

**An Attorney’s Unsuccessful Challenges
to Georgia’s 2020 General-Election Procedures**
Wood v. Raffensperger (Steven D. Grimberg, 1:20-cv-4651)
and Pearson v. Kemp (1:20-cv-4809)
and Wood v. Raffensperger (1:20-cv-5155)
(Timothy C. Batten, Sr.) (N.D. Ga.)

Ten days after the 2020 general election, a voter alleged that a settlement agreement reached in another case the previous March would result in too few invalidations of absentee ballots. The district judge determined that the plaintiff did not have standing to challenge the other parties’ settlement agreement, the action had been brought too late for equitable relief, and the claims had no merit. The court of appeals agreed that the plaintiff lacked standing. Three weeks and a day after the general election, the voter in the earlier case acted as counsel for plaintiffs in a case challenging how absentee ballots and voting machines were used in the election. Relief was denied because the claims belonged in state court, the plaintiffs did not have standing to bring them, and they brought them too late for equitable relief. In a third action, the plaintiff in the first case and attorney in the second case brought a pro se challenge to Georgia’s election procedures for a pending runoff election, but both the district judge and the court of appeals determined that the plaintiff did not have standing to bring his claims.

Subject: Voting procedures. *Topics:* Enjoining certification; absentee ballots; voting technology; signature matching; laches; interlocutory appeal; intervention; matters for state courts; Electoral College; Covid-19; pro se party.

An attorney pursued three unsuccessful 2020 challenges to Georgia’s election procedures: two actions as a plaintiff and one action representing would-be members of the Electoral College.¹

First Action as a Plaintiff

The attorney’s Friday, November 13, 2020, complaint filed in the Northern District of Georgia as a voter against Georgia’s secretary of state and members of Georgia’s election board alleged, “The validity of the results of the November 3, 2020 general election in Georgia are at stake as a result of Defendants’ unauthorized actions in the handling of absentee ballots within this state, actions that were contrary to the Georgia Election Code.”² In particular, the

1. See generally Alan Judd, *Amid Personal Turmoil, Libel Lawyer Wood Goes on the Attack for Trump*, Atlanta J.-Const., Dec. 19, 2020, at 1A.

2. Complaint at 2, *Wood v. Raffensperger*, No. 1:20-cv-4651 (N.D. Ga. Nov. 13, 2020), D.E. 1 [hereinafter *Wood Complaint*]; see *Wood v. Raffensperger*, 981 F.3d 1307, 1310–12 (11th Cir. 2020); *Wood v. Raffensperger*, 501 F. Supp. 3d 1310, 1316–17 (N.D. Ga. 2020); see also Mark Niese, *Georgia Sued in Attempt to Stop Election Results*, Atlanta J.-Const., Nov. 14, 2020, at 8A.

complaint challenged the terms of a March 6 settlement agreement resolving the verification of absentee-ballot signatures during a time of heavy absentee voting because of the global infectious Covid-19 pandemic, “making it less likely that [defective absentee ballots] would be identified or, if identified, processed for rejection.”³

On Monday, the voter filed an amended complaint, attaching affidavits supporting a motion for a temporary restraining order.⁴ On Tuesday, the voter filed an “Emergency Motion for Injunctive Relief and Memorandum of Law in Support Thereof,” which the court docketed as a motion for a temporary restraining order.⁵

The plaintiff political party in the settled case moved on November 18 to intervene in the new case.⁶ Three voters and two voting-rights advocacy organizations also filed a motion that day to intervene as defendants in the new case.⁷

Judge Steven D. Grimberg set the case for a remote audio and video hearing on the afternoon of Thursday, November 19.⁸ At the hearing, Judge Grimberg granted intervention to the plaintiff party in the settled case and permitted its attorney to cross-examine the witness presented by the new plaintiff.⁹ Judge Grimberg also allowed the other prospective intervenors to make an argument without granting their intervention motion.¹⁰

Following a recess from 5:31 to 5:47 p.m., Judge Grimberg denied the voter a temporary restraining order.¹¹ He issued a published opinion on the following day.¹² “As a threshold matter, the Court finds [that the plaintiff] lacks standing to assert [his] claims.”¹³ Even if he had standing, his claims would be

3. *Wood* Complaint, *supra* note 2, at 13–14; *see* Notices of Settlement, Democratic Party of Ga., Inc. v. Raffensperger, No. 1:19-cv-5028 (N.D. Ga. Mar. 6, 2020), D.E. 55, 56; Order, *id.* (Mar. 9, 2020), D.E. 57 (order by Judge William M. Ray II closing the case); Amended Complaint, *id.* (Dec. 27, 2019), D.E. 30; Complaint, *id.* (Nov. 6, 2019).

