

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

DONNA CURLING, an individual; )

)

COALITION FOR GOOD )

GOVERNANCE, a non-profit corporation )

organized and existing under Colorado )

Law; )

)

DONNA PRICE, an individual; )

)

JEFFREY SCHOENBERG, an individual; )

)

LAURA DIGGES, an individual; )

)

WILLIAM DIGGES III, an individual; )

)

RICARDO DAVIS, an individual; )

)

Plaintiffs, )

)

v. )

)

CIVIL ACTION  
FILE NO.:

BRIAN P. KEMP, in his individual )

capacity and his official capacity as )

Secretary of State of Georgia and )

Chair of the STATE ELECTION BOARD; )

)

**DEMAND FOR  
JURY TRIAL**

DAVID J. WORLEY, REBECCA N. )

SULLIVAN, RALPH F. "RUSTY" )

SIMPSON, and SETH HARP, in their )

individual capacities and their official )

capacities as members of the STATE )

ELECTION BOARD; )

THE STATE ELECTION BOARD;

RICHARD BARRON, in his individual  
capacity and his official capacity as  
Director of the FULTON COUNTY  
BOARD OF REGISTRATION AND  
ELECTIONS;

MARY CAROLE COONEY, VERNETTA  
NURIDDIN, DAVID J. BURGE, STAN  
MATARAZZO and AARON JOHNSON  
in their individual capacities and official  
capacities as members of the FULTON  
COUNTY BOARD OF REGISTRATION  
AND ELECTIONS;

THE FULTON COUNTY BOARD OF  
REGISTRATION AND ELECTIONS;

MAXINE DANIELS, in her individual  
capacity and her official capacity as  
Director of VOTER REGISTRATIONS  
AND ELECTIONS FOR DEKALB  
COUNTY;

MICHAEL P. COVENY, ANTHONY  
LEWIS, LEONA PERRY, SAMUEL  
E. TILLMAN, and BAOKY N. VU  
in their individual capacities and official  
capacities as members of the DEKALB  
COUNTY BOARD OF REGISTRATIONS  
AND ELECTIONS;

THE DEKALB COUNTY BOARD OF

REGISTRATIONS AND ELECTIONS; )  
 )  
 JANINE EVELER, in her individual )  
 capacity and her official capacity as )  
 Director of the COBB COUNTY )  
 BOARD OF ELECTIONS AND )  
 REGISTRATION; )  
 )  
 PHIL DANIELL, FRED AIKEN, JOE )  
 PETTIT, JESSICA BROOKS, and )  
 DARRYL O. WILSON in their individual )  
 capacities and official capacities as )  
 members of the COBB COUNTY )  
 BOARD OF ELECTIONS AND )  
 REGISTRATION; )  
 )  
 THE COBB COUNTY BOARD OF )  
 ELECTIONS AND REGISTRATION; )  
 )  
 MERLE KING, in his individual capacity )  
 and his official capacity as Executive )  
 Director of the CENTER FOR ELECTION )  
 SYSTEMS AT KENNESAW STATE )  
 UNIVERSITY; and )  
 )  
 THE CENTER FOR ELECTION )  
 SYSTEMS AT KENNESAW STATE )  
 UNIVERSITY )  
 )  
 Defendants. )

**VERIFIED COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE  
 RELIEF, AND WRIT OF MANDAMUS**

COMES NOW, Plaintiffs, named above, to show this Honorable Court the following for their Complaint against the above-named Defendants:

## **I. INTRODUCTION**

This is a case about the insecurity of Georgia's voting system, and those who are responsible.

1.

In August of 2016 Logan Lamb ("Lamb"), a professional cybersecurity researcher curious about the Center for Election Systems at Kennesaw State ("CES"), which is responsible for overseeing, maintaining, and securing the electronic election infrastructure for the state of Georgia, discovered that he was able to access key parts of Georgia's electronic election infrastructure through CES's public website on the internet. Affidavit of Logan Lamb, June 30, 2017, attached as "Exhibit A."

2.

Lamb immediately alerted CES to the serious security vulnerabilities that he had discovered, advising CES that they should "Assume any document that requires authorization has already been downloaded without authorization."

Exhibit A at ¶5.

3.

CES did not secure the vulnerabilities. Exhibit A at ¶7.

4.

Lamb had discovered that CES had improperly configured its server and had failed to patch a security flaw which had been known since 2014. These mistakes allowed anyone to access the internal information stored on CES's servers. Those documents included "a database containing registration records for the state's 6.7 million voters; multiple PDFs with instructions and passwords for election workers to sign in to a central server on Election Day; and software files for the state's ExpressPoll pollbooks — electronic devices used by poll workers to verify that a voter is registered before allowing them to cast a ballot. There also appeared to be databases for the so-called GEMS servers. These Global Election Management Systems are used to prepare paper and electronic ballots, tabulate votes and produce summaries of vote totals."<sup>1</sup> Exhibit A at ¶ 4.

5.

That is, Lamb discovered that he could access via the internet all of Georgia's voter registration records, including personally identifiable information, documents with election day passwords to access the central server for the election, and the code that was to be used to run the election. Everything a bad actor (such

---

<sup>1</sup> Kim Zetter, Will the Georgia Special Election Get Hacked, Politico, June 14, 2017, <http://www.politico.com/magazine/story/2017/06/14/will-the-georgia-special-election-get-hacked-215255> , (last visited June 30, 2017)

as a hacker) would need in order to interfere with the election, if such a bad actor wanted to.

6.

It is unknown how long CES left this data exposed before Lamb discovered it.

7.

In addition, the documents Lamb discovered included training videos, at least one of which “instructed users to first download files from the elections.kennesaw.edu website, put those files on a memory card, and insert that card into their local county voting systems.” Exhibit A at ¶11. Such a procedure would result in election workers ensuring that whatever code existed on CES’s website ended up on voting machines. This would be a serious security concern if CES’s servers were compromised, as in fact they were.

8.

Georgia law explicitly allows the Secretary of State to, on his own, reexamine the voting machines used in Georgia, and to prevent their use if they “can no longer be safely and accurately used.” O.C.G.A § 21-2-379.2. Despite this, CES and the Secretary of State allowed elections in 2016 and 2017 to be run on this compromised system with the knowledge that they could not be presumed to be “safe and accurate.”

9.

It is presently unknown if any party interfered with Georgia's elections in 2016 or 2017. But according to FBI Director Comey, hackers were "scanning" election systems in the lead up to the election in the fall of 2016.)<sup>2</sup> Subsequent reporting has suggested that as many as 39 states were targeted.<sup>3</sup> . Kemp, through his spokesman, denied that Georgia was one of the 39 states so targeted.<sup>4</sup>

10.

What is known is that the Department of Homeland Security ("DHS") held a call with election officials to discuss cyber security concerning the election in August 2016. At this time, DHS offered assistance to any state that wanted help securing its electronic election infrastructure.<sup>5</sup> Secretary of State Kemp, on behalf

---

<sup>2</sup> Kristina Torres, Georgia Not One of 20 States Targeted by Hackers Over Election Systems, Atlanta Journal Constitution, September 30, 2016, (<http://www.ajc.com/news/state--regional-govt--politics/georgia-not-one-states-targeted-hackers-over-election-systems/FvCGGjulVUm7VNMp8a9vuO/>) (last visited June 30, 2017)

<sup>3</sup> Michael Riley and Jordan Robertson, Russian Cyber Hacks on U.S. Electoral System Far Wider Than Previously Known, BloombergPolitics, June 13, 2017, <https://www.bloomberg.com/news/articles/2017-06-13/russian-breach-of-39-states-threatens-future-u-s-elections> (Last visited June 30, 2017)

<sup>4</sup> Kristina Torres, State Considers Dropping Election Data Center, Atlanta Journal Constitution, June 14, 2017, <http://www.myajc.com/news/state--regional-govt--politics/state-considers-dropping-election-data-center/YLERatmHYmLEqnOjUng2GL/> (last visited June 30, 2017)

<sup>5</sup> DHS Press Office, Readout of Secretary Johnson's Call With State Election Officials on Cybersecurity, Department of Homeland Security, August 15, 2016, <https://www.dhs.gov/news/2016/08/15/readout-secretary-johnsons-call-state-election-officials-cybersecurity> (last visited June 30, 2017)

of Georgia, refused that offer of assistance to secure Georgia's voting systems.<sup>6</sup>

Kemp said the offer amounted to an attempt to “subvert the Constitution to achieve the goal of federalizing elections under the guise of security.”<sup>7</sup>

11.

Despite this, upon information and belief, neither Secretary of State Kemp, CES, nor any other election official took action to ensure the security of Georgia's election infrastructure.

12.

Seven months after Lamb was able to access critical information concerning Georgia's voting systems via the internet, another researcher was able to do the same. On or about March 1, 2017, Chris Grayson (“Grayson”), a colleague of Lamb's, discovered that CES had not fixed all of the security issues identified by Lamb back in August 2016. That is, from at least August of 2016 to March of 2017, a time period that overlapped with known attempts by Russia to hack elections in the United States, CES left exposed for anyone on the internet to see:

---

<sup>6</sup> Marshall Cohen and Tom LoBianco, Hacking the Election? Feds Step in as States Fret Cyber Threats, CNN, September 23, 2016, <http://www.cnn.com/2016/09/23/politics/ohio-pennsylvania-election-2016-hack/index.html>, (last visited June 30, 2017)

<sup>7</sup> Id.

voter registration records, passwords for the central server, and election related applications.<sup>8</sup>

13.

Lamb confirmed Grayson’s findings, and he determined that he was still able to download the information he had accessed in August 2016 as well as new information which had since been uploaded. Exhibit A at ¶8.

14.

The newly discovered information included more recent files related to software and information related to the 2016 Presidential election. Exhibit A at ¶ 8.

15.

