

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

DEMOCRATIC NATIONAL COMMITTEE
and DEMOCRATIC PARTY OF GEORGIA,
INC.,

Petitioners,

vs.

COBB COUNTY,

Respondent.

Civil Action No.: _____

**EMERGENCY RELIEF
REQUESTED**

VERIFIED PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioners the Democratic National Committee (“DNC”) and Democratic Party of Georgia, Inc. (“DPG”), by and through the undersigned attorneys, file this Verified Petition for Declaratory and Injunctive Relief against Respondent Cobb County.

NATURE OF THE CASE

1. Thousands of Cobb County voters are on the brink of disenfranchisement due to a failure to timely send their absentee ballots. This occurred twice in 2022, and in both instances, this Court granted judicial relief to protect the affected voters’ fundamental right to vote.

2. In this instance, the Cobb County Board of Elections failed to timely send more than 3,000 absentee ballots in accordance with Georgia law. Cobb County has publicly admitted to missing the statutory deadline. Judicial relief is thus required to remedy this legal violation and prevent disenfranchisement.

3. Absent immediate relief, some Cobb County voters who are DNC or DPG members likely will not be able to participate in the November 2024 general election despite no fault of their own. These voters properly registered to vote and requested an absentee ballot by the absentee

ballot request deadline. Rather, the failure to timely mail or issue absent ballots will abridge their fundamental right to vote.

4. In addition, as a political party, DPG nominates qualified candidates for office and supports Democratic nominees in their campaigns, including with monetary and logistical support. DNC likewise has a core interest in electing Democratic candidates. DNC and DPG have an interest in ensuring that voters can cast their ballots for Democratic candidates for federal and state office.

5. The Georgia Constitution gives a right to vote to “[e]very person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article.” Ga. Const. art. II, § I, II. The Georgia Supreme Court has held that “[t]he right to vote is fundamental, forming the bedrock of our democracy.” *Favorito v. Handel*, 285 Ga. 795, 796 (2009) (quotation omitted).

6. Cobb County announced its failure to comply with the law requiring issuance of absentee ballots the afternoon of October 31, 2024, the penultimate day of early voting, and just five days before the general election on November 5, 2024.

7. Although Cobb County asserts it will send “most” absentee ballots to voters by overnight mail beginning Friday, November 1, 2024, there is no guarantee those voters will receive and be able to return these ballots by the absentee ballot receipt deadline on election day. If those voters cannot vote in person, they will be disenfranchised.

8. What’s more, Cobb County has made no guarantee when it will send *all* absentee ballots to voters. Some voters may never receive the absentee ballot they properly requested. If those voters cannot vote in person, they will be disenfranchised.

9. Given Cobb County's violation of its statutory and constitutional duties and the imminent election, the Court should declare that Cobb County's breach of its duty to timely send absentee ballots violated Georgia law and the fundamental right to vote guaranteed by the Georgia Constitution.

10. The Court should order that Cobb County: (1) immediately send absentee ballots and overnight return envelopes by overnight mail to all voters who (a) requested an absentee ballot but whose ballot was not timely sent, and (b) who have not yet voted ("Affected Voters"); (2) extend the receipt deadline for all absentee ballots sent to Affected Voters (and returned postmarked on or before November 5, 2024) to November 8, 2024, the receipt deadline for Uniformed and Overseas Citizens Absentee Voters Act ("UOCAVA") ballots; (3) allow overseas Affected Voters who have not received an official ballot by noon (local time) on election day, November 5, 2024, to use the Federal Write-In Absentee Ballot ("FWAB") to vote; (4) provide immediate notice (by phone, email, and all other reasonably available means) to all Affected Voters as to the extended receipt deadline, their right to postmark their absentee ballot by election day, and the ability of overseas voters to use the FWAB to vote if they have not received an official absentee ballot by noon on election day; and (5) to segregate all absentee ballots cast by Affected Voters and received after 7:00 p.m. on November 5, 2024.

11. Unless this Court intervenes, the DNC, DPG and their members will face the irreparable harm of disenfranchisement in the 2024 election. The public interest demands that the Affected Voters have the opportunity to vote and have their vote counted.

JURISDICTION AND VENUE

12. This action arises exclusively under the Constitution and laws of the State of Georgia. This Court has jurisdiction to grant declaratory and injunctive relief under O.C.G.A. §§ 9-4-2 and 9-4-3.

13. The Georgia Constitution waives sovereign immunity for this action seeking declaratory and injunctive relief for acts “in violation of the laws or the Constitution of this state.” Ga. Const. art. I, § 2, ¶ V(b)(1).