4. Amended Complaint, *Wood*, No. 1:20-cv-4651 (N.D. Ga. Nov. 16, 2020), D.E. 5; *Wood*, 501 F. Supp. 3d at 1317.

5. Motion, *Wood*, No. 1:20-cv-4651 (N.D. Ga. Nov. 17, 2020), D.E. 6; Docket Sheet, *id.* (Nov. 13, 2020); *Wood*, 501 F. Supp. 3d at 1317; *see* Supplement, *Wood*, No. 1:20-cv-4651 (N.D. Ga. Nov. 18, 2020), D.E. 7, 20 (exhibit Q, inadvertently omitted from the motion filed on the previous day).

6. Intervention Motion, *Wood*, No. 1:20-cv-4651 (N.D. Ga. Nov. 18, 2020), D.E. 8; *Wood*, 501 F. Supp. 3d at 1317.

7. Intervention Motion, *Wood*, No. 1:20-cv-4651 (N.D. Ga. Nov. 18, 2020), D.E. 22; *Wood*, 501 F. Supp. 3d at 1317.

8. Notice, *Wood*, No. 1:20-cv-4651 (N.D. Ga. Nov. 18, 2020), D.E. 21; Minutes, *id.* (Nov. 19, 2020), D.E. 52; *Wood v. Raffensperger*, 981 F.3d 1307, 1312–13 (11th Cir. 2020); *Wood*, 501 F. Supp. 3d at 1317.

9. Transcript at 41–44, *Wood*, No. 1:20-cv-4651 (N.D. Ga. Nov. 19, 2020, filed Nov. 24, 2020), D.E. 65.

10. *Id.* at 76–80.

11. *Id.* at 92; *Wood*, 501 F. Supp. 3d at 1317; *Wood*, 981 F.3d at 1313; *see* Alan Judd, *Judge Rejects Bid to Block Results*, Atlanta J.-Const., Nov. 20, 2020, at 1A.

12. *Wood*, 501 F. Supp. 3d 1310; *Wood*, 981 F.3d at 1313.

13. *Wood*, 501 F. Supp. 3d at 1320.

barred by the doctrine of laches.¹⁴ The settlement agreement had been in place for eight months, in effect for at least three elections.¹⁵ The claims did not merit immediate injunctive relief.¹⁶

The court of appeals agreed to expedite review of Judge Grimberg's decision and ordered briefing completed by Thursday, December 3.¹⁷ Agreeing that the voter lacked standing to contest the settlement agreement, the court of appeals affirmed the denial of injunctive relief on December 5.¹⁸ In addition, the matter had become moot because of Georgia's certification of its election results.¹⁹

Judge Grimberg ordered the case closed on February 24, 2021.²⁰

Action as an Attorney

Three weeks and a day after the November 3, 2020, general election—on the day before Thanksgiving Day—seven would-be members of the Electoral College filed a federal complaint against Georgia election officials in the Northern District alleging “massive election fraud.”²¹ Also identified as a plaintiff in the complaint, but not included in the caption, was a county Republican Party chair.²² The plaintiff in Judge Grimberg's case was one of the plaintiffs' attorneys in this case.²³ The allegations included challenges to the use of voting equipment provided by companies “founded by foreign oligarchs and dictators”²⁴ and “handling absentee ballots in a manner that is not consistent with the laws promulgated by the Georgia Legislature for elections in this state.”²⁵ Two days later, the plaintiffs filed an “Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief,” which the court docketed as a motion for a temporary restraining order.²⁶ The plaintiffs also filed a motion to file two affidavits under seal to protect the affiants from harassment and physical harm.²⁷ The court assigned the case to Judge Timothy C. Batten, Sr.²⁸

14. *Id.* at 1323.

15. *Id.* at 1324.

16. *Id.* at 1325–31.

17. Order, *Wood v. Raffensperger*, No. 20-14418 (11th Cir. Nov. 25, 2020).

18. *Wood v. Raffensperger*, 981 F.3d 1307 (11th Cir. 2020), *cert. denied*, 592 U.S. ___, 141 S. Ct. 1379 (2021); see David Wickert, *Court Rejects Bid to Overturn Presidential Election*, Atlanta J.-Const., Dec. 6, 2020, at 12A; David Wickert, *Supreme Court Rejects Ga. Election Challenge*, Atlanta J.-Const., Feb. 23, 2021, at 3A.

19. *Wood*, 981 F.3d at 1310, 1316–18.

20. Order, *Wood v. Raffensperger*, No. 1:20-cv-4651 (N.D. Ga. Feb. 24, 2021), D.E. 78.

21. Complaint, *Pearson v. Kemp*, No. 1:20-cv-4809 (N.D. Ga. Nov. 25, 2020), D.E. 1.

22. *Id.* at 14.

