or encouraging poll watcher activities given the potential for the allegation of a felony against a watcher. I have also personally ceased watcher activities, starting with the May 24, 2021 start of early voting for the June 15, 2021 elections.

11. The Secretary of State and the State Election Board have made exaggerated and baseless allegations against me and CGG Board Member Rhonda Martin in the past for poll watching activities, threatening us with potential prosecution. (Exhibit 2). The complaints against us are still pending. I am fearful that Secretary Raffensperger's investigators will use the opportunity to again allege crimes, this time Elector Observation felonies, on an arbitrary and capricious basis. Therefore, until this threat is mitigated, I will not conduct polling place monitoring, nor will I encourage our volunteers to act as poll watchers.

12. CGG as an organization, certain CGG members, and I as an individual have filed numerous formal and informal complaints with and against the Secretary of State and the State Election Board regarding the large touchscreens' violation of ballot secrecy. Such complaints have included litigation currently pending in this district court (Curling v Raffensperger 17cv2989) and a Help America Vote Act (HAVA) complaint. State Defendants are well aware of the ballot secrecy issue and have refused to act to protect in-person voters' rights to a secret ballot.

13. CGG is diverting resources and will continue to divert resources to consult with members and other voters who have reported that they now fear going into the polling places because of the threat of being accused of the Election Observation Felony. In particular, we are advising members who have publicly protested SB202 and its sponsor Representative Barry Fleming, and other Secretary of State policies, and are reasonably fearful of prosecution for the Election Observation Felony, to vote by mail ballot, despite the identity theft and fraud risks of mail ballots under SB202 provisions. The option of voting by mail ballot, however, may not be available for runoff elections because of the new rule under SB202 that prohibits applications after eleven days prior to an election.

Gag Rule

14. I have frequently acted as an appointed monitor in absentee mail ballot processing activities and have trained others to be a monitor. It is my experience that the complexity of mail ballot processing takes specialized knowledge of applicable law, mail ballot procedures, and the risks of discrepancies and irregularities.

15. It is not unusual to see errors occurring in the processing of mail ballots. Part of the routine duties of an appointed mail ballot monitor is to report irregularities and discrepancies to their appointing party and at times, law enforcement. Other times, it is important for the press and public to know what is

being observed in the monitoring, whether it is irregularities or laudable progress in efficient processing. The Gag Rule of SB202 criminalizes such reporting that has long been the purpose of mail ballot monitoring.

16. Examples of issues I have observed during mail ballot monitoring and reported to others in prior elections, including some in other states are: clearly fraudulent mail ballot envelope signatures purposely being accepted; officials purposely associating envelopes and ballots to determine how a specific individual voted; Fulton County mail ballot supervisor requiring workers to keep ballots associated with the voters' envelopes, violating voter privacy; mail ballot scanner equipment malfunctions; inaccurate adjudication of marginal marks on mail ballots; workers improperly duplicating damaged or spoiled mail ballots; officials creating illegal unique identifying marks on military voters' ballots; failure to count legal write-in votes on mail ballots; workers inadvertently skipping batches of ballots for scanning; officials improperly obtaining early tallies of mail ballots before Election Day; improper rejection of mail ballot signatures; withholding from certain candidates or political parties the lists of mail ballot rejections needing cures; and numerous other irregularities. Reporting these problems has made a difference in the prompt correction of the erroneous processes.

17. In the past, I have reported such mail ballot processing issues to appropriate district attorneys, the Colorado Attorney General, secretaries of state,

state election commissions or boards, county election boards, state legislators, political campaigns, political parties, candidates, state courts in written or court testimony, CGG's attorneys, and members of the press. It is my understanding that reporting the vast majority of these examples would be banned by SB202's Gag Rule, effectively obstructing effective citizen oversight and the continuation of the observed irregularities. The Gag Rule even prohibits reporting to law enforcement, which is particularly troubling.

18. CGG is a strong proponent of prohibiting the scanning of mail ballots prior to Election Day for numerous election security reasons. SB202 permits the scanning of mail ballots as early as 15 days prior to election day, effectively creating an electronic record available to insiders to see trends of votes cast as ballots are scanned. Preventing disclosure of this valuable information is essential for a secure election. Therefore, CGG has strongly recommended that early scanning be avoided, but if early scanning is implemented, prohibitions with criminal penalties should be placed on disclosure of this information. SB202 does not attempt to prevent creation of, or insider access to, such information or reporting such information to election officials either before or after the closing of the polls.

19. However, SB202's Gag Rule with no time limitation on reporting problems related to mail ballot processing serves to suppress CGG's and others'

effectiveness in assisting in the correction of discrepancies by calling attention to election irregularities in a timely manner. CGG fully supports prohibitions on disclosure of vote trend or tally information prior to the closing of the polls.

20. CGG's meaningful work in monitoring mail ballot processing will be severely curtailed because of the Gag Rule that prevents the press, public or appointed monitors from reporting the kinds of discrepancies I have listed above.

Estimating Ban

21. Similar to the Gag Rule provision, the ban on "estimating" or "attempting to estimate" vote quantities on absentee mail ballots at any time such ballots are being processed, harms and reduces the effectiveness of the election security efforts of CGG as well as other election observers. Part of our duty as observers is to determine whether reported tallies appear reasonable in relation to voted ballot content we have observed during the ballot processing.

22. For example, in observing the Colquitt County January 28, 2020 HD171 election, I watched an official scan the mail ballots on election night and noted the number of ballots scanned. After the results were posted, I checked to determine whether the number of ballots reported as counted agreed with what I had observed. It is my understanding that this meaningful check and balance is prohibited by the Estimating Ban.

23. CGG will be prohibited from other important observations in estimating important information such as the number of ballots being scanned, left to be scanned, rejected, or sidelined for curing.

24. As CGG and other monitors observe the handling and scanning of individual ballots, another important control measure is to note vote trends in key races in order to compare such estimates to final counts for reasonableness. It is my understanding that we will be prohibited from mentally making estimates based on what we observe. Therefore, any reported results that appear to be significantly different than our observations cannot be questioned by our member-observers without incriminating themselves, as having made estimates of votes or ballots being counted.

25. CGG members who are appointed observers will not only be ineffective by being barred from estimating the quantities of ballots or votes they observe being processed, scanned, accepted, rejected, secured, mishandled, etc., but will be subject to arbitrary and capricious potential enforcement of SB202.

26. Further, we cannot train observers to avoid the risk of being accused of “estimating” quantities of ballots or votes in what they are watching.

27. Until the negative impacts of SB202’s Elector Observation Felony, Gag Rule and Estimating Rule are mitigated, CGG will be forced to curtail many of its core election oversight activities because of the fear that its members will be

prosecuted and the limited value of observation that cannot be used to address irregularities. I will personally drastically reduce many of my personal planned election observation activities as a result of the threats of criminalizing standard election observation activities.

28. While I may attend the mail ballot tabulation in Cobb County on June 15 for the HD34 election, I will first seek advice of legal counsel on how to minimize the risks of being targeted for criminal accusations.

Photography Ban

29. The Photography Ban will have a negative impact on CGG's work and effectiveness in three primary ways: 1) the inability to photograph and record ballots during public ballot adjudication, counting and auditing; 2) the inability to work with and publicly share copies of ballot images; and 3) and inability to use press photography and press videography of ballot counting and handling processes.

30. CGG and I have frequently used photos that we or the press have taken during public ballot counting or auditing events to educate voters and train volunteers as well as to help isolate problem areas.

31. Attached as Exhibit 3 are scanned images of sample mail ballots from Chaffee County, Colorado and my related complaint to the Colorado Secretary of State alleging potential mail ballot fraud. These documents demonstrate one

example of my experience as to how photographs and recordings of ballots as well as the ability to freely report election administration problems to law enforcement and the press and public are essential tools in election integrity. I discovered that the color scans of ballots of a 2012 election in Chaffee County, Colorado indicated that hundreds of mail ballots were marked with votes filled in with both blue and black ink. I reported the signs of likely fraud to the Colorado Secretary of State, who investigated, determined that mail ballot fraud was likely, and recommended a fraud investigation to prosecutors in the Colorado Attorney General's office, which was undertaken. The local press also covered the story. (The perpetrator was never identified, but management changes were made in the county election office, and public awareness of ballot security was enhanced.)

32. Attached as Exhibit 4 are true and correct copies of press photographs and photographs that I am CGG volunteers working at my direction took of the statewide hand audit after the November 2020 election. These include photos of voted ballots.

33. I took video in Gwinnett County documenting the ineffective and "glitchy" ballot count audit software in use in the midst of stacks of voted ballots. Banning photography of voted ballots would have prevented these important evidentiary videos that demonstrate one of the serious tabulation problems with the 2020 post-election audit.

34. CGG volunteers and I have taken and obtained photographs and video recordings of ballots being adjudicated, including legal votes that were not counted because of the software and scanner settings. Such photos were essential to CGG in analyzing the root cause of the scanner-tabulator's failure to count the votes. The photos were also used in the *Curling v Raffensperger* litigation, where Judge Totenberg included some of the images in her order illustrate the scanning software issues. Attached as Exhibit 5 are pages from Judge Totenberg's order that included photographs of voted ballots.

35. In November 2018 I recorded video in the Gwinnett County recount showing problems with ballot scanning caused by improperly creasing the ballots. The true and correct copy of the video was annotated by a CGG member and posted at this link. (<https://drive.google.com/drive/folders/1bUqMPQUGEq4LNF5tSvafzsKzWnfFDDXi>).

36. A ban on recording voted ballots and criminalizing such recordings will have a negative impact on CGG's ongoing efforts to detect and challenge discrepancies that threaten to disenfranchise voters and to educate voters and the press on election security issues.

37. SB202 clarified that ballot images are public records. (O.C.G.A. §50-18-71(k) (2021)). CGG is one of the few organizations working in Georgia that routinely uses ballot images, a graphical representation made of the scanned ballot

by the optical scanner. CGG has a current project to publicly post all the Fulton County ballot scans from the November 2020 election and recount to permit the public to count the controversial ballots for themselves. Despite the fact that the images CGG obtains are public records, SB202 prohibits recording or photographing the “voted ballots,” apparently greatly restricting our use of the images for research or education purposes.

38. Posting and researching recorded ballot images has been a method of providing citizen information and oversight of elections in controversial elections. In 2009, to educate myself on ballot mark interpretation and recounts, I reviewed numerous controversial ballot images posted by the Minneapolis Star Tribune and Minnesota Public Radio from the nationally-watched 2008 Franken-Coleman recount, as described in the article linked here.

(https://minnesota.publicradio.org/features/2008/11/19_challenged_ballots/).

Below is a true and correct copy of the published infamous “Lizard People” vote.



39. It is my understanding that the Photography Ban in SB202 would criminalize the copying and recording of such ballot images, greatly limiting their use in research, public information, or election integrity efforts.

40. I am aware of no disclosure of sensitive information that has occurred because of photography of a voted ballot, or of a voter casting a ballot.

41. I attended in person or watched by video every hearing of SB202 and related legislation in the General Assembly. During the SB202 legislative hearings, I did not hear any discussion of the justification for the Photography Ban, the Estimating Ban, or the Gag Rule.

42. I have reviewed the allegations pertaining to Coalition for Good Governance in the complaint, and those allegations are true and correct to the best of my knowledge and belief.

Executed this 11th day of June, 2021.



Marilyn Marks

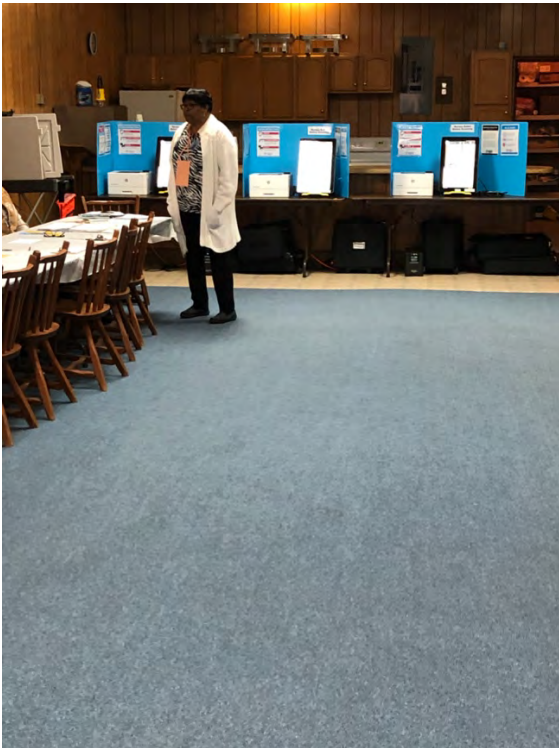
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Exhibit 1 Marks

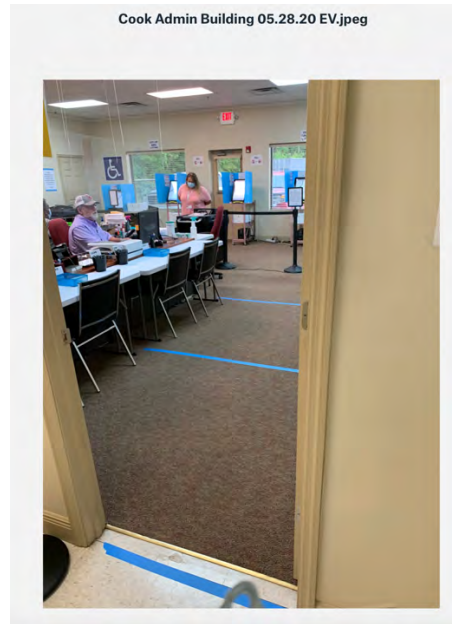
Photos made outside Georgia polling places



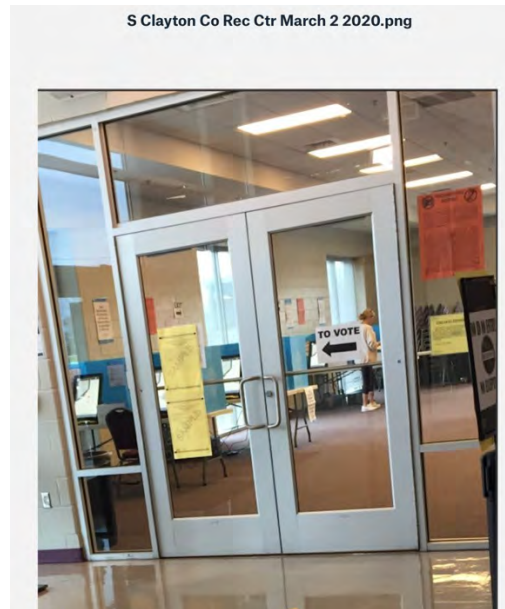
Unadilla, GA 2/4/20 (from public hallway)



Pinehurst, GA (2/4/20) (from sidewalk)



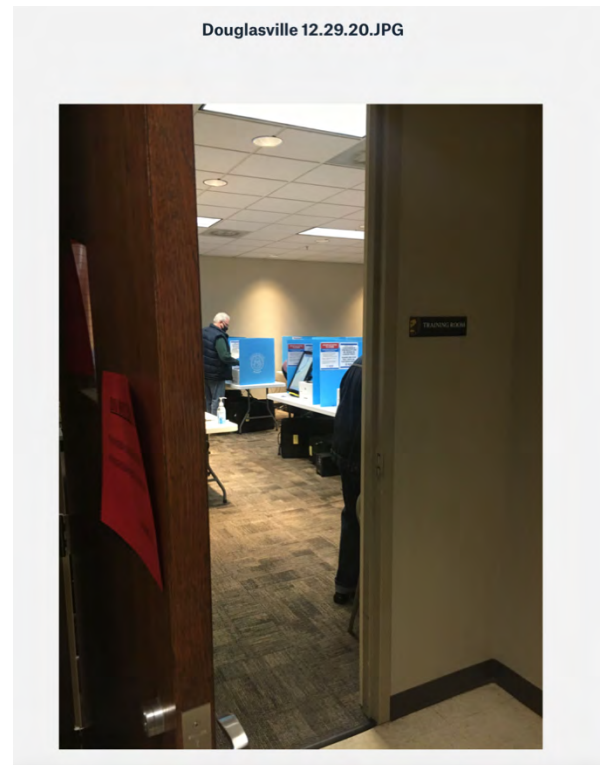
Cook County Admin Bldg. (outside polling place)