14. Venue lies in this Court under O.C.G.A. § 9-10-30 because this action was brought in the Cobb County Superior Court against Cobb County.

PARTIES

15. Petitioner Democratic National Committee (“DNC”) is the principal committee of the Democratic Party, dedicated to electing Democratic candidates and protecting voters’ rights. The DNC has a core interest in ensuring proper and legal administration of elections. That interest is harmed when voters cannot cast ballots for Democratic candidates because local election administrators violated the law by failing to issue absentee ballots.

16. Petitioner Democratic Party of Georgia (“DPG”) is a political party as defined by O.C.G.A. § 21-2-2(25) and is the official Democratic Party organization in Georgia. DPG is dedicated to electing Democratic candidates in the state and protecting Georgians’ voting rights. As stated in its charter, DPG is “committed to the wisdom and efficacy of the will of the majority” and seeks to “protect and enhance political freedom of all people and to encourage the meaningful participation of all citizens within the framework of the United States Constitution and the laws of the United States and the State of Georgia.” Charter and Bylaws of the Democratic Party of Georgia, Preamble (Aug. 28, 2021). Like the DNC, DPG has a core interest in ensuring proper

and legal administration of elections. That interest is harmed when voters cannot cast ballots for Democratic candidates because local election administrators violated the law by failing to issue absentee ballots.

17. Respondent Cobb County is a body corporate and politic of the State of Georgia. Ga. Const. art. IX, § I, ¶ I. The Cobb County Board of Elections and Registration (“Cobb Board”) is the election “superintendent” for Cobb County and is part of Cobb County. The Cobb Board is responsible for overseeing elections in Cobb County, including the timely mailing and counting of absentee ballots. *See* Ga. Laws 1985, p. 4653, § 1(a)-(b). The Members of the Cobb Board are Tori Silas, Jennifer Mosbacher, Steven Bruning, Stacy Efrat, and Debbie Fisher. The Director of the Cobb Board is Tate Fall.

FACTUAL ALLEGATIONS

18. Georgia voters are eligible to request absentee ballots between 78 and 11 days before an election, without providing a reason to vote absentee. O.C.G.A. § 21-2-381(a)(1)(A).

19. Absentee ballots must be received by an election board before the close of polls on election day. O.C.G.A. § 21-2-386.

20. During the period for advance voting, election boards must “make such [eligibility] determinations and mail or issue absentee ballots, provisional absentee ballots, and notices of rejection of application within three days after receiving a timely application for an absentee ballot.” O.C.G.A. § 21-2-384(a)(2). Because the application deadline was October 25, 2024, the statutory deadline to mail all absentee ballots was October 28, 2024.

21. By regulation, when an election board receives a request for an absentee ballot, it “shall mail or issue official absentee ballots or provisional absentee ballots, if appropriate,” to

applicants “*immediately upon determining their eligibility.*” Ga. Comp. R. & Regs. § 183-1-14-.11 (emphasis added).

22. Absentee ballots must be received by an election board before the close of the polls on election day. O.C.G.A. § 21-2-386.

23. Yet despite the statutory and regulatory deadline noted above, on the afternoon of Thursday, October 31, 2024, the penultimate day of early voting in the November 2024 election, the Cobb Board issued a press release announcing that it had not mailed more than 3,000 absentee ballots. *See Cobb County Board of Elections and Registration, Cobb Elections Express Shipping Thousands of Outstanding Absentee Ballots* (Oct. 31, 2024), attached as Ex. A.

24. The Cobb Board admitted that it did not complete the issuance or mailing of absentee ballots by “the deadline for mailing the ballots.” *Id.*

25. Despite the impending election, the Cobb Board has been unable to promise when it can mail all absentee ballots. In its press release, it stated that it would mail “most” ballots on Friday, November 1, 2024. *Id.* But it has not provided any guarantee when it will mail all ballots (again, to voters who fully complied with all legal requirements to vote). *See id.*

26. Even if the Cobb Board mails all absentee ballots on Friday, November 1, 2024, there is no guarantee those ballots will reach Affected Voters in time for them to cast their vote and return the ballot to the Cobb Board by the close of the polls on election day. If those voters cannot vote in person (e.g., out-of-state voters), then the failure to timely mail absentee ballots has deprived Affected Voters of their fundamental right to vote.