23. *Id.* at 103.

24. *Id.* at 4.

25. *Id.* at 22.

26. Motion, *id.* (Nov. 27, 2020), D.E. 6; Docket Sheet, *id.* (Nov. 25, 2020) [hereinafter *Pearson* Docket Sheet].

27. Motion, *id.* (Nov. 27, 2020), D.E. 5.

28. *Pearson* Docket Sheet, *supra* note 26.

Judge Batten heard the case by videoconference on Sunday evening, November 29.²⁹ A few local runoff elections were scheduled for December 1, and statewide runoff elections were scheduled for January 5, 2021.³⁰ At 10:10 p.m. on the day of the hearing, Judge Batten issued an order preserving the possibility of plaintiffs' experts examining voting machines: ordering the defendants not to erase them and to provide briefing on security and proprietary risks resulting from the plaintiffs' examinations.³¹ On the following day, Judge Batten certified his order for immediate appeal.³² At the hearing, he agreed that the forthcoming order could only apply to named defendants, who might have no control over whether the machines were erased.³³

Judge Batten set the case for an in-person hearing on Friday, December 4.³⁴ The state's Democratic Party moved to intervene in defense of a certified victory for its presidential candidate in Georgia,³⁵ and Judge Batten granted intervention on the next day.³⁶ Meanwhile, the court of appeals ordered an appellee brief by midnight on December 4 and an optional reply brief by midnight on Sunday, December 6.³⁷ In light of the pending appeal, Judge Batten stayed further hearing.³⁸

On December 3, the defendants moved for relief from the temporary restraining order to remove uncertainty about whether county election officials could prepare voting machines for the upcoming runoff elections for Georgia's two U.S. senators and its public service commissioner.³⁹ On the following day, a county board of registrations and elections moved to intervene in support of the defendants' motion.⁴⁰

On December 4, the court of appeals dismissed the appeal for lack of jurisdiction, noting that the temporary restraining order "gave the plaintiffs

29. Transcript, *Pearson*, No. 1:20-cv-4809 (N.D. Ga. Nov. 29, 2020, filed Nov. 30, 2020), D.E. 23 [hereinafter Nov. 29, 2020, *Pearson* Transcript]; Minutes, *id.* (Nov. 29, 2020), D.E. 18.

30. Nov. 29, 2020, *Pearson* Transcript, *supra* note 29, at 6–8.

31. Order, *Pearson*, No. 1:20-cv-4809 (N.D. Ga. Nov. 29, 2020), D.E. 14, 2020 WL 7040582.

32. Order, *id.* (Nov. 30, 2020), D.E. 22; *see* Notice of Appeal, *id.* (Dec. 1, 2020), D.E. 32.

33. Nov. 29, 2020, *Pearson* Transcript, *supra* note 29, at 33.

34. Order, *Pearson*, No. 1:20-cv-4809 (N.D. Ga. Nov. 30, 2020), D.E. 17; Nov. 29, 2020, *Pearson* Transcript, *supra* note 29, at 17.

35. Intervention Motions, *Pearson*, No. 1:20-cv-4809 (N.D. Ga. Nov. 30 and Dec. 2, 2020), D.E. 20, 41.

36. Order, *id.* (Dec. 3, 2020), D.E. 42.

37. Order, *Pearson v. Governor*, No. 20-14480 (11th Cir. Dec. 2, 2020).

38. Order, *Pearson*, No. 1:20-cv-4809 (N.D. Ga. Dec. 2, 2020), D.E. 40; *see* Order, *id.* (Dec. 1, 2020), D.E. 37 ("Any delay in conducting the hearing on the claims in Plaintiffs' complaint would be attributable to Plaintiffs—not this Court—since Plaintiffs are the ones who filed the notice of appeal."); *see also id.* at 3 n.2 ("The Court's November 20 order [22] certifying the November 29 order for immediate appellate review pursuant to 28 U.S.C.A. § 1292(b) does not render the November 29 order directly appealable. This is because the court of appeals has not as of this time granted Plaintiffs permission to appeal.")

