



**Cobb County Republican Party
P. O. Box 1232
Marietta, GA 30060**

December 15, 2023

Georgia State Election Board
2 MLK Jr. Drive
Suite 802 Floyd West Tower
Atlanta, Georgia 30334
(Addresses below)

Re: Chairman Mashburn's Request for Jurisdiction Opinion

Dear Honorable Board Members:

I am writing as a friend of the State Election Board (the "Board") in response to your letter dated October 20, 2023, to Mr. Joe Rossi (the "Jurisdictional Letter") in which you ask if the Board can investigate the Secretary of State and its officers.¹ The text of your letter is set out as Exhibit "A".

I am the Chairman of the "Over 80K Counties" as their representative on the Executive Committee of the Georgia Republican Party. I am writing on behalf of the officers in Republican parties throughout the State of Georgia, currently representing over Six Million (6,000,000) voters in at least 18 of the 32 major counties I represent. The voters in the counties that have joined after just a few hours of circulating a draft of this letter represent more than 56% of the voters in Georgia. Other counties have indicated that they are interested in making their comments known as well; I will obtain a final number of the counties and percentage of votes represented before the meeting

¹ Please accept our apologies for the legal citations. In the Jurisdictional Letter, you asked for citations when you extended to Mr. Rossi the "option ... to brief the Board on any specific, explicit authority, under which you contend the Board has jurisdiction to hear Complaints against the Secretary of State." With all respect to you and the Board and Mr. Rossi, we do not believe those questions should be addressed to a chemical engineer in Perry, Georgia, particularly when you ask for explanation of "the scope and limits of such authority" as well as the effects of an old opinion of the Attorney General and the recently enacted SB 202.

We have therefore consulted with counsel in the preparation of this letter, but we assume that you have also consulted with counsel on this matter. We note that the Board includes attorneys who are well-versed in the applicable legal and constitutional principles. But as lay citizens, it seems clear to us that as citizens, we can answer your question by saying that: "No man is above the law."

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on Tuesday, but please accept my representation that we believe that most Republican party chairs in Georgia will be interested in expressing concern over the continuing lack of real investigation by the State Election Board or the Secretary of State into the anomalies reported in the 2020 election results.

Specifically, Fulton County, for example, traditionally represents about 10% of the electorate in Georgia, but we are concerned with the lack of a certifiable and transparent investigation by a professional independent of the Secretary of State into the of irregularities in Fulton County. The miscounts in Fulton County have not been explained. Without a public understanding of how these miscounts happen, our voters will continue to question the integrity of the election system and the recounts will continue to dilute the certified and compliant votes of the 90% of the electorate who reside in other counties throughout the State. Even a single vote should be explained – an error rate of nearly 3% in absentee ballot counting needs a detailed explanation.

Mr. Rossi had asked for an investigation into the Secretary of State and his office by his letter (with his lawyer, John K. James) of March 21, 2022. That request was renewed in July of 2023. He had previously presented his reasons for an investigation to the Governor, whose staff had confirmed the discrepancies in November of 2021. A timeline is attached as Exhibit B. It seems this is a simple question to the undersigned, but we recognize that you have received an email from Ms. Charlene McGowan saying, “As I explained in our June 14th meeting, the SEB has no oversight role over the Secretary of State.”ⁱ We don’t agree. We note that Ms. McGowan holds the office of General Counsel to the Secretary of State, and trust that you have sought independent legal advice with respect to your authorities. However, we will present the matters as we and our constituents see them.

The lack of oversight and real investigation over election issues arising from the elections in 2020 and 2021 have caused an unprecedented falloff in confidence in election integrity, particularly among Republican voters. The last Pew Research survey showed that “Republicans remain skeptical of absentee and mail voting, and they are now less confident that votes cast in person will be counted accurately.”ⁱⁱ We represent those voters and understand their concerns, particularly in Georgia.

We are therefore grateful for the work of Mr. Rossi showing the errors in counting in Fulton County and we understand his concern that all the matters that he has raised are being “swept under the rug” by the Secretary of State and the State Election Board. And we are grateful that you are now after a long delay considering Mr. Rossi’s complaint against the Secretary of State as SEB 2023-BI-00001.

The Board’s duty to investigateⁱⁱⁱ, provide oversight^{iv}, and make rules for uniformity^v is not tied to any mandate that the Board would be able to enforce a decision. The Board also has a duty to make recommendations to the Legislature.^{vi} (This last assigned duty will likely occupy a significant amount of the Board’s time in the next few months given the parlous state of the election code in Georgia.)

