IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ROQUE "ROCKY" DE LA FUENTE	:	
	:	
Plaintiff,	:	
	:	**Civil Action #19-cv-05323**
vs.	:	**Judge J.P. Boulee**
	:	
BRAD RAFFENSPERGER, in his official capacity as the Secretary of State of the State of Georgia	:	
	:	***Filed Electronically***
Defendant.	:	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR EMERGENCY TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

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I. INTRODUCTION

In support of his motion for an emergency temporary restraining order and/or for a preliminary injunction, Plaintiff files the instant memorandum of law in support.

This case arises from Georgia's statutory scheme barring access to Georgia's taxpayer funded presidential preference primary ballot unless a candidate is first qualified to appear on the ballot by the executive committee of the candidate's political party. Georgia provides no other route to secure access to Georgia's presidential primary ballot.

Plaintiff, Roque "Rocky" De La Fuente (hereinafter "Plaintiff"), is a declared candidate contesting the 2020 Republican nomination for the Office of President of the United States. One of the reasons that Plaintiff is seeking the 2020 Republican Party nomination for President is to afford the Republican voters an important choice in the midst of shifting political terrain where President Trump may be impeached and the very real prospect that Republican voters will decide in the coming months that President Trump cannot defeat any candidate nominated by a radicalized Democratic Party seeking to force Socialism down the throats of an unsuspecting American electorate.

The Georgia Election Code, O.C.G.A. § 21-2-193 (2010) prevents any Republican presidential candidate from gaining access to Georgia's tax-payer

funded 2020 presidential primary ballot unless the Georgia Republican Party first qualifies a candidate and communicates their approval to Defendant, based on any reason – or no reason whatsoever – determined solely at the unfettered discretion of the Executive Committee of the Georgia Republican Party. Specifically, Georgia Election Code, O.C.G.A. § 21-2-193 (2010) provides that candidates may gain access to the presidential primary ballot if:

> The state executive committee of each party which is to conduct a presidential preference primary shall submit to the Secretary of State a list of the names of the candidates of such party to appear on the presidential preference primary ballot…."

See, O.C.G.A. § 21-2-193 (2010); Compl. at ¶16. No other provision of the Georgia Election Code provides an avenue to secure access to Georgia's tax-payer funded presidential primary election ballot. No provision of the Georgia Election Code, for instance, permits presidential candidates to demonstrate that they enjoy a significant modicum of support in Georgia to gain access to the primary election ballot.

On or about November, 29, 2019, the executive committee of the Georgia Republican Party qualified only one candidate to Defendant to appear on Georgia's 2020 Republican presidential preference primary election ballot, President Donald Trump. Accordingly, Georgia Election Code O.C.G.A. § 21-2-193 (2010) imposes an insuperable barrier and additional qualification for candidates to contest for the Office of President of the United States in violation of the Presidential

Qualifications Clause of Article II of the United States Constitution and is also an unconstitutional state-imposed ballot access restriction under the First and Fourteenth Amendments to the United States Constitution. One candidate appearing on a taxpayer funded primary election ballot for an office contested by several candidates, beyond being wholly inconsistent with basic standards of a functioning democracy, violates rights guaranteed to Plaintiff under the Constitution for which Plaintiff is entitled to the requested relief.

II. STANDARD OF REVIEW

The standard for obtaining a temporary restraining order is essentially the same as obtaining preliminary injunctive relief that this court is well familiar. Such relief is appropriate if – but only if – the movant shows: (1) a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998); *Ingram v. Ault*, 50 F.3d 898 (11th Cir. 1995); *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169 (11th Cir. 1988). The movant bears the burden of persuasion as to the four prongs of the test for the issuance of a

temporary restraining order and preliminary injunction. *McDonald's Corp.*, 147 F.3d at 1306.

When a party requests preliminary injunctive relief on the basis of the potential violation of the First Amendment, a showing of a reasonable probability of success on the merits often will be the determinative factor in granting the requested temporary restraining prodder/preliminary injunction. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Likewise, the determination of where the public interest lies also is dependent on a determination of the "reasonable probability of success" prong of the preliminary injunction test because "it is always in the public interest to prevent the violation of a party's constitutional rights." *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979). Furthermore, upon a showing that Plaintiff has established a reasonable probability of success on the merits of his First Amendment claim, Defendant, as the nonmoving parties cannot assert and/or prove any interest that would be subject to greater injury than the loss of Plaintiff's constitutional rights, because the analysis of Defendant's interest is baked into the initial analysis of the underlying merits of Plaintiff's claims as to whether the challenged provision impair rights guaranteed under the First and Fourteenth Amendments to the United States Constitution are narrowly drawn to advance a compelling governmental interest sufficient to permit the impairment of Plaintiffs' rights in the first instance.

