

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
Atlanta Division**

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THE NEW GEORGIA PROJECT,  
*et al.*,

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, in his  
official capacity as the Georgia  
Secretary of State and the Chair of the  
Georgia State Election Board, *et al.*

*Defendants.*

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Case No. 1:20-cv-01986-ELR

**BRIEF OF THE PUBLIC INTEREST LEGAL FOUNDATION AND  
LANDMARK LEGAL FOUNDATION AS *AMICI CURIAE* IN  
OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY  
INJUNCTION**

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## INTRODUCTION

Plaintiffs ask this Court to invalidate five elements of Georgia’s absentee ballot voting procedures: (1) the process for notifying voters on incomplete absentee ballot applications (“Error Notification”), O.C.G.A. § 21-2-381(b)(4); (2) the age restriction on those who are allowed to submit one application to vote by mail for an entire election cycle, (“Absentee Application Age Restriction”), O.C.G.A. § 21-2-381(a)(1)(G); (3) the failure to provide prepaid postage on absentee ballots (“Postage Requirement”); (4) the rejection of absentee ballots received after 7:00 p.m. on Election Day (“Receipt Deadline”), O.C.G.A. § 21-2-386(a)(1)(F); and (5) the prohibition on third-party assistance for absentee ballots (“Ballot Harvesting Ban”), O.C.G.A. § 21-2-385(a). (Doc. # 33 p. 10.)

Plaintiffs have not established their entitlement to relief under relevant precedent. *Amici* Public Interest Legal Foundation (“PILF”) and Landmark Legal Foundation (“Landmark”) therefore respectfully urge the Court to deny Plaintiffs’ request for preliminary injunction.

## ARGUMENT

### I. PILF's Voter Roll Research.

#### A. PILF's Research and Submission of Findings to the Georgia Secretary of State.

As part of its organizational mission, PILF analyzes voter rolls across the Nation to assess their health. In November 2019, PILF received a copy of Georgia's statewide voter roll. Then, at considerable expense for a 501(c)(3) charitable organization, using detailed methodologies and matching techniques (described *infra* and in the attached letter), PILF identified registrations that are potentially inaccurate, outdated, or no longer valid. In Georgia, these registrations include the following: (1) registrations belonging to potentially deceased individuals; (2) registrations that are potentially duplicated across county lines; (3) registrations that are potentially duplicated within the same county; and, (4) persons potentially registered twice across state lines. PILF also reviews voting histories to determine if one or more voting credits were assigned to these potentially problematic entries. A voting credit is a government record from the state of Georgia indicating whether a registrant voted in a particular election. On June 19, 2020, PILF sent a letter to the Georgia Secretary of State that described PILF's methodology and findings and asked the Secretary to investigate and take

corrective action where necessary.<sup>1</sup> Exhibit A (hereafter, the “Letter”).

**B. PILF Matched More than 4,200 Registrations to a Verifiable Record of Death.**

PILF’s research indicates that there were potentially more than 4,200 deceased individuals with an active registration in Georgia in the voter roll data purchased by PILF. Letter at 1. While it is true that the Georgia Secretary of State may have removed some of these deceased registrants in the intervening time and may endeavor to keep deceased registrants off the list of eligible registrants, the record is not subject to dispute that there have been deceased registrants on the rolls. Each of those potentially deceased individuals presents an opportunity for confusion and even fraud. Anyone with access to a deceased registrant’s date of birth and address information<sup>2</sup> could attempt to request a ballot in the name of the deceased.

Georgia law presently limits the universe of people who may collect and deliver the voted ballot of another person. *See* O.C.G.A. § 21-2-385(a). Those limits are designed to safeguard the votes of those who are unable to deliver or mail their own ballot, including the disabled. Plaintiffs ask this Court to remove

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<sup>1</sup> Election officials are the final judge of voter eligibility. PILF asks election officials to do what is permissible under state and federal law to investigate the leads PILF submits.

<sup>2</sup> *See* Application for Official Absentee Ballot, *available at* [https://sos.ga.gov/admin/files/Absentee\\_Ballot\\_Application\\_2018.pdf](https://sos.ga.gov/admin/files/Absentee_Ballot_Application_2018.pdf) (last accessed July 14, 2020).

those limits and allow anyone to collect and deliver the voted ballots of other absentee voters. If such relief is granted, someone who successfully requests a ballot in the name of the deceased could also deliver and submit that ballot. Were someone to succeed in doing so, it would cancel out the legitimate vote of another Georgian.