27. The Cobb Board admitted that it did not complete the issuance or mailing of absentee ballots by “the deadline for mailing the ballots” and that it has had to “take extraordinary measures” as a result. *Id.*

28. This is not the first time that the Cobb Board has failed to timely mail absentee ballots in recent years.

29. Days before the November 2022 election, it came to light that the Cobb Board failed to timely mail approximately 1,036 absentee ballots. To cure the legal violation in that case, the Cobb Board consented to relief substantially similar to the relief requested here. The Consent Order from that case is attached hereto as Ex. B.

30. The Cobb Board also failed to timely mail more than 3,000 absentee ballots for the December 2022 runoff election. To cure the breach in that case, the Cobb Board consented to relief substantially similar to the relief requested here. The Interlocutory Injunction from that case is attached hereto as Ex. C.

31. DNC and DPG members who are Affected Voters and who are unable to vote in person will be disenfranchised unless the Court intervenes.

32. The DNC and DPG will also be harmed if Affected Voters who are unable to vote in person cannot cast ballots for the candidates that Democrats nominated and supported through the 2024 election cycle.

CAUSES OF ACTION

Count I: Declaratory and Injunctive Relief Under O.C.G.A. § 9-4-1 et seq. for Violation of O.C.G.A. § 21-2-381

33. The DNC and DPG reallege and incorporate by reference the allegations contained in the preceding paragraphs.

34. The Georgia Declaratory Judgment Act, O.C.G.A. § 9-4-1 et seq., provides for relief by declaratory judgment to settle legal rights and remove uncertainty and insecurity from legal relationships before rights are violated. O.C.G.A. § 9-4-2(a) provides: “In cases of actual controversy, the respective superior courts of this state ... shall have power, upon petition or other

appropriate pleading, to declare rights and other legal relations of any interested party petitioning for such declaration.”

35. The Georgia Declaratory Judgment Act authorizes the Court to grant “[f]urther plenary relief, legal or equitable, including but not limited to ... injunction ... in a petition seeking declaratory judgment.” O.C.G.A. § 9-4-3(a). Moreover, the Court, “in order to ... preserve equitable rights, may grant injunction and other interlocutory extraordinary relief.” O.C.G.A. § 9-4-3(b).

36. Cobb County had a legal duty to timely mail or issue absentee ballots. O.C.G.A. § 21-2-381(b)(2)(A); Ga. Comp. R. & Regs. § 183-1-14-11.

37. Cobb County has admitted its failure to timely mail or issue absentee ballots to Affected Voters by “the deadline for mailing the [absentee] ballots.” Ex. A.

38. Affected Voters who cannot vote in person or who do not receive their absentee ballot in time to return it by Election Day will be disenfranchised as a result of Cobb County’s violations of the law.

39. Absent relief, DNC and DPG will be irreparably harmed by the disenfranchisement of Affected Voters who are unable to vote for Democratic candidates that DNC and DPG nominated and supported through the 2024 election cycle.

40. Absent relief, DNC’s and DPG’s members who are Affected Voters and are unable to vote in person will be irreparably harmed by the violation of their fundamental right to vote.

41. The public interest will be served by granting the requested relief to allow the Affected Voters to exercise their right to vote.

Count II: Declaratory and Injunctive Relief Under O.C.G.A. § 9-4-1 et seq. for Violation of the Fundamental Right to Vote, Ga. Const. art. II, § 1

42. The DNC and DPG reallege and incorporate by reference the allegations contained in the preceding paragraphs.

43. The Georgia Constitution protects the fundamental right to vote: “Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people.” Ga. Const. art. II, § I, ¶ II.

44. Cobb County violated the fundamental right to vote by failing to timely issue or mail absentee ballots in accordance with Georgia law. O.C.G.A. § 21-2-381(b)(2)(A); Ga. Comp. R. & Regs. § 183-1-14-.11.

45. Cobb County has admitted its failure to timely mail or issue absentee ballots to Affected Voters by “the deadline for mailing the [absentee] ballots.” Ex. A.

46. Affected Voters who cannot vote in person or who do not receive their absentee ballot in time to return it will be disenfranchised as a result of Cobb County’s violations of the law.

47. Absent relief, DNC and DPG will be irreparably harmed by the disenfranchisement of Affected Voters who are unable to vote for Democratic candidates that DNC and DPG nominated and supported through the 2024 election cycle.

48. Absent relief, DNC’s and DPG’s members who are Affected Voters and are unable to vote in person will be irreparably harmed by the violation of their fundamental right to vote.

49. The public interest will be served by granting the requested relief to allow the Affected Voters to exercise their right to vote.