When Lamb notified CES directly of the issue in August 2016, Merle King, the Executive Director of CES, allegedly told him, “It would be best if you were to drop this now,” and warned that if Lamb did talk “the people downtown, the politicians ... would crush [him].”<sup>9</sup>

16.

This time, rather than notifying CES directly, Grayson notified Andrew Green, a colleague and a faculty member at Kennesaw State University (“KSU”). Email Chris Grayson to Andrew Green, March 2, 2017, attached as “Exhibit B.”

---

<sup>8</sup> Kim Zetter, [Will the Georgia Special Election Get Hacked](http://www.politico.com/magazine/story/2017/06/14/will-the-georgia-special-election-get-hacked-215255), Politico, June 14, 2017, <http://www.politico.com/magazine/story/2017/06/14/will-the-georgia-special-election-get-hacked-215255> (last visited June 30, 2017).

<sup>9</sup> *Id.*

On information and belief, Mr. Green notified KSU's University Information Technology Services ("UITS") Information Security Office, which in turn appears to have notified CES. KSU's UITS Information Security Office is not affiliated with CES. KSU UITS Information Security Office, "Incident Report", April 18, 2017, attached as "Exhibit C."

17.

Within an hour of Grayson's notification, the KSU UITS Information Security Office established a firewall to isolate CES's server. Exhibit C, pages 1-2. It is not known why this preventative action was not taken after Lamb's notification in August 2016.

18.

The day after Grayson's notification, the KSU UITS Information Security Office seized CES's server to preserve evidence "for later analysis and handoff to federal authorities." Exhibit C. It is not known why this action was not taken after Lamb's notification in August 2016.

19.

Two days after Grayson's notification, the FBI was alerted and took possession of the server. Exhibit C, page 1. It is not known why this action was not taken after Lamb's notification in August 2016.

20.

CES's information technology staff, which had previously been outside of KSU's Information Security Office, were then "realigned" to be a part of KSU's information security structure. Exhibit C, page 1. It is not known why this action was not taken after Lamb's notification in August 2016.

21.

Following the realignment, CES's information technology staff conducted a walkthrough, a cursory examination of the physical IT structure, with the Information Security Office. Exhibit C, page 1. This review led to the elections backup server also being physically removed. Id. It is not known why this action was not taken after Lamb's notification in August 2016.

22.

The walkthrough revealed numerous other security failures at CES. Exhibit C, pages 3-4. These failures included a door to the private elections server closet that did not lock properly, the presence of a wireless access point in the CES facility, and live access to an external network in the private network closet. Id.

23.

The "Incident Report" also found that no security assessment had been done on the supposedly isolated CES network. Exhibit C, page 4.

24.

CES was first alerted to Grayson's access to their systems on March 1, 2017. The "Incident Report" on this matter was completed on April 18, 2017 – which happened to be the date of the Special Election for Georgia's 6<sup>th</sup> Congressional District.

25.

Georgia law explicitly allows the Secretary of State to, on his own, reexamine the voting machines used in Georgia, and to prevent their use if they "can no longer be safely and accurately used." O.C.G.A. §21-2-379.2. Furthermore, Defendants had the authority to use paper ballots when a voting system is impracticable to use. O.C.G.A. §21-2-218.

26.

Despite this authority, duty, and ability to avoid unsafe systems, CES, the State Elections Board, and the Secretary of State allowed the April 18, 2017 Special Election to be run on a compromised system. Despite the knowledge of this compromised system, they chose not to use the only safe method for conducting the election – paper ballots. This is especially important because the electronic voting machines used in Georgia do not produce a paper record that is verified by the voter.

27.

While Lamb and Grayson’s access to CES’s supposedly secure systems was being investigated, others were sounding the alarm about the security of Georgia’s elections infrastructure.

28.

For example, on March 15, 2017 a group over twenty experts in the field of computer security and voting systems sent a letter to Kemp expressing their concerns with the security of Georgia’s election systems in light of the reported breach at CES.<sup>10</sup> And on March 16, 2017, the Democratic Party of Georgia, also responding to those reports, wrote Kennesaw State University, and copied Secretary of State Kemp, expressing concerns over the security of the election.<sup>11</sup>

29.

None of these warnings, appear to have resulted in any remedial action on the part of CES or the Secretary of State.

30.

On April 15, 2017, an additional known security breach occurred when electronic poll books, containing a voter registration database and software to

---

<sup>10</sup> Verified Voting Blog: Technology Experts’ Letter to Georgia Secretary of State Brian Kemp, VerifiedVoting, March 14, 2017, <https://www.verifiedvoting.org/verified-voting-letter-to-georgia-secretary-of-state-brian-kemp/> (last visited June 30, 2017)

<sup>11</sup> Letter from Chairman DuBose Porter, Democratic Party of Georgia to President Samuel S.Olens, Kennesaw State University, March 16, 2017, <http://www.georgiademocrat.org/wp-content/uploads/2017/03/KSU-Letter-of-Request-031617.pdf> (last visited June 30, 2017)

program voter access cards, were stolen from an election worker’s truck where he had left them unattended while grocery shopping. (<sup>12</sup> The Chairman of the Cobb County GOP was quoted as saying that, “The theft could just be a random thing, but the timing makes it much more worrisome, [...] I think there is cause to be concerned about the integrity of the elections.”<sup>13</sup>)

31.

This theft of electronic poll books did not cause Secretary of State Kemp to take any action such as decertifying the voting machines or call for the use of paper ballots.

32.

The April 18, 2017 Special Election experienced technical glitches, including voters being sent from one precinct to another and then back to their original precincts due to glitches in the electronic poll book software<sup>14</sup> and an error caused by the uploading of improper and unauthorized memory cards—something the system is not supposed to allow—that resulted in delays in uploading election

---

<sup>12</sup> Christopher Wallace, New details emerge in theft of Ga. Voting machines, Fox News April 18, 2017, <http://www.foxnews.com/politics/2017/04/18/new-details-emerge-in-theft-ga-voting-machines.html>, (last visited June 30, 2017.)

<sup>13</sup> Id.

<sup>14</sup> Kim Zetter, Will the Georgia Special Election Get Hacked, Politico, June 14, 2017, <http://www.politico.com/magazine/story/2017/06/14/will-the-georgia-special-election-get-hacked-215255>, (last visited June 30, 2017)

results.<sup>15</sup> These errors were sufficiently severe that Secretary of State Kemp called for an investigation into them.<sup>16</sup> No results from this investigation have been announced, nor has the public been told that it has been completed. Yet with that pending investigation ongoing, Secretary of State Kemp allowed the Runoff Election in Georgia's 6<sup>th</sup> Congressional district to be conducted on June 20, 2017 on the same voting system.

33.

On May 10, 2017, based on the publicly available information, and fearing that the June 20, 2017 election could be targeted, a group of electors utilized their rights under O.C.G.A §21-2-379.2 and requested that the voting machines in Georgia be reexamined. On May 15, 2017, a second letter was sent explaining the irreversible security issues in the system and a request that the voting machines be reexamined. Two additional letters followed requesting a timely response. No answer was received until after the electors filed suit against Secretary of State Kemp over his lack of response. See *Curling v. Kemp*, Case No. 2017CV290630.

34.

---

<sup>15</sup> Arielle Kass, 'Rare Error' Delays Fulton County Vote Counts in 6th District Race, Atlanta Journal Constitution, April 19, 2017, <http://www.ajc.com/news/local-govt--politics/rare-error-delays-fulton-county-vote-counts-6th-district-race/dleYXJvjL1R9gSswlswAJ/> (last visited June 30, 2017)

<sup>16</sup> Aaron Diamant and Berndt Petersen, State Opens Investigation into Issues With 6th District Race, WSBTV, May 26, 2017, <http://www.wsbtv.com/news/local/atlanta/state-opens-investigation-into-issues-with-6th-district-race/514213222> (last accessed June 30, 2017)

The Secretary of State's Office did not respond to the requests until June 5, 2017. He indicated that it would complete the recertification in approximately six months. Letter from C. Ryan Germany to various electors, June 5, 2017, attached as "Exhibit D."

35.

Pending the reexamination and despite the fact that Georgia law allows for voting to be done by paper ballot if the electronic system is unusable, the Secretary of State declined to use his authority under O.C.G.A §21-2-379.2 to prevent the use of voting machines for the June 20, 2017 Runoff. Exhibit D." The County Defendants likewise declined to use their authority under O.C.G.A. § 21-2-334 or § 21-2-28 to issue paper ballots for the June 20, 2017 Runoff.

36.

Notwithstanding the known incidents of outside access into Georgia's election system, the known attempted breaches, concerns about potentially undetected breaches, the stolen electronic poll books, other security failures, glitches in the April 18 Special Election, and the pending request for reexamination, the Secretary of State and CES allowed the June 20, 2017 Runoff in the Special Election for Georgia's 6<sup>th</sup> Congressional district to be conducted by voting machines, rather than by paper ballot.

37.

All of this took place against the backdrop of Georgia’s election systems being particularly vulnerable to begin with.

38.

The State of Georgia uses Direct Electronic Recording (“DRE”) voting machines to conduct its elections. These devices, when working properly, directly record a voter’s ballot to an electronic storage medium for tabulation. DRE voting machines, unlike other voting methods do not allow voters to verify that their votes have been correctly recorded and do not create paper records of how votes were cast. Affidavit of Edward W. Felten, ¶¶5 -6, Attached as “Exhibit E.” This lack of paper trail is the reason “computer scientists and cybersecurity experts typically recommend against the use of DREs.” *Id.* At ¶ 7.

39.

