No. 26-13125-G

In the U.S. Court of Appeals for the Eleventh Circuit

VOTERS ORGANIZED FOR TRUSTED ELECTION RESULTS IN GEORGIA, *ET AL.*,
Plaintiffs-Appellants,

v.

ELECTION ASSISTANCE COMMISSION, *ET AL.*,
Defendants-Appellees.

APPELLENTS' MOTION FOR SUMMARY REVERSAL OF THE DISTRICT COURT'S *SUA SPONTE* DISMISSAL

Harry W. MacDougald
Caldwell, Carlson, Elliott & Deloach LLP
6 Concourse Parkway, Suite 2400
Atlanta, Georgia 30328
(404) 843-1956
hmacdougald@ccedlaw.com

Counsel for Plaintiffs-Appellants

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Circuit Rule 11th Cir. R. 26.1-1(a)(1), the following parties and persons have an interest in this matter:

Armstrong, Richard J. (plaintiff-appellant)

Baker, R. Stan (district court trial judge)

Chasin, Steven M. (trial court defense counsel)

Chatham County Republican Party, Inc. (plaintiff-appellant)

DeKalb County Republican Party, Inc. (plaintiff-appellant)

Election Assistance Commission (defendant-appellee)

Favorito, Garland (plaintiff-appellant)

Hicks, Thomas (or his successor in office, defendant-appellee)

Hovland, Benjamin W. (or his successor in office, defendant-appellee)

Joseph, Lawrence J. (trial court plaintiffs' counsel)

Leithart, O. Woelke (trial court defense counsel)

Liberty Votes (potentially interested nonparty)

MacDougald, Harry W. (plaintiffs-appellants' counsel)

McCormick, Christy (or her successor in office, defendant-appellee)

Miller, III, Jonathan R. (trial court plaintiffs' counsel)

Palmer, Donald L. (or his successor in office, defendant-appellee)

Schletz, Brianna (or her successor in office, defendant-appellee)

United States (defendant-appellee)

Voters Organized for Trusted Election Results in Georgia (plaintiff-appellant)

Dated: November 12, 2026 Respectfully submitted,

/s/ Harry W. MacDougald
Harry W. MacDougald
Caldwell, Carlson, Elliott & Deloach, LLP
6 Concourse Parkway, Suite 2400
Atlanta, Georgia 30328
(404) 843-1956
hmacdougald@ccedlaw.com

Counsel for Plaintiffs-Appellants

CORPORATE DISCLOSURE STATEMENT

Pursuant to FED. R. APP. P. 26.1, no plaintiff-appellant has a parent, a subsidiary, or outstanding stock in which the public holds an interest, and no publicly traded company has an interest in the outcome of the above-captioned case or appeal.

Dated: November 12, 2026 Respectfully submitted,

/s/ Harry W. MacDougald
Harry W. MacDougald
Caldwell, Carlson, Elliott & Deloach, LLP
6 Concourse Parkway, Suite 2400
Atlanta, Georgia 30328
(404) 843-1956
hmacdougald@ccedlaw.com

Counsel for Plaintiffs-Appellants

TABLE OF CONTENTS

Certificate of Interested Persons C-1
Corporate Disclosure Statement C-2
Table of Contents i
Table of Authorities iii
Introduction 1
Jurisdiction 2
Standard of Review 2
Statement of the Case 3
Problems with Georgia's EAC-certified 5.5-A Election System 4
EAC Inaction on Plaintiffs' Administrative Petition 4
Nonpreclusive, Unpersuasive Effect of *DeKalb GOP v. Raffensperger* 5
District Court's *Sua Sponte* Dismissal 5
District Court's Denial of Rule 59(e) Motion 6
Recurring, Ongoing, and Urgent Issues Presented 6
Argument 6
I. Summary reversal is warranted. 6
A. Voting rights and election integrity are important and require resolution before future elections. 7
B. Dismissal was clearly wrong as a matter of law. 7
II. *Sua sponte* dismissal without leave to amend was an abuse of discretion. 7
A. Evidentiary burdens for interim relief and Rule 12(b)(1) differ. 8
B. *Sua sponte* dismissal was without notice. 9
C. The district court's declining to search plaintiffs' pleadings is inconsistent with *sua sponte* dismissal. 10
D. The district judge applied the wrong standard for Rule 59(e). 13
1. Circuit precedent is divided on the proper standard but clear that panels must follow the earliest-case rule. 13
2. Circuit precedent clearly requires the liberal-amendment policy of Rule 15 for Rule 59(e) motions. 13

3. *De novo* futility is the only pertinent *Foman* factor. 15
III. An Article III Case or Controversy clearly exists. 15
A. Plaintiffs suffer cognizable injury. 16
1. Plaintiffs suffer procedural injury. 16
2. Plaintiffs suffer election-integrity injury. 17
3. Plaintiffs suffer informational injury. 19
B. EAC caused Plaintiffs' injuries. 20
C. The requested relief would redress Plaintiffs' injuries. 20
1. *Vacatur* would redress election-related injuries. 22
a. The legal link between 5.5-A's certification and Georgia elections suffices for redress. 22
b. Likely third-party responses would provide redress. 23
2. Published information would provide redress. 25
3. Remand would provide redress. 25
D. Plaintiffs bring a ripe challenge. 25
Conclusion 25

TABLE OF AUTHORITIES

CASES

Ala. State Conf. of the NAACP v. Allen,
796 F. Supp. 3d 759 (N.D. Ala. 2025) 18

Allen v. Wright,
468 U.S. 737 (1984) 15

AT&T Mobility, LLC v. NASCAR, Inc.,
494 F.3d 1356 (11th Cir. 2007) 12

Baker v. Carr,
369 U.S. 186 (1962) 11

Banister v. Davis,
590 U.S. 504 (2020) 22

Bischoff v. Osceola Cty.,
222 F.3d 874 (11th Cir. 2000) 9

Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs,
781 F.3d 1271 (11th Cir. 2015) 23–24

BLOM Bank SAL v. Honickman,
605 U.S. 204 (2025) 14, 15

Bonner v. City of Prichard,
661 F.2d 1206 (11th Cir. 1981) (*en banc*) 14

Bost v. Illinois State Bd. of Elections,
607 U.S. 71 (2026) 16-19

Cafe Risque v. Camden County,
273 Ga. 451 (2001) 23

Carney v. Adams,
592 U.S. 53 (2020) 16

Corey Outdoor Advertising, Inc. v. Board of Zoning Adjustments,
254 Ga. 221 (1985) 23