In order to ensure a high degree of confidence, PILF matched voter roll data against the federally maintained cumulative Social Security Death Index (SSDI), and where possible, against the SSDI and printed obituaries and other public notices. Letter at 1. Approximately 89 percent of registrants matched against the SSDI list a date of death in November 2019 or earlier, with some dates of death reaching back as far as 2010. Letter at 1.<sup>3</sup>

**C. PILF Identified Potentially Duplicated Registrations with Apparent Voting Credits Assigned for Georgia Elections.**

PILF's letter also alerted the Secretary to registrations that are potentially duplicated within the same Georgia county (intracounty) and across county lines (intercounty) that were apparently assigned voting credits for the same election. Letter at 2. For the 2016 General Election, more than 570 potential intercounty duplicates were apparently assigned voting credits, and more than 9,600 potential intracounty duplicates were apparently assigned voting credits, according to public

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<sup>3</sup> The true number of deceased registrants is likely even higher because PILF analyzed only registrants with active registrations.



records. *Id.* For the 2018 General Election, nearly 9,900 potential intracounty duplicates were apparently assigned voting credits, according to public records. *Id.* PILF cannot confirm whether the apparent duplicate registrations did or did not cast ballots, only that the records from election officials indicated that they did.

The number of people with two or more active duplicate registrations is almost certainly even higher because PILF flagged only registrations that were assigned voting credits. In addition, PILF has not yet accounted for some well-known causes of duplication, such as married-name confusion, which happens when a registrant becomes married and then submits a subsequent registration using a different last name. Such cases of duplication would only increase the total number of duplicate active registrations. PILF has seen those circumstances result in significant numbers of likely duplicated registrations in other jurisdictions.

It is paramount that Georgia's election officials investigate and confirm the registrations PILF flagged and further examine Georgia's voter rolls for other duplicate entries prior to the entry of any injunctive relief that would exacerbate these defects.

**D. PILF Identified Potentially Duplicated Registrations with Apparent Voting Credits Assigned for Elections in Georgia and Another State.**

Using voter roll extracts obtained from other states, PILF performed a detailed matching analysis to discern the number of registrants who are potentially

registered in more than one state. Using this methodology, PILF alerted the Secretary's office to more than 840 potentially duplicated registrations across state lines where it appeared that voting credits were assigned for the 2018 General Election in each state, according to public records. Letter at 2. PILF cannot confirm whether the apparent duplicate registrations did or did not cast ballots, only that government records indicated that they did.

PILF and Landmark invite the Court to appoint an *Amicus Curiae* to verify PILF's voter roll research. PILF's research can be replicated. PILF hopes that replication can resolve any doubts concerning ambiguities or uncertainties in the data. PILF therefore invites the Court to verify its research. PILF welcomes efforts to verify and improve upon its work so that the Court is working with the most accurate and up-to-date data when rendering a decision in this matter. For example, PILF invites the Court to appoint its own *amicus curiae* to replicate the study to ascertain the number of duplicate registrations on the public voter rolls in Georgia, if the Court believes it is warranted.

## **II. Reasonable Protections for Absentee Voting Do Not Violate the Voting Rights Act nor Are They Unconstitutional.**

Georgia's laws designed to ensure the accuracy and integrity of its absentee voting system are reasonable, impose a minimal burden on voters, and fall well within a state's authority to regulate the time, place, and manner of its elections.

U.S. Const. Art. I., § 4. They do not violate the Voting Rights Act nor are they unconstitutional.

The right to vote in any way one wishes is not absolute. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). There is no constitutional right to vote by absentee ballot. *Griffin v. Roupas*, 385 F.3d 1128, 1130-31 (7th Cir. 2004). To achieve the necessary objective of a fair, orderly, and honest election, states enact comprehensive and sometimes complex election codes. These provisions affect—at least to some degree—the individual’s right to vote. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). Reasonable and nondiscriminatory restrictions are justifiable because of a state’s important regulatory interests in ensuring a fair and honest election. *Id.* Voting regulations, therefore, do not automatically trigger strict scrutiny—even when they affect the right to vote. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

Thus, courts must determine the burden the regulation places on voters when setting the standard of review. “While a rational basis standard applies to state regulations that do not burden the fundamental right to vote, strict scrutiny applies when a state’s restriction imposes ‘severe’ burdens.” *NE Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 592 (6th Cir. 2012). In less severe cases, courts apply the flexible *Anderson-Burdick* standard:

Under this test,

A court considering a challenge to a state election law must 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 interests put forward by the State as justifications for the burden imposed by the rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”

*Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). There is thus no “litmus test” to separate valid from invalid voting regulations. Courts must balance the burden placed on voters against the state’s asserted justifications and “make the ‘hard judgment’ that our adversary system demands.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190 (2008). Any burden should be “justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Crawford*, 553 U.S. at 191 (quoting *Norman v. Reed*, 502 U.S. 279, 288-289 (1991)).