Security researchers have repeatedly demonstrated that the hardware and software of these types of machines is vulnerable to hacking. Exhibit E. For example, in 2006, security researchers from Princeton, including Edward W. Felten, were able to hack an AccuVote TS, the primary machine in use in Georgia, in under four minutes using just \$12 worth of tools.<sup>17</sup> This hack allowed them to infect a single AccuVote TS machine in a way that would spread to the total

---

<sup>17</sup> Daniel Turner, How to Hack an Election in One Minute, MIT Technology Review, September 18, 2016, <https://www.technologyreview.com/s/406525/how-to-hack-an-election-in-one-minute/> (last visited June 30, 2016).

election results when the device's memory card was used to tabulate the results.<sup>18</sup> They were able to prove that these machines could be physically hacked in a matter of minutes, malicious software could be installed, and then that malicious software could spread.<sup>19</sup> See Exhibit E. Since these machines do not provide a voter-verified paper ballot, there is no independent method to confirm that votes were counted, and counted as cast.

40.

Because of security concerns, several states have decertified these voting machines and/or the software running on them. For example, in 2006 Maryland's House of Delegates voted unanimously to stop using these machines<sup>20</sup> and in 2009 the Secretary of State for the State of California decertified the code running on them, GEMS 1.18.19.<sup>21</sup> The version of GEMS that California decertified was only three minor revisions earlier than the version of GEMS now being used in Georgia, GEMS 1.18.22.

41.

---

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Common Sense in Maryland, New York Times, March 23, 2006, <http://www.nytimes.com/2006/03/23/opinion/common-sense-in-maryland.html?mcubz=1> (last visited June 30, 2017)

<sup>21</sup> Withdrawal of Approval of Premier Election Solutions, Inc./Diebold Election Systems, Inc., GEMS 1.18.19, Office of the Secretary of State of the State of California, March 30, 2009, <http://votingsystems.cdn.sos.ca.gov/vendors/premier/premier-11819-withdrawal-approval033009.pdf> (last visited June 30, 2017)

The security problems are exacerbated by the age of Georgia's voting machines, which are now mostly over 13 years old. Electronic voting devices over ten years old are generally understood to have surpassed their expected life span and core components begin to break or malfunction at that point in time.<sup>22</sup> Worse, as the Brennan Center for Justice notes, older machines have more security vulnerabilities than newer devices and so are more susceptible to hacking and outside interference. Further, they tend to run outdated software on outdated and no longer manufactured hardware leading to additional difficulties and security issues.<sup>23</sup>

42.

These problems are also exacerbated by the fact that Georgia uses just one kind of machine, running one set of software for its elections, programmed by and downloaded from one central location—CES. Exhibit E at ¶ 26. This makes Georgia far easier to target than states that use multiple systems, as only one vulnerability needs to be exploited. We know that the system was vulnerable because two researchers accessed it from the internet. In Georgia, a bad actor could manipulate the state's electoral process by targeting CES.

---

<sup>22</sup> Kristina Torres, An Election Primer on Georgia's Voting System and Ballot Security, Atlanta Journal Constitution, September 9, 2016, <http://www.myajc.com/news/state--regional-govt--politics/election-primer-georgia-voting-system-and-ballot-security/yedbpzowTMxdeBOwjHlkZP> (last visited June 30, 2017)

<sup>23</sup> [https://www.brennancenter.org/sites/default/files/publications/Americas\\_Voting\\_Machines\\_At\\_Risk.pdf](https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf) pages 12-17).

43.

The fact that the electronic infrastructure is centralized at a single location, CES, provides an additional point of vulnerability. If CES inadvertently exposed passwords to the central server, exposed code, left key rooms unlocked, or permitted unauthorized internet access, a malicious hacker could tamper with the election results. In other states, a single point of failure would not render the entire election suspect as most use decentralized--and properly certified--systems.

44.

The DRE system used by Georgia creates no paper trail by which the accuracy of the vote can be verified. See Exhibit E. There is no physical record to ensure that votes are counted, and counted as cast.

45.

As Dr. Felten notes, “Because of the vulnerability of the DRE voting machines to software manipulation, and because of the intelligence reports about highly skilled cyber-attackers having attempted to affect elections in the United States, [stringent] precautions appear to be indicated for the CES systems. In the absence of stringent precautions to find and expel potential intruders in the CES systems, the ability of voting-related systems that have been in the CES facility to function correctly and securely should be viewed with greater skepticism.” Exhibit E at ¶ 29.

46.

Georgia began using a DRE system to conduct its elections in 2002. The devices used were certified for use by the then Secretary of State, Cathy Cox. Certification of Election Systems for use in Georgia, attached as “Exhibit F.” Secretary of State Cox again certified these systems in 2003, 2004, 2005, and 2006. Id. Her successor, Karen Handel, certified the devices that were used in 2007. Id. An examination of the certifications on file suggests that this is the last time a Georgia Secretary of State certified the devices—albeit without explicitly opining on the safety and accuracy of the voting system of the State of Georgia, as is further required.

47.

Secretary of State Kemp has not once--in the past seven years of his two terms in office as Secretary of State--certified that Georgia’s election system “can be safely and accurately used by electors at primaries and elections,” as required by Georgia law. O.C.G.A §21-2-379.2. By knowledge and belief, this is problematic because the system has changed since its last certification in 2007--ten years ago.

48.

O.C.G.A §21-2-379.2(b) states that if, upon examination or reexamination the Secretary of State believes “the kind of system so examined can be safely and

accurately used by electors at primaries and elections” he shall make and certify a report to that effect and store such a report in his office. O.C.G.A §21-2-379.2(c) states that “No kind of direct recording electronic voting system not so approved shall be used at any primary or election.”

49.

Despite not being certified for use, and despite the pending request for reexamination, Secretary of State Kemp allowed the uncertified and compromised systems to be used in the June 20, 2017 Runoff election.

50.

The right to vote is the foundation of our democracy. It is how we ensure that our government has the consent of the governed. It is enshrined in the Federal Constitution and in the Constitution of the State of Georgia. Electors have the right to vote, the right to do so by secret ballot, the right to have their ballot accurately tabulated, and the right to be assured that their vote will be counted and recorded accurately. When electors cannot trust that their vote will be accurately counted and recorded, it has a chilling effect and violates those rights. When votes are not properly recorded or counted, then those rights have been violated.

51.

All of this motivates the present case. The U.S. electoral system has been under attack. Georgia is particularly vulnerable, as it uses old, outdated systems

with major security flaws. Georgia refused help from the DHS to protect its voting systems. Secretary of State Kemp has never certified that the system in use is safe and accurate--and he has been in office since January 2010. CES was improperly secured, and CES allowed key information to be accessible via the internet--from at least August 2016 until March 2017. After that, the voting system was not forensically tested and analyzed to ensure that it was secure prior to the Special Election on April 18, 2017 or the Runoff election on June 20, 2017.

52.

Electors have a right to be secure in their votes. Given the circumstances under which the June 20, 2017 Runoff was held, electors who voted using the DRE voting machines cannot be certain that their votes were counted, or counted as cast. Consequently, considerable doubt has been cast on the results of the election as a result of the aforementioned irregularities and misconduct of officials.

## **II. JURISDICTION AND VENUE**

53.

Plaintiffs bring claims under the United States Constitution, the Georgia Constitution, and the laws of the State of Georgia. This Court has jurisdiction based upon O.C.G.A. §§ 9-4-1 to -10 to grant declaratory relief; based upon

O.C.G.A. §§ 9-5-1 to -11 to grant injunctive relief; and based upon O.C.G.A. §§ 9-6-20 to -28 to grant relief by way of issuing the writ of mandamus.

54.

Venue in this Court is proper under O.C.G.A. § 9-10-30 because Fulton County is the county of residence of at least one of the Defendants against whom substantial equitable relief is prayed. The principal office of the Secretary of State's Elections Divisions is located at 2 Martin L. King Jr. Drive SE, Suite 1104, Atlanta, Fulton County, Georgia, 30334, as such, jurisdiction and venue are proper in this Court.

### **III. PLAINTIFFS**

55.

Plaintiff DONNA CURLING (“Curling”) is an elector of the State of Georgia and a resident of Fulton County and the Sixth Congressional District of the State of Georgia. Curling is a member of the COALITION FOR GOOD GOVERNANCE. Curling is an “aggrieved elector who was entitled to vote” for a candidate in Runoff for the Special Election (“Special Election”) in Georgia’s Sixth Congressional District between Karen Handel and John Ossoff, held on June 20, 2017 (the “Runoff”) under O.C.G.A. § 21-2-521. Furthermore, the ballot

system under which she cast her vote substantially burdens her right to vote, as the system is fundamentally insecure, illegally employed, and cannot be reasonably relied upon to have properly recorded and counted her vote and the votes of other electors. As such, she has standing to bring her claims.

56.

Plaintiff COALITION FOR GOOD GOVERNANCE. (“CGG”), is a non-profit corporation organized and existing under the laws of the State of Colorado. CGG’s purpose is to advance the constitutional liberties and individual rights of citizens, with an emphasis on elections, by--among other activities--engaging in and supporting litigation. CGG is a membership organization. Its membership includes Curling, Price, and other electors of the State of Georgia who reside in, variously, Fulton County, Cobb County, DeKalb County, and the Sixth Congressional District of the State of Georgia. Several of CGG’s Georgia elector members voted in the Runoff.

57.

Plaintiff CGG has associational standing to bring this complaint on behalf of CGG’s Georgia individual elector members because (1) those members would otherwise have standing to sue in their own right; (2) the interests CGG seeks to protect are germane to CGG’s purpose; and because (3) with the exception of

Courts IV and V, the relief requested herein does not require the participation of CGG's individual Georgia elector members in the lawsuit.

58.

Plaintiff DONNA PRICE ("Price") is an elector of the State of Georgia and a resident of DeKalb County. Price was among the Georgia Electors who signed the May 10, 2017 and May 17, 2017 letters requesting that Kemp re-examine the state's voting system. Also, Price casts her ballot under a system which substantially burdens her right to vote, as the system is fundamentally insecure, illegally employed, and cannot be reasonably relied upon to record and count her votes properly and the votes of other voters. As such, she has standing to bring a writ of mandamus claim.

59.