Your letter asks for the “jurisdiction” that applies in this matter. The word “jurisdiction” can cover “jurisdiction to investigate” and “jurisdiction to administer” and “jurisdiction to enforce.”^{vii} The Election Code observes, in our view, the distinction between investigation and administration or enforcement. For any actions involving enforcement, the Board can refer matters to the Attorney General or the appropriate district attorney.^{viii} For matters involving the Secretary of State individually, we note that the position is a constitutional position, and any action against the Secretary of State would be decided by the Legislature alone. However, that does not preclude investigation of the Secretary of State or investigation and actions involving election officials in the Secretary of State’s office. The Board’s more limited role in administration and enforcement does not mean that it may shirk its statutory duties of investigation and oversight.

The Election Code supports that interpretation. For example, O.C.G.A. § 21-2-586 expressly makes the Secretary of State and its officers can be guilty of both a misdemeanor and a felony:

§ 21-2-586. Refusal by Secretary of State or His or Her Employee to Permit Public Inspection of Documents; Removal, Destruction, or Alteration of Documents

- a. If the Secretary of State or any employee of his or her office willfully refuses to permit the public inspection or copying, in accordance with this chapter, of any return, petition, certificate, paper, account, contract, report, or any other document or record in his or her custody, except when in use, or willfully removes any such document or record from his or her office during such period or permits the same to be removed, except pursuant to the direction of competent authority, the Secretary of State or employee of his or her office shall be guilty of a misdemeanor.
- b. If the Secretary of State or any employee of his or her office willfully destroys, alters, or permits to be destroyed or altered any document described in subsection (a) of this Code section during the period for which the same is required to be kept in his or her office, the Secretary of State or employee of his or her office shall be guilty of a felony.

The Election Code also imposes duties on the Secretary of State in other areas. See O.C.G.A. §§ 21-2-50 (powers and duties), 21-2-51 (opening of election records to members of the public), 21-2-52 (preservation of primary and election records), 21-2-50.2 (duties to maintain accurate voting records under the Help America Votes Act), 21-2-499 (duties for tabulation, computation, and canvassing), etc. Far from suggesting that the Secretary of State is “above the law,” the Election Code mandates that he – and his employees and officers -- be subject to the law. While we do not think it is necessary to point that out, this interpretation of our Election Code seems consistent with Supreme Court precedent^{ix} and the Georgia Constitution.^x

To address the points raised in your Jurisdictional Letter, it is also consistent with Georgia law. You specifically note that the Attorney General’s opinion 2005-3 (“Opinion 2005-3”) “continues to exist.” While it is almost 20 years old, and many features of Georgia law (including the passage of SB 202, discussed below) have changed, we believe that it does still exist as well, but it specifically refers to the Board’s responsibilities of oversight and investigation.

Opinion 2005-3 specifically references that the Board’s “duties and responsibilities relate not just to the Office of the Secretary of State, but also to local election officials such as voter registrars and election superintendents, and are directed to the broader policy considerations of providing for technical uniformity in the operation of election practices and procedures and in providing a due process mechanism for determining whether violations of laws, rules, or regulations have occurred.” Opinion 2005-3 also opines that the Board can make rules and regulations and can “enforce those rules and regulations.” The Opinion goes on to suggest a possible remedy if the Board needs additional powers to enforce:

“Should the Board believe that there are additional requirements that should be advanced in the area of election law, but which are beyond its abilities to provide through rule or regulation, or which exceed the scope of its authority, the Board is authorized to make legislative recommendations to the General Assembly.”

Opinion 2005-3 also refers to a “symbiotic relationship” between the Board and the Secretary of State. The opinion seems to find this “symbiotic relationship” in from the presence of the Secretary of State as the Chairman of the Board prior to the adoption of SB 202:

“The fact that the Board is chaired by the Secretary of State further indicates a statutory goal that the Board’s actions are to be influenced and directed by the Secretary of State, presumably with the “good government” result that these two entities will coordinate consistently in providing guidance on the appropriate enforcement of Georgia’s electoral statutes.”

We must admit that we have no idea what “symbiotic relationship” or “good government result” is accomplished but citing to a “symbiotic relationship” does not appear to have any precedent in law. To the extent it prevents government accountability, we believe that it would undermine both the principle of accountability and the rights of citizens under the Georgia Constitution to “apply by petition or remonstrance to those vested with the powers of government for redress of grievances.” How can a citizen apply by petition if the authority is vested in a “symbiotic relationship?”