The protections challenged by the Plaintiffs do not violate this standard. The notification process requirement that a voter completing an absentee ballot provides enough information to establish identity guards against fraud. Requiring verification of identity ensures a fair and honest election. The process also requires election officials to “promptly” notify the voter should the request contain errors. O.C.G.A. § 21-2-381(b)(4). It is a minimal burden that is especially necessary because of the increasing likelihood that large numbers of absentee ballots may be

cast in the General Election. The receipt deadline ensures finality and reduces the opportunities for post-election voter fraud.

**A. Absentee Voting Systems Require Special Protections and They Are Particularly Vulnerable to Fraud.**

Plaintiffs allege that Georgia law disenfranchises lawful voters. (Doc. # 33 p. 10). They are incorrect and fail to consider the inherently vulnerable nature of voting by absentee ballot. *See United States v. McCranie*, 169 F.3d 723, 725-26 (11th Cir. 1999) (“most of the illegal vote buying occurred during the absentee voting period”). In short, opportunities for fraud abound when individuals vote by absentee ballot. Presidential Commission on Election Administration, *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform* 46 (2005) (“Carter–Baker Report”).<sup>4</sup> For example, voting occurs outside the strictly regulated confines of the precinct, where election officials guard against undue influence and electioneering, ensure compliance with voting laws and maintain the chain of custody of ballots. Thus, the absentee ballot process “remains the largest source of potential voter fraud.” *Id.* Fraud occurs in several ways. First, blank ballots mailed to wrong addresses or apartment buildings can be intercepted. *Id.* Second, voters are particularly susceptible to pressure or intimidation when voting at home or from a nursing home. *Id.* Finally, third-party organizations can

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<sup>4</sup> Available at <https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf> (last visited July 14, 2020).

operate illicit “vote buying schemes” that are “far more difficult to detect when citizens vote by mail.” *Id.*

Even a study skeptical of the incidence of voter fraud generally acknowledges the dangers in vote-by-mail. It notes that – when fraud does occur, “absentee ballots are often the method of choice.” Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration 56* (2014).<sup>5</sup>

Voter registration errors also contribute to voting system vulnerabilities. Millions of voters’ names appear on multiple state voter registration lists because states do not routinely share registration data. *Id.* at 28. In 2012, The Pew Center on the States found that about 24 million (one in eight) voter registrations were no longer valid or contained significant inaccuracies with 1.8 million deceased individuals listed on voter rolls and 2.75 million names on registrations in more than one state. The Pew Center on the States, *Inaccurate, Costly and Inefficient: Evidence that America’s Voter Registration System Needs an Upgrade 1-5* (February 2012).<sup>6</sup>

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<sup>5</sup> Available at [https://elections.delaware.gov/pdfs/PCEA\\_rpt.pdf](https://elections.delaware.gov/pdfs/PCEA_rpt.pdf) (last visited July 14, 2020).

<sup>6</sup> Available at [https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2012/pewupgradingvoterregistrationpdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewupgradingvoterregistrationpdf.pdf) (last visited July 14, 2020).

These inaccuracies can, in part, be traced to states' failures to enforce the provisions of the National Voter Registration Act (NVRA), which require election officials to ensure the accuracy of registration lists by confirming residency and periodically removing the names of dead or out of state residents from voter rolls. 52 U.S.C. § 20507.

As discussed, *supra*, *amicus* PILF's research found potential inaccuracies on Georgia's voter registration rolls. These registration errors make an already vulnerable voting system even more susceptible to fraud. Necessary protections such as placing deadlines on when absentee ballots are received, limiting who may handle ballots or ensuring absentee ballot applications are essential to limit opportunities for fraud. *See* Carter-Baker Report at 47.