Plaintiff JEFFREY SCHOENBERG ("Schoenberg") is an elector of the State of Georgia and a resident of DeKalb County and the Sixth Congressional District of the State of Georgia. Schoenberg is also an "aggrieved elector who was entitled to vote" for a candidate in the Runoff under O.C.G.A. § 21-2-521. Furthermore, the ballot system under which he cast his vote substantially burdens his right to vote, as the system is fundamentally insecure, illegally employed, and cannot be reasonably relied upon to have properly recorded and counted his vote and the votes of other voters. As such, he has standing to bring his claims.

60.

Plaintiff LAURA DIGGES (“L. Digges”) is an elector of the State of Georgia and a resident of Cobb County and the Sixth Congressional District of the State of Georgia. L. Digges is also an “aggrieved elector who was entitled to vote” for a candidate in the Runoff under O.C.G.A. § 21-2-521. Furthermore, the ballot system under which she cast her vote substantially burdens her right to vote, as the system is fundamentally insecure, illegally employed, and cannot be reasonably relied upon to have properly recorded and counted her vote and the votes of other voters. As such, she has standing to bring her claims.

61.

Plaintiff WILLIAM DIGGES III (“W. Digges”) is an elector of the State of Georgia and a resident of Cobb County and the Sixth Congressional District of the State of Georgia. W. Digges is an “aggrieved elector who was entitled to vote” for a candidate in the Runoff under O.C.G.A. § 21-2-521. Furthermore, the ballot system under which he cast his vote substantially burdens his right to vote, as the system is fundamentally insecure, illegally employed, and cannot be reasonably relied upon to have properly recorded and counted his vote and the votes of other voters. As such, he has standing to bring her claims.

62.

Plaintiff RICARDO DAVIS (“Davis”) is an elector of the State of Georgia and a resident of Cherokee County. Davis was among the Georgia Electors who signed the May 10, 2017 and May 17, 2017 letters requesting that Kemp re-examine the state’s voting system. Also, Davis casts his ballot under a system which substantially burdens his right to vote, as the system is fundamentally insecure, illegally employed, and cannot be reasonably relied upon to record and count his votes properly and the votes of other voters. As such, he has standing to bring a writ of mandamus claim.

#### **IV. DEFENDANTS**

63.

Defendant BRIAN P. KEMP (“Kemp”) is the Secretary of State of Georgia and, in that role, is also Chair of the State Election Board. In his official and individual capacity, he is responsible for the orderly and accurate administration of Georgia’s the electoral processes, which includes the duty to approve the use of Georgia’s voting systems and to conduct any reexaminations of Georgia’s voting systems, upon request or at his own discretion. O.C.G.A. § 21-2-379.2(a)-(b). See O.C.G.A. § 21-2-50.

64.

Defendants DAVID J. WORLEY, REBECCA N. SULLIVAN, RALPH F. “RUSTY” SIMPSON, and SETH HARP (“Members of the State Election Board”) are members of the State Election Board in Georgia. In their individual capacities and their official capacities as members, they are responsible for (1) promulgating rules and regulations to ensure the legality and purity of all elections, (2) investigating frauds and irregularities in elections, and (3) reporting election law violations to the Attorney General or appropriate district attorney. O.C.G.A. § 21-2-31.

65.

Defendant STATE ELECTION BOARD (“State Board”) is responsible for (1) promulgating rules and regulations to ensure the legality and purity of all elections, (2) investigating frauds and irregularities in elections, and (3) reporting election law violations to the Attorney General or appropriate district attorney. O.C.G.A. § 21-2-31.

66.

Defendant RICHARD BARRON (“Barron”) is the Director of the Fulton County Board of Elections and Registration. In his official and individual capacity, he was responsible for conducting the April 18, 2017 Special Election and the June 20, 2017 Runoff in Fulton County.

67.

Defendants MARY CAROLE COONEY, VERNETTA NURIDDIN, DAVID J. BURGE, STAN MATARAZZO, AND AARON JOHNSON (“Members of Fulton County Board of Registration and Elections”) are members of the Fulton County Board of Registration and Elections. In their official and individual capacities, they were responsible for conducting the Special Election and Runoff in Fulton County.

68.

Defendant FULTON COUNTY BOARD OF ELECTIONS AND REGISTRATION (“Fulton Board”) is responsible for conducting elections in Fulton County, including the Runoff.

69.

Defendant MAXINE DANIELS (“Daniels”) is the Director of Voter Registrations and Elections for DeKalb County. In her official and individual capacity, she is responsible for conducting the elections in DeKalb County, including the Runoff.

70.

Defendants MICHAEL P. COVENY, ANTHONY LEWIS, LEONA PERRY, SAMUEL E. TILLMAN, and BAOKY N. VU (“Members of DeKalb County Board of Registrations and Elections”) are members of the DeKalb County Board of Registration and Elections. In their official and individual capacities, they

were responsible for conducting the Special Election and Runoff in DeKalb County.

71.

Defendant DEKALB COUNTY BOARD OF ELECTIONS AND REGISTRATION (“DeKalb Board”) is responsible for conducting elections in DeKalb County, including the Runoff.

72.

Defendant JANINE EVELER (“Eveler”) is the Director of the Cobb County Board of Elections and Registration. In her official and individual capacity, she is responsible for conducting the elections in Cobb County, including the Runoff.

73.

Defendants PHIL DANIELL, FRED AIKEN, JOE PETTIT, JESSICA BROOKS, and DARRYL O. WILSON (“Cobb County Board of Elections and Registration”) are members of the Cobb County Board of Elections and Registration. In their official and individual capacities, they were responsible for conducting the Special Election and Runoff in Cobb County.

74.

Defendant COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION (“Cobb Board”) is responsible for conducting elections in Cobb County, including the Runoff.

75.

Defendant MERLE KING (“King”) is Executive Director of the Center for Election Systems at Kennesaw State University. In his official and individual capacities, he is responsible for overseeing and maintaining the DRE-based registration systems used in the Special Election and the Runoff.

76.

Defendant The CENTER FOR ELECTION SYSTEMS AT KENNESAW STATE UNIVERSITY (“CES”) is responsible for overseeing and maintaining the DRE-based registration systems used in the Special Election and the Runoff.

## **V. FACTUAL ALLEGATIONS**

77.

The allegations of paragraphs 1 through 76 above are hereby incorporated as the allegations of this paragraph 77 this complaint.

78.

Plaintiffs are electors of the State of Georgia, and an association that includes among its members electors of the State of Georgia, who are concerned about the integrity, credibility, security, and reliability of the electoral process.

79.

Their concern about the integrity, credibility, security, and reliability of the electoral process has lead them to oppose the general use of Georgia’s unsafe, uncertified, insecure, and inaccurate voting system (“Georgia’s direct-recording electronic (‘DRE’)-Based Voting System”), and specifically its use during the June 20, 2017 Runoff.

A. GENERAL ALLEGATIONS

80.

On June 20, 2017, the Runoff in the Special Election for Georgia’s Sixth Congressional District was held to replace the previous incumbent, Congressman Tom Price. Advance voting in the Runoff began on May 30, 2017, pursuant to O.C.G.A. § 21-2-385(d). Karen Handel was certified as the winner of the election.

81.

Georgia’s Sixth Congressional District spans portions of Fulton, Cobb, and DeKalb Counties.

82.

O.C.G.A. § 21-2-379.2(c) prohibits the use of any kind of DRE voting system not approved by the Secretary of State at any primary or election

83.

Georgia's DRE-Based Voting System, as currently in use in all 159 of Georgia's counties consists of the following configuration of components and related firmware and software:

- Optical Scan: AccuVote OS 1.94W
- Touch Screen: R6 – Ballot Station 4.5.2! and TSx – Ballot Station 4.5.2!
- ExpressPoll: ExpressPoll 4000 and 5000; Express Poll 2.1.2 and Security Key 4.5+
- Election Management System: GEMS 1.18.22G!
- Honeywell barcode scanner: MK1690-38-12-ISI, used with ExpressPoll pollbooks

(the foregoing, the DRE-Based Voting System). There is no evidence the Secretary of State ever approved of or certified the system in its current form.

84.

Defendant Barron and the Fulton County BOE used Georgia's DRE-Based Voting System to conduct the Special Election and Runoff in Fulton County.

85.

Defendant Daniels and the DeKalb County BOE used Georgia's DRE-Based Voting System to conduct the Special Election and Runoff in DeKalb County.

86.

Defendant Eveler and the Cobb County BOE used Georgia's DRE-Based Voting System to conduct the Special Election and Runoff in Cobb County.

87.

O.C.G.A. § 21-2-379.2(a) grants ten or more concerned electors the right to require the Secretary of State "at any time" to conduct a reexamination of a previously examined and approved DRE voting system. Specifically, O.C.G.A. § 21-2-379.2(a) reads as follows:

(a) Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any direct recording electronic voting system may request the Secretary of State to examine the system. Any ten or more electors of this state may, at any time, request the Secretary of State to reexamine any such system previously examined and approved by him or her. Before any such examination or reexamination, the person, persons, or organization requesting such examination or reexamination shall pay to the Secretary of State the reasonable expenses of such examination. The Secretary of State may, at any time, in his or her discretion, reexamine any such system.

88.

O.C.G.A. § 21-2-379.2(b) provides that, upon receiving such a request for reexamination from ten or more electors, the Secretary of State has a duty to reexamine the DRE voting system. The statute reads as follows:

(b) The Secretary of State shall thereupon examine or reexamine such direct recording electronic voting system and shall make and file in his or her office a report, attested by his or her signature and the seal of his or her office, stating whether, in his or her opinion, the kind of system so examined can be safely and accurately used by electors at primaries and elections as provided in this chapter. If this report states that the system can be so used, the system shall be deemed approved; and systems of its kind may be adopted for use at primaries and elections as provided in this chapter.

89.