But fortunately, we do not need to address this question, since, as you note in the Jurisdictional Letter, the adoption of SB 202 was a watershed in separating the Secretary of State and the Board, except to the extent that the Secretary of State is an ex officio member of the Board.^{xi} Secretary of State Brad Raffensberger agreed^{xii} that SB 202 confers “an incredible amount of power on the [Board]. In the interview we just quoted, Mr. Raffensperger expressed concern for a lack of accountability. We believe that is all Mr. Rossi is asking for – accountability in government.

In connection with Mr. Rossi’s complaint, we are also asking for accountability. The first step to accountability is an investigation. We are concerned that the Board may not be taking seriously its duties under the first paragraph of O.C.G.A. § 21-2-31 to ensure “uniformity” and

“purity” in Georgia elections and the fifth paragraph that requires investigation. To reiterate the point, it is worth repeating the duties imposed by this statute here:

“It shall be the duty of the State Election Board:

- (1) To promulgate rules and regulations **so as to obtain uniformity in the practices and proceedings of superintendents**, registrars, deputy registrars, poll officers, and other officials, as well as **the legality** and **purity in all primaries and elections**....”

- (5) **To investigate**, or authorize the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and **irregularities in primaries and elections** and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution. (Emphasis supplied.)

We take this language seriously, under the laws and constitution of Georgia and the Constitution of the United States. The Georgia Legislature has “plenary authority”^{xiii} with respect to the “Times, Places and Manners” of elections under the “Elections Clause” of the U.S. Constitution.^{xiv} Its mandate of uniformity in the practices and proceedings of elections in this State is consistent with the opinions of all members of the Supreme Court in *Bush v. Gore*,^{xv} which is sometimes regarded as a “split decision.” But at least two of the dissenting justices agreed with the outcome – stopping the recount – making that decision a 7-2 decision of the Court and *all nine justices agreed on one thing* – the counties should hold the elections *uniformly* and, as stated by Justice Stevens in dissent, there was “no legitimate state interest served by these differing treatments of the expressions of voters' fundamental rights.”^{xvi}

We are asking that the State Election Board investigate these complaints and if the investigation reports incorrect results, enforce the same uniformity in counting votes in Fulton County as those counted in all other counties in the State. In that regard, the recounts should mean something – errors that have been identified should be corrected. In that regard, we are not asking for any redo of any election, simply that the law be followed and transparency in counting be restored to Georgia.

Fulton County has long been a problem child in the State’s election system. If the allegations in SB 2021-181 are true, then President Biden was awarded 4,509 more votes in the Risk-Limiting Audit (“RLA”) hand-count than are merited. It appears that these facts are correct, based on the Report of the Governor of November 17, 2021, validating Mr. Rossi’s investigation, the negotiations by the Attorney General for a “settlement agreement,” the acceptance of a settlement agreement by Fulton County, and the Board’s approval of the settlement agreement. But it does not appear that the settlement agreement or any other action was taken with respect to these findings.

Let's not deceive ourselves. There has been no real accountability – or any accountability at all. Because there has been no real investigation by a professional, independent investigation team. And that is the basis for Mr. Rossi's complaint – and our support in this letter. The June 2023 settlement agreement did not change the landscape. It imposes no fines nor proposed any remedy. It mandates no change in the methods of counting. It provides no accountability to the person or persons who miscounted on such an important vote. And these improper counts have diluted the citizens of other counties – and Fulton County – in ways that are unacceptable. These improper accounts must be *investigated* and explained. If the Board does not understand how the miscounting occurred, how can it fulfill its duties to make rules and procedures or recommendations to the Legislature that will prevent these irregularities in future elections?

For the foregoing reasons, we believe that the State Election Board must have oversight over the Secretary of State, at least with respect to the investigation being proposed. No one in the United States can be above the law. In light of the seriousness of this matter, we will all be watching the next meeting of the Board or attending in person where possible. If you have any questions that should be directed to us, please let me know and I will arrange for our county leaders to be able to answer your questions or address your concerns.

Thank you for all you do and for taking seriously our mutual commitment to election integrity in Georgia. We hope your commitment to integrity means that you will consider opening this investigation and determining what the General Assembly and the citizens of Georgia need to know to inform our election processes.

