IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JULIE ADAMS, in her official capacity as a member of the Fulton County Board of Elections and Registration, a/k/a Fulton County Board of Registration and Elections**,**	
Plaintiff,	Case No.: 24-cv-006566
v.	The Hon. Kimberly M. Esmond-Adams
FULTON COUNTY BOARD OF ELECTIONS AND REGISTRATION, a/k/a FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS, and NADINE WILLIAMS, in her official capacity as Elections Director.	
Defendants.	

MOTION OF THE GEORGIA STATE CONFERENCE OF THE NAACP, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., LEAGUE OF WOMEN VOTERS OF GEORGIA, AND LEAGUE OF WOMEN VOTERS OF ATLANTA-FULTON COUNTY FOR LEAVE TO FILE A BRIEF OF *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Amici Curiae the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., the League of Women Voters of Georgia, and the League of Women Voters of Atlanta-Fulton County, respectfully move the Court for leave to file a brief as *amici curiae* in support of the Motion to Dismiss of Defendants Fulton County Board of Elections and Registration and Nadine Williams.

Amici are nonprofit, nonpartisan organizations dedicated to increasing civic engagement among their members and eliminating barriers to voting, particularly for Black voters, other voters of color, and voters in traditionally disenfranchised communities. On their own and on behalf of their members, they have a strong interest in ensuring that all lawfully cast votes are counted and certified as required by state law. Accordingly, *amici* seek leave of the Court to file the attached brief that provides important legal, historical, and practical context that shows the weakness of Plaintiff's claims. *Amici's* brief explains why courts have always treated certification as mandatory, how Plaintiff's claims fit into the ongoing movement to deny valid elections results and sow chaos, and why the practical consequences of a decision in Plaintiff's favor may not affect all voters equally.

This case presents issues that could have significant ramifications for elections this year and beyond. Plaintiff asks this Court to ignore the plain language of Georgia law and more than a century of well-settled case law to transform election certification into a "discretionary" rather than ministerial (*i.e.*, mandatory) duty. If Plaintiff's argument were accepted, the results could prove disastrous for the upcoming general election and beyond. Such a result would frustrate the efforts of *amici* to increase voting access for their members. Georgia courts have granted similarly situated applicants leave to file amicus briefs in cases raising similar issues and seeking similarly expedient relief. *See, e.g.*, Order Granting Leave to File an

Amicus Brief, *Republican Nat'l Comm., et al. v. State Elec. Bd., et al.*, CAF No. 2020CV343319 (Fulton Cnty. Super. Ct.) (Dec. 18, 2020).

CONCLUSION

For the reasons set forth above, *Amici* respectfully request that the Court grant them leave to file the Amicus Brief attached hereto as Exhibit A, urging the Court to grant Defendants' Motion to Dismiss.

[**Signature on Following Page**]

Respectfully submitted, this 29th day of July 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing ***MOTION OF THE GEORGIA STATE CONFERENCE OF THE NAACP, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., LEAGUE OF WOMEN VOTERS OF GEORGIA, AND LEAGUE OF WOMEN VOTERS OF ATLANTA-FULTON COUNTY FOR LEAVE TO FILE A BRIEF OF AMICUS CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS*** by electronically filing the same with the Clerk of Court using the Odyssey eFileGA system, which should automatically send an email notification of such filing to all counsel of record, and by transmitting a copy via email in portable document format (PDF) to counsel of record and showing in the subject line of the email message the words "STATUTORY ELECTRONIC SERVICE" in capital letters.

/s/ Adam M. Sparks
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Counsel for Amici Curiae

Exhibit A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JULIE ADAMS, in her official capacity as a member of the Fulton County Board of Elections and Registration, a/k/a Fulton County Board of Registration and Elections**,** Plaintiff, v. FULTON COUNTY BOARD OF ELECTIONS AND REGISTRATION, a/k/a FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS, and NADINE WILLIAMS, in her official capacity as Elections Director. Defendants.	Case No.: 24-cv-006566 The Hon. Kimberly M. Esmond-Adams

BRIEF OF *AMICI CURIAE* IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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INTEREST OF *AMICI CURIAE*