III. RELEVANT FACTS

Plaintiff is Roque "Rocky" De La Fuente (hereinafter "Plaintiff") is a declared candidate seeking the 2020 nomination of the Republican Party for the Office of President of the United States, in a political environment where the current Republican President is mired in impeachment proceedings and the Republican electorate may want a new standard-bearer to fend off a likely radical-Socialist Democrat nominee for President in 2020. In short, the Republican electorate in Georgia and in the other 49 States may very likely decide by March of 2020 that the future of their country is more important than a pro-forma rubber-stamp re-nomination of President Trump – the only Republican nominee that is likely to lose to a radical Socialist like Elizabeth Warren or Tom Steyer.

Unlike the other opponents challenging President Trump for the 2020 nomination, Plaintiff has sufficient personal resources to finance a national campaign, has more campaign funds on-hand than the other challengers combined, and has met every ballot access deadline in states where candidates are allowed to directly qualify for the primary ballot. Plaintiff, as a successful Mexican-American businessman, is also uniquely placed to attract the important growing Hispanic and Mexican-American constituency into the Republican Party – a hard-working, entrepreneurial, religious, and family-orientated constituency best represented by the Republican Party agenda. As an independent candidate for president in 2016,

over 14,000 Georgia voters supported Plaintiff's name to be placed on the 2016 general election ballot.

Georgia Election Code, O.C.G.A. § 21-2-193 (2010) provides that the only sole method for a presidential candidate to appear on the Georgia presidential preference primary ballot is to be qualified for the ballot by the executive committee of the candidate's respective political party. No other candidates for local, state or federal office in the State of Georgia is prevented from securing ballot access unless the political party first qualifies them to be on their primary ballot. No other statutory provision allows excluded presidential candidates to demonstrate that they enjoy sufficient public support within the Georgia Republican electorate to warrant ballot access.

On October 23, 2019, Plaintiff's legal counsel sent a letter to Defendant and Attorney General Christopher Carr requesting that they review the constitutionality of Georgia Election Code, O.C.G.A. § 21-2-193 (2010) and requested written guarantee that O.C.G.A. § 21-2-193 not be enforced as an unconstitutional additional qualification in violation of the presidential Qualifications Clause of Article II, § 1, cl. 5 of the United States Constitution (hereinafter the "Presidential Qualifications Clause"). Unlike officials in the few other states with similar additional qualifications imposed on presidential primary ballot access, Plaintiff's counsel received no response from Defendant to his October 23, 2019 letter.

As part of the *ad hoc* process established by the Georgia Republican Party for consideration to be qualified by the party to be placed on the 2020 Georgia Republican presidential primary ballot, David Shafer, the Chairman of the Georgia demanded that prospective nominees execute a Letter of Intent which included, among other information, a loyalty oath to support the 2020 nominee of the Republican Party. Plaintiff executed the requested Letter of Intent on October 28, 2019. Having fulling complied with the Party's in executing the requested Letter of Intent, the Party (demonstrating the bad faith latent in the Party's alleged process), the Party thereafter requested from Plaintiff lists of Georgia supporters and donors – all without a confidentiality agreement such that the information could then be used by the Trump campaign to target Plaintiff's Georgia supporters. Plaintiff timely provided an appropriate response to the supplemental request for additional information.

Predictably, on December 3, 2010, David Shafer, the Chairman of the Georgia Republican Party announced that the party had only qualified President Donald Trump to appear on the 2020 Georgia Republican presidential preference primary ballot.

IV. ARGUMENT

A. **Plaintiff is Likely to Succeed on the Merits.**

1. O.C.G.A. § 21-2-193 (2010) Imposes an Additional Qualification for the Office of President of the United States in Violation of Article II, Section 1, Clause 5 of the United States Constitution.