Very truly yours,

Salleigh Grubbs

Salleigh Grubbs, Chair

Cobb County Republican Party

Over-80 Chair, Executive Committee of the

Georgia Republican Party

with support of the following:

Stephanie Endries, Chair, Fulton County
Republican Party

Marci McCarthy, Chair, DeKalb County
Republican Party

Brittany Brown, Chair, Chatham County
Republican Party

CV Dinsmore, Chair, Cherokee County
Republican Party

Will Jones, Chair, Douglas County
Republican Party

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Mendy Moore, Chair, Forsyth County
Republican Party
Rich Elsarelli, Chair, Hall County
Republican Party
Jim Tully, Chair, Paulding County
Republican Party
Joe Edelman, Chair, Columbia County
Republican Party
Lawton Sack, Chair, Bulloch County
Republican Party
David Sumrall, Chair, Bibb County
Republican Party
Brant Frost, Chair, Coweta County
Republican Party
Elaine Kilgore, Chair, Fayette County
Republican Party
Eddie Caldwell, Chair, Whitfield County
Republican Party
Jamie Palmer, Chair, Floyd County
Republican Party
Et al.

Addressed to:

Mr. Matt Mashburn, Acting Chair

mmashburn@georgia-elections.com

Dr. Jan Johnston

jjohnstonmd.seb@gmail.com

Mrs. Sara Tindall Ghazal

saraghazal.seb@gmail.com

Mr. Edward Lindsey

edwardlindsey.seb@gmail.com

Ex officio:

Mr. Brad Raffensperger

soscontact@sos.ga.gov

Secretary of State

214 State Capitol

Atlanta, Georgia 30334

Exhibit A
{Letterhead of the State Election Board}

October 20, 2023

Via Certified Mail
Return Receipt Requested
Signature Required

Mr. Joseph Rossi
2007 Cedar Ridge Drive
Perry, Georgia 31069

Dear Mr. Rossi –

As the State Election Board (the "Board") carefully considers and examines its options as initiated in an email to you from former Chair, Duffy on August 5, 2023 the Board members have decided to extend you the option, if you wish to do so, to brief the Board on any specific, explicit authority, under which you contend the Board has jurisdiction to hear Complaints against the Secretary of State.

For any authority you cite, you should explain the scope and limits of such authority. For example, you should highlight whether the authority you cite grants the Board jurisdiction only over the Secretary of State or over some or all of the Secretary of State staff and office employees (including receptionists, and any other “public facing” employees). You should specifically demonstrate how the authority you cite grants the Board jurisdiction to hear Complaints against the Secretary of State's investigators who are performing investigations on behalf of the Board. You should address what impact, if any, that such would have on the “symbiotic relationship” between the Board and the Secretary of State's office as described in GA Att'y. Gen. Op. No – 2005–3 (April 15, 2005) that continues to exist even in light of the passage by the General Assembly of SB 202, in 2022, as well as SB 222 in 2023.

You may take up to 30 days from the date of your receipt of this letter (which receipt is presumed to be three days following the mailing hereof). You need not take the full thirty days, but it is made available to you. You should limit your briefing to fifteen 8-1/2 x 11 pages, single-side, double spaced with 12 point font.

This invitation to you does not limit the SEB in any way from seeking input or advice from any other person or persons as it considers the serious Constitutional questions and operational challenges raised by Judge Duffy’s August 5, 2023, email, nor does it set or establish any deadline within which the board is constrained to act. This is not a command or a direction, but completely voluntary on your part whether you wish to participate or not.