CSX Transportation, Inc. v. General Mills, Inc.,
846 F.3d 1333 (11th Cir. 2017) 14

Czeremcha v. International Ass'n of Machinists & Aerospace Workers, AFL-CIO, 724 F.2d 1552 (11th Cir. 1984) 14

Davis v. FEC,
554 U.S. 724 (2008) 17

Deal v. Coleman,
294 Ga. 170 (2013) 22-23

DeKalb Cty. Republican Party v. Raffensperger,
376 Ga. App. 757 (Ct. App. 2025) 5, 6, 22, 24

Diamond Alternative Energy, LLC v. EPA,
606 U.S. 100 (2025) 21

Drago v. Jenne,
453 F.3d 1301 (11th Cir. 2006) 3

Dussouy v. Gulf Coast Inv. Corp.,
660 F.2d 594 (5th Cir. 1981) 3, 13, 14

Elend v. Basham,
471 F.3d 1199 (11th Cir. 2006) 12

Ex parte McCardle,
74 U.S. (7 Wall.) 506 (1869) 12

FEC v. Akins,
524 U.S. 11 (1998) 16, 19, 25

FEC v. Ted Cruz for Senate,
596 U.S. 289 (2022) 2, 19

Foman v. Davis,
371 U.S. 178 (1962) 3, 9, 12-15

Georgia Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cty. Bd. of Registration & Elections, 36 F.4th 1100 (11th Cir. 2022) 18

Groendyke Transp., Inc. v. Davis,
406 F.2d 1158 (5th Cir. 1969) 2, 7

Hall v. United Insurance Co. of America,
367 F.3d 1255 (11th Cir. 2004) 3

Harper v. Va. State Bd. of Elections,
383 U.S. 663 (1966) 7

MacPhee v. MiMedx Grp., Inc.,
73 F.4th 1220 (11th Cir. 2023) 13, 14, 23

Loggerhead Turtle v. Cty. Council of Volusia Cty.,
148 F.3d 1231 (11th Cir. 1998) 21

L.S. ex rel. Hernandez v. Peterson,
982 F.3d 1323 (11th Cir. 2020) 3, 15

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992) 8, 16, 17, 25

Margolin v. Nat'l Ass'n of Immigr. Judges,
608 U.S. 339 (2026) 15

Massachusetts v. EPA,
549 U.S. 497 (2007) 21

Muransky v. Godiva Chocolatier, Inc.,
979 F.3d 917, 923 (11th Cir. 2020) (*en banc*).....2

Murthy v. Missouri,
603 U.S. 43 (2024) 8

Nelson v. Adams USA, Inc.,
529 U.S. 460 (2000) 11

Ohio Forestry Ass'n, Inc., v. Sierra Club,
523 U.S. 726 (1998) 25

Resnick v. Uccello Immobilien GMBH, Inc.,
227 F.3d 1347 (11th Cir. 2000).....3

Simon v. Eastern Ky. Welfare Rights Org.,
426 U.S. 26 (1976) 18, 21

Spanish Broad. Sys. of Fla. v. Clear Channel Communs.,
376 F.3d 1065 (11th Cir. 2004).....3, 13, 14

Spokeo, Inc. v. Robins,
578 U.S. 330 (2016) 16

Stalley v. Orlando Regional Healthcare System, Inc.,
524 F.3d 1229 (11th Cir. 2008).....3, 18

Stevens v. Premier Cruises, Inc.,
215 F.3d 1237 (11th Cir. 2000).....9

Summers v. Earth Island Institute,
555 U.S. 488 (2009) 16

Tanner-Brown v. Haaland,
105 F.4th 437 (D.C. Cir. 2024) 23

Tazoe v. Airbus S.A.S.,
631 F.3d 1321 (11th Cir. 2011).....12

Tel. & Data Sys. v. FCC,
19 F.3d 42 (D.C. Cir. 1994).....21

Thomas v. Davie,
847 F.2d 771 (11th Cir. 1988)..... 3, 13-15

Thomas v. E. I. Du Pont de Nemours & Co.,
574 F.2d 1324 (5th Cir. 1978).....3, 13, 14

Thomas v. Myers,
2023 U.S. Dist. LEXIS 97390 (S.D. Ga. June 5, 2023).....12

Twin City Fire Ins. Co. v. United States,
2015 U.S. Dist. LEXIS 143115 (M.D. Fla. Oct. 21, 2015).....12

United States v. Chemical Foundation, Inc.,
272 U.S. 1 (1926) 24

United States v. Ruiz,
536 U.S. 622 (2002) 10

United States v. Steele,
147 F.3d 1316 (11th Cir. 1998) (*en banc*).....13

Univ. of Texas v. Camenisch,
451 U.S. 390 (1981) 8, 9

Warth v. Seldin,
422 U.S. 490 (1975) 11

STATUTES

U.S. CONST. art. III 2, 8, 15-17, 19, 21

U.S. CONST. amend. V, cl. 4 ..... 1, 10-11

Administrative Procedure Act,
5 U.S.C. §§551-706 .....1, 4, 5, 16, 19, 23

5 U.S.C. §555(b) 4, 5, 20

5 U.S.C. §555(e) 4, 19

5 U.S.C. §705 4

5 U.S.C. §706(1)-(2) 21

28 U.S.C. §1291 2

28 U.S.C. §1331 2

28 U.S.C. §1343(a)(3)-(4).....2

Help America Vote Act of 2002,
52 U.S.C. §§20901–21145 .....1, 19
52 U.S.C. §20922(2) 19, 25
52 U.S.C. §20926 .....19, 25
52 U.S.C. §20928 6
O.C.G.A. §21-2-300(a)(2) 23, 24
O.C.G.A. §21-2-300(a)(3) 5, 20, 23
O.C.G.A. §21-2-324(a) 5, 22-24

RULES AND REGULATIONS

FED. R. APP. P.27(a)(2)(B) 2
FED. R. CIV. P. 8(a)(3) 17
FED. R. CIV. P. 12(b)(1) 2, 7-9, 11
FED. R. CIV. P. 12(h)(3) 10
FED. R. CIV. P. 15(a) 1, 3, 6, 13, 14
FED. R. CIV. P. 15(a)(1)(B) 11, 15
FED. R. CIV. P. 54(c) 17
FED. R. CIV. P. 59(e) 1, 3, 6, 8, 13-15, 22, 23
FED. R. CIV. P. 60(b) 14