Amici Curiae the Georgia State Conference of the NAACP (Georgia NAACP); Georgia Coalition for the People's Agenda, Inc. (GCPA); League of Women Voters of Georgia (LWVGA); and League of Women Voters of Atlanta-Fulton County (LWVAF) are organizations dedicated to increasing civic engagement among their members and eliminating barriers to voting, particularly for Black voters, other voters of color, and voters in traditionally disenfranchised communities. For example, among its key objectives, *amicus* Georgia NAACP seeks to ensure "the political . . . equality of all citizens" and "remove all barriers of racial discrimination through democratic processes." *The Mission of the NAACP*, Georgia NAACP, https://www.georgianaacp.org/mission. *Amicus* GCPA's primary missions include "voting rights protection [and] elimination of barriers to the ballot box," particularly among underrepresented voters. *About Us*, The Peoples' Agenda, https://thepeoplesagenda.org/about-us/. *Amici* LWVGA and LWVAF are grassroots membership organizations that work to empower every person to participate fully in our democracy, including through helping voters register and get to the polls. *About Us*, League of Women Voters of Georgia, https://lwvga.clubexpress.com/content.aspx?page_id=22&club_id=996555&module_id=506655; *About Us*, League of Women Voters of Atlanta-Fulton County, https://lwvaf.org/new-page. *Amici* all operate in Fulton County. Accordingly, on

their own behalf and on behalf of their members, *amici* have a particularly strong interest in ensuring that all lawfully cast votes are counted and certified as required by state law.

SUMMARY OF ARGUMENT

This case involves an extraordinary demand. Plaintiff, a single member of the Fulton County Board of Registration and Elections ("BRE"), asks this Court to ignore the plain language of Georgia law and more than a century of well-settled precedent to transform election certification into a "discretionary" rather than ministerial (*i.e.*, mandatory) duty. If the Court accepts Plaintiff's arguments, the results could prove disastrous for the upcoming general election and beyond—particularly for *amici* and the constituents they serve.

This brief provides important legal, historical, and practical context, all of which refute Plaintiff's claims. First, *amici* contextualize Plaintiff's request within the history of election certification in the United States. Indeed, this lawsuit is precisely the scenario that early state legislatures and state courts—including Georgia's Supreme Court—sought to avoid when they shaped certification into a mandatory, non-discretionary duty. Second, *amici* show that this effort to undermine Fulton County's certification process is part of the modern election denier movement. This case is one of many recent attempts to interfere with local certification processes, each of which amplifies distrust in our election system and

sows disorder in state election administration processes. Third, *amici* emphasize the danger that discretionary certification poses: officials who refuse to certify valid results could delay or disrupt statutorily-mandated post-election processes and the State's ability to meet important state and federal deadlines for counting votes and certifying election results. And in a worst-case scenario, it could disenfranchise Fulton County's hundreds of thousands of voters—a result that would disproportionately harm the County's 60 percent non-white population. *Amici* and the constituents that they serve stand to be particularly affected by this threat. Many of the County's Black voters and other voters of color are members of *amici* organizations, each of which dedicates significant resources to help their members vote and have those votes counted. *Amici* conclude by underscoring that this case is simply the latest iteration in a longstanding effort to use Fulton County and its diverse communities of color as a proxy for the broader election denier movement.

For these reasons and the reasons set forth in the briefs of Defendants and Intervenor-Defendants, this Court should reject Plaintiff's attempt to derail Georgia's certification process.

ARGUMENT

I. Plaintiff's Request for Discretionary Judgment Over Certification Is at Odds with Statutory Law and Longstanding Precedent.

Certification—the statutory process by which officials sign off on the completion of election results—serves as an important but usually uneventful post-election formality. The text of Georgia's certification statutes and the case law interpreting those statutes demonstrate that the General Assembly intended the process to be a ministerial, non-discretionary duty. *See, e.g.*, *Grammens v. Dollar*, 287 Ga. 618, 620 (2010) (defining a ministerial duty as one "[w]here there is an established policy requiring an official to take specified action in a specified situation"). This view finds ample support not only in the historical context behind election certification in Georgia, but also in the United States at large.