Very truly yours

/s/ T. Matt Mashburn
T. Matt Mashburn
Acting Chair
Georgia State Election Board

Exhibit B Timeline

| <u>DATE</u> | <u>DOCUMENT DETAILS</u> |
|-------------|--|
| 2/9/2021 | GABE STERLING (GS) RESPONDS TO QUESTIONS SENT TO HIM BY JOE ROSSI (JR) VIA CERTIFIED MAIL. SPECIFICALLY REGARDING THE BATCH TALLY SHEETS (BTS) USED FOR THE RLA HAND AUDIT, GS STATES "ALL THE TALLY SHEETS HAVE BEEN AVAILABLE ONLINE ON THE SOS WEBSITE FOR NEARLY 2 MONTHS. HERE IS THE LINK..." |
| 2/21/2021 | JR POINTS OUT TO GS, THAT THE BTS HE REFERRED TO HAVING BEEN POSTED FOR NEARLY TWO MONTHS, DON'T ADD UP TO THE TOTAL COUNT FOR FULTON. JR STATES, "NOTE THAT THE TOTAL VOTE COUNT FOR FULTON BASED UPON SUMMATION OF BATCH TALLY SHEETS = 246,922 VOTES WHICH FALLS FAR SHORT OF THE FINAL VOTE COUNT FOR FULTON COUNTY = 525,283." QUESTIONS WHETHER THE SOS EVEN BOTHER TO CHECK ANY NUMBERS SUBMITTED FOR THE RLA HAND AUDIT? DID THEY SIMPLY POST THE NUMBERS AND STATE THEY WERE ACCURATE? |
| 2/24/2021 | GS ADMITS THE SOS FAILED TO ACCURATELY POST ALL OF THE BTS ON THEIR WEBSITE AS PREVIOUSLY STATED. "AFTER RECEIVING YOUR EMAIL, WE REVIEWED OUR INVENTORY OF PHYSICAL BATCH SHEETS FROM FULTON. WE HAVE DETERMINED THAT NOT ALL DOCUMENTS WERE SCANNED TO DIGITAL FILES. WE ARE IN THE PROCESS OF SCANNING THOSE DOCUMENTS. WE EXPECT TO HAVE OUR WEBSITE UPDATED BEFORE THE END OF THE WEEK." INCOMPLETE DATA POSTED ON SOS WEBSITE FOR MONTHS. |
| 2/26/2021 | AFTER THE UPDATED POSTING OF BTS FO FULTON, JR POINTS OUT TO GS THAT ERRORS EXIST IN THE RLA HAND AUDIT FOR FULTON POSTED ON THE SOS WEBSITE AND PUBLICIZED BY THE SOS - THAT THE HAND AUDIT WAS ACCURATE. IN THIS EMAIL, GS ADMITS THAT ERRORS EXIST WITH THE RLA REPORT FOR FULTON POSTED ON THE SOS WEBSITE, "IT APPEARS THAT FULTON MADE A DATA ENTRY ERROR." |
| 3/17/2021 | JR FINDS MORE ERRORS IN THE RLA HAND AUDIT FOR FULTON POSTED ON THE SOS WEBSITE. JR POINTS THESE ERRORS OUT ONCE AGAIN TO GS. ULTIMATELY JR FINDS 36 ERRORS (2X, 3X COUNTS, MISMATCHES...) THAT TOTAL 4081 NET FALSE ABSENTEE VOTES FOR BIDEN, OUT OF 148,000 ABSENTEE BY MAIL BALLOTS FOR FULTON = 2.7% ERROR RATE FOR A SUBSET OF VOTES IN 1 OF 159 COUNTIES. GS RESPONDS - "FULTON IS THE ENTITY THAT ULTIMATELY NEEDS TO PROVIDE THE RESPONSES." AT THIS POINT IT IS CLEAR THAT THE RLA HAND AUDIT FOR FULTON POSTED ON THE SOS WEBSITE IS ERRORED, AND THAT GS WAS NOT GOING TO TAKE ACTION ON THIS CRITICAL ITEM - CODE VIOLATION. |
| 9/2021 | DUE TO THE LACK OF ACTION BY SOS (GS) - JR TAKES THE 36 ERRORS TO THE GOVERNOR'S TEAM. . GOVERNOR SENDS HIS DEPUTY CHIEF COUNSEL, TREY BENNET (TB) TO JR'S HOME TO REVIEW THE DATA FOR THE 36 ERRORS FOUND IN THE RLA REPORT FOR FULTON. AFTER REVIEWING THE DATA, JR/TB MAKE A TRIP TO WALMART TO PURCHASE A THUMB DRIVE FOR TB. IN THE SPIRIT OF BEING FACTUAL AND TRANSPARENT JR ALLOWS TB TO COPY DATA FROM HIS COMPUTER FOR THE GOVERNOR'S TEAM. |
| 11/2021 | IN NOV OF 2021, JR RECEIVES A PHONE CALL FROM DAVID DOVE (DD), THE GOVERNOR'S CHIEF COUNSEL. DD REPORTS TO JR THAT THE GOVERNOR'S TEAM HAS COMPLETED THEIR INVESTIGATION AND THEY ARE READY TO ISSUE A REPORT AND A LETTER FROM THE GOVERNOR TO SEB. |
| 11/17/2021 | GOVERNOR ISSUES A LETTER TO THE SEB. IN THIS LETTER THE GOVERNOR STATES: |