OTHER AUTHORITIES

Election Assistance Commission, *Voting System Testing and Certification Program Manual* (Nov. 15, 2022) 4-6, 19, 20

INTRODUCTION

Plaintiffs-appellants Voters Organized for Trusted Election Results in Georgia ("VoterGA"), DeKalb County Republican Party, Inc. ("DeKalb GOP"), Chatham County Republican Party, Inc., Garland Favorito, and Richard Armstrong ("Plaintiffs") respectfully move to summarily reverse the district court's *sua sponte* dismissal of their suit challenging action and inaction by defendants-appellees Election Assistance Commission ("EAC") and its officers under the Administrative Procedure Act, 5 U.S.C. §§551-706 ("APA"), the Help America Vote Act of 2002, 52 U.S.C. §§20901-21145 ("HAVA"), and the Due Process Clause, U.S. CONST. amend. V, cl. 4. Plaintiffs challenge both EAC's certifying Dominion Voting Systems Democracy Suite 5.5-A ("5.5-A") currently used in Georgia elections and EAC's election-system certification process.

Summary reversal is warranted because—in a status conference on Plaintiffs' motion for interim relief—the district court announced an interim-relief-first process that contemplated subsequent summary-judgment and motion-to-dismiss briefing. *Sua sponte* dismissal without notice changed this sequence, without a chance to amend as of right. Plaintiffs timely sought leave under Rules 59(e) and 15(a) to file a First Amended Complaint ("FAC") to cure the perceived defects, but the district court denied the motion applying the wrong standard.

JURISDICTION

By Order and Judgment dated May 12, 2026 (Add:906a-937a),[1] the district court *sua sponte* dismissed Plaintiffs' action. On June 9, 2026, Plaintiffs moved to alter the judgment and to file their FAC, which the district court denied by Order dated July 16, 2026 (Add:1047a-1066a). The district court had subject-matter jurisdiction under 28 U.S.C. §§1331, 1343(a)(3)-(4). Plaintiffs appealed on September 2, 2026. This Court has jurisdiction under 28 U.S.C. §1291.

STANDARD OF REVIEW

Summary disposition is appropriate either where time is critical, including "situations where important public policy issues are involved or those where rights delayed are rights denied" or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Article III standing "is a threshold jurisdictional question that [courts] review de novo," *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 923 (11th Cir. 2020) (*en banc*), assuming the plaintiff's merits views. *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 298 (2022). A defendant can challenge subject matter jurisdiction under Rule 12(b)(1), either facially—whether the pleadings' allegations and inferences

[1] The Addendum ("Add.") sets forth the relevant statutes and regulations in addition to materials under FED. R. APP. P. 27(a)(2)(B).

support standing, or factually—whether jurisdiction actually exists, using evidence outside the pleadings. *Stalley v. Orlando Regional Healthcare System, Inc.*, 524 F.3d 1229, 1232-33 (11th Cir. 2008).

Denials of Rule 59(e) motions and of leave to amend pleadings are reviewed for abuse of discretion, *Drago v. Jenne*, 453 F.3d 1301, 1305 (11th Cir. 2006); *Hall v. United Insurance Co. of America*, 367 F.3d 1255 (11th Cir. 2004), but legal error *per se* abuses discretion. *Resnick v. Uccello Immobilien GMBH, Inc.*, 227 F.3d 1347, 1350 (11th Cir. 2000); *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1328 (11th Cir. 2020) (futility-of-amendment denials reviewed *de novo*).

Rule 59(e) motions seeking leave to amend pleadings implicate Rule 15(a)'s liberal-amendment policy. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Spanish Broad. Sys. of Fla. v. Clear Channel Communs.*, 376 F.3d 1065, 1077 (11th Cir. 2004); *Thomas v. Davie*, 847 F.2d 771, 773 (11th Cir. 1988) (citing *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 597 & n.1 (5th Cir. 1981)); *Dussouy*, 660 F.2d at 597 n.1 ("discussion … rule 15(a) applies equally to … rule 59(e)"); *Thomas v. E. I. Du Pont de Nemours & Co.*, 574 F.2d 1324, 1329 (5th Cir. 1978).

STATEMENT OF THE CASE

EAC's prior Executive Director erred in certifying 5.5-A as meeting EAC's certification standards. Plaintiffs thus seek not only specific relief on 5.5-A's certification but also systemic relief against EAC's certification process.

Problems with Georgia's EAC-certified 5.5-A Election System

In plain violation of EAC's election-system certification standards, 5.5-A has at least two glaring cybersecurity flaws—namely, accessible plain-text cryptographic keys and a hardcoded password—that enable anyone with physical or remote access to alter election results without detection. Compl. 32-34 (¶¶124-133) (Add:651a-653a); FAC 45-47 (¶¶170-180) (Add:1007a-1009a). Georgia's current Secretary of State ("SOS") Brad Raffensperger has known about 5.5-A's cybersecurity flaws since 2021, FAC 45 (¶170) (Add:1007a), and EAC has known since 2024, but neither has done anything. *Id.* 47-48 (¶¶181-183) (Add:1009a-1010a).

EAC Inaction on Plaintiffs' Administrative Petition

Pursuant to 5 U.S.C. §§555(b), 705, Plaintiffs administratively petitioned (Add:185a) EAC's Executive Director—whose predecessor certified 5.5-A in 2019—and its Commissioners to vacate 5.5-A's certification and for interim relief. By letter dated November 18, 2025 (Add:534a), and email dated November 28, 2025 (Add:619a), EAC denied both requests as inconsistent with EAC's *Voting System Testing and Certification Program Manual* ("*Manual*"). EAC's letter indicated that EAC would open an "informal inquiry" pursuant to the *Manual*, but unlike the APA, 5 U.S.C. §555(e), the *Manual* does not require a response if EAC closes that informal inquiry. FAC 50 (¶192) (Add:1012a); Section III.A.3, *infra*. Further, while the APA

allows decisionmakers to reconsider, 5 U.S.C. §555(b), EAC's *Manual* requires the EAC Commissioners' approval to undo Executive Directors' prior certifications. FAC 53-54 (¶205) (Add:1015a-1016a).