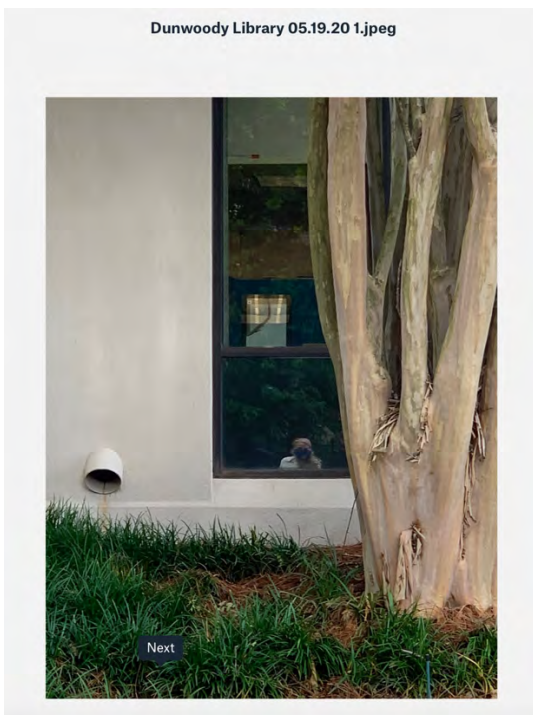
Clayton County, March 2, 2020 (from hallway)



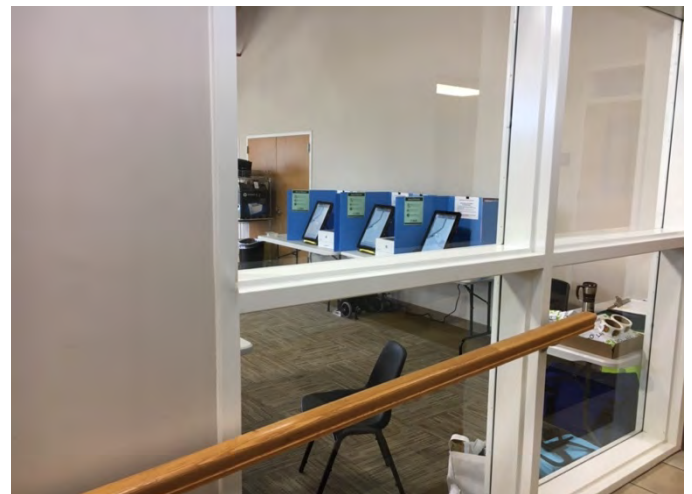
Fulton County outside early voting



Douglasville outside polling place (early voting 12/29/20)



Dunwoody Library Parking Lot (early voting May, 2020)



Lakeside Rec. Polling Place (outside polling place)

Typical View of Voters While Voting on a
BMD Source: PBS News Hour June 9, 2020



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The Office of Secretary of State

2 Martin Luther King Jr., Drive
802 West Tower
Atlanta, Georgia 30334

Brad Raffensperger
SECRETARY OF STATE

Frances Watson
CHIEF INVESTIGATOR

January 17, 2021

VIA CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

RE: SEB Case No. 2019-043

Dear Sir or Madam:

You are listed as a respondent in the above-referenced election case. Please be advised that this case is currently on the agenda for the State Election Board meeting (Webinar) scheduled for Wednesday, February 17, 2021, beginning at 9:00 a.m. Please use the link below to register for the State Election Board meeting (Webinar).

Link: https://zoom.us/webinar/register/WN_OCqA-GPhRhONO_KINIFOIw

This means that the State Election Board (SEB) will review the case facts to determine whether you may have violated the Georgia Election Code and/or SEB rules. Enclosed is the case summary with preliminary conclusions to be presented to the State Election Board. At this time, the case is listed as a "new case" on the meeting agenda. However, please note that the SEB will make final decisions on the results of all investigations.

Following review of the case, the SEB may take one of the following actions: (1) the SEB may close and dismiss the case; (2) the SEB may issue a letter of instruction or reprimand; or (3) the SEB may refer the case to the Attorney General for further review and possible administrative proceedings and penalties. Should the case involve criminal conduct, the SEB reserves the right to refer the case to the local district attorney for criminal prosecution as well.

Your attendance is not mandatory, but should you join the Webinar, you will be provided an opportunity to address the SEB about the case. The SEB may ask you questions about the case, and your statements to the SEB will be recorded. The SEB has also notified the complainant in the case about this meeting, and should the complainant choose to join the Webinar, the SEB will provide him or her with an opportunity to speak as well. **If you would like to speak when your case is called, please inform the meeting organizer that you are present by typing your name and case number in the comment box.**

If you have any questions, please feel free to contact me at (470)-312-2774.

Sincerely,
Frances Watson
Chief Investigator

Enclosures



INVESTIGATIONS DIVISION

SUMMARY

CASE NAME: Paulding County Enclosed Space Violation

CASE NUMBER: SEB2019-043

INVESTIGATOR: Paul Braun

DATE OF REPORT: 06/12/2020

COMPLAINT(S): Liz Hausmann with the Georgia Secretary of State Office, reported in an email about two (2) white females, and a white male standing in the room where the voting machines were located. This incident took place at the Watson Government Complex in Paulding County on November 05, 2019. Forlândia Kennerly identified Rhonda Martin as the person who presented herself as a Poll Watcher and entered the enclosed space at the Argyle Elementary School in Cobb County.

COUNTY AND ELECTION INVOLVED: Paulding County and Cobb County November 05, 2019.

ELECTION STAFF: Paulding County Board of Registration & Elections and Cobb County Board of Registration & Elections.

ELECTION CERTIFICATION: The Elections Supervisor for Paulding County is Deidre Holden, who was certified on October 08, 2009. The Elections Director for Cobb County is Janine Eveler who was certified on April, 2010.

JURISDICTION/VENUE: Jurisdiction will be with the State Election Board, Atlanta, Fulton County, Georgia. Venue for any criminal prosecution will lie in Paulding County and Cobb County, Georgia.

RESPONDENT(S):

Paulding County Board of Elections and Voter Registration
240 Constitution Blvd.,
Dallas, GA 30132
770-443-7503 Office
770-443-7548 FAX

Paulding County Elections Superintendent Deidra Holden
240 Constitution Blvd.,
Dallas, GA 30132
770-443-7503 Office
770-443-7548 FAX

Paulding County Poll Manager Gayle Coombs
2972 Paddock Trl.
Duluth, GA 30096
770-713-8640

Marilyn Marks
[REDACTED]
[REDACTED]
[REDACTED]

Rhonda Jo Martin
[REDACTED]
[REDACTED]
[REDACTED]

Richard DeMillo
[REDACTED]
[REDACTED]
[REDACTED]

FINDINGS:

On November 05, 2019, Richard DeMillo, Rhonda Martin, and Marilyn Marks went to the Watson Government Complex at approximately 2:45 pm to observe the voting process. All three (3) admitted to being inside the enclosed space where the voting machines were located, while electors were voting. The respondents do not agree with the definition of enclosed space in this case. The state election code clearly distinguishes that the enclosed space and voting compartments are two separate areas, however, DeMillo, Martin, and Marks challenge this investigator's interpretation of the enclosed space.

There are conflicting statements about whether or not DeMillo, Marks, and Martin were given permission to enter the enclosed space. Poll Manager Gayle Coombs, advised in her statement *that "No one asked if they could go in the room, but I didn't know they couldn't due to them saying they were observing the process."* Liz Hausmann advised in her statement "no poll worker spoke to any of these three people in the voting room." The Paulding County Election Supervisor Deidra Holden, stated in an email that "they were not given permission to do so," and "never identified themselves to the Poll Manager." Richard DeMillo, Rhonda Martin, and Marilyn Marks have all been designated Poll Watchers in the past and have followed the appropriate procedure to be placed on the list of designated poll watchers during that time. On this occasion, they took advantage of the fact that Gayle Coombs did not know who was authorized to be inside the enclosed space. There is no evidence indicating they touched any voting equipment or interfered with any poll worker or voter.

Based on their reported behavior at the Watson Government Complex, this investigator checked with other precincts in Paulding County and other neighboring counties to see if similar incidents occurred. Forlencia Kennerly, the Poll Manager for the Argyle Elementary School in Cobb County identified Rhonda Martin from a photograph as the person who introduced herself as a Poll Watcher. She advised Mrs. Martin was allowed to enter the enclosed space and sit by Ms. Kennerly. When Mrs. Kennerly realized Mrs. Martin was not on her list and did not have identification she was asked to leave the enclosed space. Ms. Kennerly identified Marilyn Marks from a photograph and stated that Ms. Marks and Mrs. Martin began to speak loudly and disturb voters outside the enclosed space so they were asked to keep their voices down. Ms. Kennerly was sent a photograph of Richard DeMillo, but could only state she observed him from a distance and he did not enter the enclosed space. She stated she is eighty-five to ninety percent sure it was Dr. DeMillo. Ms. Kennerly stated this took place between 8:00 am and 9:00 am. Richard DeMillo, Rhonda Martin, and Marilyn Marks deny going to the Argyle Elementary School on November 05, 2019. This investigator could not find any evidence that DeMillo, Martin, or Marks were at the Argyle Elementary School.

The evidence in this case suggests that DeMillo, Martin, and Marks developed and carried out a plan to gain unauthorized access into the enclosed space during the November 05, 2019, election.

POTENTIAL VIOLATIONS:

**Paulding County Board of Elections and Voter Registration
Paulding County Elections Superintendent Deidra Holden
Paulding County Poll Manager Gayle Coombs**

There is evidence to suggest that **Gayle Coombs, Deidra Holden, and the Paulding County Board of Elections and Registration** violated **Georgia Election Code Annotated 21-2-413(h)**. It shall be the duty of the chief manager to secure the observances of this Code section, to keep order in the polling place, and to see that no more persons are admitted within the enclosed space than are permitted by this chapter. Further, from the time a polling place is opened until the ballots are delivered to the superintendent, the ballots shall be in the custody of at least two poll officers at all times. **Poll Manager Gayle Coombs allowed Marilyn Marks, Rhonda Martin, and Richard DeMillo to enter and remain inside the enclosed space at the Watson Government Complex when they were not voting or acting in the capacity of designated Poll Watchers.**

**Marilyn Marks
Richard DeMillo**

There is evidence to suggest that **Marilyn Marks, and Richard DeMillo** violated **Georgia Election Code Annotated 21-2-413(f)**. All persons except poll officers, poll watchers, persons in the course of voting and such persons' children under 18 years of age or any child who is 12 years of age or younger accompanying such persons, persons lawfully giving assistance to electors, duly authorized investigators of the State Election Board, and peace officers when necessary for the preservation of order, must remain outside the enclosed space during the progress of the voting. **Marilyn Marks and Richard DeMillo entered and remained inside the enclosed space when they were not voting or acting in the capacity as Poll Watchers or Poll Officers at the Watson Government Complex.**

Rhonda Martin

There is evidence to suggest that **Rhonda Martin** violated two (2) counts of **Georgia Election Code Annotated 21-2-413(f)**. All persons except poll officers, poll watchers, persons in the course of voting and such persons' children under 18 years of age or any child who is 12 years of age or younger accompanying such persons, persons lawfully giving assistance to electors, duly authorized investigators of the State Election Board, and peace officers when necessary for the preservation of order, must remain outside the enclosed space during the progress of the voting. **Rhonda Martin entered and remained inside the enclosed space when she was not voting or acting in the capacity as Poll Watcher or Poll Officer at the Watson Government Complex and the Argyle Elementary School.**

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Monday, August 17, 2015 at 10:21:55 AM Mountain Daylight Time

Subject: FW: Complaint --Chaffee County Ballot Irregularities**Date:** Monday, August 17, 2015 at 10:21:20 AM Mountain Daylight Time**From:** Marilyn Marks

From: Marilyn Marks**Sent:** Tuesday, July 31, 2012 2:22 PM**To:** Suzanne Staiert**Cc:** Andrew.Cole@SOS.STATE.CO.US; Richard Coolidge <richard.coolidge@sos.state.co.us> (richard.coolidge@sos.state.co.us); Scott.Gessler@SOS.STATE.CO.US; Benjamin.Schler@SOS.STATE.CO.US**Subject:** Complaint --Chaffee County Ballot Irregularities

Dear Deputy Secretary Staiert,

Please see the attached complaint regarding apparent irregularities in the Chaffee County 2012 primary ballots. As we discussed, there is likely no legitimate explanation for the wide-spread various blue and black markings on individual ballots. I request that the Department open an immediate investigation to ensure that the cause of this issue is not repeated in November.

From this distance, it is impossible for me to know the cause of this irregularity. However, I would ask that the Department's investigation consider these and other possibilities:

1. Election worker with access to ballots altered ballots to influence the election.
2. Election workers illegally colored in "light marks" on ballots to purportedly assist in machine-reading, (but illegally obscuring the voter intent.)
3. Voters marked with blue and black pens in patterns to signal their ballots in a vote-selling scheme.
4. Color scanner settings created false reading of blue and black, when ink color was actually one color. (inspection of originals will be required to determine.)

I am certain that that does not consider all of the possibilities that should be explored to investigate this issue.

Please let me know what additional information I can provide to assist in your investigation of this complaint. I would appreciate knowing when you officially open your investigation.

Thank you for your prompt attention to this concern.

Marilyn Marks

Marilyn@AspenOffice.com


Complaint regarding Chaffee County 2012 Primary Ballots

I am alleging a possible violation of the duty by election officials and potential forgery of ballots in the 2012 primary in Chaffee County. Without further investigation I cannot be more specific in the laws that appear to have been broken, nor can I make allegations as to who may have committed these violations. My complaint is based on voted ballots that appear to have been altered. Additional investigation by the Secretary is warranted.

In the course of reviewing color copies of Chaffee County 2012 voted ballots produced in discovery in the Citizen Center v. Gessler et al. case, I noted that scores of ballots appeared to be marked with a combination of blue and black ink in unusual ways. The coloring of the target areas on numerous ballots appears to be inconsistent within the ballots in question. It appears upon initial review that voting marks may have been made on the ballot after the voter cast the ballot.

It is hard to imagine any legitimate explanation for different colored voter marks on so many ballots.

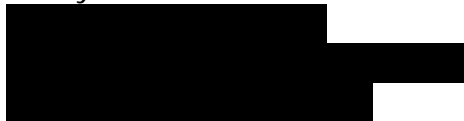
Please open an investigation into the cause of these irregularly marked ballots.

The SOS office should have a CD of the ballots produced by Chaffee county. I have also uploaded the ballot copies to a dropbox which Deputy Secretary Staiert has access.

It should be noted that I have not personally observed any of the original ballots in question, only the color scans provided in discovery.

Please contact me as follows:

Marilyn R Marks



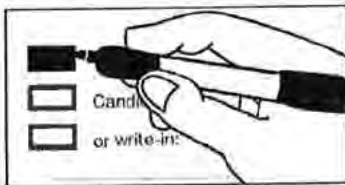
I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

Executed on July 31,2012, Aspen, CO

A handwritten signature in blue ink, appearing to read 'Marilyn R Marks', written over a horizontal line.

OFFICIAL BALLOT FOR THE REPUBLICAN PARTY**2012 Primary Election****Chaffee County Colorado****June 26, 2012****Precinct 1**


Joyce M. Reno - Clerk and Recorder



Please use a black or blue ink pen to mark your choices on the ballot. To vote for your choice in each contest, completely fill in the box provided to the left of your choice.

WARNING: Any person who, by use of force or other means, unduly influences an eligible elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with a ballot is subject, upon conviction, to imprisonment, or to a fine, or both.