PRAYER FOR RELIEF

WHEREFORE, the DNC and DPG request that the Court grant the following relief:

- A. Declare that Cobb County has violated Georgia Constitution art. II, § I, ¶ II, O.C.G.A. § 21-2-381, and Ga. Comp. R. & Regs. § 183-1-14-.11.
- B. Enter interlocutory and permanent injunctive relief requiring Cobb County to:
 - a. Overnight mail all absentee ballots to all Affected Voters with overnight return envelopes immediately;
 - b. extend the receipt deadline for all absentee ballots sent to Affected Voters (and returned postmarked on or before November 5, 2024) to November 8, 2024, the receipt deadline for UOCAVA ballots;
 - c. Allow all overseas Affected Voters who have not received an absentee ballot by noon (local time) on November 5, 2024 to use the FWAB to cast their ballots;
 - d. Provide immediate notice (by phone, email, and all other reasonably available means) to all Affected Voters as to the extended receipt deadline and the ability of overseas voters to use the FWAB to vote if they have not received an official absentee ballot by noon on election day; and
 - e. Segregate all absentee ballots cast by Affected Voters and received after 7:00 pm on November 5, 2024 to facilitate resolution of any challenge to these ballots.
- C. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 1st day of November, 2024.

/s/Manoj S. "Sachin" Varghese

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**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

DEMOCRATIC NATIONAL COMMITTEE
and DEMOCRATIC PARTY OF GEORGIA,
INC.,

Plaintiffs,

vs.

COBB COUNTY,

Defendant.

Civil Action No.: _____

**EMERGENCY RELIEF
REQUESTED**

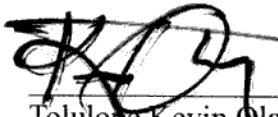
VERIFICATION OF PETITION

Personally appeared before the undersigned, authorized to administer oaths, Tolulope Kevin Olasanoye, who, being duly sworn, deposes and states as follows:

1. My name is Tolulope Kevin Olasanoye. I am over the age of 18 and am competent to make this verification.
2. I am Executive Director of the Democratic Party of Georgia, Inc. ("DPG"), a Petition in this action.
3. I have authorized the filing of the foregoing Petition on behalf of DPG.
4. I have reviewed the Petition and, to the best of my knowledge and belief, all the factual allegations contained therein are true and correct.

Further the affiant says naught.

This ^{15th} day of NOVEMBER 2024.



Tolulope Kevin Olasanoye
Executive Director
Democratic Party of Georgia, Inc.

Sworn to and subscribed before me,
this 1st day of November, 2024.

Tanya C. Reed

NOTARY PUBLIC

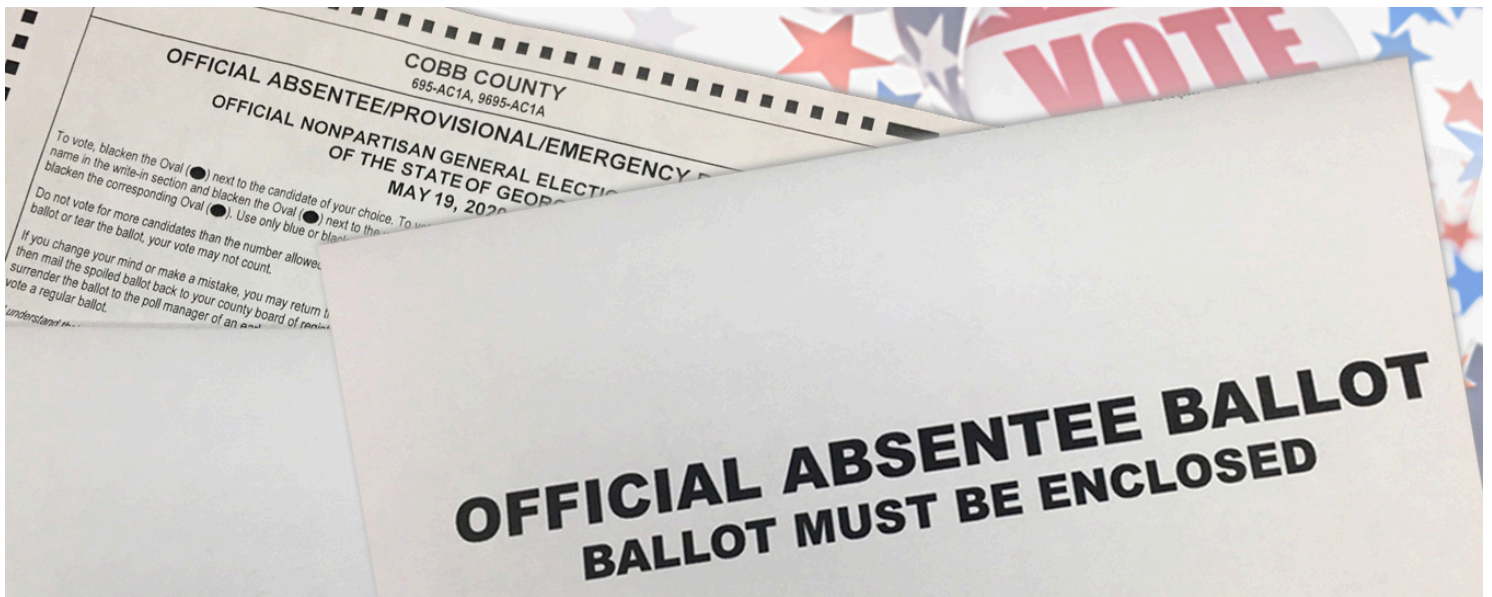
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October 31, 2024