Nonpreclusive, Unpersuasive Effect of *DeKalb GOP v. Raffensperger*

Upon learning of 5.5-A's cybersecurity flaws in 2024, DeKalb GOP filed a state-court mandamus petition against Secretary Raffensperger over 5.5-A's noncompliance with O.C.G.A. § 21-2-300(a)(3)'s certification requirements. Without considering O.C.G.A. §21-2-324(a)'s ongoing requirements, the Superior Court held that O.C.G.A. § 21-2-300(a)(3) posed a one-time requirement. The Court of Appeals dismissed for lack of standing, Georgia's Supreme Court having abandoned associational standing while the case was on appeal. *See* FAC 26-28 (¶¶85-90) (discussing *DeKalb Cty. Republican Party v. Raffensperger*, 376 Ga. App. 757, 760-61 (Ct. App. 2025)) (Add:988a-990a). As a jurisdictional dismissal never considering O.C.G.A. §21-2-324(a), *Raffensperger* is neither preclusive nor persuasive.

District Court's *Sua Sponte* Dismissal

Plaintiffs moved for interim relief, which the district judge denied for lack of standing and then *sua sponte* dismissed the case, Order 31 (Add:936a) without notice, a hearing, or an opportunity to amend. *See* Section II.B, *infra*. The district court reasoned that Plaintiffs' requested *vacatur* would moot their petition-denial

claim, relied on *Raffensperger* on the merits, did not understand Plaintiffs' claimed procedural injuries, and disregarded declarations on redressability for reputational harms. Order 12-13, 22, 24, 29-31 (Add:917a-918a, 927a, 929a, 934a-936a).

District Court's Denial of Rule 59(e) Motion

Plaintiffs timely moved under Rules 59(e) and 15(a) to alter the judgment and for leave to file their FAC (Add:938a). Neither awaiting Plaintiffs' reply nor applying the liberal-amendment policy, the district judge denied their Rule 59(e) motion as impermissibly relitigating past issues, while revising reliance on *Raffensperger* to its predictive effect on Georgia elections. Order 3, 13-15, 18 (Add:1049a, 1059a-1061a, 1064a).

Recurring, Ongoing, and Urgent Issues Presented

On July 9, 2026, the President dismissed the remaining EAC Commissioners. EAC generally cannot act without three Commissioners' votes. 52 U.S.C. §20928. Even without supervision by EAC's Commissioners, EAC continues to certify election systems through EAC's Executive Director. Because EAC's *Manual* purportedly prohibits revoking contested certifications without Commissioner-level action, the *Manual* creates the due-process anomaly that Executive Directors cannot cure their mistakes in granting certification.

ARGUMENT

I. SUMMARY REVERSAL IS WARRANTED.

Summary reversal can resolve important policy issues expeditiously, avoid

delay that nullifies rights, and address clear legal issues without a protracted appeal. *Groendyke*, 406 F.2d at 1162. Those rationales support summary reversal here.

A. Voting rights and election integrity are important and require resolution before future elections.

Plaintiffs' claims satisfy the summary-disposition criteria for important policy issues that require expedited resolution to avoid denying rights by delay. *Id.* Voting-rights and election-integrity claims are important because they preserve all other rights, *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966). A long appeal would threaten the availability of relief with sufficient lead time to secure Georgia's 2027 municipal elections and its 2028 state-federal elections.

B. Dismissal was clearly wrong as a matter of law.

Plaintiffs meet the "clearly right as a matter of law" criterion for summary disposition, *Groendyke*, 406 F.2d at 1162, for at least two reasons. First, *sua sponte* dismissal without notice denied Plaintiffs a due-process opportunity to show standing under Rule 12(b)(1)'s threshold. *See* Section II, *infra*. Second, Plaintiffs have standing under both the Rule-12(b)(1) and interim-relief tests. *See* Section III, *infra*. Full briefing is unnecessary to reverse the *sua sponte* dismissal.

II. *SUA SPONTE* DISMISSAL WITHOUT LEAVE TO AMEND WAS AN ABUSE OF DISCRETION.

The district court *per se* abused its discretion through several legal errors.

A. Evidentiary burdens for interim relief and Rule 12(b)(1) differ.

Article III's evidentiary burden differs at litigation's "successive stages," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). When standing is challenged on the pleadings courts accept "general factual allegations of injury … [and] presume that general allegations embrace those specific facts that are necessary to support the claim." *Id.* (cleaned up). By contrast, standing for interim relief requires "a clear showing that [plaintiffs are] likely to establish each element of standing." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (cleaned up). Because courts cannot "equate[] 'likelihood of success' with 'success,'" *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394-95 (1981), an interim-relief loss is nonfinal. The *sua sponte* dismissal improperly conflated standing for interim relief as briefed with standing under Rule 12(b)(1).

In dismissing *sua sponte*, the district judge purportedly applied the facial and factual tests. Order 6 (Add:911a & n.4). But there was no 12(b)(1) factual challenge pending, and Plaintiff-Appellants had no opportunity to respond to such a challenge before the Court *sua sponte* dismissed on that basis. *See* Section II.B, *infra*. Nor in dismissing did the court review the various alternate pleadings in the initial complaint, *see* Section II.C, *infra*. When Plaintiffs' Rule 59(e) motion raised the overlooked allegations, the court disclaimed any duty to comb Plaintiffs' pleadings, a task plaintiff-appellants would happily have done if given the chance. *See* Section

II.C, *infra*. For these reasons, the district court failed to evaluate standing correctly under Rule 12(b)(1) for both the initial complaint and the proffered FAC. As *Foman* applies here, leave to file the FAC could be denied only for futility, which this Court reviews *de novo* and facially. *See* Section II.D.3, *infra*.

B. *Sua sponte* dismissal was without notice.

The district court held that Plaintiffs were on notice of dismissal for lack of standing, Order 4-7 (Add:909a-912a), which is both legally and factually wrong.

First, the motion before the court was plaintiff-appellants' motion for interim relief. There was no pending motion to dismiss. Second, the evidentiary test for the interim relief that the parties briefed and the test for unbriefed Rule 12(b)(1) dismissal differ. *See* Section II.A, *supra*. Although Plaintiffs respectfully submit that they had standing under both tests, *see* Section III, *infra*, it is legal error to equate the lack of standing for interim relief with a facial lack of standing at the Rule 12(b)(1) threshold. *Camenisch*, 451 U.S. at 394-95 (distinguishing merits and interim relief); *Bischoff v. Osceola Cty.*, 222 F.3d 874, 882 (11th Cir. 2000) (reversing dismissal where district court resolved disputed facts and weighed witness credibility without hearing); *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000) (opportunity to cure pleading defects).