The State's election code requires the election superintendent for each county to "receive from poll officers the returns of all primaries and elections, to canvass and compute the same, and to certify the results thereof to such authorities as may be prescribed by law." O.C.G.A. § 21-2-70(9). In Fulton County, the BRE fulfills this role. *See* O.C.G.A. § 21-2-40; *see also Board of Registration and Elections*, Fulton County, at 1, https://fultoncountyga.gov/-/media/Departments/Clerk-to-the-Commission/Boards_Authorities/Board-of-Registration-and-Elections-6-2-

21.ashx.[1] Election superintendents must carry out their duties pursuant to a detailed set of rules set forth by statute and regulation. O.C.G.A. § 21-2-493; *see also* Ga. Comp. R. & Regs. 183-1-15-.02. The Election Code also sets forth an unambiguous certification deadline: "Such returns shall be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State." O.C.G.A. § 21-2-493(k). That the General Assembly chose to use "shall" language throughout these provisions further demonstrates that they intended to create a ministerial, non-discretionary duty. *See Mead v. Sheffield*, 278 Ga. 268, 269 (2004) ("'Shall' is generally construed as a word of command."); *State v. Henderson*, 263 Ga. 508, 510 (1993) ("[T]he plain meaning of 'must' is a command, synonymous with 'shall.'").

Importantly, Georgia's certification laws provide election superintendents with no discretion to throw out certain votes, substitute their own judgment for the actual vote totals, delay certification, or refuse to certify the results for any reason. *See, e.g.*, O.C.G.A. § 21-2-493; Ga. Comp. R. & Regs. 183-1-15-.02. Instead, other

[1] In practice, the BRE bylaws "delegate[] the powers and duties of the superintendent and the board of registrars" to the executive director of the Department of Registration and Elections of Fulton County. Fulton County Board of Registration and Elections, Bylaws, Article VI, § 1, https://fultoncountyga.gov/-/media/Departments/Registration-and-Elections/Board-of-Registration-and-Elections/Monthly-Operations-Reports/BRE-BYLAWS42021.pdf.

processes—like recounts, risk-limiting audits, and strict requirements for transparency and accountability in vote tabulating centers—ensure that ballots are lawfully and accurately counted. O.C.G.A. §§ 21-2-495; 21-2-498, 21-2-483. Along with these safeguards, Georgia law provides mechanisms for courts to hear questions about the legality of certain votes or electoral conduct. The Election Code plainly states that rather than seek to remedy allegations of fraud or other misconduct themselves, "the superintendent shall compute and certify the votes justly, *regardless of any fraudulent or erroneous returns presented to him or her*, and shall report the facts to the appropriate district attorney for action." *Id.* § 21-2-493(i) (emphasis added). Further, aggrieved candidates or eligible voters can bring election contests to challenge the returns following certification. *See id.* § 21-2-522, *et seq*. In other words, certification is not the forum for resolving any disputes about the outcome of the election.

The clarity with which Georgia law sets out certification as a mandatory, non-discretionary process is not coincidental. For as long as our country has held elections, rogue local officials have attempted to manipulate and interfere with election certification to benefit their preferred candidates or political agenda. *See* Lauren Miller & Will Wilder, *Certification and Non-Discretion: A Guide to Protecting the 2024 Election*, 35 Stanford Law & Policy Review 1, 23-31 (2024). In response, early state legislatures and courts purposefully shaped certification into a

ministerial process that left no room for local officials to take matters into their own hands. *Id.* Georgia was no exception.

Consider an exemplary case from Coffee County, where a certification crisis over the 1898 general election raised issues not dissimilar to Plaintiff's allegations. *Tanner v. Deen*, 108 Ga. 95 (1899) ("*Tanner II*"); *see also Deen v. Tanner*, 106 Ga. 394 (1899) ("*Tanner I*"). Coffee County's Democratic superintendents, over the Populists' objections, refused to count and certify the returns for a single precinct. *Tanner II*, 108 Ga. at 96-97; *Tanner I*, 106 Ga. at 394-95. Their motives were not subtle: without the precinct's returns, the Democratic candidates for the state general assembly and county sheriff won by a handful of votes. *Tanner II*, 108 Ga. at 96-97; *Tanner I*, 106 Ga. at 394-95; *see also* Miller & Wilder, *supra*, at 29 n.192. Although the returns themselves had no obvious problems, the Democrats dug in their heels over procedural questions as to how the election had been administered. *Tanner II*, 108 Ga. at 98-100.