Federal Office

REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS - DISTRICT 5

(Vote for One)

☐ Doug Lamborn

☐ Robert Blaha
University of Colorado Regent

REGENT OF THE UNIVERSITY OF COLORADO - AT LARGE

(Vote for One)

☐ Matt Arnold

☐ Brian Davidson

REGENT OF THE UNIVERSITY OF COLORADO - CONGRESSIONAL DISTRICT 5

(Vote for One)

☐ Kyle H. Hybl
State Office

STATE REPRESENTATIVE - DISTRICT 60

(Vote for One)

☐ James D. (Jim) Wilson

☐ Steve Collins
District Attorney

DISTRICT ATTORNEY - 11TH JUDICIAL DISTRICT

(Vote for One)

☐ Thom K. LeDoux

☒ Dagna Van Der Jagt
County Office

COUNTY COMMISSIONER - DISTRICT 1

(Vote for One)

☐ Dennis Giese

COUNTY COMMISSIONER - DISTRICT 2

(Vote for One)

☐ Frank F. Holman

OFFICIAL BALLOT FOR THE REPUBLICAN PARTY
2012 Primary Election
Chaffee County Colorado
June 26, 2012

Precinct **1**

Joyce M. Reno
 Joyce M. Reno - Clerk and Recorder



Please use a black or blue ink pen to mark your choices on the ballot. To vote for your choice in each contest, completely fill in the box provided to the left of your choice.

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Federal Office

REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS - DISTRICT 5

(Vote for One)

☒ Doug Lamborn

☐ Robert Blaha

University of Colorado Regent

REGENT OF THE UNIVERSITY OF COLORADO - AT LARGE

(Vote for One)

☒ Matt Arnold

☐ Brian Davidson

REGENT OF THE UNIVERSITY OF COLORADO - CONGRESSIONAL DISTRICT 5

(Vote for One)

☒ Kyle H. Hybl

State Office

STATE REPRESENTATIVE - DISTRICT 60

(Vote for One)

☒ James D. (Jim) Wilson

☐ Steve Collins

District Attorney

DISTRICT ATTORNEY - 11TH JUDICIAL DISTRICT

(Vote for One)

☐ Thom K. LeDoux

☒ Dagna Van Der Jagt

County Office

COUNTY COMMISSIONER - DISTRICT 1

(Vote for One)

☒ Dennis Giese

COUNTY COMMISSIONER - DISTRICT 2

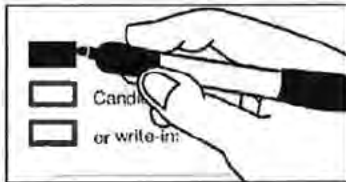
(Vote for One)

☒ Frank F. Holman

OFFICIAL BALLOT FOR THE REPUBLICAN PARTY
2012 Primary Election
Chaffee County Colorado
June 26, 2012

Precinct **1**

Joyce M. Reno
 Joyce M. Reno - Clerk and Recorder



Please use a black or blue ink pen to mark your choices on the ballot. To vote for your choice in each contest, completely fill in the box provided to the left of your choice.

WARNING: Any person who, by use of force or other means, unduly influences an eligible elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with a ballot is subject, upon conviction, to imprisonment, or to a fine, or both.

Federal Office

REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS - DISTRICT 5
 (Vote for One)

☒ Doug Lamborn
☐ Robert Blaha

University of Colorado Regent

REGENT OF THE UNIVERSITY OF COLORADO - AT LARGE
 (Vote for One)

☐ Matt Arnold
☐ Brian Davidson

REGENT OF THE UNIVERSITY OF COLORADO - CONGRESSIONAL DISTRICT 5
 (Vote for One)

☐ Kyle H. Hybl

State Office

STATE REPRESENTATIVE - DISTRICT 60
 (Vote for One)

☐ James D. (Jim) Wilson
☐ Steve Collins

District Attorney

DISTRICT ATTORNEY - 11TH JUDICIAL DISTRICT
 (Vote for One)

☒ Thom K. LeDoux
☐ Dagna Van Der Jagt

County Office

COUNTY COMMISSIONER - DISTRICT 1
 (Vote for One)

☒ Dennis Giese

COUNTY COMMISSIONER - DISTRICT 2
 (Vote for One)

☒ Frank F. Holman

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Marks Exhibit 4

Photos of Georgia's Hand Count Audit and Photos of Voted Ballots

Cobb County Hand Count November 2020



Morgan County Hand Count November 2020



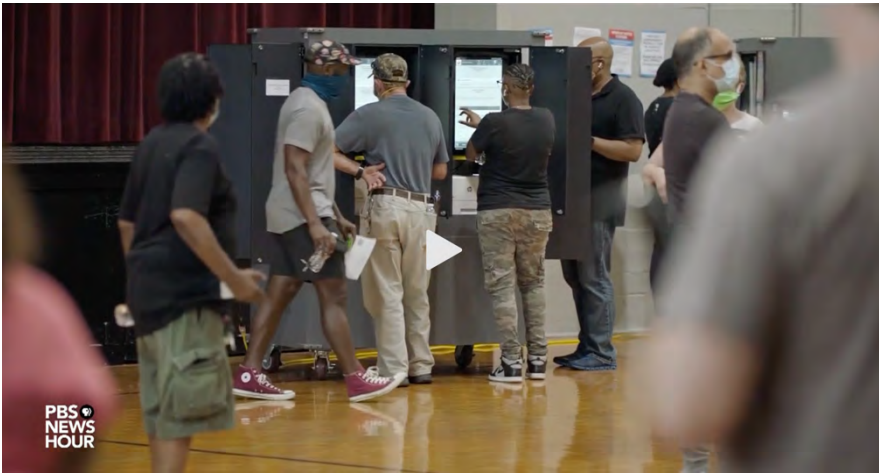
November 2020 Hand Count at Macon Bibb County

Clayton County Hand Count November 2020

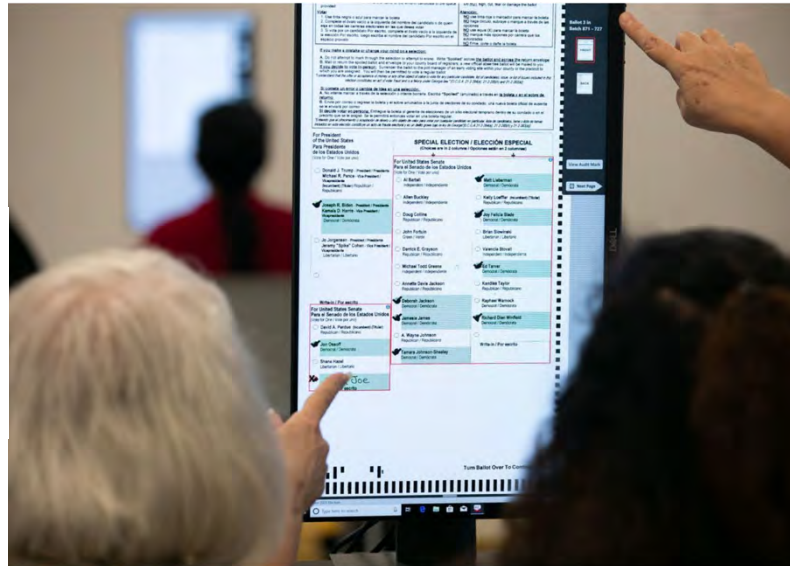


A poll watcher, right, and an auditing team, left, in the Bibb County Board of Elections in Macon on Monday, November 16.

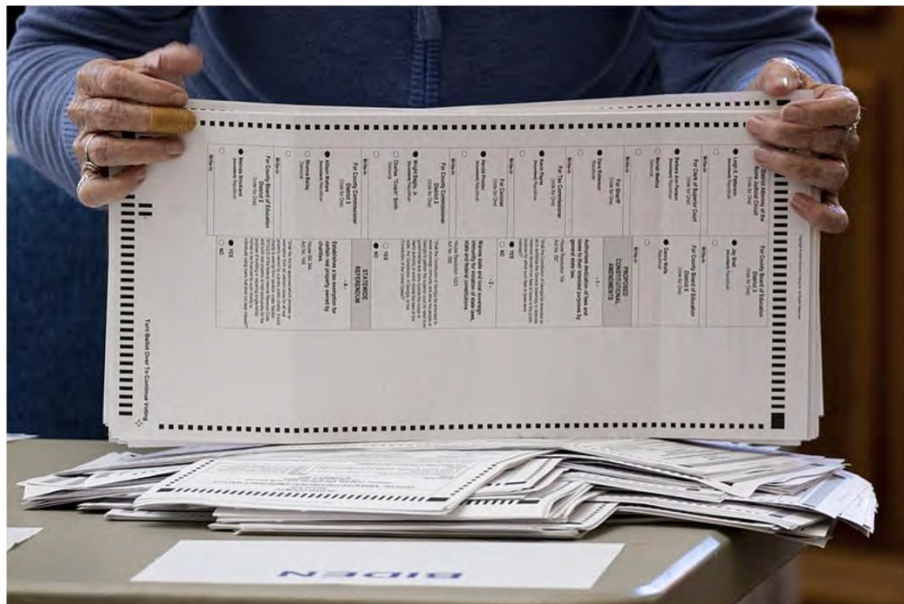
A Voter's Highlighted Vote Can be Seen at November 2020 Election



Gwinnett County Adjudication November 2020



Members of the Gwinnett County adjudication review panel look over remaining scanned ballots at the Gwinnett



Floyd County November 2020 Audit Ballot

An official sorts ballots Friday during an audit at the Floyd County administration building in Rome, Ga. The secretary of state's office has instructed county election officials to complete the audit by 11:59 p.m. Wednesday. The deadline to certify the results is Nov. 20. (AP/Ben Gray)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

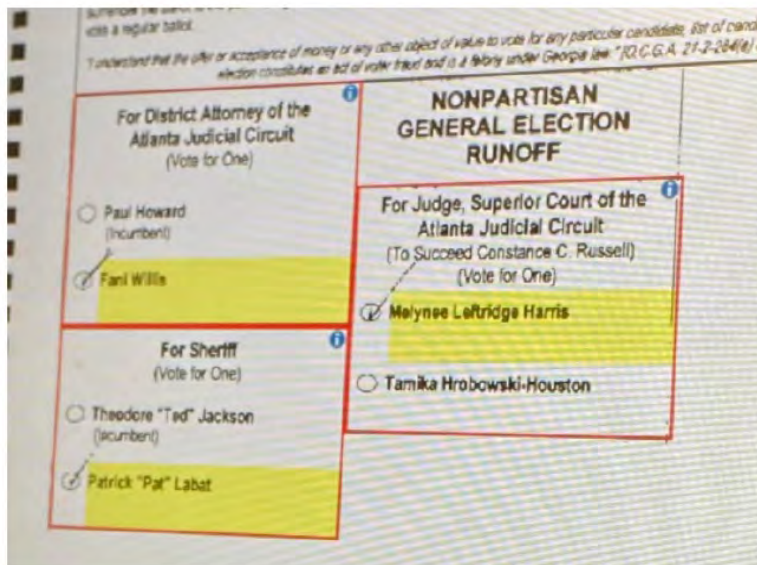
DONNA CURLING, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:17-cv-2989-AT
BRAD RAFFENSPERGER, <i>et al.</i> ,	:	
	:	
Defendants.	:	

OPINION AND ORDER

I. Introduction and Overview

In the 1983 film Groundhog Day, weather man Phil Connors is doomed to repeat the same day over and over again: “I wake up every day, right here, right in Punxsutawney, and it’s always February 2nd, and there’s nothing I can do about it.” The Court can relate; it feels like it’s February 2nd in Punxsutawney. But quite likely, the Court is not alone in this sentiment in many respects. Amidst the many other serious concerns facing the public in this challenging era, issues surrounding election system security, reliability, fairness, and the correct counting of votes continue on the forefront of citizen concerns. And so too, in turn, does voting litigation perforce continue.

flagged for adjudication. Green highlighting indicated the software recognized the mark as a vote and counted it unless it was also flagged as an overvote. Yellow highlighting indicated the software categorized the mark as ambiguous and would not be counted until there was a vote review panel adjudication. When at least one oval in a contest was darkened sufficiently to be categorized as “ambiguous,” the software highlighted the ambiguous option(s) in yellow, outlined the contest in red, and sent the entire ballot to an adjudication queue. Below is an example illustrative of the adjudication screen:

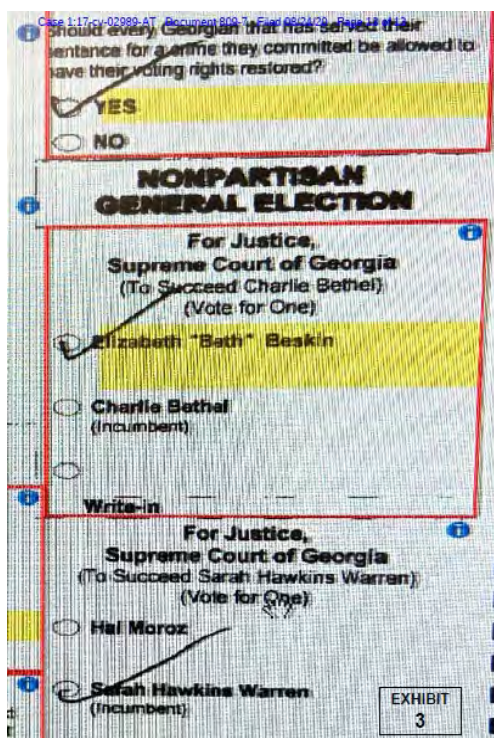


(Exhibit 2 to Shirley Decl., Doc. 809-7 at 12.)

The most common reason for ballots to be flagged as ambiguous was the voter having marked their intent with check marks or X marks. The Clarke County review panel adjudicated vote marks categorized as “ambiguous” to count votes that were clear as to voter intent. The panel took the approach that for any votes flagged for adjudication, the vote should be counted if voter intent was clear from

the on-screen image. In its review, the panel attempted to answer two questions: (1) could the voter's intent be discerned?; and (2) what was that intent? While only a simple majority was required, the bipartisan vote review panel's decision on each ballot reviewed was unanimous.

In the course of reviewing the entire ballot to inform their adjudication of flagged contests, the panel discovered clear ballot markings made by the voter that had not been highlighted by the software for adjudication. These markings were not counted as a vote (and therefore were not highlighted in green by the software) nor were they categorized as ambiguous (and therefore were not highlighted in yellow by the software). Below is the scanned image on one such marked ballot.



(Ex. 3 to Shirley Decl., Doc. 809-7 at 13.) The top and middle contests bear the red box flagging them for adjudication and yellow highlighting showing marks the

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070 JPB

DECLARATION OF JEANNE DUFORT

I, JEANNE DUFORT hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over the age of 18 and have personal knowledge of all facts stated in this declaration and, if called to testify, I could and would testify competently thereto.

2. I am a Vice Chair of the Morgan County Democratic Committee and serve regularly for the organization as a Vote Review Panel member, a poll watcher, and a mail ballot monitor. I also recruit and train other watchers to be appointed by the Committee. I expect to be asked to serve in these functions for the foreseeable future and would like to do so.

3. I am a registered voter in Morgan County and routinely vote in all elections for which I am eligible and plan to continue to do so.

4. I routinely attend and participate in the Morgan County Board of Elections and Registration meetings, volunteer with local and state campaigns, and play close attention to issues related to Georgia elections, the new voting system, State Election Board rule-makings, and election legislation.

5. The Vote Review Panel reviews hand marked paper ballots that may require human adjudication of the votes when the ballot may have been damaged or voted with marginal marks. The Vote Review Panel may begin its work during the early scanning processes before election day and its work continues until all ballots are scanned, including provisional and military and overseas ballots accepted after election day.

6. While serving as a member of the Vote Review Panel of Morgan County for the June 2020 Presidential Preference Primaries, I discovered that the Dominion scan software was leaving some valid votes uncounted on some mail ballots. A Dominion technician watching the process continued to mistakenly state that the votes were being counted, until I was insistent enough times that he reviewed the information more closely and acknowledged the vote counting failure.

7. After making this discovery, I discussed my observations with the other members of the bi-partisan Vote Review Panel and then contacted the core team at Coalition for Good Governance to try to understand the implications of this apparent software issue. Marilyn Marks, Executive Director of CGG, and I talked with Harri Hursti, a nationally recognized expert in ballot scanning technology. Mr. Hursti questioned me about the quantities of ballots and votes involved in the tabulation discrepancy and I did my best to estimate the impact of the discrepancies I had observed.

8. Based on Mr. Hursti's initial conclusions, I reported this issue to the Morgan County Board of Elections within 24 hours. The Associated Press interviewed me and published a national story about the problem.¹ The story includes a quote from Gabriel Sterling of the Secretary of State's office stating that he had not seen evidence of the problem, and found it difficult to believe, then stating that I was an "activist with an ax to grind."