39. Motion, *id.* (Dec. 3, 2020), D.E. 52; Minutes, *id.* (Dec. 7, 2020), D.E. 74.

40. Intervention Motion, *id.* (Dec. 4, 2020), D.E. 55.

what they said they wanted.”⁴¹ Judge Batten set the case for hearing on Monday morning, December 7.⁴²

Judge Batten required everyone to wear a face mask, even when addressing the court, and he reminded the parties that the proceedings would be audio-streamed publicly.⁴³ He opened with a description of the case:

In this case, the Plaintiffs are a group of disappointed Republican presidential electors. They assert that the 2020 presidential election in Georgia was stolen, and that the results, Joe Biden winning, occurred only because of massive fraud. Plaintiffs contend that this massive fraud was manifest primarily, but not exclusively, through the use of ballot stuffing. And they allege that this ballot stuffing has been rendered virtually invisible by computer software created and run by foreign oligarchs and dictators from Venezuela to China to Iran.⁴⁴

At the close of the hearing, Judge Batten dismissed the action because (1) the claims belonged in state court, (2) “[t]he Plaintiffs have essentially alleged in their pleading that their interests are one and the same as any Georgia voter,” and (3) a complaint about the voting machines should have been filed months previously.⁴⁵

On January 20, 2021, the court of appeals granted a January 19 voluntary dismissal of the plaintiffs’ appeal.⁴⁶

Second Action as a Plaintiff

Representing himself, the attorney filed a third case in the Northern District on Friday, December 18, 2020, against state election officials.⁴⁷ The complaint challenged absentee-ballot and voting-machine procedures and sought “an emergency injunction halting Georgia’s [January 5, 2021,] senatorial runoff election because the Defendants are conducting it in a ‘Manner’ that differs from and conflicts with the election scheme established by the State Legislature.”⁴⁸ The plaintiff’s emergency motion for injunctive relief filed at the same time included 276 pages of text and exhibits.⁴⁹ Also filed was an “Emergency Motion for Preservation of Evidence and Inspection of Electronic Election/Voting Equipment and for Production of Original Ballots and Other Documents.”⁵⁰

41. *Pearson v. Kemp*, 831 F. App’x 467, 470 (11th Cir. 2020).

42. Order, *Pearson*, No. 1:20-cv-4809 (N.D. Ga. Dec. 4, 2020), D.E. 56.

43. Transcript at 2, 6, *id.* (Dec. 7, 2020, filed Dec. 8, 2020), D.E. 79.

44. *Id.* at 2.

45. *Id.* at 41–44; see Greg Bluestein, James Salzer & Mark Niesse, *In Georgia, Rare GOP Pushback on Trump*, Atlanta J.-Const., Dec. 8, 2020, at 1A.

46. Order, *Pearson v. Governor*, No. 20-14579 (11th Cir. Jan. 20, 2020); Motion, *id.* (Jan. 19, 2020).

47. Complaint, *Wood v. Raffensperger*, No. 1:20-cv-5155 (N.D. Ga. Dec. 18, 2020), D.E. 1.

48. *Id.* at 1.

49. Motion, *id.* (Dec. 18, 2020), D.E. 2.

50. Motion, *id.* (Dec. 18, 2020), D.E. 3.

On Monday, Judge Batten ordered briefing concluded by Sunday, December 27, and set the case for hearing, if necessary, on December 30.⁵¹ On Tuesday, Judge Batten granted a Monday motion by Georgia's Democratic Party to intervene.⁵²

Judge Batten concluded on December 28 that he need not reach the merits of the complaint because the plaintiff attorney did not have standing to pursue the claims.⁵³

The plaintiff filed a notice of appeal that day.⁵⁴ One month later, the court of appeals asked him to address whether the January 5, 2021, election mooted the appeal.⁵⁵ The court of appeals agreed on August 6, 2021, that the plaintiff lacked standing to make his claims.⁵⁶ "Because we hold [the plaintiff] lacked Article III standing to sue, we need not reach the question of whether the appeal is moot."⁵⁷

51. Orders, *id.* (Dec. 20, 2020), D.E. 11, 12.

52. Order, *id.* (Dec. 22, 2020), D.E. 14; Intervention Motion, *id.* (Dec. 21, 2020), D.E. 13.

53. Opinion, *id.* (Dec. 28, 2020), D.E. 35, 2020 WL 7706833; see David Wickert, *Federal Judge Dismisses Suit Seeking to Stop Jan. 5 Runoff*, Atlanta J.-Const., Dec. 29, 2020, at 7A; Paul Woolverton, *Judge Blocks Attempt to Stop Georgia Runoffs*, Augusta Chron., Dec. 30, 2020, at A4.

54. Notice of Appeal, *Wood*, No. 1:20-cv-5155 (N.D. Ga. Dec. 28, 2020), D.E. 37.

55. Jurisdictional Question, *Wood v. Raffensperger*, No. 20-14813 (11th Cir. Jan. 29, 2021).

56. Opinion, *id.* (Aug. 6, 2021), 2021 WL 3440690, *cert. denied*, 595 U.S. ___, 142 S. Ct. 1211 (2022).

57. *Id.* at 3 n.1.