**B. The Absentee Application Age Restriction Does Not Violate the 26th Amendment.**

Without any relevant basis in the law, Plaintiffs allege the absentee age restriction violates the 26th Amendment. (Doc. # 33 p. 62.) They are incorrect. The 26th Amendment lowered the voting age from 21 years to 18 years. U.S. Const. Amend. XXVI. It expands the pool of eligible voters. It does not prohibit states from enacting reasonable protections to ensure the integrity of the vote. The state of Georgia's statutory provision permitting elderly residents to cast absentee ballots does not deny others the right to vote. Rather, it is a commonsense

accommodation to ensure infirm and elderly citizens are able to vote while allowing the state to maintain an orderly election process.

Protections enacted by states on absentee voting are subject to a “rational basis standard” because voting in this fashion is not a fundamental right. *Texas Dem. Party v. Abbott*, No. 20-50407, 2020 U.S. App. LEXIS 17564 at \*26 (5th Cir. June 4, 2020). As older voters face unique challenges in their ability to vote in-person, the state is justified in providing them an exclusive accommodation. Accordingly, Plaintiffs should not succeed on their 26th Amendment challenge.

Prior to ratification of the 26th Amendment, Congress lowered the voting age from 21 years to 18 years by amending the Voting Rights Act. Congress determined that imposing “national defense responsibilities” upon 18 to 21-year-olds while denying that class of individuals the right to vote was particularly unfair. The amendments applied to all federal, state and local elections. The statute was limited to federal elections by the Supreme Court in *Oregon v. Mitchell*, 400 U.S. 112, 223 (1970). The VRA amendments, however, did not create a universal ban on any secondary age requirements that a state might place on absentee voting – they simply guaranteed those 18-years-old and older the right to vote.

In response to *Oregon v. Mitchell*, Congress, with support from the states, proposed to expand the franchise to those 18-years-old and older to all elections through the 26th Amendment. Ratification occurred after extensive debates on the



abilities of 18-year-olds to conscientiously participate in the election process. Congress determined that most people between ages 18 and 21 had completed high school, bore all or most of an adult's responsibilities, and ought to be extended the opportunities to influence society in a constructive manner. *See* Cong. Research Service, *The Eighteen Year Old Vote: The Twenty-Sixth Amendment and Subsequent Voting Rates of Newly Enfranchised Age Groups*, May 20, 1983, Report No. 83-103.

The ratification history and case law pertaining to the 26th Amendment do not support Plaintiffs' expansive and unfounded claims.

**C. Georgia's Requirement that Prospective Absentee Voters Pay Their Own Postage Does Not Violate the 24th Amendment.**

The Plaintiffs allege that Georgia's requirement that absentee ballot voters pay their own postage to return completed ballots violates the 24th Amendment. (Doc. # 33 p. 35.) Plaintiffs demand that the Court open Pandora's box to the indirect costs associated with voting. Their argument goes well beyond the scope of the Amendment's text and should be rejected.

The 24th Amendment prohibits conditioning the right to vote in federal elections upon payment of a "poll tax or other tax." U.S. Const. Amend. XXIV. Under equal protection grounds, the Supreme Court found that the right to vote in a state election could not be conditioned upon payment of a fee as well. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 668-69 (1966). The state cannot force a

voter to choose between a poll tax and a cumbersome burden. In the first Supreme Court case interpreting the amendment, the Court struck down a state law requiring either the payment of a poll tax or the filing of a certificate of residence six months before the election. *Harman v. Forssenius*, 380 U.S. 528, 533-34 (1965). The state's scheme for filing the certificate was "plainly a cumbersome procedure" so that many would prefer just paying the poll tax. *Id.* at 541.

Georgia does not condition the right to vote on the payment of any poll tax or fee, nor does it impose any cumbersome burden in lieu of a poll tax. *See* O.C.G.A. § 21-2-216(a) (elector's qualifications); O.C.G.A. § 21-2-381 (application for absentee ballot); O.C.G.A. § 21-2-385 (voting by absentee electors). Georgia voters have several methods of voting. They can vote in person at the ballot box or during early voting. They can vote by absentee ballot and hand deliver the ballot to the county elections office. They can vote by absentee ballot and have the U.S. postal service deliver the ballot in the return envelope. Plaintiffs contend that, when using this last option to vote, the indirect cost of postage amounts to a tax.