9. The Associated Press story caused Brad Friedman to interview me on his radio show about the findings. Mr. Friedman is another plaintiff in this case. After this media attention, other Georgia voters and election officials became aware of this flaw.

¹ The Associated Press story can be found at <https://apnews.com/article/georgia-virus-outbreak-us-news-ap-top-news-elections-66c2b4b36609d83aa5c08235f947ea59>

10. I reported my findings to the State Election Board at its August 10, 2020 hearing. After the August 10, 2020 hearing, the State Election Board enacted a rule changing the scanner settings to include more votes without adjudication at the upper end of the spectrum, and to lower the threshold at which the system automatically determines a contest is “unvoted.” In my view, the Board’s rule was a step in the right direction. (Although, based on subsequent discoveries that I have made, the Board’s rule did not make enough improvement, and further changes should be made to reduce the probability that valid votes will remain uncounted.)

11. I have attached to this declaration as Exhibit 1 a true and correct copy of the declaration that I submitted in another case, *Curling v. Raffensperger*, No. 17-cv-02989-AT, which describes these events in greater detail at paragraphs 14 to 32.

12. The oath I took prior to serving on the Vote Review Panel, and as an Audit Monitor, states that I will “use my best endeavors to prevent any fraud, deceit, or abuse.” A true and correct copy of the oath is attached hereto as Exhibit 2.

13. SB202's “Gag Rule” interferes with my sworn duty because it prevents me from speaking out publicly to call attention to problems in Georgia’s mail ballot

processing. Citizens must be encouraged to speak up, not silenced, when problems are detected.

14. Over the past several years, I have been an outspoken critic of Georgia's election system, the Secretary of State and staff, and the State Election Board. I have been a plaintiff suing the Secretary of State in several suits that seek to improve election integrity. I have spoken frequently at State Election Board meetings and local election board meetings in several counties. I have openly encouraged citizens in several counties and municipalities to ask for Representative Barry Fleming's resignation as city/county attorney because of his leadership role in the drafting and passing of SB202.

15. I believe there is a real risk that I may be charged with a misdemeanor for violating the Gag Rule or a felony for violating the Election Observation Rule, while performing my duty as an involved citizen.

16. As a poll watcher, I am frequently inside various polling locations during elections. In most polling places the ballot marking touchscreens are so large and bright that vote selections on them are visible from a distance to anyone who walks into the polling places. Based on my observations, most voters' touchscreen vote selections are visible to the casual glance of others near the voter in the polling place. My observation in Morgan County and other counties I have

visited is that some touchscreen displays are in the sight line of almost every person in the polling place at one time or another.

17. When I glance around a polling place, attempting not to see a voters' vote, but yet trying to fulfill my duty to be a poll watcher monitoring for machine malfunctions, tampering, or voter difficulty in using the machine, it would be impossible for anyone to determine my intent in looking toward the machines, but easy for someone to wrongly accuse me of intentionally looking at the displayed vote.

18. As a well-known activist who has protested SB202, its sponsor, and other decisions of the Secretary of State and the State Election Board, I am concerned that I will be targeted with a felony allegation.

19. I have repeatedly heard the State Election Board state that they investigate all voter complaints. Therefore any baseless allegations of "intentionally observing" an elector would find the accused being reported in public records for investigation for felonious behavior. This risk is causing me to re-evaluate, at this time, whether I can engage in poll watching activity.

20. I anticipate that many of the volunteers I attempt to recruit to serve as poll watchers will be reluctant to put themselves at risk of being charged with a felony for doing their jobs. I also have some hesitancy about recruiting watchers

and encouraging watchers or observers to serve knowing the personal risk they may be taking.

21. I am unsure whether I will agree to serve as a poll watcher in the June 15, 2021 elections conducted on BMD machines. I feel that I need protection from false allegations before I can comfortably serve.

22. I will attempt to vote by absentee mail ballot in every future election to avoid the Elector Observation Felony risk and because of the insecure nature of the BMDs themselves. I will encourage other voters to vote by mail rather than go into polling places if they are at risk of being targets for retaliation.

23. I have reviewed the allegations pertaining to me in the Complaint in this case, specifically paragraphs 253 – 267, and those allegations are correct to the best of my knowledge and belief.

Executed this 25 day of May, 2021.



Jeanne Dufort

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**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al.

Plaintiff,

vs.

BRAD RAFFENSPEGER, et al.

Defendant.

**CIVIL ACTION FILE NO.:
1:17-cv-2989-AT**

SUPPLEMENTAL DECLARATION OF JEANNE DUFORT

JEANNE DUFORT declares, under penalty of perjury, pursuant to 28 U.S.C.

§1746, that the following is true and correct:

1. My name is Jeanne Dufort.
2. This declaration supplements my declarations of June 17, 2019, September 10, 2018, December 16, 2019, and January 14, 2020. I stand by all of the content of those declarations.
3. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.,
4. I am a registered voter in Morgan County, and routinely attend the Morgan County Board of Elections and Registration and stay current with the issues related to the new voting system being implemented statewide. I also

observed the BMD pilot election on December 3, 2019 in Valdosta and am familiar with many of the physical and logistical difficulties of installing the system. For the combined Presidential Preference and General Primaries, I served as a Poll watcher, Poll watcher coordinator, and Vote Review Panel member in Morgan County, appointed by the local Democratic Committee.

Use of New Dominion System and Hand Marked Paper Ballots

5. On June 9 in Morgan County, 4 out of 7 precincts opened late: Rec Center – 10 minutes, Bethany-Springfield – 20 minutes, Clack – 24 minutes, Centennial – 51 minutes late. Problems reported to me in my roles noted above included incorrect passwords, Poll Pads that needed to be unplugged and rebooted, Poll Pads incorrectly showing a voter had already voted. I obtained these reports in my duties with the Democratic Party in the above-mentioned roles.
6. In my capacity as Poll Watcher, I visited the polling place and spoke with the poll manager at Precinct 7/North Morgan in Bostwick, about 9am. He advised me that he had some problems that prevented voters from using the Ballot Marking Devices earlier, and gave a few voters Emergency Paper Ballots so they were not delayed. He was concerned that the scanners would not accept the ballots, but deposited them in the secure scanner compartment. It appeared that he was clearly prepared to switch to hand

marked paper ballots when BMD use was impractical, and voters were processed in a timely manner, as provided by the Emergency Ballot Election Rule.

7. A storm blew through in the afternoon, causing three polling locations to lose power. The backup batteries supported equipment in two of the polling places, but they failed in Centennial/Clack and voting was interrupted for about 90 minutes until the tech arrived and got the equipment working. To my knowledge, the Centennial/Clack poll manager did not offer Emergency Paper Ballots to voters. I arrived at the Polling Place about an hour after voting halted, and there were approximately 30 people in line.
8. I was dismayed that the Centennial/Clack poll manager did not offer emergency ballots to voters, which she had on hand and could have immediately permitted the voters to vote, rather than having them stand in line during a time of the pandemic where election officials should be working to reduce polling place congestion. It is my understanding that Morgan County poll managers are trained to immediately switch to hand marked paper ballots if such emergencies occur. Our poll watchers are aware of the Emergency Ballot rule and are trained to anticipate an immediate switch to hand marked ballots.

9. I observed very closely as Athens-Clarke County made such a switch with ease over one night after the Board of Elections determined that the BMDs could not provide absolute ballot secrecy.
10. I attended the Athens Clarke County (“ACC”) Board of Elections meeting on March 3, 2020, when they voted to adopt “Plan B” – to use hand marked paper ballots for most in-person voting (with a BMD station available for HAVA compliance), effective the following day when early voting resumed. The standard voting method was changed literally overnight with no publicly reported administrative or voter problems. From March 4 through March 11, ACC voters used hand marked paper ballots for early voting, and cast their ballots in the precinct scanner. Following a March 11 order by the State Election Board, ACC voters resumed voting on Ballot Marking Devices on March 12. Attached as Exhibit E is a true and correct copy of an email I received from Jesse Evans, Chair of the ACC BOE, confirming the timeline.

Vote Review Panel Observations and Vote Counting

11. On June 9, I arrived at the Election office about 8pm to attend to my duties as a Vote Review Panel member. I was asked to assist the team opening mail absentee ballots – they had begun at 3pm and there were still many to be opened. I spent the next 3 hours, with six other people, opening the

remainder of the approximately 3000 mail ballots. Scanning began about 10pm and continued until about 2am.

12.I observed the following while handling mail absentee ballots:

- a. Inconsistent paper stock – some stiffer, some more flimsy
- b. Ragged/torn edges where the top tab was detached
- c. We had to remove the top tab for a number of ballots
- d. Voters marking choices in a number of ways, including filling in the oval, circling the oval, making X or check marks, and one who made smiley faces in the oval to mark their selection.

13.The scanning team reported difficulty in scanning due to the ragged edges where the tab was removed. This was solved by using scissors to clean up the edge in some cases.

14.On June 10 afternoon, the Vote Review Panel convened. Morgan County used the adjudication tool provided by Dominion. The Vote Review Panel consisted of Election Supervisor Jennifer Doran, local attorney Stephen Morris on behalf of the Republican Party, and me on behalf of the Democratic Committee. We were assisted by a Dominion tech, with Board of Elections member Helen Butler observing.

15.Ms. Doran instructed the tech to pull up all ballots with overvotes and ambiguous marks – there were about 150 ballots to review, out of

approximately 3000 hand marked ballots. I have attached a screen shot (Exhibit A) that was published in the New York Times that depicts the same type of screen images and flagging for adjudication that I saw and worked with in Morgan County as a Vote Review Panel member.

16. Votes deemed cast were highlighted in green with a heavy check mark over the voter mark. The voter marks deemed ambiguous were highlighted in yellow. All contests deemed requiring adjudication were outlined in red. Contests with no highlights were deemed a “blank contest” by the software.
17. The first time we encountered a contest with no highlights, but a clearly marked vote, I asked the Dominion tech whether that vote was counted, and he said “of course, that’s a vote,” and assured me it was counted. We moved on to the next ballot. The next time, I asked him to show me the cast vote record (“Audit Mark”) for the ballot. The Audit Mark showed “blank contest” for the race with no highlights, despite the presence of a clear vote. By unanimous agreement, we adjudicated that contest to show the vote, overriding the inaccurate tabulator software.
18. Then we returned to the previous ballot and did the same. During the course of review about 150 ballots, I estimate we found and adjudicated about 20 votes that were clearly marked by the voters, but the software was categorizing as “blank contest”.

- 19.** Discovering that the new system was not counting some clearly marked votes was highly disturbing; together with Marilyn Marks of the Coalition for Good Governance, I was able to have a discussion on the evening of June 10th with Harri Hursti, one of the world's leading experts on election technology, and Coalition Plaintiff's expert. I learned from Mr. Hursti that many factors can affect the accuracy of how software interprets a scanned image, including paper and ink type, humidity, brand and model of scanner used, among them. Based on this conversation I became concerned about our duties as Vote Review Panel members to be certain that all votes are fairly counted.
- 20.** I attended The Morgan County Election Board met on Thursday, June 11, where I spoke during public comment time to relay the findings of the Vote Review Panel and my concerns about uncounted votes remaining in the 2,700 unreviewed mail ballots. BOER member Helen Butler, who had observed the adjudication session, asked the Board to vote to expand the adjudication process to review the remaining 2700 mail ballots to see if there were additional uncounted votes. By 3-2 vote, her motion was denied.
- 21.** The Morgan County Election Board met again on June 18, to certify results. By that time, more Georgia counties had confirmed that the software had failed to count many valid votes, and some counties, including Oconee

County, had chosen to review additional ballots, reportedly finding more uncounted votes.

22. Again Ms. Butler made a motion that Morgan County review all ballots before certifying, in light of confirmation that the software fails to count some votes. Again by 3-2 vote, her motion was denied. As a result, Morgan County voters cannot be sure that all of their votes have been counted, while voters in other counties can be more certain.
23. In my role as Vote Review Panel member, we also adjudicated a few dozen ballots that needed to be duplicated, because the ballots were physically damaged and could not go through the scanner. I have confidence that the ballots were faithfully duplicated – Ms. Doran marked the duplicate ballot while Fred Johnson, the Republican and I took turns calling the votes and confirming her marks. But I am alarmed that the audit trail back to the original voter marked ballot was not faithfully kept. Duplicates were marked as such, but not cross referenced to the original voter marked ballot, as required under statute. Robust audits are a cornerstone of safe elections, and you cannot have a reliable audit if you cannot examine the original ballot.
24. On June 13, the Associated Press posted a story (Exhibit B) about the discovery by multiple Vote Review Panel members that the new system was not counting some votes. Gabriel Sterling, chief operating officer for the

Secretary of State, challenged the Associated Press story using his personal Twitter account, saying “the AP is simply wrong” and “0-13% isn’t a mark” (Exhibit C). He further complained that the “activist in Morgan County who is making the claim did not inform the state, either directly or through the county elections division”.

25. I was shocked at his response for a number of reasons: 1) I expected Georgia elections officials to be concerned that the system was not counting some valid votes and 2) I had raised the concern at my county Board of Elections meeting three days earlier, within 24 hours of the discovery.

26. I attended the August 10 State Election Board meeting via Zoom, and advised the State Board of my discovery during public comments (Exhibit D). It’s my understanding that the purpose of Vote Review Panels is to review ballots that cannot be automatically processed by the system tools, and that we are obligated to count all votes in which voter intent is clear. In my view, scanners and scanning software are used in elections to expedite tabulation. They cannot be used to throw otherwise valid votes away.

27. During the same August 10 State Election Board meeting, a new rule

([https://sos.ga.gov/admin/files/SEB%20Rule%20183-1-15-.02\(2\)%20and%20.04%20-%20To%20Post%20For%20Public%20Comment.pdf](https://sos.ga.gov/admin/files/SEB%20Rule%20183-1-15-.02(2)%20and%20.04%20-%20To%20Post%20For%20Public%20Comment.pdf)) was posted for public

comment that will purportedly change what constitutes a vote in Georgia by changing scanner software settings used to count votes. The proposed language is:

- a. (k) Ballot scanners that are used to tabulate optical scan ballots marked by hand shall be set so that: 1. Detection of 20% or more fill-in of the target area surrounded by the oval shall be considered a vote for the selection; 2. Detection of less than 10% fill-in of the target area surrounded by the oval shall not be considered a vote for that selection; 3. Detection of at least 10% but less than 20% fill-in of the target area surrounded by the oval shall flag the ballot for adjudication by a vote review panel as set forth in O.C.G.A. 21-2-483(g). In reviewing any ballot flagged for adjudication, the votes shall be counted if, in the opinion of the vote review panel, the voter has clearly and without question indicated the candidate or candidates and answers to questions for which such voter desires to vote.

28.SOS counsel Ryan Germany introduced the proposal, saying “in the primary, the scanners are set using the factory settings, which are a minimum percent fill in is 12%. So anything below 12% was not counted, and anything above 35% of a bubble filled in was counted, and anything in between 12 and 35 was in the ambiguous cell.” He advised that the “ambiguous zone is a new feature in Georgia elections and I think it led to some, it basically led to some instability that was not previously present in old voting system.”

29. Reducing the upper ambiguous threshold from 35% to 20% should logically result in more votes being automatically counted, without further review. And reducing the lower threshold from 12% to 10% will likely reduce the

number of uncounted votes. But from the perspective of a Vote Review Panel Member charged with the responsibility of ensuring that all votes count, as long as voter intent can be determined – I would ask why the State has confidence that 10% is the correct bottom threshold.

30. During the meeting the State Board did not discuss the factual basis for the new range, nor any research that would indicate that it was a conservative range that would ensure that all reasonably detectable voter marks for candidates were recorded and counted.

31. Allowing software settings to assign “blank contest” when there are marks that a Vote Review Panel unanimously agree are clear votes is simply an affront to democracy. In my opinion, lowering the threshold further simply shifts the judgement to a Vote Review Panel to determine whether voter intent is clear, while keeping it artificially high robs a citizen of a vote. It’s not a close call – the bottom threshold should be lowered to de minimis value determined by experts that will reasonably ensure capturing all votes.

32. Based on my experience in June, I am concerned that if the software is not counting all votes in November, our Vote Review Panel will again not be permitted to review the images or the paper ballots to count the marginal vote marks that can clearly be understood as intended votes.