Following a surge of last-minute absentee ballot applications, Cobb Elections is collaborating with postal and delivery companies to expedite sending ballots to voters and ensure their timely return.

As of Wednesday, more than 3,000 absentee ballots requested by last Friday's deadline had not been mailed. Elections workers will send most of them via USPS Express Mail or UPS Overnight Delivery by Friday morning. These ballots will include prepaid express return envelopes to ensure voters can return them by Tuesday's deadline.

"We want to maintain voter trust by being transparent about the situation," said Board of Elections Chairwoman Tori Silas. "We are taking every possible step to get these ballots to the voters who requested them. Unfortunately, we were unprepared for the surge in requests and lacked the necessary equipment to process the ballots quickly."

Voters who have not received their ballots can still vote in person on Friday, the final day of Advance Voting, or at their polling place on Election Day, Nov. 5. More than 1,000 absentee ballots are being sent out of state, and Elections officials are working with UPS to expedite their delivery.

Cobb Elections had contracted with a state-approved vendor to print and ship absentee ballots.

"After our vendor's final run on Friday, we needed to utilize our in-house equipment for the final shipment of ballots, but the equipment was not working properly," said Elections Director Tate Fall. "By the time we got the equipment online, the deadline for mailing the ballots had passed, prompting us to work with the US Postal Service and UPS to take extraordinary measures. Our team has been working around the clock to get the ballots out."

Absentee ballot requests had been averaging around 440 per day, but in the last week, that number surged to 750 per day, with 985 requests submitted on Friday's deadline.

Cobb Elections will extend the hours for absentee ballot returns at the Elections Headquarters this weekend. Voters can return their ballots to 995 Roswell Street, Marietta, from 8 a.m. to 8 p.m. Saturday, 10 a.m. to 8 p.m. Sunday, and 8 a.m. to 8 p.m. Monday.

Anyone with questions about their absentee ballot request can contact the Cobb Elections Department at 770-528-2581.

Press Contact Info

For more info: 770-528-2581

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IN THE SUPERIOR COURT FOR THE COUNTY OF COBB

STATE OF GEORGIA

MADISON COOK, et al.,	:	
	:	
Plaintiffs,	:	Civil Action File
	:	
v.	:	No: 22107734
	:	
COBB COUNTY BOARD OF ELECTIONS	:	
AND REGISTRATION, et al.,	:	
	:	
Defendants.	:	

CONSENT ORDER

This matter comes before the Court on Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief, and Plaintiffs' Motion for Temporary Restraining Order. A hearing was held by consent of the parties on November 7, 2022, and after considering the evidence presented at the hearing, and with the consent of the parties, the Court hereby enters the following order.

1.

Cobb County Defendants, due to administrative errors, failed to timely send absentee ballots to approximately 1,036 voters whose absentee ballot applications had erroneously been marked as issued on October 13, 2022 and October 22, 2022.

2.

As of today, some of those voters have been able to cast their ballots at an advance voting location or by a reissued absentee ballot that has been properly submitted, while others (“Affected Voters”) whose ballots were not timely sent have not voted.

Defendants sent ballots by UPS overnight delivery, with prepaid return envelopes, to 247 Affected Voters, leaving as many as 469 voters who may not have received replacement ballots as of the date of this hearing.