A lengthy legal dispute ensued. At one point, the Democratic superintendents met without their Populist colleagues and—in direct violation of a court order—attempted to count and certify the returns without the disputed precinct. *Id.* at 96-97, 99. In a decisive opinion, the Supreme Court of Georgia resolved the crisis by granting a writ of mandamus and requiring the superintendents to reassemble and certify the returns for *all* precincts. *Id.* at 101-02. None of the procedural questions

raised by the Democrats amounted to violations of state law or warranted invalidating the results. *Id.* at 98-100. But even if they had, the superintendents "were not selected for their knowledge of the law." *Id.* at 101. For this reason, their discretion was limited to referring any alleged defect to the appropriate election tribunal to decide. *Id.* at 101-02. As the Court explained, the "essence" of the superintendents' duty, as set forth by statute, was to count and certify the returns. *Id.* at 102 (quoting Horace Gay Wood, *A Treatise on the Legal Remedies of Mandamus and Prohibition, Habeas Corpus, and Quo Warranto: With Forms*, 53 (2d ed. 1891)); *see also Tanner I*, 106 Ga. at 397-98 (setting forth the statutory framework). Because the superintendents had failed to do so, the Court had no choice but to grant a writ of mandamus. *Tanner II*, 108 Ga. at 101-02.

Similar disputes took place across the country throughout the nineteenth and early twentieth centuries. Miller & Wilder, *supra*, at 29-31. For example, in Kansas, a canvassing board rejected one precinct's returns in an 1875 election based on an alleged "unlawful and corrupt agreement and conspiracy" to manipulate the election outcome. *Lewis v. Comm'rs of Marshall Cnty.*, 16 Kan. 102, 105 (1876). The Supreme Court of Kansas awarded a writ of mandamus against the board, explaining that "[q]uestions of illegal voting, and fraudulent practices, are to be passed upon by another tribunal." *Id.* at 108. In Illinois, a local board of canvassers rejected the returns from a precinct over concerns that poll workers' oaths of office had not been

properly signed. *People ex rel. Fuller v. Hilliard*, 29 Ill. 413, 415 (1862). The Illinois Supreme Court held that the board had "no discretionary power" to reject returns that on their face complied with the law, and thus it had made a "grievous error." *Id.* at 422, 424.

Across all of these decisions, a singular pattern emerged: courts worried that affording local certifying officials discretion would create opportunities for fraud and misconduct. *See, e.g.*, *Stearns v. State ex rel. Biggers*, 23 Okla. 462, 468 (1909) ("To permit canvassing boards who are generally without training in the law . . . to look elsewhere than to the returns for a reason or excuse to refuse to canvass the same . . . would afford temptation and great opportunity for the commission of fraud."). Accordingly, courts uniformly interpreted certification as a mandatory, ministerial duty. *See* Miller & Wilder, *supra*, at 31 ("By 1897, the ministerial, mandatory nature of certifying returns was so well-established that one leading treatise declared 'the doctrine that canvassing boards and return judges are ministerial officers possessing no discretionary or judicial power, is settled in nearly or quite all the states.'") (quoting George W. McCrary, *A Treatise on the American Law of Elections*, 153 § 229 (4th ed. 1897)). As the Supreme Court of Indiana explained in an 1872 ruling:

> The duty imposed is ministerial. It is not within [the canvassing board's] province to consider or determine any questions relative to the validity of the election held or of the votes received by the persons

> voted for. They are simply to cast up the votes given for each person, from the proper election documents, and to declare the person who, upon the face of those documents, appears to have received the highest number of the votes given, duly elected to the office voted for.

Kisler v. Cameron, 39 Ind. 488, 490-91 (1872) (quoting *Brower v. O'Brien*, 2 Ind. 423, 430 (1850)). In other words, so long as the returns appeared on their face to be "regular in form, and genuine," courts did not permit canvassing boards to reject them on their own accord. *Lewis*, 16 Kan. at 106-07; *see also, e.g.*, *Byers v. Bailey*, 7 Iowa 390, 393 (1858) (holding that a county board of canvassers properly examined the face of the returns for one precinct to determine whether it read "fifty-three" or "forty-three" votes).

Consistent with this trend, the Georgia Supreme Court has consistently affirmed the ministerial nature of certification. In *Thompson v. Talmadge*, the Court described the duty that "rests upon any and all persons who are merely authorized to canvass" as a "ministerial act of disclosing to the public the official election returns that had been prepared by the election managers." 201 Ga. 867, 876 (1947). And in *Bacon v. Black*, the Court explained that "[t]he duties of the managers or superintendents of election who are required by law to assemble at the courthouse and consolidate the vote of the county are purely ministerial." 162 Ga. 222, 226 (1926) (noting that "[t]he determination of the judicial question affecting the result in such county elections is confined to the remedy of contest as provided by law").