Yet courts have not extended the 24th Amendment in several cases in which fees arise indirectly, such as the restoration of rights of former felons and voter identification laws. In former felons cases, circuit courts have rejected claims that the amendment prohibits their re-enfranchisement turning on payment of child

support, *see Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010), payment of past due fines or restitution, *see Harvey v. Brewer*, 605 F.3d 1067 (9th Cir. 2010) (O'Connor, J. (retired)), or even a fee to cover the process for reinstatement of voting rights, *see Howard v. Gilmore*, No. 99-2285, 2000 U.S. App. LEXIS 2680 (4th Cir. Feb. 23, 2000).

In contrast, however, a district court recently held that a state “*can* condition voting on payment of fines and restitution that a person is able to pay but *cannot* condition voting on payment of amounts a person is unable to pay or on payment of taxes, even those labeled fees or costs.” *Jones v. Desantis*, No. 4:19cv300-RH/MJF, 2020 U.S. Dist. LEXIS 90729, at \*7 (N.D. Fla. May 24, 2020) (emphasis in original). While affirming a preliminary injunction in the same case, the 11th Circuit ruled earlier that states cannot condition voting on the payment of an amount a person is genuinely unable to pay. *Jones v. Governor of Fla.*, 950 F.3d 795, 800 (11th Cir. 2020).

The district court’s opinion in *Jones v. Desantis* conflicts with the reasoning in *Harvey v. Brewer*. In *Harvey*, Justice O’Connor shunned the type of expansive reading of the amendment that is urged by the Plaintiffs in this case.

Plaintiffs’ right to vote was not abridged because they failed to pay a poll tax; it was abridged because they were convicted of felonies. Having lost their right to vote, they now have no cognizable Twenty-Fourth Amendment claim until their voting rights are restored. That restoration of their voting rights requires them to pay all debts owed under their criminal sentences does not transform their criminal fines into poll taxes.

*Id.* at 1080.

The argument—that the costs associated with obtaining identification to vote violated the amendment—also failed in the Ninth Circuit. *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012). In *Gonzalez*, plaintiffs argued that because some voters did not have the identification required under Arizona law, those voters would have to spend money to obtain it, making this payment indirectly equivalent to a tax on the right to vote. The court disagreed, stating, “Although obtaining the identification required under [the law] may have a cost, it is neither a poll tax itself (that is, it is not a fee imposed on voters as a prerequisite for voting), nor is it a burden imposed on voters who refuse to pay a poll tax.” *Id.* at 407.

In fact, all forms of voting often require indirect costs. Voters may have to pay for gas to drive to a polling place or pay for public transportation. Anyone outside walking distance of a polling place has an indirect cost. Voters may also have to take time off from work to vote on Election Day, requiring hourly workers to lose income. The danger of Plaintiffs’ argument is that it has no limiting principle and would bring such costs under constitutional scrutiny. This would raise the administrative costs of elections for the states exponentially.

However, Plaintiffs do not stop with postage. They argue that beyond the cost of a stamp, going out to buy a stamp is a complicated process that imposes more financial costs. (Doc. # 33 at 12.) Local post offices may not be open and

available to answer questions, delaying the voting process. This is nowhere near the administrative burdens at issue in *Harman v. Forssenius*.

**D. Georgia's Limitations on Who Handles Absentee Ballots Limits Opportunities for Voter Fraud.**

The inherently vulnerable nature of absentee voting coupled with registration errors makes it imperative to enact and enforce reasonable limitations on who handles absentee ballots. Should ineligible individuals receive absentee ballots, harvesting groups can easily exploit the situation and commit wholesale voter fraud. Such exploitation has occurred in the past. For example, in 2004, 1,700 voters registered in both New York and California requested vote-by-mail ballots to be mailed to their home in the other state with no investigation. Carter-Baker Report at 12.

Absentee ballots mailed to addresses of those who have moved or died are vulnerable to ballot harvesting. Unaccounted-for ballots are currency to harvesters. Georgia's limitations on who handles ballots, however, are a useful tool to ensure that ballots sent to ineligible registrants are not collected and submitted by unscrupulous individuals or organizations. Removal of this protection exposes this system to persons who seek to unlawfully affect the outcome of elections. The U.S. Supreme Court has recognized incidents of voting fraud that have occurred in vote-by-mail systems. *Crawford v. Marion County Election Bd.*, 553 U.S. at 195-196. The Court noted that fraudulent voting in the 2003 Democratic primary for East

Chicago Mayor, “perpetrated using absentee ballots,” demonstrated “that not only is the risk of voter fraud real but that it could affect the outcome of a close election.” *Id.*