Executed on this date, August 23, 2020.

A handwritten signature in blue ink, appearing to read "Jeanne Dufort", is written over a solid horizontal line. The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Jeanne Dufort

Dufort declaration 082320

Exhibit A

17th
Georgia

Should every Georgian that has served their sentence for a crime they committed be allowed to have their voting rights restored?

☒ YES

☐ NO

**NONPARTISAN
GENERAL ELECTION**

For Justice,
Supreme Court of Georgia
(To Succeed Charlie Bethel)
(Vote for One)

☒ Elizabeth "Beth" Beskin

☐ Charlie Bethel
(Incumbent)

☐ Write-in _____

For Justice,
Supreme Court of Georgia
(To Succeed Sarah Hawkins Warren)
(Vote for One)

☐ Hal Moroz

☒ Sarah Hawkins Warren
(Incumbent)

change
rich
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to protect
ams. that



Activists cite tabulation flaw in mail-in ballots in Georgia

Politics Jun 13, 2020 12:28 PM EDT

Faulty software or poorly calibrated vote-tabulation scanners used to count mailed-in ballots in this week's chaotic Georgia primary may have prevented thousands of votes from being counted, election officials and voting integrity activists say.

The issue was identified in at least four counties, DeKalb, Morgan, Clarke and Cherokee, according to officials who discovered them, including activists who have sued the state for alleged election mismanagement.

"The fact that it is in multiple counties tells me that it's probably systemic," Richard DeMillo, a Georgia Tech computer scientist who has testified for the plaintiffs, because identical scanners and software were used to count all absentee ballots across the state. DeMillo said the only way to know for sure is through audits.

A top Georgia voting official, voting implementation manager Gabriel Sterling, said Friday that he had seen no evidence yet of the issue and found it difficult to believe the reports were "an active description of what is happening on the ground."

"These are activists who have an ax to grind," he said.

Nearly 1.1 million Georgians voted by mail for Tuesday's primary, which had been delayed twice due to the coronavirus pandemic.

In-person voting Tuesday was beset by **cascading failures**. Voters waited up to five hours to cast ballots at some polling places due to equipment problems, poll worker unfamiliarity with a new voting system and social distancing measures taken because of the virus. Many voters also showed up to vote in person because absentee ballots they requested never arrived by mail.

The scanners and **ballot-marking devices** used in all 159 Georgia counties Tuesday are part of a voting equipment package the state purchased for \$120 million from Dominion Voting Systems after a federal judge ordered it to scrap an outdated, untrustworthy system.

In post-election reviews, bipartisan panels in all four counties detected unregistered votes while examining ballot images flagged by the vote-tallying scanner's software for anomalies.

In Morgan County, Republican-dominated and just southeast of Atlanta, panelists discovered at least 20 votes on scanned ballot images that the program had not recorded, said Jeanne Dufort, a Democrat on the panel. She said it appeared the votes did not register because ovals that were supposed to be filled in were instead checked or marked with X's.

All three panelists agreed to add the unregistered votes to the electronic tally, said Dufort. But on Thursday, the county elections board voted 3-2 not to audit the rest of the roughly 3,000 absentee ballots. The other two panelists, a Republican appointee and the election director, did not return emails and phone calls seeking comment.

"It is a head-in-the-sand approach," Dufort complained.

In Clarke County, vote review panelist Adam Shirley estimated at least 30 ballots out of about 300 flagged for anomalies had votes that "the system had not marked at all, that had not processed at all."

Shirley, a Democrat, recommended a review of all 15,000 absentee ballots.

In an email Friday to fellow board members, county election board chair Jesse Evans said "it's not just possible but probable that a ballot whose voter had clearly but not completely marked their vote would not have its votes counted by the software."

In an email to Evans, Shirley said he found it disturbing that the software did not flag the uncounted votes. "We only noticed them by sheer luck as we were adjudicating other, flagged contests on ballots."

In Cherokee County, the problem was detected in less than 5% of the flagged ballots, said an elections official who spoke on condition they not be further identified, citing fear of political harassment. The official said the number of flagged ballots was in the hundreds.

In DeKalb, County, review panel member Elizabeth Burns estimated finding between 20-50 uncounted votes on 530 flagged ballots and said her team had so far only reviewed half its 100,000 absentee ballots. Like Shirley, she said her team had stumbled upon the issue. She said she wondered how many other counties were aware of it.

"Maybe not everyone has been as thorough as us and noticed this," she said.

"The detection of this major problem was only because of diligent citizen oversight. The officials charged with the duty to fully test the equipment recklessly failed to responsibly do so, or to audit it," said Marilyn Marks, executive director of the Coalition for Good Governance, which is demanding in court that the state scrap the ballot-marking devices.

Dominion spokeswoman Kay Stimson referred questions to the state, but said in an email that her company's systems "are designed to support robust post-election audits, and we support them as a recommended best practice for elections."

Sterling, the state official, said authorities are willing to consider audits if merited.

Voting security expert Harri Hursti said inadequate pre-election testing may be the cause of the issue. A fix could be as simple as adjusting the contrast settings in the image-capturing software. Or it could be a different coding issue.

The Dominion election system used on Tuesday is proprietary. Hursti said it has never been subjected to an independent security review.

It was, however, **denied certification** by Texas, which cited "multiple hardware and software issues" identified by state-appointed examiners. They cited a complex installation process and one called the suite "fragile and error prone."

By - Frank Bajak, Associated Press

Dufort declaration 082320

Exhibit C-1

qPublic.net - Morgan X Gamis.com X Paragon Login X AOL Mail (6106) X Amazon.com X (3) Facebook X Paragon Login X (5) Gabriel Sterling on X My Ads X

https://twitter.com/GabrielSterling/status/1271965205124218880

Home
Explore
Notifications
Messages
Bookmarks
Lists
Profile
More

Tweet

The Associated Press is out with story about election activists raising concerns about the counting of mail-in absentee ballots for Georgia's primary earlier this week. bit.ly/2UFAMKA

One of the counties covered in the story is Morgan County. #gapol @fbajak

In post-election reviews Wednesday, election panels in all four counties detected unregistered votes while examining ballot images flagged by the vote-tallying scanner's software for anomalies. In Morgan County, Republican-dominated and just southeast of Atlanta, panelists discovered at least 20 votes on scanned ballot images that the program had not recorded, said Jeanne Dufort, a Democrat on the panel. She said it appeared the votes did not register because ovals that were supposed to be filled in were instead checked or marked with X's.

All three panelists agreed to add the unregistered votes to the electronic tally, said Dufort. But on Thursday, the county elections board voted 3-2 not to audit the rest of the roughly 3,000 absentee ballots. The other two panelists, both Republicans, did not return emails and phone calls seeking comment.

You and 9 others

3 27 38

Gabriel Sterling @GabrielSterling · Jun 13
And the AP is simply wrong and they know it. All systems have a setting on what will be considered a mark and what won't be. In GA 0-13% isn't a mark. 14-28% is ambiguous. 29%+ is a mark. This is the inherent problem with Hand Marked Paper Ballots. Irony that HMPB folks on it.

7 2 2

Marilyn Marks #Wear A Mask! @MarilynRMarks1 · Jun 13
What is the "setting" that you instructed the counties to use? What was your plan for counting the legal votes that were check marks or X's?

1 1 10

Gabriel Sterling @GabrielSterling · Jun 13
Again, all Central scanners were set at the industry standard 0-13% is not a mark (the oval is 5%) 14-28% is the ambiguous level to be checked by review panels. 29%+ is a mark. You are pointing out the inherent issues with HMPBs that we don't see with BMD marked ballots.

6 1 7

Richard DeMillo @rad_atl · Jun 13
Of course if there's a logic flaw in the software the scanner settings are irrelevant. @GabrielSterling will you make the software available to software engineers for black box testing?

1 1 7

Jeanne Dufort @dufort_jeanne

Relevant people

Gabriel Sterling @GabrielSterling
Conservative. Cyclist. Foodie. Entrepreneur. Brewer. Former Sandy Springs Councilman. COO SOS of Georgia. **Following**

Richard DeMillo @rad_atl
Exec Dir Georgia Tech Ctr for 21st Century Universities, Computer Science prof, former dean, Ducati owner, grandfather. Avoid opinion. Seek critical thought. **Following**

Marilyn Marks #W... @Marilyn...
Election integrity activist. Political opinions solely my own. **Following**

What's happening

NHL · 11 minutes ago
Penguins announce they will not renew contracts for three assistant coaches
Trending with **Gonchar**

#Walk2EndAlz
Alzheimer's isn't waiting. Neither are you. Join us.
Promoted by Alzheimer's Association

Politics · Trending
Oh Liz
8,439 Tweets

POPSUGAR · Last night
Maya Rudolph Was In For a Surprise When Kamala Harris Became a VP Pick
Trending with **#VoteBidenHarris2020** and

Messages

Type here to search

11:49 AM 8/12/2020

Dufort declaration 082320

Exhibit C-2

qPublicnet - Morgan... x | Gmails.com x | Paragon Login x | AOL Mail (86106) x | Amazon.com x | Facebook x | Paragon Login x | (5) Gabriel Sterling on x | My Ads x

https://twitter.com/GabrielSterling/status/1272148540094062599

Tweet

Gabriel Sterling @GabrielSterling

Replying to @NFMich

Well, the images that have been posted to social media are sketches, not actual ballots. Further, the activist in Morgan County who is making the claim did not inform the state, either directly or through the county elections division. She went to the press with a claim.

8:47 AM · Jun 14, 2020 · Twitter for iPhone

1 Quote

Marilyn Marks #Wear A Mask! @MarilynRMarks1 · Jun 14

Replying to @GabrielSterling and @NFMich

You have to be kidding! What obligation did @dufort_jeanne have to inform "the state?" Her responsibility runs to the Mo.Co. Dem Party--not you guys.

But she immediately gave details to others and in public meeting the next day. What is wrong with that???

Brad Friedman @TheBradBlog · Jun 14

Replying to @GabrielSterling and @NFMich

Wasn't "the activist", @dufort_jeanne a member of the bipartisan adjudication panel examining what the state software presented as under or overbites when the software showed some votes weren't counted at all? Didn't rest of panel (Republicans) agree??

John Panzer @jpanzer · Jun 15

Replying to @GabrielSterling and @NFMich

You're saying this is not an image of an actual ballot, with the documented highlight marking added? Because that would mean you're saying Dufort is lying. Please clarify. This is not a "sketch". It is a photo, with annotations.

Jeanne Dufort @dufort_jeanne · Jun 13

Search Twitter

@NFMich Follows you

7th generation Floridian, animal lover, happily married, Catholic, Democrat, #VoteBlue #GoGators #BidenHarris2020 #BlackLivesMatter

What's happening

US election · Yesterday

President Trump responds to Kamala Harris' selection as Biden's VP and political analysts look at how it might impact the race

Trending with: #VoteBidenHarris2020 and Biden and Harris

#Walk2EndAlz

Alzheimer's isn't waiting. Neither are you. Join us.

Promoted by Alzheimer's Association

Politics · Trending

June Cleaver

3,046 Tweets

NHL · 26 minutes ago

Penguins announce they will not renew contracts for three assistant coaches

Trending with: Gonchar

Politics · Trending

Corey Booker

28.5K Tweets

Show more

Terms Privacy policy Cookies Ads info More

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Messages

Type here to search

11:51 AM 8/12/2020

Dufort declaration 0823

Exhibit D

Remarks to State Election Board, August 10, 2020

My name is Jeanne Dufort. I'm a Morgan County voter, 1st Vice Chair of the Morgan County Democrats and a member of the Coalition for Good Governance

I served in a number of capacities on June 9 and during the following 10 days – officially as a poll watcher and vote review panelist, and informally assisting opening and sorting mail ballots.

Like voters in most counties, about half of Morgan County voters chose to vote from home, submitting hand marked absentee ballots that had to be checked in, opened, and scanned in the central office.

We used the adjudication software to resolve questions with ballots – about 5% of the ballots required review. In consultation with the Dominion Tech, we looked at ballots with overvotes and ambiguous marks – to my knowledge, most counties throughout the state used this selection criteria.

Overall, the adjudication tool was easy to navigate and helpful in selecting ballots to review. But I was shocked to find that the scanning software has a serious flaw – it marked some votes as uncounted that our 3-person vote review panel unanimously agreed were clearly votes. First time we encountered this; the Dominion tech assured us that the vote was counted – it was that clear. Next time, we asked to see the cast vote record – and were really shocked to see that vote labeled “unvoted”.

21-2-438(c) is clear: notwithstanding any other provisions of this chapter to the contrary.... If the elector's mark is clear, it SHALL be counted.

Technology MUST support the goals of the business it is used for – its absurd to change the goal based on technology limitations.

Scanners and scanning software are used in elections to expedite tabulation. They cannot be used to throw otherwise valid votes away.

Georgia voters want to be assured that all of their votes will be counted.

From: evans.jesse.accboe@gmail.com,
To: jdufort@aol.com,
Subject: Re: ACC sequence of events - HMPB
Date: Sun, Aug 23, 2020 7:31 pm

March 3
March 4
March 11
March 12

Yes, they used the scanner

On Sun, Aug 23, 2020, 18:39 Jeanne <jdufort@aol.com> wrote:

Jesse

Please confirm the sequence of events regarding the ACC temporary switch to hand marked paper ballots for early voting.

March 2 - ACC BOE votes to adopt Plan B immediately

March 3 - ACC voters begin using hand marked paper ballots for early voting, with one BMD available for HAVA compliance

March 11 -State Election Board orders ACC to switch back to BMDs for all voters

March 12 - ACC voters begin using BMDS for early voting

can you confirm that voters who used hand marked paper ballots from March 3-11 were able to cast their ballots using the precinct scanner?

Thanks

Jeanne Dufort

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B
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T


State of Georgia
County of Morgan

OATH OF VOTE REVIEW PANEL

I, (each of the undersigned deponents individually and jointly) do swear (or affirm) that I will attend the ensuing November 3, 2020 General/Special Election, during the continuance thereof, that I will use my best endeavors to prevent any fraud, deceit, or abuse in carrying on the same, and that I will at all times truly, impartially, and faithfully perform my duties therein to the best of my judgment and ability, and further that I am not disqualified by law to hold the position of Vote Review Panel.

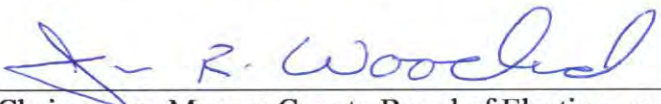






Oath administered by, and sworn to and subscribed before me,

This the 3rd day of November, 2020.



Chairperson, Morgan County Board of Elections and Registration

General Election Risk Limiting Audit

Monitor Oath

(Check One)

☒ I am a designee of the vote review panel, designated by MORGAN
(List County)

While monitoring the process, designated monitors are prohibited from:

- (a) In any way interfering with the audit process;
- (b) Speaking to any member of the audit team or vote review panel;
- (c) When outside of the public viewing area, using any photographic, electronic monitoring or recording devices, cellular telephones, or other electronic equipment;
- (d) Touching any ballot or ballot container; or
- (e) Engaging in any form of campaigning or campaign activity.

I swear or affirm, under penalty of perjury, that (1) I have read and understand the prohibitions set forth above, (2) I will not engage in any prohibited activity, and (3) I understand that any violations of this rule will be punishable by the State Election Board.

11/13/20
Date


Signature

Jeanne DuFort
Print Name

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070 JPB

DECLARATION OF BRADLEY FRIEDMAN

I, **BRADLEY FRIEDMAN** declare, under penalty of perjury, pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. My name is Bradley Friedman. I am over 18 years old.
2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
3. I am a long time member of the media, broadcasting a nationally syndicated radio show (The Brad Cast) and publishing a related daily blog (BradBlog), frequently focusing on election integrity and election security issues. I have reported on Georgia's electronic voting system hundreds of times over the course of the last 17 and a half years.

4. I have relied on first-hand accounts of Georgia poll watchers, mail ballot monitors, Vote Review Panel members, nationally known voting system experts, and voters in my reporting on Georgia's election management issues. I have not only interviewed such witnesses personally, but have interviewed many of them on the radio broadcast and referenced their reports at The BRAD BLOG.