Against this backdrop, Plaintiff's request for discretionary judgment over certification is not new or novel. Courts in Georgia and around the country have considered and squarely rejected similar claims for over a century. Indeed, Plaintiff's attempt to access "all the data, information, materials, and records from each of the 481 polling locations in Fulton County" to resolve "discrepancies" constitutes precisely the type of investigation into the election that courts have found inappropriate for certifying officials to conduct. Pl's. Renewed Mot. for Interlocutory Relief (June 14, 2024) at 2. Plaintiff further states that she "did not feel she could certify the election results" because an admittedly "small sample" taken during a "truncated time" period revealed potential procedural problems. Pl's. Brief in Support of Renewed Mot. for Interlocutory Relief (June 18, 2024) at 2. It is difficult to imagine a scenario that more aptly demonstrates the danger of affording certifying officials discretion over certification; at what point does a feeling justify refusing to certify results? Granting Plaintiff the discretion she seeks would upend more than a century of longstanding precedent and introduce the potential for chaos in future elections.

II. This Lawsuit Is the Latest Iteration of a Wave of Post-2020 Attacks on Certification.

Even though courts and legislatures have long considered certification to be a non-discretionary, ministerial duty, a new wave of attempts to subvert certification

has grown out of election denialism—the false idea that the 2020 presidential election was stolen and that widespread fraud continues to pervade our election system. First, insurrectionists attempted to stop Congress from certifying the election results on January 6, 2021. Next, attacks on certification shifted to the local level. During the 2022 election cycle, several rogue local officials across the country refused or threatened to refuse to certify valid election results in violation of state law based on claims rooted in election denialism. Miller & Wilder, *supra*, at 14-23. At least 21 counties across 8 states faced disruptions between November 2020 and March 2024. Emily Rodriguez, et al., *Election Certification Is Not Optional: Why refusing to certify the 2024 election would be illegal*, Protect Democracy (Mar. 2024), https://protectdemocracy.org/wp-content/uploads/2024/03/PD_County-Cert-WP_v03.1.pdf, at 4.

Fortunately, courts and state officials intervened in each of these instances to compel certification. *Id.* But attempts to delay or refuse to certify elections show no sign of slowing down in 2024. This year, jurisdictions across the country have faced unlawful attempts to disrupt certification during the primaries. *See, e.g.*, Nick Coltrain, *Colorado officials warn of new frontier in election denial as more Republicans refuse to certify vote totals*, The Denver Post (Apr. 8, 2024), https://www.denverpost.com/2024/04/08/colorado-election-denial-county-canvass-boards-election-officials-protests-trump/; Jane C. Timm, *Nevada county refuses to*

certify results of two local primaries, NBC News (July 10, 2024), https://www.nbcnews.com/politics/2024-election/nevada-county-refuses-certify-results-two-local-primaries-rcna161176. Even when they fail, attempts to undermine and deviate from statutory certification processes still cause harm.

First, refusals to certify can sow disorder and create significant logistical challenges by disrupting the careful balance and timeline of the election administration cycle. Certification is just one of several post-election processes that must take place during a predetermined statutory time frame, including post-election contests and recounts. O.G.C.A. §§ 21-2-522, *et seq*., 21-2-495(c)(1). All of these processes have complex, interdependent timelines that must conclude before officials at the state level can complete their own canvass and formally certify the winners of statewide races by a statutory deadline. *Id.* § 21-2-497. In this presidential election year, this deadline takes on even greater importance; under the Electoral Count Reform Act ("ECRA"), state executives must certify their state's slate of presidential electors no later than December 11, 2024. *See* 3 U.S.C. §§ 5(a)(1), 7.[2]

[2] The ECRA requires each state's executive to certify the state's slate of electors no later than six days before the date on which the electors meet to officially cast their vote. 3 U.S.C. § 5(a)(1). The ECRA requires the electors to hold that meeting on "the first Tuesday after the second Wednesday in December," which will be December 17, 2024 this election cycle. 3 U.S.C. § 7. Six days prior is December 11, 2024.

Under these circumstances, delaying certification by even a few days could place at risk a state's ability to certify by the ECRA deadline.

Second, efforts to delay or refuse to certify elections divert critical and often scarce state resources away from election officials who are responsible for administering elections. *See, e.g.*, Leadership Conference on Civil and Human Rights, *National and State Organizations and Local Elected Officials Support Federal Funding for Election Administration* (Sept. 28, 2023), https://civilrights.org/resource/national-and-state-organizations-and-local-elected-officials-support-federal-funding-for-election-administration/ (letter to Congress that highlights "urgent gaps in equipment, personnel, and facilities" and explains that "[w]hen election administration is not adequately resourced, the core functions of our elections and the democratic process are threatened"). Already this year, legal changes to election procedures, underfunding, and election worker turnover—a direct result of the harassment and intimidation discussed below—have led to greater pressures on election resources. Rodriguez et. al, *supra,* at 11.