Lack of significant regulation on the absentee ballot voting process led to widespread “ballot harvesting” in California in 2018. “[P]olitical operatives, known as ‘ballot brokers,’ ...identify specific locations, such as large apartment complexes or nursing homes” to exploit the voting process. U.S. House of Representatives Committee on House Administration Republicans, *Political Weaponization of Ballot Harvesting in California 2* (May 14, 2020) (“Committee Report”).<sup>7</sup> After establishing relationships with individuals in these locations, ballot brokers would “encourage, and even assist, these unsuspecting voters in requesting a mail-in ballot; weeks later when the ballot arrives in the mail the same ballot brokers are there to assist the voter in filling out and delivering the ballot.” *Id.* As noted in the Committee Report, “[t]his behavior can result in undue influence in the voting process and destroys the secret ballot, a long-held essential principle of American elections intended to protect voters.” *Id.* It continued, “These very scenarios are what anti-electioneering laws at polling locations are

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<sup>7</sup> Available at <https://republicans-cha.house.gov/sites/republicans.cha.house.gov/files/documents/CA%20Ballot%20Harvesting%20Report%20FINAL.pdf> (last visited July 14, 2020).

meant to protect against. A voter cannot wear a campaign button to a polling location, but a political operative can collect your ballot in your living room?” *Id.*

Ballot harvesting appeared to affect the outcome of several races for the U.S. House of Representatives in California. For example, in the 39th Congressional district, Young Kim, the Republican candidate, led the vote count on election night and in the week following election day. Ms. Kim even traveled to Washington D.C. for orientation as a new member of the House. “Two weeks later, the Democrat challenger was declared the winner after 11,000 mail ballots were counted, many of which were harvested.” *Id.* at 3. In the 21st Congressional district, Republican David Valadao led by almost 5,000 votes on election night. The final tally of votes led to Mr. Valadao’s Democratic challenger winning by 862 votes – a swing of 5,701 votes. *Id.* These votes, “heavily favored the Democrat candidate at a much higher rate than previously counted ballots.” *Id.* The swing in counted votes was due largely to numbers of vote-by-mail ballots that had been dropped off at the polls and were processed and counted in the days following the election. “In Orange County alone, 250,000 mail ballots were turned in on Election Day.” *Id.* at 4. Such last-minute actions can overwhelm election officials’ ability to properly validate every ballot before the certification deadline. California’s insufficient signature verification standards only added to this post-election chaos.

This uncertainty and after-the-fact results undermine the public's confidence in the integrity of the election process. And “[c]onfidence in the election process is essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). The Court continued, “Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government.” *Id.*

Limiting who handles vote-by-mail ballots to the voter, an acknowledged family member, the U.S. Postal Service, caregivers, or election officials is reasonable and provides a necessary protection to guard against voter manipulation and voter fraud. As voter rolls are not accurate and as voting by mail is the method of choice for those who seek to commit fraud, reasonable protections are essential. The benefits of preventing fraud, intimidation, and undue influence on voters by limiting who can handle vote-by-mail ballots far outweighs the minimal burden imposed by Georgia's law.

### **CONCLUSION**

This Court should accordingly deny Plaintiffs' request for a preliminary injunction.



Dated: July 15, 2020

Respectfully Submitted,

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\*Motion for admission *pro hac vice* forthcoming

The undersigned certifies that the foregoing document was prepared in 14-point Times New Roman font and in accordance with the margin and other requirements of Local Rule 5.1.

s/ Harry W. MacDougald  
Harry W. MacDougald  
Georgia Bar No. 463076

**EXHIBIT A**

**Public Interest Legal Foundation Letter to Georgia  
Secretary of State Brad Raffensperger**

**June 19, 2020.**

# PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA FACSIMILE and USPS

June 19, 2020

**The Hon. Brad Raffensperger**  
**Georgia Secretary of State**  
Elections Division  
2 MLK Jr. Drive  
Suite 802, Floyd West Tower  
Atlanta, GA 30334  
Fax: (404) 463-5231

**Re: Voter List Maintenance Leads  
Request for Meeting**

Dear Secretary Raffensperger:

Our organization—the Public Interest Legal Foundation—is a non-partisan, 501(c)(3) public-interest organization that is dedicated entirely to promoting the integrity of elections nationwide through research, education, remedial programs, and litigation. As part of our mission, we study, audit, and analyze voter rolls throughout the country to assess their health and accuracy. We compare voter roll data against federal and other public or commercial databases to flag registrations that may be incomplete, outdated, or no longer valid. We then submit findings and leads to proper election officials for further investigation and confirmation to better aid voter roll maintenance programs.