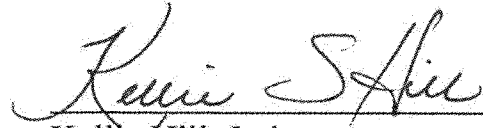
With the consent of the parties, the Court orders the following:

1. The ballot receipt deadline for all Affected Voters is extended to the same receipt deadline for Uniformed and Overseas Voters (“UOCAVA”) ballots (on or before November 14, 2022);
2. Defendants shall send replacement ballots, on November 7, 2022, by UPS overnight delivery, with prepaid return envelope, to Affected Voters who have not yet been sent a replacement ballot by UPS overnight delivery. Defendants shall prioritize sending overnight replacement absentee ballots to the 93 Affected Voters for whom they do not have a valid email address;
3. Defendants shall allow Affected Voters to vote in person, by replacement absentee ballot, or by Federal Write-In Absentee Ballot (“FWAB”) to cast their ballots;

4. Defendants shall accept all returned ballots by Affected Voters, either by replacement absentee ballot or FWAB, that are postmarked by 7:00 P.M. on Election Day, November 8, 2022, and received by Defendants on or before November, 14, 2022. Defendants shall process received ballots by Affected Voters in accordance with state law to ensure that an Affected Voter's vote is recorded once;
5. When processing a FWAB from an Affected Voter, Defendants shall disregard the field on the FWAB which asks the voter labeled "Who are you? Pick one."
6. Defendants will provide immediate notice by email and text message to all Affected Voters, unless Defendants do not have an email address and/or phone number for the voter. Notice shall include the following content:
 - a. Defendants have mailed or will mail an overnight replacement absentee ballot to every Affected Voter with a prepaid return envelope by November 7, 2022;
 - b. Each Affected Voter will have the option to vote by replacement absentee ballot, by FWAB, or by voting in person at their Cobb County polling place on election day, November 8, 2022.
 - c. The Affected Voter may view a sample ballot by logging into their My Voter Page at mvp.sos.ga.gov.

- d. If voting by replacement absentee ballot or FWAB, the Affected Voter must have their replacement absentee ballot or FWAB postmarked by 7:00 P.M. on election day, November 8, 2022, and received by Defendants by November 14, 2022;
7. Defendants shall also attach to the above notice to Affected Voters:
 - a. instructions for completing a FWAB and a link to access the FWAB form. These instructions should include notice that voters should disregard the field “Who are you? Pick one” on the FWAB;
 - b. a sample FWAB ballot.
8. Defendants shall release a public announcement on their website alerting voters to the issue that any eligible voter who has not yet received their absentee ballot and who has not yet voted may do so in person on Election Day. Additionally, it will alert voters that the Affected Voters may vote by the replacement absentee ballot or a FWAB, in addition to the option to vote in person on Election Day. This notice will include a copy of this Consent Order and the list of Affected Voters.

So ORDERED this 7th day of November, 2022.



Kellie Hill, Judge
Superior Court of Cobb County

Order prepared and presented by:

HAYNIE, LITCHFIELD & WHITE, PC

/s/ Daniel W. White

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**Pro hac vice applications forthcoming*

Attorneys for Plaintiffs

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**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

KAYLA CROWELL, et al.,

Plaintiffs,

v.

COBB COUNTY BOARD OF ELECTIONS
AND REGISTRATION, et al.,

Defendants.

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:

:

[:OBJ]

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:

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Civil Action File

No: 22107734

INTERLOCUTORY INJUNCTION

This matter comes before the Court on Plaintiffs' Supplemental Complaint for Declaratory Judgment and Injunctive Relief and Plaintiffs' Motion for Temporary Restraining Order and Interlocutory Injunction. The Court heard arguments from Plaintiffs, Defendants, and Intervenor-Defendants Georgia Republican Party, Inc., National Republican Senatorial Committee, and Republican National Committee on December 2, 2022.

Plaintiffs presented evidence that many Cobb County voters, including Plaintiffs, who properly applied for an absentee ballot on or before November 26, 2022, for the upcoming runoff election on December 6, 2022 ("Affected Voters"), are at risk of being unable to vote absentee in the runoff election. The evidence further shows that many Affected Voters will be unable, without undue hardship, to

cast their ballots in person on election day.