Third, when fueled by false claims of widespread fraud, attempts to disrupt certification can further increase distrust in our election systems at a time when false information already has caused demonstrable, dangerous harm to our democracy. *See, e.g.*, Brandy Zadrozny, *Disinformation poses an unprecedented threat in 2024 — and the U.S. is less ready than ever*, NBC News (Jan. 18, 2024),

https://www.nbcnews.com/tech/misinformation/disinformation-unprecedented-threat-2024-election-rcna134290 (discussing the threat of local movements that spread disinformation about elections); Lynn Walsh, *Access to Information Can Help Combat the Threat to Democracy*, Hum. Rts. Mag., Vol. 48, no. 4 (July 26, 2023), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-end-of-the-rule-of-law/access-to-information-can-help-combat-the-threat-to-democracy/ ("The proliferation of misinformation causes confusion and frustration and contributes to increased polarization and distrust of democratic institutions."); Gabriel R. Sanchez & Keesha Middlemass, *Misinformation is eroding the public's confidence in democracy*, Brookings Institution (July 26, 2022), https://www.brookings.edu/articles/misinformation-is-eroding-the-publics-confidence-in-democracy/ ("One of the drivers of decreased confidence in the political system has been the explosion of misinformation deliberately aimed at disrupting the democratic process. This confuses and overwhelms voters.").

Fourth, certification refusals premised on unsubstantiated innuendo and allegations of widespread election problems can contribute to increased threats, harassment, and intimidation against election officials. *See, e.g.*, Ruby Edlin & Lawrence Norden, *Election Officials in Communities of Color Face More Abuse*, Brennan Center for Justice (July 17, 2024), https://www.brennancenter.org/our-work/analysis-opinion/election-officials-communities-color-face-more-abuse;

Information Gaps and Misinformation in the 2022 Elections, Brennan Center for Justice & First Draft, (Aug. 2022), https://www.brennancenter.org/our-work/research-reports/information-gaps-and-misinformation-2022-elections. A ruling allowing Plaintiff's case to proceed could embolden those that may seek to interfere with Georgia's elections at a time when the risk of violence is already too high.

Finally, granting Plaintiff's request would not just entail picking sides in an administrative feud; it would make democracy in Fulton County conditional on enough board members foregoing the "temptation" to reject undesired results and respect the outcome. *Stearns*, 23 Okla. at 468 (holding that certification is a ministerial duty because otherwise canvassing boards could "be turned into a contesting court, and the entire election machinery would become blocked and useless for the purpose for which it was created"). For precisely this reason, courts across the country have consistently rejected efforts to turn certification into a lottery of whose votes count. *See supra* Section I.

Viewed in light of the broader election denier movement, Plaintiff's lawsuit is not unique to Fulton County. It is simply another attempt to upend the longstanding status quo that election certification should be free from partisan political influence and to introduce uncertainty into election administration. It should be rejected as such.

III. This Latest Attempt to Undermine Routine Election Procedures in Fulton County Would Disproportionately Risk Disenfranchising Black Voters.

Although the process of certifying elections is a ministerial duty, the effect is significant: it confirms that every lawfully cast ballot in the state or locality counts in the final tally of votes. In that sense, certification serves as a confirmation of the people's will. Plaintiff's requested relief would turn this process on its head by creating an option for rogue election officials to reject any or every ballot cast in Fulton County. This would be an extreme remedy for any case, let alone one predicated on nothing more than Plaintiff's displeasure at not receiving unfettered access to election materials on an accelerated timeline. *See* Verified Compl. for Decl. Relief, Interlocutory Inj. Relief, and Permanent Inj. Relief (May 22, 2024) at ¶¶ 39-44.[3]

Indeed, the importance of effectuating the voters' choice is precisely why certification is a ministerial process. "Any other rule would enable canvassing

[3] As even the Complaint acknowledges, *see* Verified Compl. ¶ 41 & Ex. 2, the Board conducts extensive post-election reconciliation before certification to ensure that it can account for all cast votes. This process is open to all board members, including Plaintiff. Additionally, voters and candidates have other avenues of legal recourse if they believe that the outcome was wrongly decided for any reason. For example, superintendents may order a recount or recanvass before certification and in certain situations involving very close races, after certification. O.C.G.A. § 21-2-495(c). A candidate or voter may file an election contest after certification. *Id.* § 21-2-524. In some scenarios, they may file a mandamus action. O.C.G.A. § 9-6-20 *et seq.*; *see*

boards, through design or incompetency to temporarily, at least, defeat the will of the people." *Lehman v. Pettingell*, 39 Colo. 258, 264 (1907). The stakes of this case are especially high for *amici* because refusing to certify an election in Fulton County would disproportionately affect Black voters.