Although Plaintiffs obviously knew they needed standing for interim relief, the purported notice of *sua sponte* dismissal is not correct:

> [Court:] I believe that the defendants' announcement earlier was just address the interim relief right now and then let them file their answer and/or a motion to dismiss or whatever responsive pleading they want to file after the ruling on the interim relief.

Tr. 10:23-11:3 (status conference) (Add:891a-892a); *accord id.* 12:16-19 (defendants preferred "[summary judgment] motions be staggered" and anticipated "combining their cross-motion with a motion to dismiss") (Add:893a). The district court stayed defendants' obligation to respond to the complaint. Order 1 (Add:880a). Plaintiffs reasonably awaited the planned motion to dismiss to amend their complaint as of right to add Count III against the *Manual* and allegations on candidate members. *See* Mot. 2-5 (Plaintiffs' plans to make these permissible amendments as of right when defendants-appellees moved to dismiss) (Add:939a-942a).

C. The district court's declining to search plaintiffs' pleadings is inconsistent with *sua sponte* dismissal.

The district judge colorfully disclaimed mind-reading, truffle-hunting, or archeological duties to divine plaintiffs' intended claims, Order 9-10 (Add:1055a-1056a), but Plaintiffs never asked for that. Plaintiffs simply seek an opportunity to surface their claims in both their initial complaint and in their proposed FAC.

Although Rule 12(h)(3) requires dismissal when jurisdiction is lacking, "a federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002), the district judge exercised that unquestionable

jurisdiction too summarily for Due Process, which requires "afford[ing] a proper opportunity to respond." *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 468 & n.2 (2000). *Sua sponte* dismissal did not afford Plaintiff-Appellants the opportunity to respond to a motion to dismiss, which—for initial complaints—would have included the opportunity to amend the complaint *as of right*. FED. R. CIV. P. 15(a)(1)(B).

Indeed, "concrete adverseness … sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962). The typical process allows that presentation:

- First, "both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975).
- Second, trial courts may "allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations." *Id.*
- Third, dismissal is required if, after that opportunity, "standing does not adequately appear from all materials of record." *Id.* at 501-02.

By conflating the interim-relief standing test with Rule 12(b)(1)'s facial-factual standing test, *see* Section II.A, *supra*, the district judge failed to allow any presentation on the Rule 12(b)(1) threshold.

As a variant of futility under *Foman v. Davis*, 371 U.S. 178, 182 (1962), *sua sponte* dismissal without notice is permissible if the complaint is patently frivolous or futile. *Tazoe v. Airbus S.A.S.*, 631 F.3d 1321, 1336 (11th Cir. 2011). That rule applies when plaintiffs *cannot* establish jurisdiction. *See*, *e.g.*, *AT&T Mobility, LLC v. NASCAR, Inc.*, 494 F.3d 1356, 1360 (11th Cir. 2007) (nonparty beneficiary's standing to enforce contract not met); *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514-15 (1869) (statute amended to deny jurisdiction). *Twin City Fire Ins. Co. v. United States*, 2015 U.S. Dist. LEXIS 143115, at *7 (M.D. Fla. Oct. 21, 2015) (jurisdictional failure to exhaust administrative remedies); *Thomas v. Myers*, 2023 U.S. Dist. LEXIS 97390, at *10-11 (S.D. Ga. June 5, 2023) (no federal question); *Elend v. Basham*, 471 F.3d 1199, 1203-04 (11th Cir. 2006) (affirming dismissal of second amended complaint as not curing first amended complaint's flaws). Although the district court cited these decisions, Order 4 (Add:1050a), none of them support *sua sponte* dismissal without leave to amend where the plaintiff could amend its complaint to establish jurisdiction.

To avoid truffle hunts, courts can await the parties' adversarial presentations according to the sequence discussed in status conferences. To *sua sponte* short-circuit the process, courts must do the archeological work that the district judge avoided.

D. The district judge applied the wrong standard for Rule 59(e).

The district court rejected any consideration of Rule 15(a)'s liberal-amendment policy under Rule 59(e), Order 18 (Add:1064a), though "leave to amend must be granted absent a specific, significant reason for denial." *Spanish Broad.*, 376 F.3d at 1077; *accord Davie*, 847 F.2d at 773; *Dussouy*, 660 F.2d at 597 n.1; *Du Pont*, 574 F.2d at 1329; *Foman*, 371 U.S. at 182. Simply invoking the prior dismissal to sidestep the liberal-amendment rule of *Foman* and progeny was legal error and thus a *per se* abuse of discretion.

1. Circuit precedent is divided on the proper standard but clear that panels must follow the earliest-case rule.

Although there is "some tension in our circuit's case law on the proper standard for … post-judgment motion[s] for leave to amend," three-judge panels clearly must apply the "earliest case rule" to determine Circuit precedent. *MacPhee v. MiMedx Grp., Inc*., 73 F.4th 1220, 1249-50 (11th Cir. 2023). *MacPhee* identified the issues correctly but—as explained in Section II.D.2, *infra*, adopted the wrong "earliest case." *Id.* "Under our prior precedent rule, a panel cannot overrule a prior one's holding even though convinced it is wrong." *United States v. Steele*, 147 F.3d 1316, 1317-18 (11th Cir. 1998) (*en banc*). That requires identifying the first-decided Circuit precedent.

2. Circuit precedent clearly requires the liberal-amendment policy of Rule 15 for Rule 59(e) motions.

This Circuit's precedents include decisions from the former Fifth Circuit.

Bonner v. City of Prichard, 661 F.2d 1206, 1209 & n.5 (11th Cir. 1981) (*en banc*).