5. Given the massive increase in the use of mail ballots in 2020 in Georgia, I was particularly interested in the topic of scanning of legal, but marginal marks on mail ballots, reported in Georgia's June 2020 primary. I relied on photographs such as this one in Exhibit 1 to report on the problem. On my radio broadcast on November 18, 2020, I interviewed Plaintiff Jeanne Dufort the member of Morgan County's Vote Review Panel who discovered this statewide discrepancy in vote counting stemming from inappropriate scanner settings.

6. As I understand the Gag Rule provisions of SB202, if such provisions of law had been in place in June 2020, Ms. Dufort would have been prohibited from telling me, my listening audience, other members of the press, or even her attorneys about this important discovery which ultimately caused officials to improve the accuracy of the scanning and tabulation.

7. Obtaining first-hand reports and photographs has been critical to my reporting on election issues across the nation and particularly in Georgia. I have frequently published photographs of voted ballots being processed, and rely on

press photographs of precinct voting and voted ballots. It is my understanding that the Photography Ban will prevent me from obtaining photographs of voted ballots being processed.

8. I have a BradCast colleague located in Atlanta whom I had planned to deploy to polling places and mail ballot processing centers in future elections to obtain photos and interview voters and officials. However, her effectiveness will be so severely limited by the Photography Ban, the Gag Rule and the Elector Observation Felony, that I will not be able to engage her for such work while these SB202 provisions remain in force, short of endangering her with a felony or misdemeanor in the course of doing the job of the press and election oversight

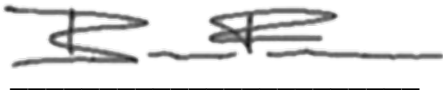
9. I would like for her to visit polling places to obtain photographs of the BMD voting process, but given the Elector Observation Felony, I cannot in good conscience ask her to risk being accused of a felony for simply looking around the polling place or taking press photographs, where she could be accused of looking through the camera lens at a voters' displayed choices on the large touchscreens.

10. The Gag Rule would prevent my colleague from reporting her findings to me related to any issues or irregularities she observes in processing of mail ballots, or even estimating the number of ballots she observes having been counted or awaiting counting. Georgia's criminalizing reporting such basic

election oversight information concerns me greatly, given the reduction in information that I, as a member of the press, can access and report to the public.

11. I have reviewed the allegations of the Complaint in this case about me and my work, specifically paragraphs 283-291, and those allegations are correct to the best of my knowledge and belief.

Executed on this date, June 8, 2021.

A handwritten signature in dark ink, appearing to read 'B. Friedman', is written over a horizontal line.

Bradley Friedman

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(Vote for One)

☒ Daniel Blackman

☐ John Noel

For U.S. Representative in 117th Congress From the 11th Congressional District of Georgia
(Vote for One)

☒ Dana Barrett

For State Representative in the General Assembly From 46th District
(Vote for One)

☒ Caroline L. Holko

☐ Shirley Ritchie

DEMOCRATIC PARTY QUESTIONS

- 1 -

Should Georgians work to stop climate change and listen to the scientific community, which recommends immediate action to combat this serious threat to our planet?

☒ YES

☐ NO

- 2 -

Should Georgia enact basic standards to protect our environment from wasteful plastic items that pollute our state?

☒ YES

☐ NO

- 3 -

Should every eligible Georgian be allowed to register to vote on Election Day to make sure everyone can exercise their right to vote?

☒ YES

☐ NO

- 4 -

Should every Georgian that has served their sentence for a crime they committed be allowed to have their voting rights restored?

☒ YES

☐ NO

NONPARTISAN GENERAL ELECTION

For Justice, Supreme Court of Georgia
(To Succeed: Charlie Bethel)
(Vote for One)

☒ Elizabeth "Beth" Beskin

☐ Charlie Bethel
(Incumbent)

☐ Write-in _____

For Justice, Supreme Court of Georgia
(To Succeed: Sarah Hawkins Warren)
(Vote for One)

☐ Hal Moroz

☒ Sarah Hawkins Warren
(Incumbent)

☐ Write-in _____

For Judge, Court of Appeals of Georgia
(To Succeed: Trenton "Trent" Brown, III)
(Vote for One)

☒ Trenton "Trent" Brown, III
(Incumbent)

☐ Write-in _____

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070 JPB

DECLARATION OF RYAN GRAHAM

I, RYAN GRAHAM, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over the age of 18 and have personal knowledge of all facts stated in this declaration and, if called to testify, I could and would testify competently thereto.
2. I am the Chairman of the Libertarian Party of Georgia (“LPG”).
3. In my role as Chairman of LPG, I have routinely appointed election poll watchers, mail ballot monitors, and audit monitors for LPG. Since 2018, I have regularly called on and appointed members of Coalition for Good Governance (“CGG”) who are experts in election observation to act as LPG’s appointed watchers and monitors on behalf of our party.

4. The CGG members who have served as appointed watchers and monitors for LPG are not members of the Libertarian Party but are chosen because of their objectivity and expertise. Marilyn Marks, Executive Director of CGG, generally calls me to report any significant findings.

5. The “Gag Rule” in SB202 concerning mail ballot processing will restrict important information coming from CGG that I rely on to make policy decisions and assignments relating to election oversight and to follow up on discrepancies that may have an impact upon LPG’s interests. Our appointed monitors will be unable to legally report discrepancies or processing problems to me so that I can take action, essentially making mail ballot monitoring an ineffective citizen oversight activity.

6. The Libertarian Party had a candidate in the November 2020 presidential election. LPG appointed Ms. Marks to monitor the hand count audit of that election. Attached as Exhibit 1 are true and correct copies of a photograph of the hand count audit that Ms. Marks took and sent to me.

7. The “Photography Ban” on voted ballots, which are anonymous, will inhibit the flow of this information. It is useful for LPG to have a photographic record of processes such as the audit.

8. The “Elector Observation Felony” is already causing injury to the election oversight process and to my work in attempting to recruit and assign poll

watchers and ballot monitors on behalf of LPG. The LPG has a candidate in the upcoming HD34 election on June 15, 2021 in Cobb County. Although some experienced watchers are permitting me to apply for credentials in their names for some of the upcoming June 15, 2021 elections, they are informing me that they feel that they need more protection from being falsely accused before they will actually go into the polling place.

9. The felony risk from allegedly intentionally observing a voter's displayed votes is a personal risk to me when I enter a polling place either to vote or to visit as a public observer. It is my experience as a voter in Fulton County that the touchscreen displays of voter selections are quite visible to many people in the room, including voters standing beside each other. I have unintentionally seen how other voters are voting. Given the size and brightness of the displayed votes, and the number of screens throughout a polling place, it is almost impossible not to look in a direction that another voter's vote display could not be seen.

10. Exhibit 2 is a photo of a typical setup of voting machines on a 4 machine rack similar to what I have observed in Fulton County when voting. When voting at one of the side-by-side stations, despite the wing-flaps that cover the machine when stored away, voters can see the votes displayed on their neighbor's touchscreen. Merely glancing sideways could trigger the allegation that someone was "intentionally observing."

11. I'm distressed by my loss of the ability to vote a secret ballot in the polling place because of the BMD machines displays, and further frustrated by being required to take the unacceptable risk of an allegation of committing a felony by seeing screens that the state government chose to have publicly display individuals votes. I may be a political target for such an allegation, given the public stance LPG and I have taken objecting to many of the Secretary of State's policy positions.

12. The June 15, 2021 HD34 election has 5 candidates including a LPG candidate. The election is expected to go to a runoff election on July 13. The Secretary of State will be required to certify the results by July 2, and officially determine whether there will be a runoff election, just 11 days before the runoff election. Such a schedule will not permit voters to apply for an absentee ballot, because under SB202, the deadline for applying for an absentee ballot will be July 2, the same day that the runoff election is determined to be required.

13. I will be required to devote many hours of my time helping our voters who need to vote by absentee ballot understand the inability to do so for the runoff election and to determine if assistance is available to get affected voters to the polls. I will be required to spend considerable time helping our LPG candidate and voters determine whether ballot applications for the runoff can be legally accepted prior to the official determination of the need for a runoff.

14. The question of how to apply for an absentee ballot on a prompt basis with a narrow deadline is further complicated by the SB202 requirement to provide a secure electronic transmission method for applications. The Secretary has not done so, and I personally do not expect that he can do so in the foreseeable future. I am an IT professional and can say that from my experience, developing and installing a truly “secure electronic transmission method” between voter’s computers and 159 county election offices would be a monumental undertaking.

15. I cannot comfortably suggest that our LPG voters submit their absentee ballot applications with sensitive personal information on them via email to their county election boards. Given the identity theft risk, in my opinion, submitting such sensitive information is not a reasonable requirement for exercising the right to vote an absentee ballot.

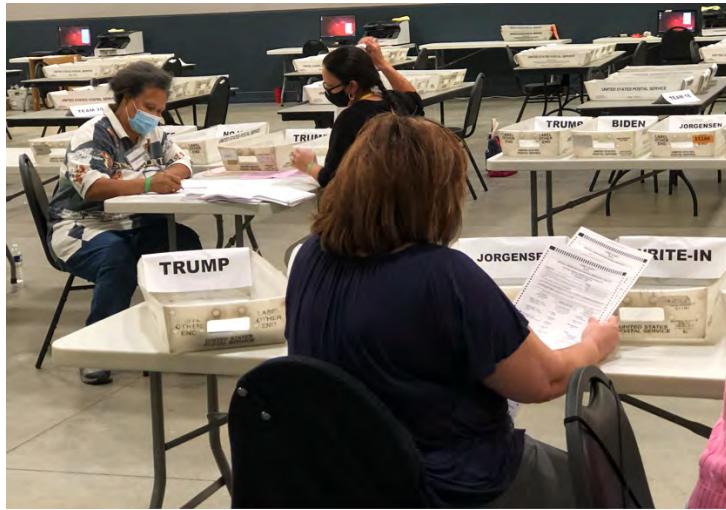
16. I have reviewed the allegations pertaining to me in the Complaint in this case, specifically paragraphs 228 – 239, and those allegations are correct to the best of my knowledge and belief.

Executed this 9 day of June, 2021.



Ryan Graham

Exhibit 1

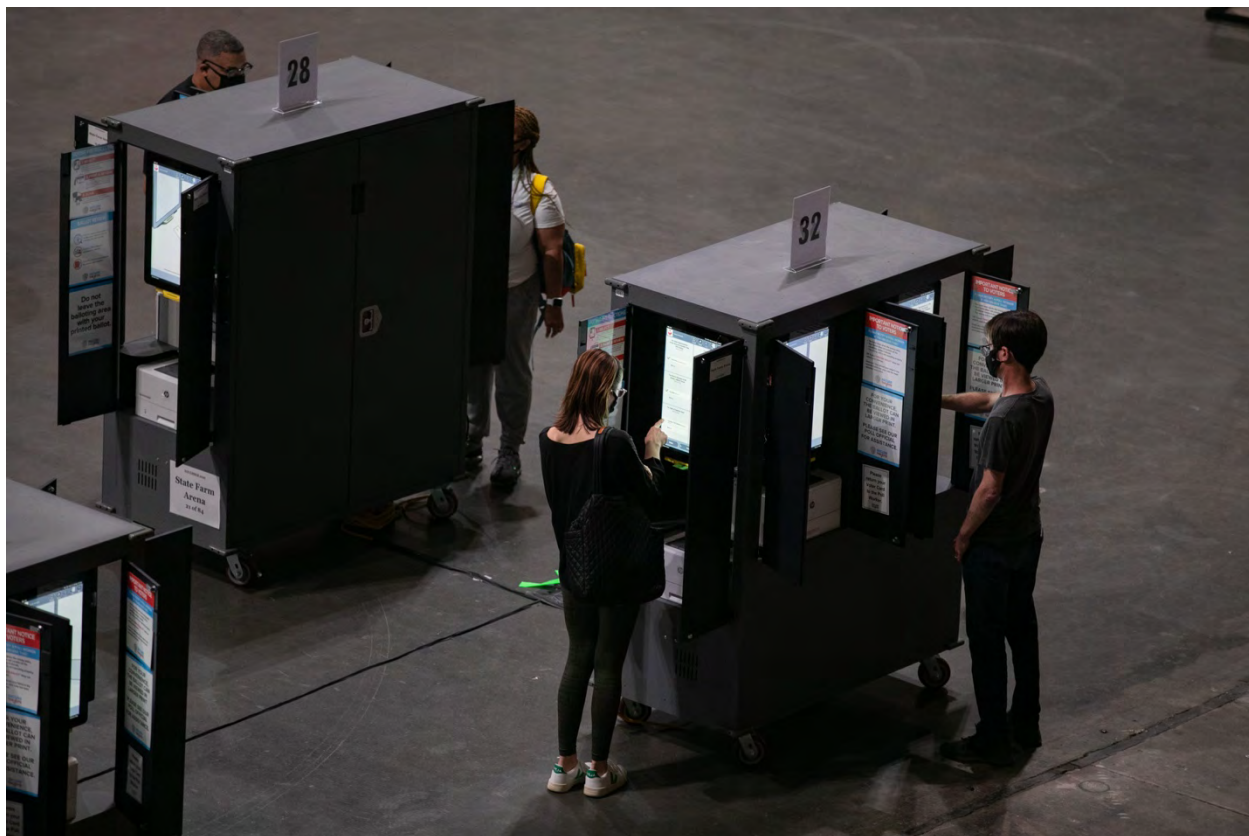


Cobb County November 13, 2020 Hand Count Audit



Clayton County Hand Count Audit Nov. 14, 2020

Exhibit 2



Press Photo State Farm Arena November 2020 Election Early Voting

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070 JPB

DECLARATION OF BARBARA GRAY

I, BARBARA GRAY hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over the age of 18 and have personal knowledge of all facts stated in this declaration and, if called to testify, I could and would testify competently thereto.
2. I am a registered voter in Cobb County, Georgia, and also vote in Georgia's House District 34.
3. I am 77 years of age with chronic health conditions.
4. I am a member of the Coalition for Good Governance.
5. While I much prefer to vote using an absentee ballot and drop it off at an outside drop box at a time of my choosing, I recently learned the polling place

nearest me for the June 15, 2021 Georgia House District 34 special election, the North Cobb Library, no longer has a drop box due to SB202.

6. Instead of using an absentee ballot, I decided to vote early at the North Cobb Library to avoid Election Day, when there will likely be more people voting. I was the only voter present, and I chose a voting machine facing a wall so I could have as much privacy as possible away from the sightlines the poll workers have of the voters' touchscreen displays.

7. Since there are five candidates running, there may be a runoff in the House District 34 election. It is my understanding that the deadline for the Secretary of State's determination of the runoff and announcement is July 2, 2021, only 11 days prior to the runoff election on July 13.

8. With fewer days and hours of early voting for a runoff, the polling places are more likely to be crowded, so I would prefer to use an absentee mail ballot for the runoff for the reasons I explain below.

9. However, mail ballot applications are due to be received by the election office 11 days prior to election day, which is July 2, 2021, in the case of the potential HD34 runoff. Therefore, if the Secretary of State announces the runoff on the certification deadline, July 2, it will be too late to request an absentee mail ballot for the runoff.

10. Due to this impossible deadline, or an unreasonably narrow application window caused by the 11 day deadline in any case, I will be precluded from voting with an absentee by mail ballot. If I wish to vote in the HD34 runoff election, I will be forced to vote in person at the polling place.

11. There are three reasons why I do not wish to vote in person. First, due to my age and chronic health conditions, I do not want to put myself at risk due to the ongoing pandemic.

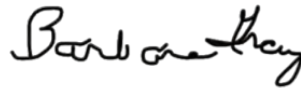
12. Additionally, I voted in person during the Kennesaw municipal election to experience the new BMD touchscreen voting machines, and felt incredibly uncomfortable voting on the new machines. The screen was very large, brightly lit, and directly faced the poll workers, making it impossible for me to vote a secret ballot. The poll workers behind me had a clear view of who I was voting for. This experience was very disconcerting and I did not want to vote in person again on the BMD touchscreen machines after that.

