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September 21, 2023

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Re: Email of September 20, 2023

Those Responsible:

I am writing this letter in response to your email to me and Mr. Joe Rossi on Wednesday morning in which you said, "*I need to see the entire Excel spreadsheet so I will have all the information. I need this by Noon on Friday September 22, 2023.*"

“I have not examined or heard of an election in the United States with errors of this type or this magnitude.” 2022-Duncan Buell

I am responding to you tonight so that you will “have all the information” you need with time to spare. We are exasperated at being told to provide 48-hour turnaround service on a matter that has been pending since at least the date we drafted the complaint (July 8, 2022). Please understand that most of this information was presented to the Governor or the Secretary of State even before that date and we have spent a lot of time and treasure trying to get someone to review this analysis. So even though we may express our frustration, we are heartened by the fact that someone is actually reading what we submitted more than 14 months ago.

As I explained to you and the board on September 7, 2023 (2 weeks ago), the screenshot I provided was but an example to show you that your theory as to the cause of 17,852 missing ballot images was flawed and not possible. In response, you questioned the credibility of the data shown in the screenshot, to which I explained that you should access the data at its source – we sourced this data from the Secretary of State and we believed that you would want to authenticate our data. That would be helpful for two reasons: (a) you could verify that we have not compromised the integrity of the data, and (b) if there is anything amiss with the data, your office is best positioned to determine the errors and correct us – and the courts from which we obtained the data.¹

Your insistence on obtaining our data raises the following issues at least for us:

1. As noted above, we believe you cannot rely on our data for the purposes of your official investigation. Months ago, we provided a separate list specifically identifying each tabulator, each batch, and the number of ballots missing from each of those batches. It is the height of gross negligence that the Secretary of State’s office is not already in possession of this data and has not already made the same conclusions that we have made.
2. The Secretary of State and Attorney General have done something completely unprecedented – instead of investigating evidence-based complaints using the powerful state resources at your disposal, you have

¹ If you question how we arrived at the 17,852 extra votes, you might also want to question Professor Philip B. Stark of Berkeley, whose Declaration of March 9, 2022 also found “17,852 image files are missing.” (p.20) Professor Stark continued, “Entire batches of images are missing from Fulton County’s production, for example, images from Scanner 801 batch 117 and Scanner 801 batch 118 are referred to in the cast vote records for the second machine count but the images were not among the electronic records.” We looked at the CVR for those batches and note that 100% of the votes in Scanner 801 batch 117 and Scanner 801 batch 118 were cast for Joseph R. Biden. This seems suspicious and we would think it would warrant further inquiry by the Secretary of State – or the Secretary of State should have noticed that during the machine recount on December 3, 2020.

instead used that power to undermine the efforts of True the Vote, another complainant. You sued True the Vote, caused them to spend valuable resources on lawyers and specious litigation, because you refused to provide protections for a whistleblower. This Board's actions have placed their lives in jeopardy. You have ignored the valuable data they have provided and used a handful of cherry-picked cases - to put on display.²

3. Will we now be the targets of an investigation? Like True the Vote, are we too in jeopardy or at risk of being sued by the State Election Board for seeking redress and remedy from our government for fraud, waste, and abuse? Does anyone at the Secretary of State's office want to acknowledge that we have a First Amendment right to petition our government for the redress of grievances?
4. Or will this case be resolved like SEB-2021-181, with a secret settlement agreement which conceals the fact that – as the Governor's own staff determined – were 36 inconsistencies that falsely added over 6,000 votes to the hand-count/audit? Will the board members at least get to read the document before they vote this time?³ The board has a new chairman now, and perhaps Chairman Mashburn will not hide the text of an agreement from the other board members and deprive them of a right to ask questions, as Judge Duffey did with the Consent Agreement of SEB 2021-181.

We stand firmly behind our work and have the courage of our convictions. Thus, I have already provided the spreadsheet that you *demand*ed -- as a courtesy and act of good faith; however, your deadline "*by Noon on Friday September 22, 2023*" is surprising, yet troublesome. Surprising because of the newfound sense of urgency. Troublesome because such a deadline suggests the creation of a false pretext which could potentially be used to drop the complaint.

Four-hundred-and-twenty-four (424) days have passed since we filed this complaint. How is it that source data is only now being sought? Considering only days ago Ms. McGowan reported to the board:

² David Cross has filed several complaints with the SEB involving potential ballot mules that have not been investigated.

³ Will the three attorneys now on the Board who voted to adopt that agreement sight-unseen, do so again knowing they could face bar complaints for violating the Rules of Professional Conduct? Was Ms. McGowan aware of the circumstances detailed above? Or will attorneys who work with us be subject to bar complaints and disbarment proceedings, like John Eastman in California or Harry MacDougald in Georgia?

