

UNITED STATES DISTRICT COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 20-14418

L. LIN WOOD, JR.,

Appellant,

vs.

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, REBECCA N. SULLIVAN, in her official capacity as Vice Chair of the Georgia State Election Board, DAVID J. WORLEY, in his official capacity as a Member of the Georgia State Election Board, MATTHEW MASHBURN, in his official capacity as a Member of the Georgia State Election Board, and ANH LE, in her official capacity as a Member of the Georgia State Election Board,

Appellees.

**APPELLANT'S RESPONSES TO THE COURT'S
JURISDICTIONAL QUESTIONS AND CERTIFICATE OF INTERESTED
PERSONS AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to the Federal Rules of Appellate Procedure and this Court's Clerk, David J. Smith's correspondence to the parties dated November 25, 2020, Appellant

hereby responds to the Court's Jurisdictional Questions and submits a Certificate of Interested Parties and Corporate Disclosure Statement, as follows:

INTRODUCTION

On November 25, 2020, the Court issued, through correspondence from the Clerk, two "Jurisdictional Questions". The Court required the parties to state their positions regarding the questions by 9:00 a.m. on Tuesday, December 1, 2020.

Also, on November 25, 2020, but later in the day, the Court granted, in part, Appellant's emergency motion for expedited review, and still later in the day, Appellant filed his initial brief. The jurisdictional statement and the discussion commencing on page 38 of the initial brief, address the jurisdictional questions, which are further addressed herein.

Briefly by way of background, on November 16, 2020, Appellant filed in the district court an Amended Complaint, and on November 17, 2020, Appellant filed an Emergency Motion for Injunctive Relief which sought, in relevant part, an injunction preventing the Secretary of State from certifying Georgia's election results and determining that the procedures employed for processing and rejecting absentee ballots conflicted with state law and were unconstitutional, rendering the purported election results defective, and in need of cure. (DE 5- Verified Amended

Complaint at p. 28-29; 32; and 37-38) (DE 6- Emergency Motion for Injunctive Relief p. 4-10; 15; and 24-25) (DE 54- Opinion and Order at p. 3-4).

Importantly, the State Board of Elections will use the same defective procedures in the upcoming Senatorial run-off election, and if they are invalid, then the outcome of that election could likewise be in doubt. The same is true of the recount, which President Trump has now requested.

Appellant argued below that his rights to Equal Protection were violated by Georgia's absentee ballot processing scheme, as modified by the unlawful "Settlement Agreement" because it fails to comply and conflicts with the election scheme adopted by the State Legislature. It is critically important for Appellant's appeal to be heard now before the December 14, 2020 "safe harbor" date under GA Code § 21-2-499 (2019) for Georgia to certify its Presidential electors.

RESPONSE TO THE JURISDICTIONAL QUESTIONS

Concerning the Court's first jurisdictional question, the district court's November 20, 2020 order denying the appellant's motion for injunctive relief is immediately appealable. As an appeal of an interlocutory order of a district court of the United States refusing an application for an injunction, this appeal is expressly authorized by 28 U.S.C. § 1292(a)(1). See also *Bognet v. Secretary Commonwealth of Pennsylvania, et al.* 2020 WL 6686120 *5 (3d Cir. November 13, 2020)

(recognizing the immediate appealability of voter and candidates motion for temporary restraining order and preliminary injunction.); *Schaivo v. Schaivo*, 403 F. 3d 1223, 1225 (when denial of TRO might have serious, perhaps irreparable consequence, same can be effectively challenged only by immediate appeal).

An interlocutory order that clearly denies a specific request for injunctive relief is immediately appealable without any further showing. *Watchtower Bible and Tract Soc. Of New York, Inc. v. Colombani*, 712 F. 3d 6, 12 (1st Cir. 2013)(articulating the standard for appealability); see also *13 Cyclopedia of Federal Procedure* Section 57:36 at p. 1. (3d ed.) Because the lower court's order is clearly one that denies a request for injunctive relief, the order is immediately appealable under the above authority.

Concerning the Court's second jurisdictional question, this controversy is not moot and neither is this appeal. The fact that the State certified the Georgia purported election results after the order on appeal was entered does not moot the Plaintiff's lawsuit because this litigation is ongoing. Plaintiff's fundamental right to vote continues to be impaired, President Trump has officially requested a recount, and the constitutionally improper procedure would be employed in the recount, as well as in the upcoming Senatorial runoff election in January. *Siegel v. Lepore*, 234 F. 3d 1163, 1173 (11th Cir. 2000)(action by presidential and vice-presidential candidates

to enjoin manual recounts was not rendered moot when the manual recounts were completed and the county canvassing boards filed certified vote tabulations).

Moreover, if the certified result is permitted to stand, and if the upcoming recount and Senatorial runoff election is run according to the same unconstitutional process, which was argued below, the Plaintiff (and the citizens of Georgia) will be permanently harmed by the Defendants' infringement on Plaintiff's voting rights. *New Ga. Project v. Raffensperger*, 2020 WL 5200930 at *26-27 (N.D. Ga. August 31, 2020)(concluding that movant satisfied balance of harms/public interest factors, as "Plaintiffs will be forever harmed if they are unconstitutionally deprived of their right to vote"). This appeal presents this Court with the opportunity to correct the constitutional violations below before December 14, 2020. Therefore, the present appeal involves a live case or controversy and is not moot.

Respectfully submitted this 1st day of December, 2020.

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Appellant, L. LIN WOOD, JR., pursuant to Fed.Ed. R. Civ. P. 26.1, and 11th Cir. R. 26.1-3, hereby submit this Certificate of Interested Persons and Corporate Disclosure Statement, as follows:

Beane, Amanda J. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Blumenfeld, Jeremy P. - Counsel for Proposed Intervenors Woodhall, et al.

Brailey, Emily R. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Callais, Amanda R. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Carr, Christopher – Counsel for Appellee

Clarke, Kristen- Counsel for Proposed Intervenors Woodhall, et al.

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Elias, Marc E. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Greenbaum, Jon M. - Counsel for Proposed Intervenors Woodhall, et al.

Grimberg, Steven D. – United States Northern District Court Judge

Hamilton, Kevin J. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Houk, Julie M. - Counsel for Proposed Intervenors Woodhall, et al.

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Le, Anh - Appellee

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Mashburn, Matthew- Appellee

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Webb, Bryan K. - Counsel for Appellee

Willard, Russell D. - Counsel for Appellee

Wood, Jr., L. Lin. – Appellant

Worley, David J. - Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been electronically filed with this Court via CM/ECF, and has been furnished to all counsel on the attached service list, by email, on December 1, 2020.

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