Like *Foman* (1962) itself, *Spanish Broadcasting* (2004), *Davie* (1988), *Dussouy* (1981), and *Du Pont* (1978) require Rule 15(a)'s liberal-amendment policy under Rule 59(e). *Foman* is good law and controls. In 1988, *Davie* resolved the express issue presented here. Without addressing *Davie*, *Dussouy*, or *Du Pont*, *MacPhee* adopted in 2023 the "reasoning" in *Czeremcha v. International Ass'n of Machinists & Aerospace Workers, AFL-CIO*, 724 F.2d 1552 (11th Cir. 1984). *MacPhee*, 73 F.4th at 1250. The *MacPhee* panel lacked authority to overrule Circuit precedent for two reasons. First, the first-decided-case rule applies to holdings, not *dicta*, *CSX Transportation, Inc. v. General Mills, Inc.*, 846 F.3d 1333, 1338 (11th Cir. 2017), so *Czeremcha*'s reasoning on different issues was not a first-decided holding. Second, *Foman* and *Davie* control over *MacPhee* in any event.

In 2025, the Supreme Court distinguished post-judgment Rule 60(b) motions from Rule 59(e) motions (which suspend judgments' finality) to affirm *Foman*'s continuing vitality: "Rule 60(b) differs from Rule 59(e) in just about every way that matters to the inquiry here," *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 215 (2025) (cleaned up), so that Rule 60(b) limitations do not apply to Rule 59(e). *Id.* at 215-16 (citing *Foman*, 371 U.S. at 181-82). *Foman, Du Pont, Dussouy* and *Davie* control here.

3. ***De novo* futility is the only pertinent *Foman* factor.**

Defendants-appellees argued only one *Foman* factor (futility), Defs.' Opp'n 18-21 (Add:1042a-1045a), but the district court added delay, efficiency, finality, and prejudice. Order 19 (Add:1065a). "Federal courts adhere to the principle of party presentation, [which is] violated … when [a court] decide[s] a case different from the one [the party] advanced." *Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. 339, 342-43 (2026). Nonetheless, defendants-appellees suffer no undue prejudice, delay, or inefficiency because Plaintiffs seek relief they had as of right before the *sua sponte* dismissal, *Davie*, 847 F.2d at 773 (no undue prejudice or delay from allowing plaintiff to cure pleading defects); *Peterson*, 982 F.3d at 1328 (*de novo* review); *cf. Honickman*, 605 U.S. at 215 (Rule 59(e) suspends the initial dismissal's finality), and Plaintiffs reasonably awaited defendants-appellees' motion to dismiss before making their one as-of-right amendment to the complaint. FED. R. CIV. P. 15(a)(1)(B). Pls.' Mot. 5 (Add:942a). Reopening would merely restore the ordinary pleading process that *sua sponte* dismissal interrupted, with no unfair disadvantages on defendants-appellees.

III. AN ARTICLE III CASE OR CONTROVERSY CLEARLY EXISTS.

Article III imposes overlapping limits—including standing and ripeness—on federal-court jurisdiction. *Allen v. Wright*, 468 U.S. 737, 750 (1984). Standing's tripartite test requires: (a) judicially cognizable injury to plaintiffs, (b) causation by

the challenged conduct, and (c) redressability by courts. *Lujan*, 504 U.S. at 561-62. Although "[c]ourts sometimes make standing law more complicated than it needs to be," *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 83 (2026) (cleaned up), Plaintiffs have standing.

A. Plaintiffs suffer cognizable injury.

Injury must be actual or imminent, not merely speculative, conjectural, or hypothetical. *Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009). Further, injury must be "concrete and particularized," *id.*, not an "abstract generalized grievance." *Carney v. Adams*, 592 U.S. 53, 59 (2020). Nonetheless, if sufficiently concrete, widely shared injuries can satisfy Article III. *FEC v. Akins*, 524 U.S. 11, 24 (1998); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016) (mass torts). Plaintiffs suffer several cognizable injuries, a subset of which they present at this summary-reversal threshold.

1. Plaintiffs suffer procedural injury.

The APA entitles Plaintiffs to procedures that EAC unlawfully denied. *See* Compl. 15-16, 41 (¶¶46-50, 161(B)(i)) (Add:634a-635a, 660a); FAC 23-24, 56-60 (¶¶74-77, 216-226, 228(B)(i)) (Add:985a-986a, 1018a-1022a). EAC's denial inflicted *procedural* injury, which—combined with Plaintiffs' concrete injuries[2]—

[2] Plaintiffs suffer cognizable injuries, *see* Sections III.A.2-III.A.3 *infra* (election-integrity, information), as well as concrete reputational and associational

lowers the Article III threshold for immediacy and redressability. *Lujan*, 504 U.S. at 571-72 & n.7. The federal rules allow pleading in the alternative and entitle plaintiffs even to relief for which they did not plead, FED. R. CIV. P. 8(a)(3), 54(c). The district judge ignored Plaintiffs' claim that remand to EAC would provide redress and held that *vacatur* would moot Plaintiffs' underlying administrative petition. *Compare* Order 24 (Add:929a) *with* Compl. 20 (¶64) (Add:639a); *see* Section II.C, *supra* (*sua sponte* dismissal required considering Plaintiffs' alternate claims for relief). If *vacatur* lacked Article III jurisdiction, that would not affect jurisdiction for remand because courts evaluate jurisdiction independently for each requested relief. *Davis v. FEC*, 554 U.S. 724, 733-34 (2008). Lacking jurisdiction for *vacatur* says nothing about standing for remand.

2. Plaintiffs suffer election-integrity injury.

Georgia counts votes using 5.5-A, so candidates suffer personalized injury if—as Plaintiffs allege, FAC 20-22 (¶¶64, 70) (Add:982a-984a)—5.5-A violates Georgia law. *Bost*, 607 U.S. at 76. Although the initial complaint made no allegations about the political-party plaintiffs' candidate members, a declaration clarifies that DeKalb GOP had candidate members when the suit was filed. Biegalski

injuries FAC 17-22 (¶¶51-58, 60, 63, 67, 69) (Add:979a-984a) that the district court rejected on traceability and redressability without disputing injury. Order 21, 30-31 (Add:926a, 935a-936a).

Suppl. Decl. 4 (¶13) (naming DeKalb GOP members who planned to run before this suit was filed) (Add:910a); FAC, 19-22 (¶¶59, 64-69) ("DeKalb GOP had members who already planned to run for office on December 22, 2025") (Add:981a-984a). Significantly, the FAC's alleging candidate members entitles plaintiff-appellants to reasonable candidate-related inferences, *Stalley*, 524 F.3d at 1232-33, where the initial complaint (silent on candidate members) does not. That surmounts the rationale that the declaration's expression of interest was insufficient. Order 18 (citing *Ala. State Conf. of the NAACP v. Allen*, 796 F.Supp.3d 759, 887 (N.D. Ala. 2025)) (Add:923a).

