

PETITION BY THE SENATE CALLING FOR AND CONVENING
A SESSION OF THE GENERAL ASSEMBLY OF GEORGIA

This petition shall serve as notification to Governor Brian Kemp and Secretary of State Brad Raffensperger that an emergency exists such that a session of the General Assembly is being called for and convened on Tuesday, December 8, 2020, at 10:00 A.M. in order to attend to such emergency and for all purposes provided for pursuant to Article II, Section 1 of the Constitution of the United States.

WHEREAS, an election was held in this state on November 3, 2020, for the purpose of selecting electors from Georgia to cast the state's vote for President and Vice President of the United States of America on December 14, 2020; and

WHEREAS, Article I, Section 4 of the Constitution of the United States provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators"; and

WHEREAS, Article II, Section 1 of the Constitution of the United States provides, in pertinent part, that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress"; and

WHEREAS, the Supreme Court of the United States has described such constitutional authority of the state legislatures to determine the manner of choosing electors as "plenary." See *McPherson v. Blacker*, 146 U.S. 1, 35 (1892); see also *Bush v. Gore*, 531 U.S. 98, 104 (2000); and

WHEREAS, Section 5 of Title 3 of the United States Code provides:

"If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned"[:]

and

WHEREAS, Chapter 2 of Title 21 of the Official Code of Georgia Annotated (hereinafter, the "Georgia Election Code") sets forth the rights and procedures for an election contest in Georgia as enacted by the General Assembly pursuant to its plenary power under Article II, Section 1 of the Constitution of the United States (hereinafter, "plenary power"); and

WHEREAS, testimonial and other evidence given before the Georgia Senate Judiciary Committee's Subcommittee on State Election Processes on December 3, 2020, demonstrated a systemic failure to observe the Georgia Election Code enacted by the General Assembly in ways that include, but are not limited to, the following:

- (1) Allowing underage individuals to cast ballots and then counting such ballots in violation of Code Section 21-2-216(a)(3);
- (2) Allowing convicted and still incarcerated felons to register to vote and cast votes and then counting such ballots in violation of Code Section 21-2-216(b);
- (3) Allowing individuals to vote who were not listed in the state's records as having been registered to vote and counting such ballots in violation of Code Sections 21-2-220.1 and 21-2-417;
- (4) Allowing voters who moved to a different county more than 30 days prior to the election to cast votes without reregistering and counting such ballots in violation of Code Section 21-2-218;
- (5) Allowing voters who registered using a post office box instead of a residence address to cast ballots and counting such ballots in violation of Code Section 21-2-217;
- (6) Counting the ballots of individuals who were deceased prior to election day in violation of Code Section 21-2-231;
- (7) Counting of ballots outside the view of poll watchers or designated monitors in violation of Code Sections 21-2-408 and 21-2-483; and
- (8) Alteration of the signature verification requirements for absentee ballot applications and absentee ballots set out in Code Sections 21-2-381 and 21-2-386; and

WHEREAS, any certification of electors by the Governor of Georgia or the Georgia Secretary of State in light of such systemic failures would not be in conformity with the Georgia Election Code enacted by the General Assembly pursuant to its plenary power; and

WHEREAS, the Supreme Court of the United States in *Bush v. Gore*, 531 U.S. 98 at 104, has held that a state legislature, "after the granting the franchise in the special context of Article II, can take back the power to appoint electors"; and

WHEREAS, Article II, Section 1 of the Constitution of the United States does not prescribe any procedural limitations or criteria relating to a state legislature's exercise of its plenary powers under said provision; and

WHEREAS, the General Assembly's ability to take back the power to appoint electors is not conditioned or dependent upon whether it is in convened in a session at the time when the need to take back such power arises; and

WHEREAS, the testimonial and other evidence presented of the systemic failure to follow the Georgia Election Code warrant the convening of a session of the General Assembly on Tuesday, December 8, 2020, at 10:00 A.M., to determine if the such election can be properly certified or if the state should exercise any authority granted pursuant to Article II, Section 1 of the Constitution of the United States; and

NOW, THEREFORE, pursuant to the state's plenary power under Article II, Section 1 of the Constitution of the United States, the undersigned members of the General Assembly hereby certify that an emergency exists in the affairs of the state such that a session of General Assembly should be called and shall be convened on Tuesday, December 8, 2020, at 10:00 A.M. to attend to such emergency and for all purposes provided for pursuant to Article II, Section 1.

NOW, THEREFORE, BE IT CERTIFIED THAT THE UNDERSIGNED MEMBERS OF THE SENATE OF THE GENERAL ASSEMBLY OF GEORGIA hereby call for a session