O.C.G.A. § 21-2-379.2(c) provides that, if reexamination shows that a DRE voting system “can no longer be safely or accurately used” then the approval of that system “shall immediately be revoked by the Secretary of State; and no such system shall thereafter ... be used in this state.” (emphasis added). The statute reads as follows:

(c) No kind of direct recording electronic voting system not so approved shall be used at any primary or election and if, upon the reexamination of any such system previously approved, it shall appear that the system so

reexamined can no longer be safely or accurately used by electors at primaries or elections as provided in this chapter because of any problem concerning its ability to accurately record or tabulate votes, the approval of the same shall immediately be revoked by the Secretary of State; and no such system shall thereafter be purchased for use or be used in this state.

90.

Georgia's election laws contemplate that elections normally required to be conducted using voting equipment may instead be conducted using paper ballots if circumstances so require.

91.

First, O.C.G.A. § 21-2-334 (emphasis added) provides as follows:

§ 21-2-334. Voting by ballot

If a method of nomination or election for any candidate or office, or of voting on any question is prescribed by law, in which the use of voting machines is not possible or practicable, or in case, at any primary or election, the number of candidates seeking nomination or nominated for any office renders the use of voting machines for such office at such primary or election impracticable, or if, for any other reason, at any primary or election the use of voting machines wholly or in part is not practicable, the superintendent may arrange to have the voting for such candidates or offices

or for such questions conducted by paper ballots. In such cases, paper ballots shall be printed for such candidates, offices, or questions, and the primary or election shall be conducted by the poll officers, and the ballots shall be counted and return thereof made in the manner required by law for such nominations, offices, or questions, insofar as paper ballots are used.

92.

Second, O.C.G.A. § 21-2-281 provides as follows:

§ 21-2-281. Use of paper ballots where use of voting equipment impossible or impracticable

In any primary or election in which the use of voting equipment is impossible or impracticable, for the reasons set out in Code Section 21-2-334, the primary or election may be conducted by paper ballot in the manner provided in Code Section 21-2-334.

93.

O.C.G.A. § 21-2, Article 11, Part 2, provides the detailed procedures that are required to be used in precincts that conduct primaries and elections using paper ballots.

## B. KNOWN SECURITY AND ACCURACY PROBLEMS IN GEORGIA'S DRE-BASED VOTING SYSTEM

94.

Georgia's DRE-Based Voting System is subject to widely known safety and accuracy concerns as summarized in the affidavits of Professor Duncan Buell and Professor Edward Felten. Attached as Exhibit I and Exhibit J, respectively.

95.

In considering the use of Georgia's DRE-based voting system, its inherent deficiencies and recent security failures must be acknowledged. These inherent deficiencies and recent security failures include, but are not limited to:

96.

First, the legal--but no less concerning--infiltration of Georgia's DRE-based voting system via CES's public webpage by Logan Lamb in August 2016 and again in March 2017 by Christian Grayson, as summarized in Logan's affidavit. Attached as Exhibit A.

97.

Second, numerous critical security vulnerabilities and deficiencies were identified prior to the Special Election and Runoff at the State's CES. CES is responsible for ensuring the integrity of the voting systems and developing and implementing security procedures for the election management software installed in all county election offices and voting systems. CES also is responsible for

programming these systems for each election, and providing all counties with instructions for accessing and validating the system's software. A security breach at CES could have dire security consequences for the integrity of the technology used for elections in Georgia. CES's cybersecurity was reviewed at a high level "walk through" review. See Exhibit [original exhibit 2, now Ex. K.], attached as a result of the reported March 2017 intrusion. Some of the immediately obvious security vulnerabilities were reported in an incident report. Attached as Exhibit K, at 7-12.

98.

Third, on May 24, 2017, after becoming aware of problems with the electronic tabulation of the Fulton County Special Election, sixteen computer scientists wrote Defendant Kemp to express profound concerns about the lack of verifiability and unacceptable security of Georgia's DRE-Based Voting System. Attached as Exhibit H. The computer scientists reiterated cybersecurity concerns that many of them had expressed in a similar letter sent on March 15, 2017, following the remote electronic intrusion into the Georgia's system in March 2017. Exhibit L, at 7-9. The computer scientists urged Defendant Kemp to treat the breach at CES "as a national security issue with all seriousness and intensity." Ex. H, at 1. They stated that "a truly comprehensive, thorough and meaningful forensic computer security investigation likely would not be completed in just a few

weeks.” Id. They warned that the error that occurred in Fulton County during the Special Election for the Sixth Congressional District on April 18, 2017 could indicate a corrupted database that must be investigated. The computer scientists urged the use of paper ballots. Id. at 2.

99.

Fourth, failures in Georgia’s DRE-Based Voting System caused improper memory cards to be uploaded into the election database during the April 18, 2017, Special Election for the Sixth Congressional District. Defendant Barron told the Fulton County Board of Commissioners that the system did not prevent the uploading of improper election memory cards and data and only generated an unintelligible error message when an attempt was made to export the results from the Election Management System (GEMS) into the Election-Night Reporting system (a separate application from the voting system itself). Exhibit 4. Federal voting system standards require controls that prevent the introduction of improper memory cards. Unconventional procedures, including deleting precinct voting results in the database, reportedly were used to correct this error, but the corrections themselves lacked a verifiable audit trail. It was reported in the press that Kemp initiated an investigation of the April 18 Fulton County system failure. On information and belief, that investigation has not been completed. Therefore, Georgia’s DRE-Based Voting System cannot be relied upon to produce accurate

results from the Runoff, or for further use while the system continued failures are still under investigation and analysis, because it cannot be safely or accurately used.

100.

Fifth, on all election nights, Fulton County transmits ballot data from touchscreen machine memory cards to the GEMS tabulation server (i.e., the Election Management System used in Georgia's DRE-Based Voting System) via modem in an unauthorized configuration that, on information and belief, does not use adequate encryption. Voting systems standards require that security of data transmission be assured. The lack of security in transmission exposes the system to, and invites attack. The State Board agrees that such data transmission is insecure, which is why it requires a two step-process when reporting election results. First, memory cards from the voting machines are physically upload to the GEMS server to tabulate official results. Then, the results are deleted from GEMS. However, this process exposes the TSx machines, the GEMS server, and the DRE-system memory cards to malicious code throughout the system.

101.

Sixth, the physical security of DRE voting equipment used in Georgia's DRE-Based Voting System has been inadequate during pre- and post-election machine storage, leaving the machines vulnerable to attack and compromise.

102.

Seventh, as noted in the Elector Group's letter of May 17, 2017, Ex. K, at 4, Georgia's DRE-Based Voting System does not meet fundamental voting system standards for federal certification, including mandatory audit capacity standards required by the Help America Vote Act, 52 U.S.C. § 21081.

103.

Despite the facts claimed in paragraph 30, Defendants Kemp and King both claim that the system is "federally and state certified." However, neither Kemp nor King have been able to provide evidence of certification of the current system configuration. The DRE voting equipment used in Georgia's DRE-Based Voting System provides no audit trail or verifiable record that can be used to recover from a malicious attack, human error, or software failure. Any such failure is difficult or impossible to detect--unlike errors in a paper ballot system, where problems can be isolated and manually corrected to reflect the voter's intent.

104.

Eighth, the Elector Group's letters of May 10, 2017, Ex. L, and of May 17, 2017, (Ex. K), both detail numerous other significant security and accuracy concerns that precluded Georgia's DRE-Based Voting System from being used safely and accurately in the June 20 election.

105.

Ninth, Georgia's DRE-Based Voting System is fifteen years old, relies upon a back-end database that is outdated, inadequate, and runs on an operating system that is currently past its support life. Such a relatively old configuration is inherently vulnerable to hacking, errors, and other mischief.

C. DEFENDANT KEMP FAILED TO EXAMINE AND APPROVE THE VOTING SYSTEM

106.

The Secretary of State is required by O.C.G.A. § 21-2-379.2 to formally approve a voting system that can be "safely and accurately used." No such documentation exists for the DRE-based system used in recent years. Elections in Georgia cannot be legally conducted on a system that is not approved by the Secretary of State.

107.

Any new the Voting system deployed after April 17, 2005 is required to meet the certification standards in Ga. Comp. R. & Regs. 590-8-1-.01. That regulation requires compliance with the most recent Election Assistance Commission (EAC) voting standards. Secretary Kemp has not attempted to certify the system in use to those mandatory state standards, although the current equipment configuration constitutes a new system deployed after April 17, 2005.

108.

On May 10, 2017, a group of Georgia electors including Plaintiff Davis, concerned about the security issues that had become public knowledge, filed a formal request Secretary Kemp seeking a re-examination of the equipment under the provisions of O.C.G.A. § 21-2-379.2(a). Kemp has failed to conduct a timely review of the system either at his own initiation or in response to the request of the concerned citizens.

D. IMPROPER CERTIFICATION OF THE ELECTION

109.

As noted above, the system used for the June 20 election has not been approved in compliance with the election code and regulations, and its use renders an election illegal and unconstitutional.

110.

To provide for election transparency citizen oversight of Georgia elections, Georgia election regulations, provide for citizen initiated re-canvassing of any precincts which seem to have erroneous results from the DRE-voting machines. Ga. Comp. R. & Regs. 183-1-12. These regulations permit citizens to choose any or all precincts to demand re-canvassing of the votes, by having the memory cards reread body tabulation server by the election officials prior to the certification of

results. Members of CGG (then Rocky Mountain Foundation) and other citizens wrote to each DeKalb County and Cobb County boards of elections prior to county-level certification specifying the precincts where they believe that there may be erroneous results, and requesting a recanvassing prior to the certification. See Exhibit J. In each case, county officials denied their properly submitted requests for recanvassing.

111.

Prior to each county election board meeting, on behalf of its members who are eligible electors in the Sixth Congressional District, CGG (then Rocky Mountain Foundation) filed a letter requesting that each county board deny certification of the election because of the numerous violations of law occurring during the conduct of the election. Exhibit N, attached. The letter and concerns expressed were not discussed at any of the county board meetings. The boards simply rubberstamped the results without concern about the legality or accuracy of the returns.