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| | <p>A. "THE 36 INCONSISTENCIES NOTED BY JR ARE FACTUAL IN NATURE."</p> <p>B. "DATA THAT EXISTS IN PUBLIC VIEW ON THE SECRETARY OF STATE'S WEBSITE OF THE RLA REPORT DOES NOT INSPIRE CONFIDENCE. IT IS SLOPPY, INCONSISTENT, AND PRESENTS QUESTIONS ABOUT WHAT PROCESSES WERE USED BY FULTON COUNTY TO ARRIVE AT THE RESULT."</p> <p>C. "THIS IS THE ONE ISSUE WHERE I BELIEVE THIS BOARD MUST ACT SWIFTLY, AND I URGE YOU TO DO SO IN THIS CASE."</p> |
| 12/4/2021 | <p>UNSOLICITED PHONE CALL FROM CHARLENE MCMGOWAN (CM) - ASSISTANT ATTORNEY GENERAL, TO JACK JAMES (JJ), WHO WORKED WITH JR ON IDENTIFYING THE 36 ERRORS IN THE RLA HAND AUDIT FOR FULTON.</p> <p>IN A TRANSCRIBED DOCUMENT OF THIS CALL JJ STATES, "THE PURPOSE OF HER CALL WAS APPARENTLY TO CONVINC ME THAT THE SOS HAS NO RESPONSIBILITY FOR THE ERRORS EXPOSED IN FULTON. I SAID JR AND I BELIEVE THE SOS HAS THE ULTIMATE RESPONSIBILITY, THUS WE DISAGREE ON THE ISSUE OF RESPONSIBILITY." AGAIN, THIS CALL WAS INITIATED BY MS. MCGOWAN.</p> |
| 12/16/2021 | <p>SUMMARIZING EFFORTS TO PROTECT THE SOS. GS (SOS) FULTON ISSUE ONLY, CM (AG) FULTON ISSUE ONLY. NEXT EFFORT TO PROTECT THE SOS COMES IN A MEETING WITH INVESTIGATORS ZAGORIN/BRAUN AND JAMES/ROSSI. IN THIS MEETING ZAGORIN AGREES THAT THE RLA HAND AUDIT FOR FULTON POSTED ON THE SOS WEBSITE HAS NUMEROUS ERRORS. HOWEVER, THE INVESTIGATORS TAKE THE POSITION THAT THE SOS'S OFFICE IS JUST A CONDUIT FOR INFORMATION AND ALL THAT THEY DO IS POST WHAT THE COUNTIES GIVE THEM - NO CHECKING OF DATA FOR ACCURACY. ZAGORIN STATES, "I THINK YOU'RE SAYING BECAUSE IT'S ON OUR WEBSITE, IT'S OUR RESPONSIBILITY. THESE ARE NOT OUR RESPONSIBILITY."</p> |
| 3/16/2022 | <p>SEB HEARING - RESULT OF GOVERNOR'S LETTER AND THE 36 ERRORS NOTED IN THE RLA REPORT FOR FULTON POSTED ON THE SOS WEBSITE:</p> <p>A. NO DISPUTE THAT ERRORS EXIST</p> <p>B. WHEN ASKED THE MAGNITUDE OF THE ERRORS INVESTIGATOR ZAGORIN PROVIDES NO ANSWER TO THE BOARD. AFTER 4 MONTHS OF INVESTIGATION - ZAGORIN FAILS TO TOTALIZE THE ERRORS - "I DIDN'T PULL THOSE INTO THIS."</p> <p>C. LATER IN THE MEETING JR REPORTS TO THE SEB THAT THE TOTAL NUMBER FOR THE 36 ERRORS WAS 4081 FALSE VOTES FOR BIDEN.</p> |
| 3/21/2022 | <p>JR AND MR JAMES FILE A DETAILED COMPLAINT AGAINST THE SOS FOR TWO CODE VIOLATION.</p> <p>A. OCGA SECTION 21-2-50(B) - FAILURE TO PROPERLY EXECUTE THE DUTIES OF THE STATE'S CHIEF ELECTION OFFICIAL.</p> <p>B. OCGA SECTION 21-2-499(A) - WHEN ERRORS ARE FOUND IN THE CERTIFIED RETURNS THE SOS HAS THE DUTY TO REPORT THE ERRORS TO THE SPECIFIC COUNTY AND REQUIRE CORRECTIONS.</p> |
| 7/8/2022 | <p>MACHINE COUNT 2 COMPLAINT FILED - 17,852 VOTES COUNTED THAT ARE NOT SUPPORTED BY A CORRESPONDING BALLOT IMAGE. 3,125 DUPLICATE BALLOT COUNTS.</p> |