According to data from the Secretary of State's office, Fulton County's active voter list contains a plurality of Black voters: 310,962 out of 742,420 total active voters, or just below 42 percent. *Election Data Hub*, Georgia Secretary of State https://sos.ga.gov/election-data-hub (last checked July 29, 2024). Overall, there are 2,130,722 active Black voters in Georgia out of 7,138,368 total active voters, meaning Black voters constitute slightly below 30 percent of all active voters in the State. *Id.* Accordingly, if the BRE were to use "discretionary judgment" to decline to certify a statewide election, that refusal could risk disenfranchising almost 15 percent of the State's Black voters—higher shares than any other group except Asian-American and Pacific Islander-heritage voters, who would suffer disenfranchisement at a similar rate.

Georgia's status as a battleground state further amplifies the dangers of Plaintiff's request. Recent statewide races have been decided by extremely thin

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Miller and Wilder, *supra*, at 34-36. The judiciary has long been the appropriate forum to investigate potential election issues and resolve electoral disputes—not certifying officials.

margins, including the 2020 Presidential race (12,670 votes) and the 2021 Senate runoff (54,944 votes). Georgia Secretary of State, *November 3, 2020 General Election Results* (Nov. 20, 2020), https://results.enr.clarityelections.com/GA/105369/web.264614/#/summary; Georgia Secretary of State, *January 5, 2021 Federal Runoff* (Jan. 20, 2021), https://results.enr.clarityelections.com/GA/107556/web.274956/#/summary. Whatever Plaintiff's aims, the risk of refusing to certify an election in Fulton County is undeniable: the county's voters, and Black voters in particular, could see their ballots tossed out such that it could change the results of statewide races. The groups that *amici* exist to serve would, in turn, face the threat of diminished political influence.

In other words, if Fulton County does not certify an election, voters of color and voters from historically disenfranchised groups—the very voters that *amici* work to protect from discrimination—would bear the brunt of the fallout. Indeed, *amici*'s work is not complete unless all eligible people who want to vote are not only able to cast a ballot, but also able to have that ballot counted. Making certification discretionary would subject the counting of all ballots to the whims of rogue election officials, undermining *amici*'s missions and their work to help voters participate in our democracy.

Plaintiff's lawsuit is just the latest attack in an ongoing effort to undermine election processes in Fulton County's plurality Black jurisdiction. Workers and voters in the County, and throughout Georgia generally, have faced extensive racial targeting over the last several years from candidates and activists alike. Fulton County election workers, for example, have experienced numerous racially charged threats. One caller to the County elections office, which consisted of almost entirely Black employees at the time, suggested the workers would be killed by firing squad or hanging, even saying to one employee: "Boy, you better run." Johnny Kauffman, *Inside the Battle for Fulton County's Votes*, Atlanta Magazine (Feb. 3, 2021), https://www.atlantamagazine.com/great-reads/inside-the-battle-for-fulton-countys-votes/. Then-Fulton County voter registration chief Ralph Jones, a Black man, was called racial epithets and told he would be shot and have his body dragged by a truck. Linda So, *Trump-inspired Death Threats Are Terrorizing Election Workers*, Reuters (June 11, 2021), https://www.reuters.com/investigates/special-report/usa-trump-georgia-threats/.

Most infamously, Rudy Guiliani accused Fulton County election workers Ruby Freeman and Wandrea "Shaye" Moss of passing around USB ports containing votes like "vials of heroin or cocaine." H.R. Rep. No. 117-663, at 45. In response to Giuliani's lies, some extremists threatened Freeman and Moss using racial epithets. For example:

- "You are dead. . . . I hope you and your family live in fear for their lives they ending soon. . . . Fucking kill yourself now so we can save AMNO! Stupid iboc [n-word] casket dweller! . . . ." Exhibit B (Excerpt of Exhibits from *Freeman v. Guiliani*, 1:21-cv-03354-BAH (D.D.C.).