112.

On information and belief, Secretary Kemp almost immediately certified the consolidated return for the special election after the DeKalb County certification had taken place, despite the fact that he was informed of the trampling of the

citizens' rights to seek a re-canvas of precincts that appeared to show irregularities or questionable results.

E. Irreparable Harm / Inadequate Remedy at Law

113.

Georgia electors who cast their votes in person during the Runoff were required to cast their votes using Georgia's DRE-Based Voting System.

114.

Georgia's DRE-Based Voting System could not be used safely and accurately by electors voting in the Runoff because Georgia's DRE-Based Voting System is demonstrably vulnerable to undetectable malfunctions and malicious manipulation that cannot be corrected.

115.

Each Plaintiff and the Georgia elector members of Plaintiff CGG were harmed in the exercise of their constitutional fundamental right to vote in the Runoff because Georgia used an unsafe, unsecure, and uncertified DRE-Based Voting System that was subjected to undetected, unauthorized access and potential manipulation.

116.

Plaintiffs and the Georgia elector members of Plaintiff CGG cannot be adequately compensated for these harms in an action at law for money damages.

## **VI. COUNTS**

### **COUNT I: VIOLATION OF ARTICLE II, SECTION I, PARAGRAPH I, OF THE GEORGIA CONSTITUTION OF 1983**

**(All Plaintiffs, Against All Defendants In Individual Capacities, Except State  
Board, Fulton Board, DeKalb Board, Cobb Board, and CES)**

**Declaratory and Injunctive Relief**

**O.C.G.A. § 9-4-2 and O.C.G.A. § 9-4-3**

**Enjoining Use of Georgia's DRE-Based Voting System Until It Is  
Properly Reexamined and Approved by the Secretary of State**

117.

The allegation of paragraphs 1 through 116 above are hereby incorporated as the allegations of this paragraph 117 of Count One of this complaint.

118.

Article II, Section 1, Paragraph 1 of the Georgia Constitution provides, “Elections by the people shall be by secret ballot and shall be conducted in accordance with procedures provided by law.”

119.

Elections must be conducted in accordance the statutes and regulations of the State of Georgia.

120.

The Runoff was not conducted in accordance with the “procedures provided by law” because the DRE-Based Voting System was in violation of O.C.G.A. § 21-2-379.1(8) at the time of the Runoff. O.C.G.A. § 21-2-379.1(8) provides that DRE-Based Voting Systems “shall, when properly operated [by an elector], register or record correctly and accurately every vote cast.”

121.

Georgia’s DRE-based voting system violated O.C.G.A. § 21-2-379.1(8) during the Runoff because as a likely compromised system, it cannot be trusted to “register or record correctly and accurately every vote cast,” even when “operated properly” by electors. Defendants knew that the system had been unsecured and could not be presumed to be safe or in compliance with regulations.

122.

Additionally, the Runoff was not conducted in accordance with the “procedures provided by law” because the DRE-Based Voting System used was in violation of O.C.G.A. § 21-2-379.2. Georgia code section 21-2-379.2(a) requires the DRE system to be properly examined and certified by the Secretary of State prior to the election, if “[a]ny ten or more electors of this state request the Secretary of State to reexamine any such system previously examined and approved by him or her.” Id.

123.

That was not done here. Ten Georgia electors requested Secretary of State Kemp re-examine the DRE-Based Voting System prior to the Runoff three times, on May 10, 17, and 19, 2017. Secretary Kemp responded to the request on June 2, 2017, stating that re-examining the system would cost \$10,000 and take six months. Thus, not only precluding a re-examination of the system before the Runoff, but also before the remaining 2017 primaries and elections.

124.

After a request to examine or reexamine the DRE-Based voting system, “no kind of [DRE] voting system” not so examined or reexamined “shall be used at any primary or election.” O.C.G.A. § 21-2-379.2(c). Despite this, the DRE-Based Voting System was used during the Runoff. Kemp was well aware that the system could not pass certification standards nor be approved as “safe or accurate.” By

choosing to move forward, he abrogated his statutory duties and abused his discretion.

125.

The importance of examining and reexamining the DRE-voting system prior to elections is stressed in the Georgia Code. Upon examination, should it “appear that the system... can no longer be safely or accurately used by electors” as provided under the Georgia Code “because of any problem concerning its ability to accurately record or tabulate votes” then the Secretary of State should “immediately” revoke his approval. O.C.G.A. §21-2-379.2(c). Indeed, given the knowledge Kemp and other Defendants had of how non-compliant and insecure the system was, the system should have been sidelined before electors had requested re-examinations.

126.

Since Defendant Kemp did not ensure the Runoff complied with the “procedures provided by law,” as alleged above, he has violated the Georgia Constitution. Other Defendants—including Members of the State Board, Barron, Members of the Fulton Board, Daniels, Members of the DeKalb Board, Eveler, members of the Cobb Board, or King—likewise did not ensure the Runoff complied with the “procedures provided by law,” as alleged above, which also constitutes a violation the Georgia Constitution.

127.

Georgia's DRE-Based Voting System, as alleged throughout this complaint, cannot be safely and accurately used, nor is it currently used in accordance with the Georgia Constitution or Georgia law.

128.

Accordingly, pursuant to O.C.G.A. § 9-4-2, Plaintiffs pray that this court will declare that these Defendants have violated the Constitution. Pursuant to O.C.G.A. § 9-4-3, Plaintiffs also pray that this court will enjoin Defendants to void certification, as well as certification of election, until the election and its results have properly adhered to existing regulations. This court should also enjoin Defendants' use of Georgia's DRE-Based Voting System until the system is reexamined and certified by the Secretary of State to be safe and accurate as required by the Georgia Constitution and laws of this state.

**COUNT II: VIOLATION OF 42 USC § 1983 – DUE PROCESS**

**(All Plaintiffs, Against All Defendants In Official Capacities, Except State Board, Fulton Board, DeKalb Board, Cobb Board, and CES)**

**Declaratory and Injunctive Relief**

**O.C.G.A. § 9-4-2 and O.C.G.A. § 9-4-3**

**42 USC § 1983**

129.

The allegation of paragraphs 1 through 128 above are hereby incorporated as the allegations of this paragraph 129 of Count Two of this complaint.

130.

42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ... .”

131.

The failure to comply with the Georgia Constitution and the Georgia Code concerning elections is a violation of federal due process when the patent and fundamental fairness of the election is called into question.

132.

Patent and fundamental fairness of an election is called into question when allegations go well beyond an ordinary dispute over the counting and marking of ballots. Such is the case here.

133.

Elected Georgia government officials—and those they control—denied the electorate the right granted by Georgia Constitution to choose their elected official in accordance with the procedures provided by state law. Ga. Const. art. II, § 1, ¶ 2. These state officials include Defendants Kemp, Members of the State Board, Barron, Members of the Fulton Board, Daniels, Members of the DeKalb Board, Eveler, members of the Cobb Board, and King.

134.

Defendants violated O.C.G.A. § 21-2-379.1(8) which provides that the DRE system must, when properly operated by the elector, “record correctly and accurately every vote cast.” Consistent with experts who state that the system must be presumed to have been compromised, it is more than probable that the DRE system was compromised prior to the Runoff and that the system could not correctly or accurately count every vote during the Runoff.

135.

Instead, despite receiving a warning that the DRE-Based Voting System had been compromised--and knowing that that documents capable of enabling a

malicious attack were accessed and downloaded from the CES without authorization--Kemp responded by stating that the system was secure and that no review was needed. These actions amount to a purposeful and willful substantial burdening of the fundamental right to vote.

136.

Additionally, the Georgia's DRE-Based Voting System system must be properly certified, reexamined, and approved by the Secretary of State prior to any election, when so requested by ten or more electors. O.C.G.A. § 21-2-379.2; See Ga Comp. R. & Regs. 590-8-1.01. Here, the Secretary of State did not certify, reexamine or approve the system. See Counts VII and VIII, respectively.

137.

By violating the Georgia Constitution, Georgia's election officials distributed to GA-06 electors an illegal ballot, precluding their right to vote in the Runoff. See Counts Count IV and V, respectively.

138.

Under the circumstances alleged above, relief under 42 U.S.C. § 1983 is warranted. Accordingly, Plaintiffs ask this Court to declare that these Defendants have violated the fundamental right to due process of Plaintiffs and enjoin Defendants to void certification, as well as certification of election, until the election and its results have properly adhered to existing regulations. This court

should also enjoin Defendants’ use of Georgia’s DRE-Based Voting System until the system is reexamined and certified by the Secretary of State to be safe and accurate as required by the Georgia Constitution and laws of this state.

**COUNT III: VIOLATION OF 42 USC § 1983 – EQUAL PROTECTION**

**(All Plaintiffs, Against All Defendants In Official Capacities, Except State Board, Fulton Board, DeKalb Board, Cobb Board, and CES)**

**Declaratory and Injunctive Relief**

**O.C.G.A. § 9-4-2 and O.C.G.A. § 9-4-3**

**42 USC § 1983**

139.

The allegation of paragraphs 1 through 138 above are hereby incorporated as the allegations of this paragraph 139 of Count Three of this complaint.

140.

42 U.S.C. § 1983 provides that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United

States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ... .”

141.

The Equal Protection Clause of the Fourteenth Amendment mandates that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV § 1.

142.

The Plaintiffs are all similarly situated to other registered electors in the Runoff who voted by paper ballot.

143.

The Secretary of State and Election Boards allowed electors using a paper ballot to vote in the Runoff to vote using properly verifiable, recountable ballots. These ballots are properly verifiable and recountable to the extent that they can be counted manually, rather than counted electronically, in a manner necessarily exposed to irregularity.

144.

Comparatively, the Secretary of State and Election Boards allowed electors using the DRE voting system in the Runoff to vote using illegal and improperly certified ballots. These include Kemp, Members of the State Board, Barron, Members of the Fulton Board, Daniels, Members of the DeKalb Board, Eveler, members of the Cobb Board, and King.