The United States Supreme Court has established that States may not add to the qualifications established for federal office under the United States Constitution in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). In *U.S. Term Limits*, the Supreme Court struck down an Arkansas law that imposed term limits on Congressional candidates as a violation of the Qualifications Clause of Article I, section 2, clause 2 of the United States Constitution , which enumerates the exclusive list of qualifications for members of Congress. There seems to be little or no doubt that the Supreme Court's decision in *U.S. Term Limits* applies with equal force in prohibiting the States from imposing additional qualifications on candidates seeking the Office of President beyond those set forth in the Qualifications Clause of Article II, section 1, clause 5 of the United States Constitution. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798-805 (1995). Plaintiff does not believe that Defendant will argue to the contrary.

In addition, the United States Supreme Court has also established that the Qualifications Clauses of Article I is equally applicable to primary elections in precisely the same fashion that they apply to general congressional elections, such

that the Presidential Qualifications Clause of Article II is also applicable to presidential primary elections. *Tashjian v. Republican Party of Connecticut*, 749 U.S. 208, 227 (1986). There is no authority to suggest that the rational of *Tashjian* extending the congressional qualifications clause to primary elections does not extend with equal force the presidential Qualifications Clause of Article II of the constitution to the conduct of Georgia's presidential primary election.

The Presidential Qualifications Clause of the Constitution sets forth the exclusive requirements for eligibility for the Office of President:

> No person except a natural born Citizen…shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

U.S. Const. art. II, § 1, cl. 5. The Framers intended the qualification clauses to "fix as exclusive the qualifications in the Constitution," *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 806 (1995), "thereby 'divest[ing]' States of any power to add qualifications…" *Id*. at 801. States thus do not "possess the power to supplement the exclusive qualifications set forth in the text of the Constitution," *id*. at 827, to bar candidates "who would otherwise qualify under the Qualifications Clause," *Schaefer v. Townsend*, 215 F.3d 1031, 1035 (9th Cir. 2000); *see also U.S. Term Limits*, 514 U.S. at 803 ("Representatives and Senators are as much officers of the entire Union as is the President. States thus 'have just as much right, and no more, to prescribe new qualifications for a representative, as they have for a

president.'"). Moreover, States may not accomplish indirectly what the Qualifications Clause prohibits them from accomplishing by direct means. *See U.S. Term Limits*, 514 U.S. at 829-30; *see also Smith v. Allwright*, 321 U.S. 649, 664 (1944) ("Constitutional rights would be of little value if they could be …indirectly denied."). A state regulation thus is unconstitutional when it has "the likely effect of handicapping an otherwise qualified class of candidates." *Schafer*, 215 F.3d at 1035; *U.S. Term Limits*, 514 U.S. at 836.

Georgia Election Code, O.C.G.A. § 21-2-193 (2010) bars candidates from the primary election ballot if they fail to be first qualified by the executive committee of their respective political party. Georgia Election Code, O.C.G.A. § 21-2-193 (2010) therefore plainly "handicaps" the chance of election of any candidate that the executive committee of their party refuses to qualify to be placed on Georgia's taxpayer funded presidential primary election by prohibiting them from participating in an integral part of the election process, the nomination process. To be sure, such candidates could still qualify for the general election ballot by independent nomination or through a write-in candidacy, but these are plainly inadequate substitutes for participation in the presidential primary process. *See U.S. Term Limits*, 514 U.S. at 831 ("[T]here is no denying that the ballot restrictions will make it significantly more difficult for the barred candidate to win the election.").

The challenged Georgia statutory scheme places an even more severe handicap on candidates than the California statute invalidated by the Ninth Circuit in *Schafer*. In *Schafer*, the Ninth Circuit addressed California's requirement that candidates for federal office be registered voters, and therefore residents of the State of California, at the time they become candidates for the federal office for which they seek election. In *Schaefer*, California argued that the registration requirement was a mere ballot access restriction within its authority under the Elections Clause of Article I, section 4, clause 1 of the United States Constitution to regulate the times, places and manner of the holding of federal elections and that California had the power to adopt "generally-applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself." *Schaefer*, 215 F.3d at 1037, quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). The 9th Circuit explained in *Schaefer* that:

> Prior to *Term Limits*, when faced with a viable Elections Clause argument, the Supreme Court commonly employed a balancing test, weighing the state's interests against the rights of candidates and voters, to measure the constitutionality of a challenged ballot access provision. *Anderson*, 460 U.S. at 789 (outlining the balancing test); *see also Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992) (reaffirming *Anderson* and recognizing that severe restrictions on the rights of candidates and voters are subject to strict scrutiny); *Bates v. Jones*, 131 F.3d 843, 846 (9th Cir. 1997) (employing the *Anderson* test in upholding term limits for California state legislators). Accordingly, California invites us to balance its interests in maintaining the integrity of its ballot against the burden that its election laws place on nonresident candidates.