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| 7/29/2022 | RYAN GERMANY - SOS ATTORNEY SENDS EMAIL TO JR. ADMITS THAT ERRORS EXIST WITH THE RLA REPORT FOR FULTON POSTED ON THE SOS WEBSITE. "OUR INVESTIGATORS LOOKED AT THE ALLEGED VIOLATIONS AND FOUND THAT FULTON DID MAKE MISTAKES IN THEIR AUDIT COUNTING/REPORTING." |
| 3/2023 | COMPLAINT IS FINALLY ASSIGNED AN INVESTIGATION NUMBER SEB2023-25. |
| 5/2023 | JR RECEIVES FIRST CALL FROM INVESTIGATOR ON SECOND COMPLAINT (10 MONTHS AFTER FILING). |
| 6/1/2023 | REGARDING SEB2021-181 - THE OFFICIAL CASE FOR THE ERRORED RLA REPORT FOR FULTON POSTED ON THE SOS WEBSITE, AG OFFICE PROPOSES SETTLEMENT AGREEMENT WITH FULTON FOR VIOLATING SEB RULE 181-1-15-.04. REGARDING AUDITS. SEB VOTES 3-1 IN AGREEMENT WITH THE SETTLEMENT AGREEMENT NOTE THAT THIS SETTLEMENT AGREEMENT WAS NOT POSTED PUBLICLY ON THE AGENDA FOR THIS JUNE MEETING. BASED ON OPEN RECORDS REQUESTS, MEMBERS OR THE SEB WERE NOT PROVIDED A COPY OF THE SETTLEMENT AGREEMENT PRIOR TO THE MEETING OR PRIOR TO BEING ASKED TO VOTE ON THE ORDER. |
| 8/6/2023 | REGARDING SOS CODE VIOLATION COMPLAINT FILED 3/21/22: A. WILLIAM DUFFEY (WD) ATTACHES MCGOWAN (SOS ATTORNEY) EMAIL SENT TO HIM 7/21/23. IN THIS EMAIL CM ADMITS THAT WD REQUESTED THAT AN INVESTIGATION BE OPENED ON THIS COMPLAINT. CM STATES, "I UNDERTAND THAT YOU HAVE ASKED SARAH TO OPEN A NEW CASE ON JR'S COMLAINT AGAINST THE SECRETARY OF STATE'S OFFICE REGARDING THE POSTING OF THE COUNTY-LEVEL RLA RESULTS FOR THE 2020 PRESIDENTIAL ELECTION. I HAVE INSTRUCTED OUR INVESTIGATIONS DIVISION THAT THIS OFFICE WILL NOT BE OPENING UP A CASE ON THIS COMPLAINT, FOR SEVERAL REASONS..." B. AT THE CLOSE OF THIS 7/21/23 EMAIL - CM STATES, "I TRUST WITH THIS INFORMATION THAT THE BOARD WILL INFORM JR THAT NO CASE WILL BE OPENED ON THIS MATTER." C. IN WD EMAIL DATED 8/6/23 - HE STATES, "WE ARE EVALUATING OUR OPTIONS ON HOW WE CAN PROCEED IN THIS MATTER." |
| 8/8/2023 | JAMES REFUTES MCGOWAN EMAIL DATED 7/21/23 WITH 5 POINTS. SPECIFICALLY JJ POINTS OUT THAT THE SEB HAS THE RESPONSIBILITY TO ENSURE UNIFORMITY IN THE SOS'S PRACTICES. JJ QUOTES THE AG OPINION THAT MS. MCGOWAN USES TO SHUT DOWN SEB INVESTIGATION REQUEST..."THE STATE ELECTION BOARD FULFILLS ITS RESPONSIBILITIES IN PROVIDING DIRECTION AND OVERSIGHT TO THE SECRETARY OF STATE AND OTHER ELECTION OFFICIALS WHEN SUCH DIRECTION IS NECESSARY TO ASSURE UNIFORMITY IN THEIR PRACTICES OR THE 'LEGALITY AND PURITY' OF THE ELECTORAL PROCESS." |
| 8/29/2023 | MM PROPOSES NEW RULES FOR SEB HEARINGS: COMPLAINANTS NO LONGER PERMITTED TO PRESENT COUNTERS TO THE SOS INVESTIGATOR REPORT OUTS. "I DO NOTE THAT IT IS CURRENT PRACTICE OF THE BOARD THAT COMPLAINANTS DO NOT PRESENT DURING THE INVESTIGATOR'S REPORT LIKE WAS DONE AT THE MARCH 16, 2022 HEARING." |