145.

Again, despite receiving warning that the DRE-Based Voting System had been compromised--and knowing that that documents capable of enabling a malicious attack were accessed and downloaded from the CES without server authorization --the Secretary of State responded by stating that the system was secure and no review was needed. He also did so in the face of overwhelming and repeated warnings from experts that the system must be presumed to have been compromised. These actions amount to purpose and willful substantial burdening of the right to vote.

146.

The electors who voted by paper ballot were able to vote in the election using properly verifiable, recountable ballots, while voters using the DRE system were not – thus creating two classes of electors.

147.

The use of illegal and improperly constructed ballots in the DRE voting system severely infringed upon the Plaintiffs' fundamental right to vote by not providing the opportunity to cast a lawful vote in accordance with the Georgia Constitution or code.

148.

The burdens and infringements imposed upon these fundamental rights were differentially imposed upon paper ballot voters and DRE system voters during the Runoff without justification by any substantial or compelling state interest that could not have been accomplished by other, less restrictive means. As the United States Supreme Court has noted, "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." Bush v. Gore, 531 U.S. 98, 104-105 (2000) (citing Harper v. Virginia Bd. of Elections, 383 U.S. 663, 665 (1966) ("[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.")). The Supreme Court continued, "It must be remembered that 'the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting

the free exercise of the franchise.” Id. (quoting Reynolds v. Sims, 377 U.S. 533, 555 (1964)).

149.

Even under a rational basis standard, there is no rational basis for unequal treatment of electors predicated on actions in violation of the Georgia Constitution and Code.

150.

Defendant’s conduct described herein violated the Fourteenth Amendment right of the Plaintiffs to enjoy equal protection of the law.

151.

Under the circumstances alleged above, relief under 42 U.S.C. § 1983 is warranted. Defendants showed purposeful and intentional disregard for the fundamental and wholesale problems of the DRE-Based Voting System by not reexamining and approving the system, because they willfully, despite overwhelming evidence to the contrary, refused to believe there were significant security threats against Georgia’s DRE-Based Voting System.

152.

Plaintiffs ask this Court to declare that these Defendants have violated the fundamental right to equal protection of Plaintiffs and enjoin Defendants to void certification, as well as certification of election, until the election and its results

have properly adhered to under existing regulations. This court should also enjoin Defendants' use of Georgia's DRE-Based Voting System until the system is reexamined and certified by the Secretary of State to be safe and accurate as required by the Georgia Constitution and laws of this state.

**COUNT IV: ELECTION CONTEST DUE TO MISCONDUCT AND  
IRREGULARITY -- USE OF UNCERTIFIED DRE-BASED VOTING  
SYSTEM**

**(By all Plaintiffs, except Price, Davis, and CGG, against all Defendants in  
their Official and Individual Capacities, except King and CES)**

**Declaratory and Injunctive Relief**

**O.C.G.A. § 9-4-2 and O.C.G.A. § 9-4-3**

**O.C.G.A. § 21-2-520**

153.

The allegation of paragraphs 1 through 152 above are hereby incorporated as the allegations of this paragraph 153 of Count Four of this complaint.

154.

Under O.C.G.A. § 21-2-520, a Contestant is entitled to “contest the result of any primary or election.”

155.

A Contestant can be “any aggrieved elector who was entitled to vote” in an election. O.C.G.A. § 21-2-520. Plaintiffs Curling, L. Diggs, B. Diggs, and Schoenberg were all aggrieved electors in the Runoff. Karen Handel was certified as the winner of the Runoff on June 26, 2017.

156.

An aggrieved elector has the right to contest the election by naming as a defendant in a lawsuit the “election superintendent or superintendents who conducted the contested primary or election.” O.C.G.A. § 21-2-520(c). Election superintendents include either “the county board of elections [or] the county board of elections and registration” as the case may be. O.C.G.A. § 21-2-2(35)(a). Additionally, it can include the Secretary of State. See Dawkins-Haigler v. Anderson, 799 S.E.2d 180 (2017). Here, Plaintiffs named such appropriate defendants.

157.

Since Boards and their members are “superintendents” under the meaning of this statute (including the State Board), by statute, the Defendants State Board, Fulton Board, DeKalb Board, Cobb Board, as well as their respective individual

members, including Kemp as Chair of the State Board lack immunity to an election contest claim. See O.C.G.A. § 21-2-520.

158.

The result of any election may be contested if, among other reasons, there is “misconduct, fraud, or irregularity” on the part of any “election official or officials sufficient to change or place in doubt the result.” O.C.G.A. § 21-2-522(1).

159.

Here, the use of Georgia’s DRE-based voting system, given its lack of required certification and the compromise and unverifiability of the system, amounts to an “irregularity” that, at a minimum, “place[s] in doubt” the result of this election. O.C.G.A. § 21-2-522(1).

160.

Georgia’s DRE-based voting system, approved for use in the Runoff by “election official or officials,” compromised the votes of approximately 232,712 electors. 232,712 votes is significantly greater than the margin of victory in the Runoff – 9,702. Therefore, the results of the election are placed in significant doubt.

161.

Accordingly, Plaintiffs file this petition to contest the Runoff election results, in addition to their other claims herein. Plaintiffs pray this court void

certification, as well as certification of election, until the election and its results have properly adhered to existing regulations.

**COUNT V - ELECTION CONTEST DUE TO IRREGULARITY -- USE OF  
ILLEGAL BALLOTS**

**(By all Plaintiffs, except Price, Davis and CGG, against all Defendants in their  
Official and Individual Capacities, except King and CES)**

**Declaratory and Injunctive Relief**

**O.C.G.A. § 9-4-2 and O.C.G.A. § 9-4-3**

**O.C.G.A. § 21-2-520**

162.

The allegation of paragraphs 1 through 161 above are hereby incorporated as the allegations of this paragraph 162 of Count Five of this complaint.

163.

Electors in the Runoff who used Georgia's DRE-based voting system to cast their vote used illegal ballots. Illegal ballots are an "irregularity" by "an election

official or officials.” O.C.G.A. § 21-2-522(1); See Mead v. Sheffield, 278 Ga 268, 270 (2004).

164.

When illegal ballots are used, how electors voted on the illegal ballots is irrelevant.

165.

Instead, the question is whether the number of illegal ballots use is “sufficient to change or place in doubt the result” of the election. The number of illegal ballots is sufficient enough to change or place in doubt the result of the election when the amount used by electors to cast their votes is greater than the margin of victory. See Mead v. Sheffield, 278 Ga. 268, 270 (2004).

166.

In the Runoff, 260,455 ballots were cast. Of those ballots, approximately 232,712 were cast using the DRE system. The remaining 27,742 votes were cast by paper ballot. 232,712 is significantly greater than the margin of victory in the Runoff – 9,702. The paper ballots were also improperly counted through electronic means, although they can be recounted by audible means in this proceeding. Given these illegal ballots, the results of the election are placed in doubt.

167.

The DRE ballots used in the Runoff were illegal because they did not adhere to the Georgia Constitution or Code. When a ballot does not follow a mandate from the Georgia Constitution or the Georgia Code the ballot is “illegal.” See Mead v. Sheffield, 278 Ga. 268, 269 (2004).

168.

Defendants State Board, Fulton Board, DeKalb Board, Cobb Board, as well as their respective individual members, including Kemp as Chair of the State Board bear statutory responsibility, as “superintendents,” for allowing illegal ballots to proceed under the DRE-based system. See O.C.G.A. § 21-2-520. They do not have immunity to this claim.

169.

Since the Runoff used illegal ballots in sufficient number to place the election in doubt, Plaintiffs file this petition to contest the Runoff election results, in addition to their other claims herein. Plaintiffs pray this court void certification, as well as certification of election, until the election and its results have properly adhered to existing regulations.

## **COUNT VI: FAILURE TO RECANVASS VOTES**

**(Plaintiff CGG Against Defendants Barron, Members of the Fulton Board,  
Daniels, Members of the DeKalb Board, Eveler, Members of the Cobb Board,  
in their Official and Individual Capacities)**

**Declaratory and Injunctive Relief**

**O.C.G.A. § 9-4-2 and O.C.G.A. § 9-4-3**

**Ga. Comp. R. & Regs. 183-1-12**

170.

The allegation of paragraphs 1 through 169 above are hereby incorporated as the allegations of this paragraph 170 of Count Six of this complaint.

171.

Georgia law states: “The election superintendent shall, either of his or her own motion, or upon petition of any candidate or political party or three electors of the county or municipality, as may be the case, order a recanvas of all the memory cards (PCMCIA cards) for a particular precinct or precincts for one or more offices in which it shall appear that a discrepancy or error, although not apparent on the face of the returns, has been made.” Ga. Comp. R. & Regs. 183-1-12-.02(7)(a).

172.

For the reasons alleged above, the DRE-based voting system must be assumed to have caused substantial discrepancies or errors in returns, even if not apparent on the literal face of the returns.

173.

Plaintiff CGG includes members that petitioned the Fulton Board, DeKalb Board, and the Cobb Board to recanvas certain precincts in both DeKalb and Cobb Counties. See Exhibit J.

174.

Defendants Barron, Members of the Fulton Board, Daniels, Members of the DeKalb Board, Eveler, and Members of the Cobb Board refused to recanvas these precincts.

175.

Defendants violated their duty under Ga. Comp. R. & Regs. 183-1-12. Concurrently, they violated the citizen's right of oversight and review.

176.

Plaintiffs pray this court declare that Defendants are in violation of their duty to recanvas these precincts. Plaintiffs also pray that this court will enjoin Defendants to void certification, as well as certification of election, until the election and its results have properly adhered to existing regulations.

**COUNT VII: LACK OF CERTIFICATION OF DRE-BASED VOTING  
SYSTEM**

**(All Plaintiffs, Against Defendant Kemp, in His Individual Capacity)**

**Declaratory and Injunctive Relief**

**O.C.G.A. § 9-4-2 and O.C.G.A. § 9-4-3**

**Ga. Comp. R. & Regs. 590-8-1-.01**

177.