"...the investigation is (sic) has been complete but Mr. Rossi "keeps asking that the scope of the investigation be broadened beyond the original complaint,"

How could it have been completed without accessing the source data? And if the data has already been referenced, why is Mr. Zagorin now seeking it from us? Is contesting his explanation for the missing ballot images we know to be false, "broadening the scope"?

Let me be very clear -- Neither Mr. Rossi nor I have ever sought to "broaden the scope" of this case. We have no need to add weight to our complaint, as it stands on the material, independently verified, meticulously cited facts. Those facts are the records of Fulton County and the Secretary of State.

Ms. McGowan states that the *"...SOS office is ready to move forward with the investigation as initially presented in the original complaint if the Board is ready to hear it."* (We wonder if Ms. McGowan is getting a full report on the status of this investigation.)

It is my understanding that, according to Mr. Mashburn, at hearings complainants are not permitted to speak. I hasten to remind Mr. Mashburn that during the March 16, 2022, SEB meeting on a separate complaint, Mr. Rossi was not permitted to speak about matters involving the Secretary of State,⁴ because *"...he's not named as a Respondent."*⁵ Using the Board's rationale, prohibiting us from speaking is tantamount to removing our ability to be heard.

The information you now seek has been available to you since December of 2020 and likely before. It was obtained by us and many others -- only as a result of hard-fought litigation -- in both the pending Fulton County ballot case matter, while the media continues to report that there is "no evidence" of any irregularity in the 2020 election, or in the Curling case, which has hardly moved to any conclusion over the six years it has been moldering in the Federal court. And the media reports that the courts have "heard the evidence." You know that is not true.

⁴ Mr. Rossi simply attempted to say that the Secretary of State shared responsibility for the 36 Fulton County errors, to which Mr. Mashburn interjected, *"Mr. Rossi, you are out of order!"*. Mr. Rossi asked, *"Who decided that?"* *"I did!"*, stated Mashburn.

⁵ Mr. Rossi filed a separate complaint specifically naming the SOS as a Respondent. Chairman Duffey asked the SOS to open an investigation *"...regarding the posting of the county-level RLA results for the 2020 General Election."* In response, the SOS's General Counsel, Charlene McGowan, stated, *"I have instructed our investigations division that this office will not be opening a case on this complaint for several reasons."* McGowan states, *"...the SEB has no jurisdiction over this complaint."*, and then, *"...the SEB has no oversight role over the Secretary of State."* Assuming hypothetically that there was an alleged violation or crime, McGowan further states that the SEB would need to refer the case to the Attorney General's office, *"...and the AG's office does not take legal action against their own clients."*; *"For all these reasons, the SEB cannot pursue complaints against the Secretary's office, and to do so would be unprecedented action by the Board. I trust with this information that the Board will inform Mr. Rossi that no case will be opened on this matter."*

Of course, SEB-2023-025 irrefutably establishes that there **IS** evidence of “irregularity”. Plenty of it. But we are constantly met with inquiries of the sort you raise – at the last minute for a complaint that was filed 14 months ago. Or being told that we are duplicitous or ignorant. Not because there is no evidence. But because the journalists, lawyers, judges, and it appears, investigators are simply incapable of understanding the evidence. Let us walk you through this. We will try to make it as clear as possible.

The theorem we have developed through complex mathematical equation is that **every vote must have a ballot**. Are you with us? This is an important point. The lawyers, judges, journalists, and representatives of the Secretary of State seem unable to understand. There are 17,852 votes that were somehow inserted in the CVR with no supporting ballot image. That is the entry called “FALSE” in column S of the file labeled as the “Fulton County Recount Missing Ballot Images” file.

This is the exact same number that Professor Philip B. Stark of the University of California at Berkeley calculated in his analysis, so we have provided a link to his declaration for your review.⁶ We call your attention to paragraph 63 of his Declaration from March 9, 2022 (page 20), which confirms that number:

For the first machine count, production included images of ballots or BMD printout cards for only 168,726 of the 528,776 cast vote records: 376,863 image files are missing. For the second machine count, Fulton County’s production included images of ballots or BMD printout cards for 510,073 of the 527,925 cast vote records: 17,852 image files are missing.

That information was confirmed by Professor Duncan Buell of the University of South Carolina in his declaration of January 11, 2022, which we have provided for your review and confirmation of the number we provided to you 14 months ago (para. 16):⁷

“Approximately 17,800 images... are missing from the presidential recount.”

Buell characterizes the election results:

“There appears to be no localized isolating explanation’ the mismatches occur across precincts, tabulators, batches and counting groups. Vote counting errors of this magnitude (more than 2-1/2%) are unacceptable for any voting system or election tabulation process. I have not examined or heard of an election in the United States with errors of this type or this magnitude.”

