

WOOD V. RAFFENSPERGER: AGGRIEVED GEORGIA VOTER DIRECTED TO STATE COURT FOLLOWING THE 2020 ELECTION

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In *Wood v. Raffensperger*,¹ the U.S. Court of Appeals for the Eleventh Circuit addressed whether it had jurisdiction over an appeal from the denial of a Georgia voter's request for emergency relief following the 2020 United States presidential election.² A Georgia voter alleged that the absentee ballot and recount procedures violated existing Georgia law as well as his federal constitutional rights.³ The Eleventh Circuit affirmed the District Court's denial of the voter's request for emergency relief for lack of standing and mootness and ruled that it did not have jurisdiction over post-election contests involving "issues of vote counting and misconduct that may be properly filed in state courts."⁴

At the time the case was filed, Secretary of State Brad Raffensperger served as the chief election official of Georgia and managed the state system of elections and the State Election Board.⁵ The Board promulgates rules and regulations to ensure fair and uniform practices of elections "consistent with the law," including laws related to the process of absentee voting.⁶ In November of 2019, the Democratic Party of Georgia, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee claimed that Georgia's absentee ballot procedures were unconstitutional and violations of the First and Fourteenth Amendment.⁷ Although Secretary Raffensperger and the Board contended that the procedures were constitutional, they agreed to create additional regulations to certify the validity of absentee ballots signatures and ensure a uniform system across all counties.⁸ In March of 2020, they entered into a settlement agreement in which the Board agreed to issue an Official Election Bulletin on the review of absentee signatures and to train the county election officials on how to properly follow the process.⁹

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¹ *Wood v. Raffensperger*, 981 F.3d 1307 (11th Cir. 2020).

² *Id.* at 1310.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 1310–11.

⁶ *Id.* at 1311.

⁷ *Wood*, 981 F.3d at 1311.

⁸ *Id.*

⁹ *Id.*

Ten days following the presidential election, L. Lin Wood, Jr. sued Secretary Raffensperger and the members of the Board “in his capacity as a private citizen,” alleging, in pertinent part, that the settlement agreement violated state law and that irregularities in hand recount procedures violated his rights under the Due Process Clause of the U.S. Constitution.¹⁰ In his complaint, he sought to “enjoin certification of the general election results, to secure a new recount under different rules, and to establish new rules for an upcoming runoff election.”¹¹ He also sought greater access for Republican election monitors to a hand recount of the November election results and to the senatorial runoff scheduled for January 2021.¹² However, Wood’s lawsuit was up against hard deadlines: Georgia law requires that the Secretary of State certify the general election results by the seventeenth day after Election Day, and that the Governor certify Georgia’s slate of presidential electors by the eighteenth day after Election Day.¹³ In acknowledgment of these rules, Wood made an emergency motion, asking the court to issue a temporary restraining order to avoid the approaching deadlines.¹⁴ The District Court ultimately denied Wood’s motion.¹⁵

On appeal, the Eleventh Circuit considered whether it had jurisdiction over the appeal from the denial of the request for emergency relief.¹⁶ Article III of the U.S. Constitution makes clear that federal courts are courts of limited jurisdiction, and the Eleventh Circuit held this case was not justiciable due to a lack of standing and mootness.¹⁷ Regarding the standing issue, the court concluded that Wood did not possess standing because he failed to allege an injury in fact.¹⁸ An injury in fact is a particularized injury that “affects the plaintiff in a personal and individual way.”¹⁹ The court ruled that Wood merely alleged a “generalized grievance” rather than a particularized injury.²⁰ Wood based his standing argument on his interest in ensuring that all ballots were lawfully counted, and argued specifically that “unlawfully processed absentee ballots diluted the weight of his vote,” and that the state “value[d] one person’s vote over that of another’ through ‘arbitrary and

¹⁰ *Id.* at 1311–12.

¹¹ *Id.* at 1310.

¹² *Id.* at 1312.

¹³ *Wood*, 981 F.3d at 1312 (citing GA. CODE ANN. § 21-2-499(b)).

¹⁴ *Id.* The emergency motion also included many of Wood’s previous requests from his amended complaint, “including requests for changes to the procedures for the January runoff.” *Id.*

¹⁵ *Id.* at 1313.

¹⁶ *Id.*

¹⁷ *Id.* at 1310, 1313.

¹⁸ *Wood*, 981 F.3d at 1314.

¹⁹ *Id.* (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016)).