The allegation of paragraphs 1 through 176 above are hereby incorporated as the allegations of this paragraph 177 of Count Seven of this complaint.

178.

Under Georgia law, the Secretary of State is responsible for certifying Georgia's voting systems. Ga. Comp. R. & Regs. 590-8-1-.01(d)(7.) The purpose of the certification process is to ensure that "hardware, firmware, and software have been shown to be reliable, accurate, and capable of secure operation before they are used in elections in the state." Id. at (a)(3).

179.

Certification by the Secretary of State is not required on systems implemented before April 17, 2005, unless there has been “a modification to the hardware, firmware, or software of the voting system.” Id. At (b)(4). In such a case, under Georgia regulations, the previous State certification becomes invalid.

180.

The only time State Certification is not invalidated is when “it can be shown that the modification does not affect the overall flow of program control or the manner in which the ballots are recorded and the vote data is processed.” Id. Moreover, a system that meets this requirement can only keep its certification if the modification (1) corrects a defect (with testing to prove the correction); or (2) enables interaction with other approved equipment unrelated to vote counting or data storage. See id. at (b)(4)(ii). In all circumstances Georgia law requires the Secretary of State to test every modification to determine if certification is warranted. Id.

181.

Here, unlike his predecessors—former Secretary Cox and former Secretary Handel—Kemp has not tested Georgia’s DRE-Based Voting System in its current configuration Moreover, he has not certified the DRE System in its current form. See Exhibit O.

182.

The system configuration was last certified in November 2007 by then Secretary Handel. Since various components have been added and modified since, without required certification steps, the system in use is not properly certified. Id.

183.

Certification for the system, in its entirety, is required, because the updates do more than just “correct a defect” or “enable interaction” with other equipment. Therefore, the new software and hardware additions fall outside the range of what is required for the system to remain certified. Kemp, by law, must certify any new system configuration, tested as an integrated whole, before it can be used in any election. He has not. The illegal DRE-Based Voting Systems were used in Georgia during the Special Election and Runoff. Kemp intends to keep using these uncertified systems.

184.

Moreover, Plaintiff CGG (then-named Rocky Mountain Foundation) inquired, via an open records request to the Secretary of State, to obtain any documentation evidencing the certification of Georgia’s DRE-system at either the state and federal level. The Secretary of State’s office could produce no such document. See Exhibit P, at p. 5.

185.

Accordingly, pursuant to O.C.G.A. § 9-4-2, Plaintiffs pray that this court will declare that these Kemp has not certified the DRE-Based Voting System in its present form, a violation of Georgia law. Pursuant to O.C.G.A. § 9-4-3, Plaintiffs also pray that this court will enjoin Defendants' use of Georgia's DRE-Based Voting System until the system is properly certified by the Secretary of State to be safe and accurate in accordance with Georgia law.

**COUNT VIII: WRIT OF MANDAMUS**

**(All Plaintiffs, Except Laura Digges, William Digges III, and Schoenberg,  
Against Defendant Kemp, in His Individual Capacity)**

**Writ of Mandamus**

**O.C.G.A. § 9-4-3 and O.C.G.A. § 9-4-2; O.C.G.A. § 9-6-20**

**Requiring Exercise of the Public Duty to Reexamine Georgia's DRE-Based  
Voting System Established By O.C.G.A. § 21-2-379.2(b)**

186.

The allegation of paragraphs 1 through 185 above are hereby incorporated as the allegations of this paragraph 186 of Count Eight of this complaint.

187.

Mandamus is a remedy for “government[al] inaction—the failure of a public official to perform a clear legal duty.” Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 661 (2014).

188.

Mandamus is warranted when (1) a public official has a clear legal duty to perform an official act (as requested); (2) that the requesting party has a clear legal right to the relief sought or that the public official has committed a gross abuse of discretion; and (3) that there is no other adequate legal remedy. See Bland Farms, LLC v. Georgia Dept. of Agriculture, 281 Ga. 192, 193 (2006); see also SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 800 (2015); Trip Network, Inc. v. Dempsey, 293 Ga. 520, 522 (2013); Goldman v. Johnson, 297 Ga. 115, 116 (2015).

189.

The Georgia General Assembly has the power to determine the Secretary of State’s clear legal duties. See Ga Const. art. 5, § 3, ¶ III (“[T]he General Assembly shall prescribe the powers, duties, compensation, and allowances of... executive officers...”). The General Assembly did so under O.C.G.A. § 21-2-50, which requires the secretary of state to “perform such other duties as may be prescribed by law.”

190.

One clear duty of the Secretary of State, as prescribed by law, is that “the Secretary of State may, at any time, in his or her discretion, reexamine any DRE-based.” O.C.G.A. § 21-2-379.2(a). The clear purpose Secretary of State’s power to reexamine any DRE-based system at his discretion is to ensure that the DRE-system can be “safely and accurately used by electors at primaries and elections.” O.C.G.A. § 21-2-379.2(b).

191.

Defendant Kemp has abused his discretion by not reexamining and re-approving the current DRE-system before the Runoff, or initiating the reexamination process before the upcoming primaries throughout the remainder of 2017.

192.

Abuse of discretion is found when a public official acts in an “arbitrary, capricious, and unreasonable” manner. Burke Cty. v. Askin, 291 Ga. 697, 701 (2012) (citing Massey v. Georgia Bd. of Pardons & Paroles, 275 Ga. 127, 128(2) (2002)). This includes acting in such an arbitrary, capricious way that their abuse of discretion “amounts to a failure on the part of the officer to exercise his discretion at all.” S. View Cemetery Ass'n v. Hailey, 199 Ga. 478, 483 (1945).

193.

Here, Kemp was informed of two breaches into CES system, that Russian agents were attempting to hack to U.S. elections, and overall that the DRE-system was highly susceptible to attack based on the allegations stated throughout this Complaint. At the same time, Kemp admitted earlier this month that “anything is possible” when it comes to Russians tapping into Georgia’s voting system.

194.

Despite this, Kemp declined help from the Department of Homeland Security to help protect Georgia’s DRE-based voting system in August 2016 (one of only two states to do so). He did because he does not “necessarily believe” and--to this day--remains unconvinced that hacking of Georgia’s elections is a real threat. About the issue he stated, “I think it was a politically calculated move by the [Obama] administration.” His rationale for his belief? “The question remains whether the federal government will subvert the Constitution to achieve the goal of federalizing elections under the guise of security. Designating voting systems or any other election system as critical infrastructure would be a vast federal overreach, the cost of which would not equally improve the security of elections in the United States.”

195.

Such beliefs are arbitrary in that they are based on a solely personal belief, capricious in that they could change on a whim, and unreasonable in that they are

not rooted in fact and contrary to concerns expressed to him by his constituents, securities experts, and the Department of Homeland Security. They are so arbitrary, capricious, and unreasonable that they “amounts to a failure on the part of the officer to exercise his discretion at all.”

196.

The DRE-Based Voting Systems in question here were used in the 2016 General Election, the primary for the 2017 Special Election, the 2017 Special Election, the Runoff. Kemp plans to use the system again in remaining 2017 primaries and elections, and beyond—despite being more than aware of the risk the system imposes on his constituents’ right to vote.

197.

The Secretary of State is clearly charged with ensuring the safety and accuracy of our elections, but fails to take threats to our election process seriously (against the wise counsel of the Federal Government, security experts, and his constituents). Such beliefs have caused him to essential use is discretion to do nothing. Such inaction is an abuse of discretion. See S. View Cemetery Ass'n v. Hailey, 199 Ga. 478, 483 (1945).

198.

Where the question is one of public right and the object is to procure the enforcement of a public duty, no legal or special interest need be shown, but it shall

be sufficient that a plaintiff is interested in having the laws executed and the duty in question enforced. O.C.G.A. § 9-6-24.

199.

The Court has full and complete power to issue mandamus under O.C.G.A. § 9-6-20, which provides, “All official duties should be faithfully performed; and whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance, if there is no other specific legal remedy for the legal rights.”

200.

Apart from this Court’s issuance of the writ of mandamus, Plaintiffs have no other legal remedy to compel enforcement of Defendant Kemp’s official, public duty to conduct the reexamination required by O.G.C.A § 21-2-379.2(b). They have attempted multiple times to have Defendant Kemp reevaluate the system, but he has resisted their request, and claimed impractical fees and timelines when he did respond, as a reason not to reevaluate. Additionally, Defendant Kemp can act on his own accord. Electors cannot force him to act in that capacity. Only the Court can.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask this court:

- to grant declaratory relief deeming that Defendants have violated the Georgia Constitution, 42 U.S.C. § 1983, and Georgia’s election code, including its recanvassing and certification regulations;
- to grant injunctive relief requiring that the certification of the results of the Runoff election in the 6th Congressional District be voided because accurate results are indeterminable from Georgia’s DRE-Based voting system that was compromised, unsecured, and non-compliant;
- enjoining the future use of Georgia’s DRE-Based Voting System or any similar unverifiable system unless the system is in full compliance with certification standards and can be verified, and such system is approved by the Secretary of State;
- to issue a writ of mandamus for Defendant Kemp to promptly fulfill his public duty prior to future Georgia elections to reexamine Georgia’s DRE-based Voting System for his determination of whether it can be “safely and accurately used”;

- and to grant all other relief this court deems proper.

Respectfully submitted this 30th day of June 2017.

/s/ Bryan Ward

Bryan Ward, Esq.

Georgia Bar No. 736656

Marvin Lim, Esq.

Georgia Bar No. 147236

Holcomb + Ward LLP

3399 Peachtree Rd NE, Suite 400

Atlanta, GA 30326

(404) 601-2803 (office)

(404) 393-1554 (fax)

bryan.ward@holcombward.com

marvin@holcombward.com