> The *Term Limits* Court rejected such a broad reading of the Elections Clause and held the balancing test inapplicable where the challenged provision supplemented the Qualifications Clause and did not regulate a procedural aspect of an election or require a candidate to show a minimum level of support before running. The Court noted that: "The provisions at issue in . . . our . . .Elections Clause cases were thus constitutional because they regulated election procedures and did not even arguably impose any substantive qualification rendering a class of potential candidates ineligible for [a] ballot position." *U.S. Term Limits* 514 U.S. at 835. The Court distinguished other Election Clause cases on the ground that "they did not involve measures that exclude candidates from the ballot without reference to the candidates' support in the electoral process." *Id*.
>
> Likewise, California's residency requirement falls outside the scope of Elections Clause cases because it neither regulates the procedural aspects of the election nor requires some initial showing of support.

Schaefer, 215 F.3d at 1037-1038. In *Schaefer*, the court held that in reviewing a ballot access regulation the court must determine whether it serves as an absolute bar and, "if not," it must determine whether the regulation has "the likely effect of handicapping an otherwise qualified class of candidates." *Schaefer*, 215 F.3d at 1035. O.C.G.A. § 21-2-193 (2010) clearly has "the likely effect of handicapping an otherwise qualified class of candidate." The challenged statute empowers a political party to staunch all opposition to a sitting president seeking re-nomination, the statute therefor, has the likely effect to handicap all otherwise qualified challengers to the re-nomination of a sitting president. Such a situation therefore, likely imposes

an absolute bar on all otherwise qualified candidates seeking to challenge a sitting president for the nomination of their political party.

Unlike the Plaintiff in this action, the *Schaefer* plaintiff had the opportunity to relocate and become a resident of California to satisfy the unconstitutional additional qualification. Despite the fact that the plaintiff in *Schaefer* was able to comply with the challenged California residency requirement, and would eventually be required to become a California resident before the election, the Ninth Circuit considered the residency requirement at the time a federal candidate filed for ballot access to impose such a handicap on a class of candidates as to constitute an unconstitutional additional qualification. Unlike the plaintiff in *Schaefer*, the challenged statute in this action placed Plaintiff in this action was at the complete mercy of Party insiders bent on preventing any challenge to the sitting President by denying all challengers to President Trump access to Georgia's 2020 Republican presidential primary election ballot. The challenged statute provides no other means to secure access to his party's presidential primary election ballot.

2. Exercise of O.C.G.A. § 21-2-193 (2010) Imposed an Unconstitutional Additional Qualification and Violation of First Amendment Rights on Republican Presidential Candidates Excluded from Georgia's 2020 Republican Presidential Primary Ballot.

The Georgia Republican Party, in its first communication to Plaintiff as to what would be required to secure the Party's qualification to appear on the 2020

Georgia Republican presidential primary ballot, demanded that Plaintiff execute a loyalty oath to support the party's nominee to be considered for placement on Georgia's presidential primary ballot. Plaintiff complied. Despite this compliance, and after having deceitfully extracted the loyalty oath from Plaintiff to support the party's 2020 nominee, the Georgia Republican Party nevertheless refused to place Plaintiff's name on the 2020 presidential primary ballot.

Loyalty oaths as a condition precedent to appear on a ballot have never been upheld as a condition precedent for ballot access for federal candidates by any court. Loyalty oaths have been held unconstitutional under relevant qualification clauses of the United States Constitution and a violation of rights guaranteed to candidates under the First and Fourteenth Amendments to the United States Constitution. *See*, *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441, 446 (1974) (Loyalty oath requirement for new political party unconstitutional under First Amendment to the United States Constitution); *Biener v. Calio*, 361 F.3d 206 (3rd Cir. 2004) (Loyalty oaths unconstitutional as an additional qualification for federal office); *Green Party of Tennessee v. Hargett*, 791 F.3d 684, 696 (6th Cir. 2015) (Loyalty oath for new political parties unconstitutional under the First Amendment to the United States Constitution); *Shub v. Simpson*, 76 A.2d 332 (1950) (Loyalty oath for federal congressional candidates unconstitutional under qualification clause of Article I of the United States Constitution). There is no

basis to distinguish an impermissible loyalty oath to support the United States Constitution from an unconstitutional loyalty oath to support a political party's presidential nominee of the sort that the challenged statute empowered the Georgia Republican Party to extract from Plaintiff to be considered by the party for access to the 2020 Georgia Republican presidential preference primary ballot.