⁶ [Philip Stark CGG 9 | PDF | Government \(scribd.com\)](#).

⁷ [20220111 Buell Expert Report Final Served | PDF | Election Recount | Voting \(scribd.com\)](#)

Other records, like the Recount ballot images, were also produced by Fulton County in litigation, so a lot of time and money has been spent obtaining this information. If you have any reason to believe that the information, we have is not correct, please let us know so that we can report back to our sources and the courts so that this can be cleaned up as these cases proceed.

In some cases (3,125 to be exact), there was no ballot image for a vote, but a vote in the same ballot style was cast, leading us to believe (and Professors Stark and Buell) there was a duplicate ballot in the system. Those are marked as “TRUE” in Column U (vote was the same for two ballots with the same “signature”). From Prof. Stark’s Declaration (para. 65):

The full extent of this multiple-counting problem cannot be determined without additional discovery, but there is ample evidence that it added thousands of bogus votes to the reported machine-count results. That is, thousands of Fulton County voters’ votes were included in the reported totals more than once. From the production so far, it is not possible to determine conclusively whether any voter’s votes were omitted from the reported totals.

We have called foul on earlier “sweep-it-under-the-rug” theories about miscounts, human errors, or machines failing to record images internal to a particular batch are all wrong. You will also find, just as you did with SEB-2021-181, that the results for the 2020 General Election are incontrovertibly, verifiably, and substantially incorrect. This, of course, is obvious just based on the 36 errors Mr. Zagorin investigated and verified. According to the Secretary of State and Gabe Sterling, “...the hand count matched the results”, and “we counted every ballot by hand”. Considering there were over 6,000 ballots removed from the hand-count/audit total begs the question, how did they match? The answer is- they didn’t.

Entire batches of images are missing from Fulton County’s production, for example, images from Scanner 801 batch 117 and Scanner 801 batch 118 are referred to in the cast vote records for the second machine count but the images were not among the electronic records. We note that 100% of the votes in Scanner 801 batch 117 and Scanner 801 batch 118 were cast for Joseph R. Biden. It has become painfully aware to us through this process that your office is doing everything it can to convince the public that the election was “the most secure election in history” and that our criticisms are baseless. How can anyone who knows what has been raised say such a thing without intentionally conspiring to prevent the data from being investigated? We must face the reality of the Secretary’s intransigence and refusal to review any competent analysis. It is being done maliciously to deprive voters of their equal protection, to prevent oversight of government functions, and to obfuscate the evidence that is clear in the data sets and cryptic election records.

We don't understand why it has become necessary to ignore the facts to come to a conclusion that exonerates your office from all liability for a screwed-up election. Or maybe we do understand.

Finally, as Mr. Rossi has ably explained in his earlier communications with the Secretary of State's attorneys, it is beneath the process of any investigation to resort to lying about the conduct of the complainants – we are, after all, the ones who are trying to bring evidence of these irregularities to your attention. We do not appreciate being told that we are the cause of any delay. But we know that the Secretary of State has access to all of this data – you have had it for nearly three years now.

Mr. Mashburn, please be advised that we have filed multiple very serious complaints documenting the very serious problems with Georgia's elections over the course of nearly three years. We have been very patient and very understanding. Aside from those which were referred to the SEB by Governor Kemp, our complaints have been ignored.⁸ In fact, our complaints have been avoided. Now games are being played and I have grown tired.

I am speaking only for myself here. Mr. Mashburn, listen well. There will be no more excuses. I am putting you on notice that I will be holding you accountable. There are 19 people whose lives hang in the balance because they knew Georgia's 2020 General Election and Senate run-off results were wrong. Those people were right. You can either properly investigate our complaints and verify the facts or I will show you publicly in the media. You are the chairman of the State Election Board, which is the only entity in the state of Georgia who has the authority to investigate, recognize, and remedy the travesty that you are witnessing. We have the receipts- not just for Fulton County, but for multiple counties across the state. Preserve all records and communications, Mr. Mashburn. I expect to hear from you by noon on Monday.

If we can help explain what you have that you do not understand, please feel free to call on us. You have our telephone numbers and email addresses. Thank you.

Very truly yours,

A blacked-out redaction covering the signature of Kevin Moncla.

Kevin Moncla

⁸ I must take this opportunity to say that when we asked the Governor to review the complaint at issue today, he had his office to do immediately. We were treated with respect and the people at his office were professionals. They called it like it was and didn't try to excuse or dismiss our findings. In fact, with regard to 2021-181, the Governor's team found and identified 2 additional mistakes that were missed.