²⁰ *Id.*

disparate treatment’”²¹ On the first theory, the Eleventh Circuit ruled that this supposed injury “‘requir[ing] that the government be administered according to the law’ is a generalized grievance.”²² Wood also admitted that any other Georgia voter “could bring an identical suit” alleging the same injury.²³

Wood’s second theory—that he was injured as a result of absentee ballots being treated as a “preferred class” over in-person votes—did not fare well.²⁴ The harm did not affect him as an individual because he shared this injury with approximately four million other Georgia voters who also voted in person for the November presidential election.²⁵ Thus, the Eleventh Circuit ruled that he was at most a “concerned bystander,” and the alleged harm was not particularized for him to establish an injury in fact.²⁶ Wood was not “entitled to have the court[s] decide the merits of [his] dispute” for a lack of standing.²⁷

Next, the court held that, even if Wood did have standing, many of his requests for relief concerning the results of the 2020 election were moot.²⁸ An issue is considered moot when there is no longer a “live controversy” for which the court can provide “meaningful relief.”²⁹ Wood moved the district court to prohibit “certification of the elections results or certification that included the disputed absentee ballots.”³⁰ He also demanded a hand recount and better access for Republican election monitors during the recount and the January runoff.³¹ However, after the district court denied Wood’s requests, Secretary Raffensperger certified the election results and, later that day, Governor Kemp certified the slate of presidential electors as required by Georgia law.³² The court noted that “mootness concerns the availability of relief, not the existence of a lawsuit or an injury.”³³ Thus, because Georgia

²¹ *Id.* Wood asserted two bases for standing: (1) vote dilution as a result of counting unlawfully processed absentee ballots, and (2) that Georgia valued absentee voters’ votes over others. *Id.* at 1314–15.

²² *Id.* at 1314–15 (quoting *Chiles v. Thornburgh*, 865 F.2d 1197, 1205–06 (11th Cir. 1989)).

²³ *Wood*, 981 F.3d at 1314–15.

²⁴ *Id.* at 1315.

²⁵ *Id.*

²⁶ *Id.* at 1316 (quoting *Koziara v. City of Casselberry*, 392 F.3d 1302, 1305 (11th Cir. 2004)).

²⁷ *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

²⁸ *Id.*

²⁹ *Wood*, 981 F.3d at 1316 (citing *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011)).

³⁰ *Id.* at 1316–17.

³¹ *Id.* at 1317.

³² *Id.*

³³ *Id.* (citing *Fla. Wildlife Fed’n, Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F.3d 1296, 1304 (11th Cir. 2011)).

already certified its results, Wood's appeal requesting to delay certification was moot.³⁴

Additionally, the Eleventh Circuit did not find any applicable exception to mootness.³⁵ Courts will often review otherwise-moot issues if they are "capable of repetition yet evading review."³⁶ Courts will apply this exception when a challenged action was too short in its duration to be litigated before its expiration and when there is a "reasonable expectation" that the complaining party will face the same action again.³⁷ In applying this standard to the present case, the Eleventh Circuit determined that Wood failed to satisfy the second element, meaning they did not find a reasonable expectation that Wood would face the issue again.³⁸ Because the action at issue pertains to an emergency injunction of election result certification, Wood failed to allege the situation would recur, and because Wood is a private citizen, the court ruled that the possibility of recurrence regarding this very specific action was merely theoretical.³⁹

The Eleventh Circuit ultimately ruled that Wood failed to satisfy his burden of proving that his appeal presented a justiciable controversy under Article III of the Constitution.⁴⁰ The appeal was not justiciable, and therefore not within the federal court's limited jurisdiction, because Wood did not possess standing and his requests were moot.⁴¹ As such, the court concluded they would not entertain "post-election contests about garden-variety issues of vote counting and misconduct that may properly be filed in state courts."⁴²

The Eleventh Circuit's decision in *Wood* shows that federal courts are not willing to allow voters to tie state law claims into federal claims to gain relief against state officials. The court noted that "Georgia law makes clear that post-election litigation may proceed in a state court."⁴³ Wood had the choice to bring his suit in federal or state court, but in federal court he had the burden of proving that his suit was within the federal court's jurisdiction.⁴⁴ *Wood* illustrates that federal courts will strictly apply this burden to plaintiffs to uphold the integrity of Article III of the Constitution.

³⁴ *Id.*

³⁵ *Wood*, 981 F.3d at 1317.

³⁶ *Id.* (quoting *Am. C.L. Union v. Fla. Bar*, 999 F.2d 1486, 1496 (11th Cir. 1993)).

³⁷ *Id.* (citing *Nat'l Broad. Co. v. Commc'ns Workers of Am.*, 860 F.2d 1022, 1023 (11th Cir. 1988)).

³⁸ *Id.* at 1317-18.

³⁹ *Id.* at 1318.

⁴⁰ *Id.* at 1313.

⁴¹ *Wood*, 981 F.3d at 1313.

⁴² *Id.* at 1310.

⁴³ *Id.* at 1313 (citing GA. CODE. ANN. §§ 21-2-499(b), 21-2-524(a)).

⁴⁴ *Id.*