Further, as noted above, Georgia cannot accomplish indirectly what the Qualifications Clause prohibits them from accomplishing by direct means. *See*, *U.S. Term Limits*, 514 U.S. at 829-30; *see also*, *Smith v. Allwright*, 321 U.S. 649, 664 (1944) (Constitutional rights would be of little value if they could be indirectly denied). Plaintiff assumes that this Court would brook no constitutional tolerance of a Georgia statute that required presidential candidates to swear support for their party's eventual presidential nominee as a condition precedent to securing access to the state's presidential primary ballot. This Court cannot permit the challenged statute to remain in place that permits political parties to demand that candidates take a loyalty oath to the party's eventual presidential nominee as a condition precedent to being considered to be placed on the state's taxpayer-funded presidential primary ballot.

Accordingly, Plaintiff is likely to succeed on the merits of Plaintiffs Qualifications Clause and/or First Amendment claims.

3. O.C.G.A. § 21-2-193 (2010) is Unconstitutional as a Ballot Access Restriction Under the First and Fourteenth Amendments.

Even if O.C.G.A. § 21-2-193 (2010) does not impose an unconstitutional qualification, it still falls outside Georgia's authority to regulate elections. The States have no inherent power to regulate federal elections. Rather, the Constitution delegates that power and "the States may regulate the incidents of [federal elections], including balloting, only within the exclusive delegation." *Cook v. Gralike*, 531 U.S. 510, 522-23 (2001). And though the Constitution grants States authority "to prescribe the procedural mechanisms" for federal elections, *id*. at 523, that authority is limited to "election *procedures*," *U.S. Term Limits*, 514 U.S. at 835, and that power does not extend to include the ability of States "to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." *Cook*, 531 U.S. at 523.

Accordingly, States may only impose "generally applicable and even-handed [procedural] restrictions that protect the integrity of the election process itself." *U.S. Term Limits*, 514 U.S. at 834. States, therefore, can legislate on "matters like 'notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.'" *Cook*, 531 U.S. at 523-24. These are the types of "'procedure and safeguards which experience shows are ("Eash necessary in order to enforce the fundamental right involved,' ensuring that

elections are 'fair and honest,' and that 'some sort of order, rather than chaos, is to accompany the democratic process.'" *Id.* at 524 (citation omitted); *see also* *Anderson v. Celebrezze*, 460 U.S. 780, 788 n.9 (1983) ("We have upheld generally applicable and evenhanded ballot access restrictions that protect the integrity and reliability of the electoral process itself.").

These same limitations on States' authority apply to presidential elections. *Storer v. Brown*, 415 U.S. 724, 729-30 (1974); *Anderson*, 460 U.S. at 788 & n.9; *see also* U.S. Const. art. II, §1, cl. 2 ("Each State shall appoint, in such *Manner* as the Legislature thereof may direct, a Number of Electors. . . ." (emphasis addes)). But "in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest" because "the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation." *Anderson*, 460 U.S. at 794-95. The "State's enforcement of more stringent ballot access requirements [thus] has an impact beyond its own borders." *Id*. at 745. And for that reason, States have "a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries." *Id*.

O.C.G.A. § 21-2-193 (2010), therefore, exceeds Georgia's authority to regulate elections. Allowing a small cadre of political party insiders to exclude all declared and recognized challengers to the President for their party's nomination is

not a procedural regulation targeted at "protect[ing] the integrity and reliability of the electoral process itself." *Anderson*, 460 U.S. at 788 n.9. In fact, in the hands of the Georgia Republican Party, the challenged statute essentially negates the holding of a contested election. The challenged statute also does not ensure that "some sort of order, rather than chaos" accompanies the election, *Cook*, 531 U.S. at 524, nor does the challenged statute require some minimum level of *public* support before a presidential candidate can be placed on the ballot, *Anderson*, 460 U.S. at 788 n.9, as the challenged statute's authority for the executive committee of a political party to determine who shall appear on Georgia's presidential primary election ballot is not accompanied with any restrictions to prevent either the exclusion of all candidates except the favored candidate of political party insiders, neither is there a restriction on the number of candidates that can be placed on the ballot to protect the State's legitimate interest against ballot clutter and voter confusion. *Id*.