13. Lastly, now that it is a felony to observe other voters' ballots under SB202, it is very easy for anyone to be accused of committing a felony while in the polling place. I am worried about the potential for being charged with a felony just because the screens are too large to vote secretly. Anyone could accuse me of looking at a ballot displayed on the touchscreen or require me to testify against a poll worker whom I might observe looking in the direction of the touchscreen

display as they were just checking the functioning of the machine. I find this threat of a felony accusation intimidating and wish to avoid having to go into the polling place to vote under these conditions.

14. Therefore, due to all three of these reasons, I do not want to vote in person. However, if there is a runoff election, I will either be forced to vote in person as there is not enough time for me to request a ballot, or simply just not vote. If I choose to vote in person, I will be putting both my health and my right to a secret ballot at risk, while having to vote in an intimidating polling place.

Executed this 9th day of June, 2021.

A handwritten signature in black ink, appearing to read "Barbara Gray", written in a cursive style.

Barbara Gray

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**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD GOVERNANCE,
et al.**

Plaintiff,

vs.

BRAD RAFFENSPERGER, et al.

Defendant.

**CIVIL ACTION FILE NO.: 1:21-cv-
02070-JPB**

DECLARATION OF RHONDA J. MARTIN

RHONDA J. MARTIN declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.

2. I am Executive Secretary for the Qatar Computing Research Institute Scientific Advisory Committee, and a board member of the Coalition for Good Governance. I have developed avionics software for the Space Shuttle and worked with the Department of Defense to develop guidance and policy for the testing of computer software for mission-critical applications. I have also taught AP Statistics and other Upper School level mathematics courses. I have an M.S. in Operations Research and a B.S. in Applied Mathematics from Georgia Institute of Technology, and Teaching

Certification in Math Education Major/Science Education Minor from Purdue University.

3. I am a registered voter in Fulton County, Georgia and have a practice of voting in all elections for which I am eligible.

4. I have been actively involved in election integrity work for a number of years and treasure my rights to observe public elections and associated processes, oversee government activities, and report my findings to colleagues, sponsors, and the press.

5. I have poll watched during early voting and on election day, witnessed tabulation activities after the polls close on election day, observed mail ballot processing and adjudication, and monitored audits (both risk limiting and manual hand counts).

6. I have participated in election observation activities in my capacity both as a private citizen and on other occasions as a designated poll watcher, often on behalf of the Libertarian Party of Georgia.

7. In total, I have spent over 32 hours as a poll watcher, hand count audit monitor, or citizen observer on 13 separate days at 33 different locations in 9 counties since November 1, 2019. The elections included municipal elections, special elections, special election runoffs, the presidential preference primary, general primaries, and the general election.

8. On March 2, 2020, I witnessed the delivery of voting equipment to the polling places in Sumter County. I have also witnessed shut down procedures in a variety of precincts and counties as well as election night tabulation in Colquitt County and Sumter County.

9. On February 17, 2020, I observed Fulton County's Logic and Accuracy Testing at the Fulton County Elections Preparation Center, 1365 English Street, NW, Atlanta.

10. On June 17, 2020, I visited the Fulton County Registration and Elections Department at 141 Pryor Street SW, Atlanta, to monitor the processing of absentee mail ballots. I have also witnessed this process in Colquitt and Sumter Counties.

11. On August 14, 2020 and August 17, 2020, I visited the Fulton County Elections Preparation Center to observe the adjudication of absentee ballots from the August 11, 2020 Runoff Election.

12. On June 29, 2020, I attended the Pilot Risk Limiting Audit conducted at the Fulton County Elections Preparation Center.

13. On November 14, 2020, I monitored the Fulton County Hand Count Audit of the presidential contest at the Georgia World Congress Center, Atlanta.

14. I have also attended Secure, Accessible, & Fair Elections (SAFE) Commission Meetings and submitted a letter to the commission in lieu of offering public comments, testified at three Georgia State Legislative Hearings, and spoken at more than seven State Election Board Meetings and more than ten Fulton County Board of Registration and Election Meetings.

15. I frequently talk to the press and am occasionally interviewed regarding election integrity in Georgia.

16. I was so concerned about the violations of ballot secrecy that I witnessed while poll watching that I wrote a Letter to the Editor of the AJC that was published on November 21, 2019. (See Exhibit 1.)

17. I helped draft and was signatory to a letter that was sent to all Georgia County Election Officials and County Commissioners on January 31, 2020 advocating the use of hand-marked paper ballots to provide ballot secrecy and allay security concerns associated with electronic voting systems.

18. On February 4, 2020, Doug Richards of TV Channel 11Alive in Atlanta, Georgia, interviewed a number of voters and poll workers about their use of the new voting machines in the SD13 Special Election and their concerns about ballot secrecy. The video can be found at <http://bit.ly/11aliveBallotSecrecy>. I can be seen at timestamp 2:05. This is a

true and correct record of that portion of my interview conducted outside the Vienna Voting Precinct in Dooly County.

19. I also spoke of my concerns at the Fulton County Board of Registration and Elections meeting on February 13, 2020. There I warned how voting locations in Fulton County, when filled with the newly required touchscreen ballot marking devices, printers, scanners, poll pads, and universal power supplies, could suffer from the same inability to provide voters an absolute secret ballot as I witnessed in the small stand-alone cinderblock buildings that serve as voting precincts in Colquitt County and several surrounding counties.

20. Exhibit 2 contains true and correct photos of the cinderblock buildings that house Hartsfield Precinct and Thigpen Precinct in Colquitt County. These polling places are approximately 18 feet by 20 feet with no dividing walls to provide privacy for voters. Poll workers and poll watchers cannot avoid seeing the voting screens, and people's ballot choices, from almost any location in the polling place.

21. I regularly communicate observations to Coalition for Good Governance team members to report back to my sponsors; contribute to voter education materials, policy papers, and rule making proposals; and inform the press and support ongoing litigation.

22. I would like to observe the June 15, 2021, HD34 Special Election in Cobb County on behalf of the Libertarian Party but am unwilling to do so due to the criminalization of poll watching activities by Senate Bill 202. Senate Bill 202 makes it a felony to “intentionally observe” other citizens’ votes displayed on the large touchscreen voting machines in the polling place.

23. I have stated in other declarations and affidavits that I was personally uncomfortable as a poll watcher unintentionally seeing the selections of the voters, and even more disturbed when I realized that, especially in small communities, poll workers, friends, neighbors, and others in the polling place would know how individual members of their community had voted.

24. In all locations, there were “privacy screens” around each ballot marking device/printer station, but they were ineffective at protecting ballot secrecy because the touch screens are very large, bright, and angled so that people in the room (other voters, press, poll watchers, or poll workers) can see the displayed contents across the room while the voter is voting. I have always had to make a point of looking away to avoid violating the privacy that voters are entitled to.

25. I typically vote by absentee mail ballot, but have had to vote in person on touchscreen ballot marking devices when I could not obtain an absentee ballot on time. When I must vote in person in the polling place, I now face the threat of being accused of “intentionally observing” other voters’ displayed votes. This makes me very much want to avoid voting in person.

26. There is a complaint pending against me before the State Election Board filed by Secretary Raffensperger based on allegations of enclosed space violations when I was observing the pilot use of the touchscreen ballot marking devices on November 5, 2019. Part of the complaint concerns activities in Cobb County, even though I did not visit any polling places in Cobb County on that day and have never been to the location of the alleged incident.

27. The possibility of being falsely accused of felonious conduct under Senate Bill 202 is the key reason for my decision to not participate in poll watching activities at this time. On numerous occasions, I have communicated my concerns about violations of ballot secrecy due to the use of the touchscreen ballot marking devices and the need to purposefully look away to avoid seeing how citizens are voting. Senate Bill 202 is ripe for the

abuse of false allegations of a “crime” that is hard to avoid because of the flawed design of the machines.

28. I would be willing to continue observing the processing of mail ballots and tabulation in the future but I do not see the point if I am not allowed to report on my observations. I understand that Senate Bill 202 criminalizes reporting of absentee mail ballot processing or tabulation problems or progress.

29. In the past, when observing the adjudication of absentee ballots from the August 11, 2020 General Primary and Runoff Elections in Fulton County, I photographed the displays so that I could review the quality of the ballot scans. Exhibit 3 is a true and correct copy of one such photo. I also took pictures and videos to document the Pilot Risk Limiting Audit in Fulton County on June 29, 2020. I saw many news photographers in the Georgia World Congress Center exhibit hall during Fulton County’s full hand count audit of the 2020 Presidential Race. I later saw in news reports many media photos and videos taken there. I understand that Senate Bill 202 now criminalizes photography of voted ballots.

30. I am distressed that my rights to report my findings on public elections are in jeopardy due to Senate Bill 202.

31. I have reviewed the allegations pertaining to me in the Complaint in this case, specifically paragraphs 239-251, and those allegations are correct to the best of my knowledge and belief.

Executed on this date, June 4, 2021.

A handwritten signature in cursive script, reading "Rhonda J. Martin", written over a horizontal line.

Rhonda J. Martin

Exhibit 1

Problem with new voting machines' screens

This month I exercised my right as a citizen to observe the new ballot marking devices during their trial use in Paulding and Bartow counties. I discovered the new devices make it very difficult for people to NOT see the votes of others. The devices are huge, backlit and angled such that the screens are easily visible across the room. Voters commented on the secrecy issue, even suggesting that we need voting booths with curtains to protect their privacy. Unfortunately, hiding the machines behind curtains also opens them up to tampering. I encourage voters to attend voting device demonstrations by their county election boards; judge for themselves whether they feel their secret ballots are in jeopardy; and communicate their views to those in power. I further challenge county election boards to configure their polling places to protect voters' rights and election security.

RHONDA J. MARTIN, ATLANTA

Exhibit 2

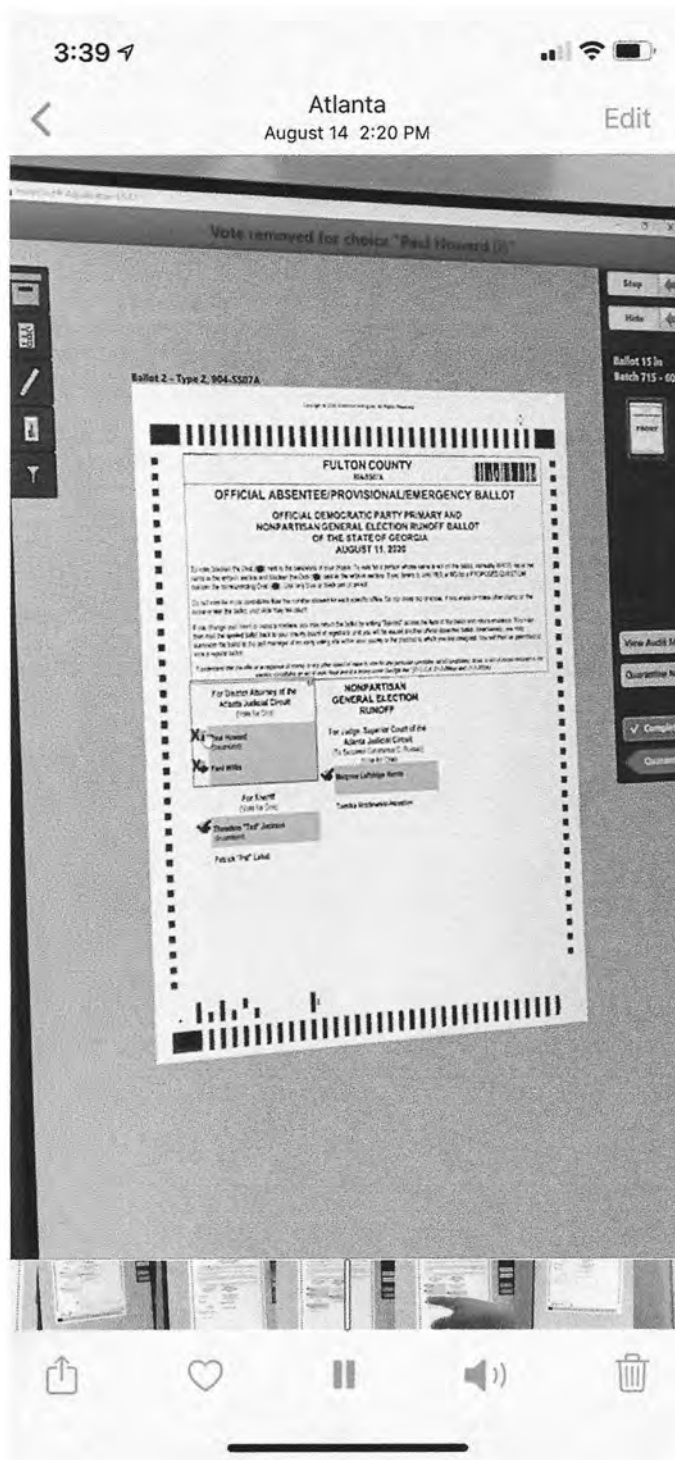


Hartsfield Precinct, Colquitt County



Thigpen Precinct, Colquitt County

Exhibit 3



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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070 JPB

DECLARATION OF AILEEN NAKAMURA

I, **AILEEN NAKAMURA** declare, under penalty of perjury, pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. My name is Aileen Nakamura. I am over 18 years old.
2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
3. I am a registered voter residing in Sandy Springs in Fulton County, Georgia, and have been an active voter since my family moved to Sandy Springs in 2007. I make a practice of voting in every election for which I am eligible and plan to continue to vote in every such election.

4. I am also an active member and volunteer for the Coalition for Good Governance (“CGG”) and have been observing and poll watching Georgia elections as well as pre- and post-election activities in Fulton, Cobb, Paulding, Bartow, and Cherokee counties since October, 2019. I devote approximately 80 volunteer hours per month to CGG activities. I also frequently recruit and train other poll observers.

5. With many Special Elections in several counties coming up on June 15, 2021, I would ordinarily have been reaching out by now to organizations and people interested in election integrity to recruit poll watchers for many of these Special Elections.

6. However, due to the new Georgia law (SB202), there is now a serious risk that poll watchers may be accused of a felonies since any voter, poll worker, poll watcher, member of the public, or observer can easily and wrongly accuse them of “intentionally observ[ing] an elector while casting a ballot in a manner that would allow such person to see for whom or what the elector is voting,” if they look in the direction of the machines.

7. Based on my personal experience in polling places, I am concerned about the risk of false allegations against me as well as others for two reasons: 1) the oversized Dominion touchscreens are so large, upright, and visible that they are easily observable even from across the room, and 2) there is no way I can prove

that I “did not intend” or “did not see” something, making this “Elector Observation Felony” provision very intimidating for poll watchers, like me.

8. Because of this risk, I cannot in good conscience recruit any poll watchers – I would not ask someone to put themselves at such a risk, especially when the activity of poll watching demands that one be “watchful” and “observant” and watch machines for malfunctions and tampering.

9. On June 15, Cobb County will conduct a Special Election for Georgia House District 34. I have been asked by one of the House District 34 candidates to volunteer to serve as a poll watcher and monitor to observe absentee ballot processing and would very much like to do so.

10. However, I feel a great deal of hesitation in being a poll watcher myself, as over the many elections that I have observed, there has never been one where I have **not** inadvertently seen how voters were voting. Now that this can expose me to allegations of committing a felony, I am undecided, but doubtful that I will be willing to be a poll watcher.

11. I also I feel I may be at even greater risk of being accused of a felony as a poll watcher since I have been an outspoken critic of the new Dominion Voting system since it started being used in Georgia in October 2019. I have also been a critic of actions by the Secretary of State’s office regarding Georgia elections,

particularly during the coronavirus pandemic, and a plaintiff in lawsuits against Secretary Raffensperger.

12. In addition, even though I would very much like to be a ballot processing monitor on behalf of the candidate in the House District 34 election, the “Estimating Ban” and “Gag Rule” provisions will now prevent me from disclosing any problems or issues I observe to the candidate.

13. It is the job of a monitor to estimate certain things about what they are observing, such as how many absentee ballots (and therefore votes) may be damaged and have to be duplicated, or how many more ballots (and therefore votes) are left to be processed. Due to SB202, however, doing either of these things will now be unlawful. Monitors also estimate vote trends. Such estimates would be a point of reference for comparison with the reported results. I firmly believe that all preliminary trends or tallies must be strictly confidential and not disclosed until after the close of the polls. But simply doing these things (without disclosing the trends or tallies) would put me at risk of being accused. This is an unfair risk to monitors, who are simply performing their public duty.