Because only one plaintiff needs standing, *Bost*, 607 U.S. at 76 n.3, that suffices, assuming *arguendo* that the Georgia-election injury is traceable to EAC and redressable by the court. *See* Sections III.B-III.C.1, *infra* (demonstrating traceability and redressability); *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 44 (1976) ("indirectness of injury [is] not necessarily fatal to standing").

Where a "jurisdictional challenge implicates the merits of the underlying claim," *Georgia Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cty. Bd. of Registration & Elections*, 36 F.4th 1100, 1113 (11th Cir. 2022), "the proper course of action for the district court … is to find that jurisdiction exists and deal with the objection as a direct attack on the merits of the plaintiff's case." *Id.* (cleaned up). A court may disagree with the *merits* of Plaintiffs' claim that 5.5-A enables malicious

actors to alter votes without detection, but Plaintiffs respectfully submit that the claim rises to the level of a mass vote-nullification tort that is particularized to *all* voters. *See* FAC 10-11 (¶31) (collecting cases) (Add:972a-973a). With *Bost*'s relaxing candidates' Article III showing, however, this Court need not resolve that election-integrity issue.

3. Plaintiffs suffer informational injury.

The standing analysis assumes plaintiff's merits views. *Cruz for Senate*, 596 U.S. at 298, so the analysis must assume 5.5-A's decertification. HAVA requires EAC to publish decertification actions, 52 U.S.C. §§20922(2), 20926, so Plaintiffs are entitled to the decertification information they seek. Moreover, the APA requires notice and an explanation if EAC substantively denies Plaintiffs' administrative petition, but EAC's *Manual* does not. *Compare* 5 U.S.C. §555(e) *with Manual* ¶7.2.2 (Add:583a). Plaintiffs' informational standing falls under *Akins*, where the plaintiffs sought information that the agency claimed it need not provide and—on remand—might decide not to provide. The Supreme Court readily found standing to seek the information from the agency, *Akins*, 524 U.S. at 21-25, and so must this Court.

Plaintiffs claim that the information would help silence some who disparage their reputations in misplaced reliance on 5.5-A's imprimatur of EAC certification. Favorito Decl. 7, 9 (¶¶22, 28, 31) (Add:676a, 678a); Biegalski Decl. 4-6 (¶¶18, 22-24) (Add:665a-667a). Additionally, the information would aid election-integrity

efforts in Georgia regarding 5.5-A. *See* Section III.C.1, *infra*; FAC 14-16 (¶¶42, 46) (Add:976a-978a).

B. EAC caused Plaintiffs' injuries.

Georgia requires EAC certification, O.C.G.A. §21-2-300(a)(3), so EAC caused Plaintiffs' injuries from 5.5-A by certifying the noncompliant 5.5-A as meeting certification standards. Because Count II seeks to appeal the original certification by EAC's then-Executive Director to the EAC's Commissioners, Count II's injury ties to the 2019 certification. By contrast, Count I challenges the current Executive Director's decision to refuse reconsideration under 5 U.S.C. §555(b) and instead subject plaintiffs to the tender mercies of EAC's *Manual*. That injury relies on the causal link between a finding that 5.5-A fails EAC's certification standards and Georgia's ongoing use of 5.5-A. *See* Section III.C.1.a, *infra* (explaining causal link).

Defendants-appellees caused Plaintiffs' *Manual*-based procedural injuries by subjecting Plaintiffs to the *Manual*. *See* FAC 57-58 (¶218) (listing defects of *Manual*) (Add:1019a-1020a). Defendants-appellees' procedural evasion caused the lack of redress under the Dominion-Georgia contract's Remedies clause for 2026 and potentially 2027. *See* Section III.C.1.b, *infra*.

C. The requested relief would redress Plaintiffs' injuries.

The district court found redressability lacking because the court's judgment—

not the "awe-inspiring effect of the opinion" against EAC—must redress plaintiffs' injuries. Order 15 (cleaned up) (Add:920a). Plaintiffs seek a *judgment* setting aside or directing EAC to vacate the unlawful 5.5-A certification under 5 U.S.C.§706(1)-(2), EAC's published information to that effect, or even a cure to 5.5-A's errors. Redress through third-party conduct can occur legally or factually:

- Legally, indirectness poses no barrier if third-party conduct "would have been illegal without [the challenged agency] action." *Simon*, 426 U.S. at 44-45 & n.25; *Tel. & Data Sys. v. FCC*, 19 F.3d 42, 47 (D.C. Cir. 1994) (third-party conduct traceable to agency "action [that] authorized the conduct or established its legality"); *Loggerhead Turtle v. Cty. Council of Volusia Cty.*, 148 F.3d 1231, 1251 (11th Cir. 1998) ("indirect control [suffices] for purposes of standing").
- Factually, predictable third-party reactions can establish redressability, even without judicial control. *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025).

As Sections III.C.1-III.C.3, *infra*, explain, Plaintiffs thus rely directly on the Court's *judgment*, not indirectly on the Court's *opinion*. Even *partial* redress suffices, *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007), so that is all that Article III requires.

1. *Vacatur* would redress election-related injuries.

With misplaced reliance on *Raffensperger*, the district court held that relief against EAC would not redress election-related injuries from Georgia's use of 5.5-A. Order 12-13 (Add:917a-918a). The district court's analysis was legally and factually wrong.

a. The legal link between 5.5-A's certification and Georgia elections suffices for redress.

Contrary to Plaintiffs' position that Georgia law required election systems to meet EAC certification standards in use, the district court initially cited *Raffensperger* as deeming O.C.G.A. §21-2-300(a) a "one-time review requirement" that the court could not redress without a time machine. Order 12-13 (Add:917a-918a). This was error for several reasons:[3]

- Jurisdictional dismissals like *Raffensperger* cannot support a merits holding. FAC 27-28 (¶¶87-90) (Add:989a-990a).
- *Raffensperger* never considered O.C.G.A. §21-2-324(a)'s *ongoing* requirements and thus could not resolve that issue. *Id.*
- Under Georgia's whole-statute interpretive approach, *Deal v. Coleman*, 294

[3] Correcting judicial error is Rule 59(e)'s core purpose. *Banister v. Davis*, 590 U.S. 504, 508 (2020). The district court's retreat from citing *Raffensperger* merits to citing only its predictive nature undercuts the argument that Plaintiffs misused Rule 59(e) to relitigate issues. Order 3 (Add:1049a).