The Supreme Court has made it clear that the First Amendment flatly protects the rights of voters to "find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." *See Lubin v. Panish*, 415 U.S. 709, 716 (1974). The challenged statute's delegation of Georgia's reduced authority in presidential elections to limit ballot access to candidates who can demonstrate a modicum of support to a political party's executive committee

empowered to deny ballot access to all challengers of a sitting president seeking re-nomination without regard to any opportunity to demonstrate public support "heavily burden[s]" the right to vote at a time when "other candidates are 'clamoring for a place on the ballot.'" *Anderson*, 460 U.S. at 788 quoting *Williams v. Rhodes*, 393 U.S. 23, 31 (1968).

The Supreme Court has established the proper formula that a State must follow in order to determine who shall or may appear on a State's ballot. The Court in *Lubin v. Panish*, 415 U.S. 709 (1974), explained that:

> That "laundry list" ballots discourage voter participation and confuse and frustrate those who do participate is too obvious to call for extended discussion. The means of testing the seriousness of a given candidacy may be open to debate; the fundamental importance of ballots of reasonable size limited to serious candidates with some prospects of public support is not. Rational results within the framework of our system are not likely to be reached if the ballot for a single office must list a dozen or more aspirants who are relatively unknown or have no prospect of success.
>
> This legitimate state interest, however, must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity. The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters….
>
> This must also mean that the right to vote is "heavily burdened" if that vote may be cast only for one of two candidates in a primary election at a time when other candidates are clamoring for a place on the ballot. It is to be expected that a voter hopes to find on the ballot a candidate

> who comes near to reflecting his policy preferences on contemporary issues.

Lubin v. Panish, 415 U.S. at 716-17. The challenged scheme empowers a small group of party leaders to cleanse Georgia's presidential primary ballot from candidates who are, themselves members of the Republican Party, but who offer the Georgia Republican electorate the opportunity to voice an alternative direction for their party to take after years of sophomoric antics emanating from the White House. Georgia does not have the right to prevent candidates from gaining access to the ballot who will permit Republican voters who do not want to re-nominate President Trump to exercise a meaningful voice at the ballot box. Neither does Georgia have the authority to delegate regulation of the presidential primary ballot to the leadership of a political party to accomplish what Georgia is not permitted to accomplish under the First Amendment to the United States Constitution.

The Supreme Court has also rejected ballot access schemes which are limited to single mechanisms "ill-fitted" to screen-out only spurious candidates. The Court explained in *Bullock v. Carter*, 405 U.S. 134 (1972) in expressly rejecting the validity of filing fees as the sole means of determining a candidate's "seriousness" that:

> To say the filing fee requirement tends to limit the ballot to the more serious candidates is not enough. There may well be some rational relationship between a candidate's willingness to pay a filing fee and the seriousness with which he takes his candidacy, but the candidates in this case affirmatively alleged that they were *unable*, not simply

> *unwilling*, to pay the assessed fees, and there was no contrary evidence. It is uncontested that the filing fee excludes legitimate as well as frivolous candidates…. If the Texas fee requirement is intended to regulate the ballot by weeding out spurious candidates, it is extraordinarily ill-fitted to that goal; other means to protect those interests are available.

Bullock, 405 U.S. at 145-46.

As the Court noted in *Bullock*, Georgia has other means at its disposal to protect its ballot from frivolous candidates to avoid the specter of a single candidate appearing on its presidential primary election ballot solely to deprive opponents of President Trump from within the ranks of the Republican Party who have suffered from years of the drip-drip-drip of daily reports of possible impeachment the opportunity to voice a different direction for their party in the hopes of saving their country from the election of a Radical Democrat to the Office of President intent on imposing deadly Socialism on America. The stakes cannot be higher.