A. Factual Findings

The Court makes the following factual findings, which Defendants do not contest¹:

1. Plaintiff Kayla Crowell is a 29-year-old resident of Cobb County who is currently in California for a temporary job. Plaintiff Crowell requested an absentee ballot on November 14, 2022. Pls.' Ex. A (Crowell Aff.) ¶ 5. Plaintiff Crowell's request was recorded as received on November 18, 2022, on the "My Voter Page" website. *Id.* ¶ 8. On November 21, 2022, Plaintiff Crowell received a text message from Cobb County notifying her that the County had mailed her absentee ballot. *Id.* ¶ 7. Plaintiff Crowell's My Voter Page shows that Cobb County issued her absentee ballot on November 23, 2022. *Id.* ¶ 8. Plaintiff Crowell had still not received her ballot as of the morning of December 2, 2022. Plaintiff Crowell, who is temporarily residing in California, likely does not have sufficient time to return her absentee ballot to Cobb County before 7:00 p.m. on election day. *Id.* ¶ 15. Plaintiff Crowell is unable to travel to Cobb County in order to vote in person given the significant distance between California and Georgia. *Id.* ¶ 13.
2. Plaintiff Karen Scott is a 62-year-old resident of Cobb County who is

¹ While Defendants do not dispute the facts set forth herein, they assert these facts as set forth do not demonstrate a violation of Georgia law.

currently in New York caring for her elderly mother. Plaintiff Scott requested her absentee ballot on November 21, 2022. Pls.' Ex. B (Scott Aff.) ¶ 4. Her request was marked as recorded on the Secretary of State's My Voter Page on November 22, 2022, and was listed as issued on November 23, 2022. *Id.* ¶ 6. She had not received her ballot as of the morning of December 2, 2022. Plaintiff Scott, who is temporarily living in New York to care for her elderly mother, will be unable to vote in person and does not believe she will have enough time to mail back her ballot to Cobb County under the existing deadline. *Id.* ¶¶ 8, 10.

3. On November 30, Defendant Janine Eveler acknowledged to the Marietta Daily Journal that 3,400 ballots with a recorded issue date of November 23, 2022 were mailed on November 28, 2022. Eveler noted that the delay was due to the intervening Thanksgiving holiday. Chart Riggall, *Delay in Ballot Mailing Due to Thanksgiving Holiday, Elections Director Says*, MARIETTA DAILY JOURNAL (Nov. 30, 2022). The article also stated that multiple state lawmakers and the county chairs of both political parties had also heard from voters that their absentee ballots never arrived. *Id.*
4. On December 1, Defendant Eveler acknowledged that those ballots were not mailed until "Monday (November 28) and maybe some even held over until Tuesday (November 29)," something she acknowledged constituted "quite a

delay.” Michele Newell, *Some Cobb County Voters Still Awaiting Absentee Ballots*, WSBTV (Dec. 1, 2022). Defendants acknowledged during the hearing on December 2 that some absentee ballots may not have been mailed to voters until December 2.

5. In the 2022 runoff elections, over 228,000 voters statewide timely requested mailed absentee ballots, and over 90,000 of those, or over 38%, were returned by November 30, 2022. GEORGIA SECRETARY OF STATE, *Data Hub*, <https://sos.ga.gov/data-hub-december-6-2022-runoff> (last accessed Dec. 1, 2022) (absentee voting tab).
6. By contrast, in Cobb County specifically, approximately 24,000 voters timely requested absentee ballots in the 2022 runoff election, with just over 3,600—approximately 15%—returned, as of November 30, 2022. *Id.*
7. For the 15,384 Cobb voters who show a ballot issue date of November 21, 20.1% of those ballots have been returned by mail as of December 1. *See Georgia Absentee Voter Records*, <https://sos.ga.gov/page/voter-absentee-files> (accessing election year: 2022, election category: statewide, election name: 12/06/2022 - 12/06/2022 General/Special Election Runoff, and selecting file number 33 for Cobb County). By contrast, 29.3% of the 12,181 Fulton voters who show the same issue date had returned their ballots by mail, and 27.1% of the 1,501 DeKalb voters who show the same issue date. Similarly, for the

1,935 Cobb voters who show an issue date of November 22, only 11.5% have returned their ballots by mail, compared to the several thousand voters in DeKalb, Fulton, and Gwinnett, with mail return rates for voters showing the same ballot issue date of 23%, 19.6%, and 41.6%, respectively. And for voters whose ballots show an issue date of November 23, just 0.3% of the 3,441 Cobb voters had returned their ballots by mail, as compared to 8.3% of DeKalb voters, 1.6% of Fulton voters, and 37.2% of Gwinnett voters.