Ga. 170, 172-73 (2013), the Legislature's adopting EAC certification standards, OCGA § 21-2-300(a)(3), and the SOS's initial safety determination and ongoing reexamination authority, OCGA §§21-2-300(a)(2), 21-2-324(a), make EAC's standards the safety *floor*. Allowing unremedied, ongoing use of election systems that never met EAC's minimum standards would abuse the SOS's reexamination discretion.

- Retroactive *vacatur* of conditions precedent to subsequent third-party action undermines the subsequent third-party action premised on the action voided *ab initio*, *Corey Outdoor Advertising, Inc. v. Board of Zoning Adjustments*, 254 Ga. 221, 225-27 (1985); *Cafe Risque v. Camden County*, 273 Ga. 451, 452-53 (2001), so vacating erroneous EAC certifications could further justify vacating Georgia's approval of 5.5-A, especially when 5.5-A never met certification standards.

The requested relief would redress Plaintiffs' injuries by making 5.5-A unlawful for use in Georgia elections. Under Rule 59(e), manifest legal error includes collapsing merits defects into jurisdictional defects to deny standing. *MacPhee*, 73 F.4th at 1240; *Tanner-Brown v. Haaland*, 105 F.4th 437, 446 (D.C. Cir. 2024). Plaintiffs' injuries are redressable.

b. Likely third-party responses would provide redress.

Vacatur is the presumptive APA remedy, *Black Warrior Riverkeeper, Inc. v.*

U.S. Army Corps of Eng'rs, 781 F.3d 1271, 1290 (11th Cir. 2015), and that relief would provide redress through likely third-party reactions to judgment against EAC and 5.5-A's certification:

- Voiding 5.5-A's certification for "[non]compliance with any standard" would trigger contractual duties to "undertake all corrective actions authorized by the State" to cure 5.5-A's defects. Compl. 19-20 (¶63) (Add:638a-639a); FAC 28-29 (¶95) (Add:990a-991a).
- Voiding 5.5-A's certification *ab initio* would make Georgia's SOS-elect more likely to reexamine it, OCGA §§21-2-300(a)(2), 21-2-324(a), particularly in light of VoterGA's pending administrative petition to reject 5.5-A. *See* FAC 28-29 (¶95) (Add:990a-991a).

Each likely reaction would partially redress Plaintiffs' injuries. In recharacterizing *Raffensperger* from substantively deciding contested Georgia law, Order 12-13 (Add:917a-918a), to indicating the likelihood of third-party action, Order 13-15 (Add:1059a-1061a), the district court presumed Georgia's SOS-elect would continue her predecessor's inappropriate acceptance of gross cybersecurity defects. Courts should presume regularity, *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926), but the district court presumed *irregularity*. FAC 45 (¶170) (Secretary Raffensperger knew of defects since 2021) (Add:1007a). Raffensperger's wrongful inaction cannot preordain his successor's continued acceptance of 5.5-A's

known cybersecurity defects.

2. Published information would provide redress.

The district court rejected informational injury as "disagreement with the information … given," rather than denial of statutorily required information. Order 25 (Add:930a). EAC must publish certification-related information, 52 U.S.C. §§20922(2), 20926, and Plaintiffs' merits views require decertification. Publication of decertification would provide informational redress. *Akins*, 524 U.S. at 21; note 2, *supra* (Plaintiffs' concrete interests).

3. Remand would provide redress.

Plaintiffs suffer concrete election-integrity, associational, and reputational injuries, *see* note 2, *supra*, so their procedural injuries lower redressability's threshold. *Lujan*, 504 U.S. at 571-72 & n.7. A "do-over" remand would provide sufficient redress, even if EAC could deny relief on remand. *Akins*, 524 U.S. at 25.

D. Plaintiffs bring a ripe challenge.

The 2026 elections happened, but the 2027 elections remain impending, and procedural injuries "never get riper." *Ohio Forestry Ass'n, Inc., v. Sierra Club*, 523 U.S. 726, 737 (1998).

CONCLUSION

This Court should summarily reverse the *sua sponte* dismissal.

Dated: November 12, 2026

Respectfully submitted,

/s/ Harry W. MacDougald
Harry W. MacDougald

Caldwell, Carlson, Elliott & Deloach, LLP
6 Concourse Parkway, Suite 2400
Atlanta, Georgia 30328
(404) 843-1956
hmacdougald@ccedlaw.com

Counsel for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

1. The foregoing document complies with the type-volume limitation of FED. R. APP. P. 27(d)(2)(A) because the motion contains 5,200 words, excluding the parts of the document exempted from counting.

2. The foregoing document complies with the typeface and type-style requirements of FED. R. APP. P. 27(d)(2)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

Dated: November 12, 2026 Respectfully submitted,

/s/ Harry W. MacDougald
Harry W. MacDougald
Caldwell, Carlson, Elliott & Deloach, LLP
6 Concourse Parkway, Suite 2400
Atlanta, Georgia 30328
(404) 843-1956
hmacdougald@ccedlaw.com

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2026, I electronically filed the foregoing motion—together with its addendum—with the Clerk of the United States Court of Appeals for the Eleventh Circuit using the Court's electronic filing system, which will serve all counsel of record who are registered electronic-filing participants.

/s/ Harry W. MacDougald
Harry W. MacDougald

No. 26-13125-G

In the U.S. Court of Appeals for the Eleventh Circuit

VOTERS ORGANIZED FOR TRUSTED ELECTION RESULTS IN GEORGIA, *ET AL.*,
Plaintiffs-Appellants,

v.

ELECTION ASSISTANCE COMMISSION, *ET AL.*,
Defendants-Appellees.

ADDENDUM TO
APPELLENTS' MOTION FOR SUMMARY REVERSAL OF THE DISTRICT COURT'S *SUA SPONTE* DISMISSAL

Harry W. MacDougald
Caldwell, Carlson, Elliott & Deloach LLP
6 Concourse Parkway, Suite 2400
Atlanta, Georgia 30328
(404) 843-1956
hmacdougald@ccedlaw.com

Counsel for Plaintiffs-Appellants