- "You fucking [n-word], You going to jail" Exhibit B (Excerpt of Exhibits from *Freeman v. Guiliani*, 1:21-cv-03354-BAH (D.D.C.).

Freeman and Moss also received threats that included clear allusions to historical violence against Black Georgians who exercised political rights. For example, one online comment read: "Be glad it's 2020 and not 1920." Kayla Epstein, *Georgia election worker feared for her life after Rudy Giuliani's election fraud claims*, BBC (Dec. 12, 2023), https://www.bbc.com/news/world-us-canada-67696511; *see also* Edmund L. Drago, *Black Legislators during Reconstruction*, New Georgia Encyclopedia (last edited Jul. 25, 2023), https://www.georgiaencyclopedia.org/articles/history-archaeology/black-legislators-during-reconstruction (explaining how the Georgia legislature expelled all its Black members elected in 1868 and how one quarter of those members were subsequently killed, beaten, or jailed). In other words, Plaintiff's lawsuit targets and threatens further chaos in a county whose Black election workers and voters already have been under siege in recent years.

This lawsuit is no more than an effort to put an official gloss on contrived claims about cheating in Georgia elections. *Amici* ask that the Court not indulge this,

but instead reaffirm statutory law and longstanding precedent. Plaintiff should not be handed the opportunity to sow chaos and risk disenfranchising hundreds of thousands of voters—a disproportionately large number of whom would be Black voters and other voters of color.

CONCLUSION

For the reasons set forth above, the Court should grant the Defendants' Motion to Dismiss.

[**Signature on Following Page**]

Respectfully submitted, this 29th day of July 2024.

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Counsel for Proposed Amici Curiae Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., League of Women Voters of Georgia, and League of Women Voters of Atlanta-Fulton County

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing **BRIEF OF *AMICI CURIAE* IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** by electronically filing the same with the Clerk of Court using the Odyssey eFileGA system, which should automatically send an email notification of such filing to all counsel of record, and by transmitting a copy via email in portable document format (PDF) to counsel of record and showing in the subject line of the email message the words "STATUTORY ELECTRONIC SERVICE" in capital letters.

/s/ Adam M. Sparks
Adam M. Sparks
Georgia Bar No. 341578
Counsel for Amici Curiae

Exhibit B

From: Voter via Alignable [redacted]@email.alignable.com]
on behalf of Voter via Alignable [redacted]@email.alignable.com> [redacted]@email.alignable.com]
Sent: 12/4/2020 2:58:26 AM
To: [redacted]1@yahoo.com
Subject: New Contact Form Submission from Voter

Someone's interested in LaRuby's Unique Treasures

From: Voter
Email: [redacted]@voter.com

Whats up with the crimes and fake ballots???????????

Reply

Voter contacted you from your public Alignable profile and is not associated with Alignable.

From: Anonymousemail [redacted]@anonymousemail.me]
on behalf of Anonymousemail [redacted]@anonymousemail.me> [redacted]@anonymousemail.me]
Sent: 12/4/2020 4:37:04 AM
To: [redacted].@yahoo.com
Subject: DOJ summons to appear - AG Barr

You fucking Nigger, You going to jail

From: Slammer McHenry via Alignable [redacted]@email.alignable.com]
on behalf of Slammer McHenry via Alignable [redacted]@email.alignable.com> [redacted]@email.alignable.com]
Sent: 12/4/2020 1:02:24 PM
To: [redacted]1@yahoo.com
Subject: New Contact Form Submission from Slammer McHenry

Someone's interested in LaRuby's Unique Treasures

From: Slammer McHenry
Email: [redacted]@gmail.com

You are dead. Your family and you are now criminals and traitors to the union. BLM wants the cops to go away,good they are in the way of my ropes and your tree! Hope you have dogs they are real delish. I hope you and your family live in fear for their lives cause they ending soon. Death to traitors and treasonist enemy's within the country starting with you and your daughter. Then comes your fucked up friends on facebook. Your mom's ,pops,gma,bff. You fucked up and they are just as guilty as you are! Fucking kill yourself now so we can save AMNO! Stupid iboc nigger casket dweller! Have fun sucking satan's dick bitch

Reply

Slammer McHenry contacted you from your public Alignable profile and is not associated with Alignable.

If you no longer wish to receive these type of emails, you can **unsubscribe**

Alignable 205 Portland Street
Boston MA 02114