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| 9/1/2023 | <p>AFTER MULTIPLE FOLLOW UP ATTEMPTS WITH NEW ACTING CHAIR OF THE SEB, MATT MASHBURN (MM), JR RECEIVES A CERTIFIED LETTER FROM MM REGARDING THE COMPLAINT FILED 3/21/22 - REGARDING SOS CODE VIOLATIONS. IN THIS LETTER MR. MASHBURN STATES:</p> <p>A. "NO DEADLINE FOR WHEN THE BOARD WOULD DECIDE THE MATTER OTHER THAN THAT THE MATTER WOULD BE DILIGENTLY, THOROUGHLY, AND RESPONSIBLY CONSIDERED."</p> <p>B. "I ADD FOR PURPOSES OF THIS LETTER AND FURTHER CLARIFICATION AND AS AN UPDATE THAT SINCE THE MATTER IS ONE THAT IS UNPRECEDENTED IN GEORGIA'S ENTIRE HISTORY...IT IS ENTIRELY PROPER AND REASONABLE THAT THE BOARD WOULD WANT TO TAKE IT'S TIME TO CONSIDER THE MATTER."</p> |
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ENDNOTES

ⁱ Email from Ms. Charlene McGowan to Judge Willaim Duffey, Chairman of the Board, dated July 21, 2023. We address her concerns in that letter in this response.

ⁱⁱ [Two Years After Election Turmoil, GOP Voters Remain Skeptical on Elections, Vote Counts | Pew Research Center](#) (last accessed Dec. 14, 2023).

ⁱⁱⁱ O.C.G.A. §21-2-31(5) (2023).

^{iv} Att'y. Gen. Op. No–2005–3 (April 15, 2005) (Board provides “direction and oversight to the Secretary of State and other election officials when such direction is necessary to assure uniformity in their practices and procedures or the “legality and purity” of the electoral process”).

^v O.C.G.A. §21-2-31(5), (7) (2023).

^{vi} O.C.G.A. §21-2-31(6) (2023).

^{vii} See *Commonwealth v. Koehler*, 229 A.3d 915, 936 (Pa. 2020) (holding actions of an appellate judge should be subject to review to allow the appeal of a capital murder defendant who had been prejudiced by the judge’s expressed bias.) (“The fact that this Court sits atop the judiciary of Pennsylvania does not elevate this Court above the law, nor can it support a conclusion that constitutional deprivations attributable to this Court are insulated from review.”)

^{viii} O.C.G.A. §21-2-31(5) (2023).

^{ix} See, e.g., *Trump v. Vance*, 140 S.Ct. 2412, 2432 (2020) (Kavanaugh, J., concurring) (“In our system of government, as this Court has often stated, no one is above the law.”); *Ex parte Milligan*, 71 U.S. 2, 30 (1866) (“Our system knows no authority beyond or above the law.”). *Accord*, *Am. Civ.Liberties Union v. Dep’t of Defense*, 339 F.Supp.2d 501 (S.D.N.Y. 2004) (“Ours is a government of laws, laws duly promulgated and laws duly observed. No one is above the law: not the executive, not the Congress, and not the judiciary,” *citing* *Youngstown Sheet and Tube, et al. v. Sawyer*, 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952)).

^x Constitution of the State of Georgia, Article I, para. IX (“The people have the right to ... to apply by petition or remonstrance to those vested with the powers of government for redress of grievances.”)

^{xi} We note that since the adoption of SB 202, the Secretary of State has not attended a single meeting of the Board, either as an *ex officio* member, a participant, a witness, or otherwise.

^{xii} Interview with 11Alive News, <https://www.11alive.com/article/news/politics/georgia-secretary-of-state-brad-raffensperger-state-voting-law/85-5c52f142-2d63-4108-ad25-6593f86548bd?> (last accessed December 14, 2023). The full text of his statements are as follows:

"Let’s set aside the personal aspects of it and what the Speaker was trying to do with retribution towards me....**You’re now putting an incredible amount of power on the state election board**, far more than it had before with now an unelected board member," Raffensperger explained. "Unaccountable to no one other than the General Assembly. So if a voter is not happy with the decisions that are made who do they hold accountable? Do they call all 180 state representatives, do they call all 56 state senators?" (emphasis supplied)

He acknowledged in the same interview that the Speaker of the House had said that SB 202 was intended as retribution towards the Secretary of State, implying at the very least that he believed that the Board had power over him. But leave that aside ...interesting that he calls for accountability.

^{xiii} *McPherson v. Blacker*, 146 U.S. 1 (1892) (hereafter “McPherson”) (referring to that power as one that “can neither be taken away or abdicated”). This year’s decision by the Supreme Court in *Moore v. Harper*, 600 U.S. 1 (July 27, 2023), cited *McPherson* with approval and relates only to conflicts between the State Constitutions and the State Legislatures. *Id.* slip op. at 4, 21.

^{xiv} U.S. Constitution, Art. I, Sec. 4.

^{xv} *Bush v. Gore*, 531 U.S. 98 (2000).

^{xvi} *Id.* at 134.