The "heavy burden" that the state GOP's exercise of O.C.G.A. § 21-2-193 (2010) imposes on the 2020 Republican presidential primary ballot, the candidates and Republican voters in eliminating all avenues of dissent implicates a severe burden on core political speech that Defendants must justify as narrowly tailored to advanced a compelling governmental interest. Defendant cannot advance any such justification.

Simply stated, Georgia could have, appropriately, allowed all candidates to collect a sufficient number of signatures to demonstrate that they enjoy a sufficient level of support within Georgia to warrant access to the presidential primary ballot. Such a well-worn ballot access scheme is far more focused on advancing Georgia's interest in regulating their ballot than to permit a small cadre of political party officials to strong-arm their own political preferences on the entire Georgia Republican electorate. Furthermore, Georgia could have permitted the political parties to exempt certain candidates from the need to collect signatures while affording other candidates the opportunity to collect signatures to demonstrate that they enjoyed a sufficient level of public support to warrant access to the presidential primary election ballot. There is simply no justification to delegate regulation of the state's presidential primary ballot solely to the absolute narrow exercise of partisan warfare.

Application of the relevant case law demonstrates that the challenged statute's delegation to the executive committee of the Georgia Republican Party the power to eliminate all opposition to President Trump on Georgia's taxpayer funded presidential primary ballot imposes a severe burden on core political speech which is not narrowly tailored to advance Georgia's legitimate interest in limiting access to Georgia's ballot to serious candidates. Accordingly, Plaintiff is likely to success on his First Amendment claim.

B. The Remaining TRO/Preliminary Injunction Factors Favor the Requested Injunctive Relief Requested by Plaintiff.

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976)). This is true for First Amendment claims, where there is a "long line of precedent establishing that 'the loss of First Amendment freedoms, for even minimal periods of time,'" constitutes irreparable harm. *See e.g., Thalheimer v. City of San Diego*, 645 F.3d 1109, 1128-29 (9th Cir. 2011). Thus, in the context of an alleged violation of First Amendment rights, a plaintiff's claim of irreparable harm is 'inseparably linked' to the likelihood of success on the merits of plaintiff's First Amendment claim. *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7 (2008). Irreparable harm with respect to Plaintiff's Qualifications Clause claim (as well as First Amendment claim) is clear as Plaintiff is a candidate for the Republican Party nomination for President of the United States and exclusion from the primary election ballot from one of the larger states irreparably impairs Plaintiff's ability to secure any Georgia delegates to the 2020 Republican National Convention. "If the plaintiffs lack an adequate opportunity to gain placement on the ballot in this year's election, this infringement on their rights cannot be alleviated after the election." *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3rd Cir. 1997). Furthermore, if Georgia prints ballots without Plaintiff's name on the ballot and then sends those ballots out to overseas and

military voters, Plaintiff will have suffered irreparable injury. Accordingly, the requested relief in necessary to protect Plaintiff's rights.

The same is true for the final two factors. No ballots have been printed and the requested injunction implicates no barrier to the conduct of a timely election. Accordingly, the balance of equities weighs in favor of granting Plaintiff's requested TRO/preliminary injunctive relief. Finally, placing Plaintiff's name on the 2020 Georgia Republican presidential primary ballot does not adversely impact the public interest. "It is always in the public interest to prevent the violation of a party's constitutional rights." *Am. Beverage Ass'n v. City & Cty. of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019). The final two factors, then, compel entry of an the requested temporary restraining order and/or preliminary injunction against enforcement of Georgia Election Code, O.C.G.A. § 21-2-193 (2010).

V. CONCLUSION

Accordingly, for all the forgoing stated reasons, this Court should issue the requested temporary restraining order and/or preliminary injunction enjoining enforcement of Georgia Election Code, O.C.G.A. § 21-2-193 (2010) and enjoining Defendant from printing any Republican presidential primary ballots without the name of Plaintiff printed thereon.

Respectfully submitted,

Dated: December 11, 2019 **CHANCO SCHIFFER LAW, LLC**

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CERTIFICATE OF SERVICE

Plaintiff, by and through his undersigned legal counsel, hereby certifies that on this date, a true and correct copy of the foregoing document has been caused to be served on Defendant at Defendant's principal place of business at the following address:

Brad Raffensperger
Georgia Secretary of State
214 State Capitol
Atlanta, GA 30334

Dated: December 11, 2019

CHANCO SCHIFFER LAW, LLC

/s/ Douglas B. Chanco
DOUGLAS B. CHANCO, ESQ