14. In addition, I have a chronic health condition causing me to be at substantial risk of contracting COVID, particularly in the case of a variant surge, in which case I would be required to avoid going to a polling place. The same would be true of surges of influenza or other communicable diseases.

15. If such a surge should happen during the eleven days prior to an election, I would be unable to vote in person and would be unable to vote altogether because SB202 prohibits voters from obtaining an absentee ballot during the eleven days prior to election day.

16. I have reviewed the allegations pertaining to me in the Complaint in this case, specifically paragraphs 267-278, and those allegations are correct to the best of my knowledge and belief.

Executed on this date, June 8th, 2021.

A handwritten signature in black ink, appearing to read "Aileen Nakamura", written over a horizontal line.

Aileen Nakamura

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070 JPB

DECLARATION OF PRISCILLA SMITH

I, PRISCILLA SMITH, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over the age of 18 and have personal knowledge of all facts stated in this declaration and, if called to testify, I could and would testify competently thereto.

2. I am a resident and voter in Cobb County. My practice is to vote in every election for which I am eligible and I plan to continue that practice. I am a member of Coalition for Good Governance.

3. I am a candidate for HD34 in the special election on June 15, 2021. Early voting began in two Cobb County locations on May 24, 2021.

4. There are 4 other candidates in the special election. If no candidate gets over 50% of the vote, a runoff will be declared after the Secretary of State certifies the election results. It is my understanding that the deadline for such certification and the decision on whether a runoff will be necessary is July 2, 2021, just 11 days prior to the runoff election day of July 13.

5. As a candidate in the ongoing election, I am concerned about how SB202 will damage my race and candidacy. I am particularly concerned about the risk of voters, including myself, being wrongly accused of “intentionally observing” votes on a touchscreen and being subjected to a felony investigation. It is my understanding that if the State Election Board receives a complaint, no matter how offbase the complaint may seem, it is investigated.

6. I generally vote by absentee mail ballot because of the loss of privacy I have when voting on the touchscreens as well as the insecure nature of the electronic BMD system. Because of the potential of the felony risk for observing vote displays, it is even more important to me to vote by mail ballot.

7. If the election results in a July 13 runoff, voters who, like me, are intimidated by threats of felony allegations for observing votes on a screen and wish to vote by absentee ballot, will have little or no time to apply for an absentee ballot. However, under SB202, the last day to apply for an absentee ballot is 11 days prior to the election. If the Secretary of State waits until July 2 to certify the

June 15 election and to declare a July 13 runoff, there will be no time at all to submit a mail ballot application for the election which will be 11 days later. This narrow 11 day window will completely disenfranchise elderly, ill, and disabled voters who cannot vote in person, and will discourage those of us who are intimidated to go the polling places because they will be unable to timely apply for an absentee ballot.

8. If I am in a July 13 runoff election, I will be harmed as a candidate because of the inability for absentee voters to submit timely applications for absentee ballots if the Secretary certifies the June 15 election on or close to the deadline for certification.


9. The “Gag Rule” cuts off important information from observers to candidates like me about potential problems with mail ballot processing, leaving us in the dark and unable to address mail ballot counting problems in a timely manner.

10. The “Photography Ban” also blocks important information from me as a candidate when I want to analyze my vote tallies and compare to the reported vote counts because it will block the usefulness of ballot images, which I understand I may not record or photograph because of the Photography Ban, although they are public records. Particularly if the election is close or anomalies appear in the results, I naturally want to review the images of the ballots while

there is still time to request a correction or investigation of anomalies, and photograph or record problem images for reporting to officials.

11. The voted ballot images are public records. The “Photography Ban,” however, criminalizes my recording or photographing the ballot images that I obtain through public records requests. The Photography Ban prevents me from sharing my observations with others and asking questions of officials about how any questionably marked ballots were counted.

Executed this 9th day of June, 2021.


Priscilla Smith

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

Civil Action No. 21-cv-02070 JPB

DECLARATION OF ELIZABETH THROOP

I, **ELIZABETH THROOP**, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over the age of 18 and have personal knowledge of all facts stated in this declaration and, if called to testify, I could and would testify competently thereto.

2. I am a registered voter in DeKalb County.

3. I am a member of Coalition for Good Governance and an active volunteer in supporting its voter education and election security efforts. As an active member of CGG since 2019, I have been a poll watcher in numerous elections including in five Georgia counties, a poll observer in nine, and have observed mail ballot processing and county tabulation in three counties.

4. My primary concerns when I signed up for observing elections were that every eligible elector got a chance to cast a vote, and that the process was secure and accurate.

5. However, as soon as I saw the large, illuminated Dominion touchscreens as an observer in Douglas County on the first day of the pilots in fall of 2019, I became concerned about voter privacy and voters' rights to a secret ballot. The equipment was also new to the poll workers, and many remarked about how big, bright, and upright the machines were, causing the loss of voter privacy. Since that time, both voters and poll workers have complained to me about how the machines frequently compromise voter privacy.

6. I also experienced a lack of being able to vote a secret ballot when I voted on Dominion touchscreens for the March 2020 primary, the November 2020 general election, the December 2020 Special Election for the 5th District senate seat, and the January 2021 Senate runoff. In March, a poll worker directed me to walk directly behind a voter who was voting on a touchscreen, and I was embarrassed because it could seem as if I were viewing their voting choices.

7. Because of my concern about voter privacy and Georgia voters' rights to a secret ballot, I attended the 10-hour SEB meeting concerning whether the Athens Clark-County BRE would be allowed to use hand marked paper ballots with the standard Dominion precinct scanners to protect voters' secret ballot rights. Using my professional design background and training, I studied several of the proposed layouts

of Athens-Clarke polling places to determine whether it was feasible to provide adequate voter privacy while using the BMD touchscreen units.

8. I created graphics showing polling place arrangements for a CGG court case concerning privacy. I created and presented printed graphics at the 2/28/20 SEB meeting to illustrate the challenges of arranging Dominion touchscreens in a private manner.

9. My many hours of analysis and personal observations in the polling places have demonstrated to me that it is not feasible to equip most polling places with current BMDs and protect voter privacy.

10. On February 22, 2021 I spoke to the Georgia House Special Committee on Election Integrity about the voter intimidation problems I saw with HB531 making “intentional observation” a felony. The language about felonious observation in HB531 was very similar to the language in SB202.

11. My concern for voter privacy is personal, especially because I try to maintain a non-partisan presence in my elections and general voting work. Nevertheless, I find it unnecessarily intimidating to risk charges of looking at a voter’s ballot because the “intentional” part of “intentional observation” prohibited in SB202 is hard to prove one way or the other. Election workers or members of the public with differing political opinions could easily and falsely accuse me of “intentionally observing” a person voting, a felony allegation that cannot be taken lightly, given the State Election Board’s stated practice of investigating all complaints.

12. As a poll watcher, I have sometimes been treated with suspicion by elections workers. I have participated in numerous public meetings where I challenged the Secretary's choice of voting system and procedures including the loss of voter privacy in the touchscreen machines. The general hostility toward me from the Secretary of State's office makes me especially fearful of being accused of "intentional observation."

13. On December 15, 2020 I went to DeKalb County's Election Office to pick up poll watching credentials and to advance vote in the January 5, 2021 Senate Runoff. After picking up credentials, I looked from the hallway to inside the voting area for regular early voting. In the voting area, the touchscreens were arranged in four banks, facing each other in pairs just a few feet apart. In order to vote on a touchscreen there as I had planned, I would have had to vote at a machine in other voters' line of sight, unless I potentially found a more private spot at the rear of the room. Even making my way back to a potentially private machine, it seemed I would have to risk people walking behind me while I voted, possibly seeing my voting choices, or else I would have to walk to the very back of the area, passing with visual access to other voters' touchscreens and how they were voting, which makes me uncomfortable. I left without voting that day, and two weeks later voted at the Flat Shoals Library where the equipment arrangement was different, and there were few other voters.

14. Poll watching and observing under SB202 provides additional risks. A major reason for doing these activities is to take note of security lapses, irregularities and discrepancies, and report them to county election officials, candidates, the parties, the press, and CGG's attorneys – and I have done so in the past. However, the Gag Rule and Estimating Ban serve to greatly restrict my ability to effectively conduct citizen oversight of the election activities. Reporting of observed discrepancies or even progress reports in mail ballot processing was criminalized by SB202.

15. I have learned a great deal about elections from poll watching, and have been able to, in modest ways, increase elections access in my community and election integrity in some counties where I've worked by sharing my observations. I have also trained other poll watchers. But now the felony risks seem too great for me to continue my poll watching and observation activities, and the Gag Rule makes monitoring mail ballot processing only marginally effective. I cannot in good conscience recommend that others poll watch or observe while the Elector Observation Felony and Gag Rule are in effect.

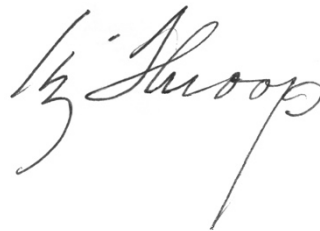
16. Another impact of SB202 is that opposing its troubling provisions has diverted my time away from other work for CGG. As a graphic designer, I developed new designs for the organization last fall but have not been able to implement them due to my time spent on tracking SB202, opposing the bill via demonstrating at the capitol, writing letters, making phone calls, and creating social media posts to help lawmakers and voters understand some of the implications of SB202. Plans to hold

more webinars like those we held in late 2020/ early 2021 including “Poll Watcher Training for Georgia,” “Goal: An Accountable Election in Georgia,” and “Separating Fact from Fiction in the 2020 Election,” have been put aside. I have instead had to create slideshows for several webinars about implications of SB202, and adapt them for election workers, the public, and other audiences.

17. Since SB202 emerged from the Georgia Senate on March 8, 2021, I have spent more than 100 hours trying to mitigate its effects.

18. I have reviewed the allegations pertaining to me in the Complaint in this case, specifically paragraphs 280 – 292, and those allegations are correct to the best of my knowledge and belief.

Executed on this date, June 9, 2021.

A handwritten signature in cursive script, appearing to read "Elizabeth Throop". The signature is written in dark ink and is positioned above a horizontal line.

Elizabeth Throop

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

**Civil Action No. 21-cv-02070
JPB**

DECLARATION OF ANDREW KURISH

ANDREW KURISH declares, under penalty of perjury, pursuant to 28 U.S.C.

§1746, that the following is true and correct:

1. My name is Andrew Kurish. I am over 18 years old.
2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
3. Since November 2013, I have worked for the Fulton County Department of Registration and Elections as a poll worker, poll manager, and elections trainer. I have also consulted with the ACLU of Georgia on poll worker recruitment.

4. I have personally recruited and trained many people, including high school students, to serve as poll workers, and trained poll workers to become poll managers, primarily for Fulton County.
5. Now that SB202 is the law, I am hesitant to continue recruiting poll workers, especially high school students and young adults, given the risk of criminal allegations that can stem from the "Elector Observation Felony" or an unintentional violation of the "Gag Rule."
6. Many voters have complained to me in my role as a poll manager in Fulton County that the new touchscreen voting machines are too large and provide little privacy as they make their selections. I know from my own experience that it is easy to see voters' screens inadvertently while performing the tasks necessary as a poll worker, including but not limited to looking for voters who need assistance, answering voter questions regarding how to use the voting machines, performing hourly inspections of voting machines and public count balancing, watching for machine malfunctions, making sure no one is tampering with equipment, and keeping the flow of voters moving.
7. The duties performed by poll workers positioned at the ICP precinct scanner and provisional ballot station place them at great risk of accidentally committing or being falsely accused of an "Elector Observation Felony" due to the nature of the positions requiring poll workers to be in the vicinity of

voted and spoiled ballots. Poll workers handling spoiled provisional ballots are at especially great risk as procedure requires them to mark a ballot that may contain some voter selections as “spoiled”.

8. Based on my experience, SB202 now makes it too easy to accidentally commit a felony while serving as a poll worker; potentially impeding poll workers from doing their job to the best of their abilities and training, and discouraging new and existing poll workers from continuing to serve because of the risk of accidentally committing or being falsely accused of the “Elector Observation Felony”.
9. In addition, since any voter, poll worker, poll watcher, or member of the public can accuse someone of intentionally looking at a voter’s selections, based on my experience with voters, poll workers, and poll watchers, I believe this will create a culture of intimidation in the polling place and will have a chilling effect on anyone who will be working around the voting machines, precinct scanners, and provisional ballot station.
10. Due to the risk of committing an “Elector Observation Felony” I anticipate that some poll workers will refuse to work positions placing them in proximity with the voting machines, precinct scanners, and provisional ballot station and request alternate positions within the polling place. Furthermore, as any poll worker can now accuse another or their poll manager of an “Elector

Observation Felony” with or without cause, poll managers may be hesitant to address inappropriate poll worker behavior, performance issues, and poll worker personality conflicts for fear of retaliation against them.

11.I anticipate that poll worker recruitment in today’s climate will be more difficult than prior to SB202 because of the risk of unfounded and retaliatory felony allegations against workers doing their jobs, and trying to honor voters’ privacy.

Executed on this date, June 10th, 2021.

A handwritten signature in blue ink, appearing to read "Andrew Kurish", is written over a horizontal line.

Andrew Kurish

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRIAN KEMP, et al.,

Defendants.

Civil Action No. 21-cv-02070-JPB

**PROPOSED ORDER GRANTING
MOTION FOR PRELIMINARY INJUNCTION**

This matter is before the Court on the Plaintiffs' Motion for Preliminary Injunction of Plaintiffs.

Upon considering the motion and supporting authorities, the response from the Defendants, and the evidence and pleadings of record, the Court finds that Plaintiffs are likely to succeed on the merits of their claims, that they will be irreparably harmed if this motion is not granted, that the balance of equities tip in Plaintiffs' favor, and that an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

The Court accordingly GRANTS the motion and issues the relief set forth below.

UNTIL FURTHER ORDER OF THIS COURT:

Defendants from enjoined from enforcing the following laws,
effective immediately:

(A) O.C.G.A. § 21-2-568.1 (the “Elector Observorvation Felony”), which makes it a felony to “intentionally observe an elector while casting a ballot in a manner that would allow such person to see for whom or what the elector is voting”;

(B) O.C.G.A. § 21–2–386(a)(2)(B)(vii) (the “Gag Rule”), which prohibits “monitors” and “observers,” under penalty of criminal misdemeanor, from “[c]ommunicating any information that they see while monitoring the processing and scanning of the absentee ballots” “to anyone other than an election official who needs such information to lawfully carry out his or her official duties”;

(C) O.C.G.A. §§ 21-2-386(a)(2)(A) and (B)(vi) (the “Estimating Bans”), which make it a misdemeanor for “monitors and observers” to, among other things, tally, tabulate, estimate or attempt to tally, tabulate, or estimate the number of absentee ballots cast or any votes on the absentee ballots cast;

(D) O.C.G.A. § 21-2-568.2 (2)(B) (the “Photography Ban”), which makes it a misdemeanor to “[p]hotograph or record the face of an electronic ballot marker while a ballot is being voted or while an elector’s votes are displayed on such electronic market,” or to “[p]hotograph or record a voted ballot”; and

(E) O.C.G.A. § 21-2-381(a)(1)(A) (the “Eleven Day Rule”), which prohibits applications for absentee ballots to be accepted “less than 11 days prior to the date of the primary or election, or runoff of either.”

SO ORDERED this ____ day of _____, _____.

J.P. Boulee
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**COALITION FOR GOOD
GOVERNANCE, et al.,**

Plaintiffs,

v.

BRIAN KEMP, et al.,

Defendants.

Civil Action No. 21-cv-02070-JPB

**PROPOSED ORDER GRANTING
MOTION FOR EXPEDITED BRIEFING AND ORAL HEARING**

Plaintiffs have moved for expedited briefing and an oral hearing on their Motion for Preliminary Injunction. Upon good cause shown, the motion is GRANTED. It is FURTHER ORDERED:

1. Defendants shall file their Response to the Motion by June 21, 2021;
2. Plaintiffs shall file their Reply Brief within seven days of the filing of Defendants' Response; and,
3. The Court will hold an oral hearing on the motion on _____, 2021.

SO ORDERED this ____ day of _____, _____.

J.P. Boulee
United States District Judge