We write today to offer you our findings for the State of Georgia.

## **Summary of Findings and Methodology**

### **1. Potentially Deceased Registrants with an Active Registration.**

In November 2019, we received a copy of the Georgia voter registration extract from your offices. The “active” portion of the extract was compared against the U.S. Social Security Death Index (SSDI), a database made available via the U.S. Social Security Administration. Where possible, voter registration entries were compared against the SSDI *and* printed obituaries and other public notices.

Our analysis showed there were potentially more than **4,200 deceased individuals** with an active registration in Georgia at that time. Approximately 89 percent of the entries matched against the SSDI listed a date of death prior to November 2019, the time period when the roll was provided. Some matches list dates of death as far back as 2010.

As you are likely aware, the National Voter Registration Act of 1993 (“NVRA”) requires your office to use reasonable efforts to identify and remove registrants who are deceased. 52 U.S.C. § 20507(a)(4)(A). Georgia law provides that “Upon receipt of the lists described in subsection (d)

of this Code section, the Secretary of State or his or her designated agent shall remove all such names of deceased persons from the list of electors and shall notify the registrar in the county where the deceased person was domiciled at the time of his or her death.” Georgia Code Title 21. Elections § 21-2-231(e). Further, “county registrars may obtain information about persons who died from obituaries published by local newspapers, death certificates, verifiable knowledge of the death...County registrars shall determine if such deceased person’s name appears on the list of electors and, if so, shall remove such name from the list of electors....” Georgia Code Title 21. Elections § 21-2-231(e.1).

We have utilized multiple means to verify these potentially deceased registrants, but ultimately only your office can conclusively determine whether the registrants are indeed deceased.

## **2. Potential Duplicate Registrations Across State Lines with Voting Credits Apparently Assigned by Election Officials for the 2018 Election.**

Using voter roll extracts obtained from other states at the same time as we obtained Georgia’s extract, we performed a detailed matching analysis to discern the number of registrants who are potentially registered in more than one state. We then viewed voting history reports to discern the number of registrants who were apparently assigned voting credits in more than one state for the same election.

In Georgia, we identified more than **840 potentially duplicated registrations across state lines** with apparent voting credits assigned by election officials in each state for the 2018 General Election. To arrive at this figure, potential matches of full names and dates of birth were filtered through commercial identity-validation services using Social Security data and more. We have utilized multiple means to verify these potentially duplicate registrations but ultimately only your office can conclusively determine whether these registrations are indeed duplications with genuine document trails reflecting the voting credits shown in the purchased voter extract.

## **3. Potential Intercounty and Intracounty Duplicates with Apparent Voting Credits Assigned for 2016 and 2018 General Elections.**

Using a similar methodology as above, we also flagged registrations that are potentially duplicated within the same Georgia county (intracounty) and across county lines (intercounty). We then reviewed assigned voting credits for each such registration.

For the 2016 General Election, 570 potential intercounty duplicates were apparently assigned voting credits.

More concerning were the findings of intracounty duplicates at matched residential addresses. At least 9,600 potential intracounty duplicates were apparently assigned voting credits in the 2016 General. For the 2018 General Election, nearly 9,900 potential intracounty duplicates were apparently assigned voting credits.

Our reading of the most recent U.S. Election Assistance Commission survey data show that your offices are aware of a duplicate registration problem. During the 2018 election cycle, your offices reportedly removed more than 62,000 registrants on this score.

We have utilized multiple means to verify these potentially duplicate registrations but ultimately only your office can conclusively determine whether these registrations are indeed duplications with genuine document trails reflecting the voting credits shown in the purchased voter extract.

**Request for Meeting**

We would like to offer our findings to you for further investigation and confirmation. We are available via telephone or videoconference, if needed, to discuss our research and how we can best transfer the data to you. Please let us know which date(s) and time(s) you prefer.

Should you need to contact us regarding this matter, please contact me at [lchurchwell@publicinterestlegal.org](mailto:lchurchwell@publicinterestlegal.org). Thank you for your service on this matter.

Sincerely,



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Communications & Research Director  
Public Interest Legal Foundation  
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