8. Affiant David Medof, a Cobb County voter, requested his absentee ballot on or around November 16, 2022. Pls.' Ex. D, ¶ 3. His "My Voter Page" showed that Cobb County issued his absentee ballot on November 22, 2022. *Id.* ¶ 4. When Affiant Medof's absentee ballot arrived on December 1, 2022, *nine days* after Cobb County issued his ballot, the ballot indicated a mailing date of November 26, 2022.
9. Plaintiff Cobb County Democracy Center ("CCDC") is an organization that educates Cobb County voters about issues related to casting their ballot. The organization's central mission includes a commitment to democracy, free and fair elections, and ensuring that eligible Cobb County voters can exercise their fundamental right to vote. CCDC assists voters in checking their voter registration status, registering to vote, arranging free rides to the polls, Get Out the Vote efforts, and ensuring that voters have the correct forms of voter

identification. Pls.' Ex. C (CCDC Aff.) ¶ 1. Upon learning about the delays at issue in this litigation, CCDC has had to divert time and money to address this issue, and will continue to do so. *Id.* ¶ 4.

B. Legal Positions of the Parties

Plaintiffs contend that Defendants violated the individual Plaintiffs' and other Affected Voters' rights under the Georgia Constitution by failing to timely mail absentee ballots to eligible voters during the advance voting period that commenced November 22, 2022. *See, e.g.,* Ga. Const. art. II, § 1, ¶ II. Plaintiffs also claim that Defendants' delay violates O.G.C.A. § 21-2-384(a)(2).

Defendants dispute these allegations and asserted at the hearing that ballots were not issued in an untimely manner. Defendants claim that any absentee ballot applications received before advance voting began in Cobb County on November 26, 2022 were properly processed, and ballots were issued or mailed "...as soon as possible upon determining their eligibility..." and for ballot applications received after advance voting commenced, ballots were issued and mailed "within three days after receiving a timely application for an absentee ballot." O.C.G.A. § 21-2-384(a)(2).

For the reasons set forth above, and those set forth in Plaintiffs' brief, the Court agrees with Plaintiffs that a delay in sending absentee ballots to voters who

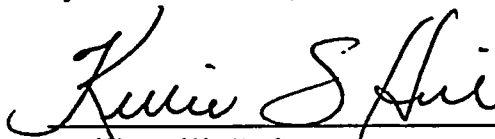
timely requested them may infringe upon Plaintiffs' right (and all other Affected Voters) to vote under the Georgia Constitution. The Court further finds that (1) there is a substantial threat that Plaintiffs will suffer irreparable injury if an injunction is not granted; (2) there is a substantial likelihood that Plaintiffs will prevail on the merits of their claims at trial; (3) the threatened injury to Plaintiffs outweighs the threatened harm that the injunction may cause to the Defendants; and (4) granting the requested interlocutory injunction will not disserve the public interest. *See SRB Inv. Servs., LLLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011) (setting forth standards for granting interlocutory injunctive relief). Accordingly, upon due consideration and for good cause shown, the Court hereby **GRANTS** Plaintiffs' motion for an interlocutory injunction and **ORDERS** as follows:

1. The absentee ballot receipt deadline for all Affected Voters is extended to the same receipt deadline for Uniformed and Overseas Voters ("UOCAVA") ballots (*i.e.*, on or before December 9, 2022), provided the ballots are postmarked by 7:00 pm on Election Day, December 6, 2022;
2. Defendants shall allow all Affected Voters who have not received an official absentee ballot by December 4, 2022 to use the Federal Write-In Absentee Ballot ("FWAB") to cast their ballots;
3. Defendants shall accept all returned ballots by Affected Voters, either by official absentee ballot or FWAB, that are (a) postmarked by 7:00 pm on

Election Day, December 6, 2022, and received by Defendants by mail on or before December, 9, 2022 or (b) delivered to the Cobb County Board of Elections and Registration Office by December 6, 2022 at 7:00 pm;

4. Defendants shall release a public announcement via the Cobb County Board of Elections and Registration website stating that any voter who has not yet received their absentee ballot and who has not yet voted may do so in person at their assigned polling location on Election Day. Additionally, the notice will state that the absentee ballot receipt deadline for Affected Voters has been extended to December 9, 2022, and that Affected Voters who have not received an official absentee ballot may use the FWAB to cast their ballots.
5. Pursuant to the request of Intervenor-Defendants, Defendants shall segregate all ballots from Affected Voters received after 7:00 pm on December 6, 2022, but shall include such votes in any official tallies, unless otherwise ordered by the Court. Additionally, however, the count of the segregated ballots, along with the vote tallies of the segregated ballots, shall be separately tabulated, recorded, and reported to the Secretary of State's office.

So ORDERED this 2nd day of December, 2022.



Kelle Hill, Judge
Superior Court of Cobb County

Order prepared and presented by:

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