

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

COALITION FOR GOOD  
GOVERNANCE, *et al.*,

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, in his  
official capacity as Secretary of State;  
*et al.*,

*Defendants.*

CIVIL ACTION

FILE NO. 1:20-CV-01677-TCB

**DEFENDANTS’ RESPONSE IN OPPOSITION TO PLAINTIFFS’  
MOTION FOR TEMPORARY RESTRAINING ORDER  
AND OTHER EMERGENCY INJUNCTIVE RELIEF**

State Defendants submit this response to Plaintiffs’ Motion for Temporary Restraining Order and Other Emergency Injunctive Relief [Doc. 27] (“TRO Motion”). As a threshold issue, for all of the reasons already articulated in State Defendants’ Brief in Support of Motion to Dismiss [Doc. 31-1], Plaintiffs’ Complaint [Doc. 1] should be dismissed without any need to consider the TRO Motion. Further, based on the same arguments advanced in State Defendants’ Response in Opposition to the Motion for Preliminary Injunction [Doc. 33], which State Defendants incorporate by reference, the TRO Motion should be denied. *See Gwinnett Cty. NAACP v. Gwinnett Cty.*

*Bd. of Registration & Elections*, 1:20-CV-00912-SDG, 2020 WL 1031897, at \*5 (N.D. Ga. Mar. 3, 2020) (the standard for obtaining a TRO is identical to that for obtaining a preliminary injunction).

The bases for Plaintiffs' TRO Motion is that absentee ballots for the June 9, 2020 primary election contain the original date of the primary election, May 19, 2020. [Doc. 27 at 2]. The TRO Motion fails to identify a single voter that has been injured as a result of the absentee ballots having the original primary election date on them. Moreover, the injury alleged by Plaintiffs in the TRO Motion (voter confusion) will not be redressed by the relief Plaintiffs' seek in the TRO Motion—to move the June 9 primary election to June 30, add an insert into absentee ballot packets explaining the change in the date of the primary election, to send a letter to voters who have already received absentee ballots explaining the change in the election date, a statewide press release explaining the change in the election date, to order county superintendents to count absentee ballots received after the primary election, and order county superintendents to issue absentee ballots and secrecy envelopes at polling locations on election day. [Doc. 27 at 6-7]. Notably, the relief requested by Plaintiffs does not include printing absentee ballots with the June 9, 2020 primary date on them.

The Secretary of State's Office has taken a variety of steps to ensure

that voters know about the change in the date of the primary election to June 9, 2020, including televised public service announcements, press releases, and providing information to voters on the Secretary of State's website.<sup>1</sup> [Barnes Decl. at ¶ 6]. When the Secretary of State announced on April 9, 2020 that the 2020 primary election would be moved from May 19, 2020 to June 9, 2020, the absentee ballots had already been built, proofed by county elections officials, approved, and sent to the vendor for printing. [*Id.* at ¶ 3]. Further, in anticipation of the May 19, 2020 election, prior to the primary election being moved to June 9, 2020, absentee ballots had already been sent to military and overseas voters in accordance with the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). [*Id.* at ¶ 4].

To reprint absentee ballots would have required the Secretary's staff and vendors to reconfigure and alter all 159 completed databases statewide. [*Id.* at ¶ 5]. This would have also required new print files to be generated and submitted to the vendors, which would cause delay getting the ballots printed and mailed to voters, and increase the possibility of inadvertent mistakes. [*Id.*]

Plaintiffs have submitted a number of affidavits from voters claiming

---

<sup>1</sup> Declaration of Michael Barnes is attached hereto as Exhibit 1.

their absentee ballot requests have not been processed. [Doc. 36]. For the individuals who submitted declarations and stated that they sent in their absentee ballot request but had not yet received their absentee ballot, some declarants have had their absentee ballot requests processed.<sup>2</sup> [Harvey Decl. at ¶¶ 9-17]. At this time, most of the declarants whose absentee ballot requests have not been processed reside in Fulton County. [Harvey Decl. at ¶¶ 13-16]. However, the Secretary's office has been informed that Fulton County anticipates that it will have processed the absentee ballot applications in its backlog within days. [Harvey Decl. at ¶¶ 3-5]. Finally, in regard to the security sleeve, the Secretary provided revised instructions addressing the privacy sleeve for printing to include in absentee ballot packets on May 7, 2020. [Harvey Decl. at ¶ 18]. Due to timing, ballot packets that were received by voters on May 11, 2020 would not have likely been packaged by the vender prior to May 7, 2020 and, therefore, would not have contained the revised instructions. [*Id.* at ¶ 19].

The TRO Motion is yet another attempt by Plaintiffs to achieve their policy preferences. The relief Plaintiffs seek will not address their concern with the May 19, 2020 date on the absentee ballots. Instead, it will likely

---

<sup>2</sup> Declaration of Chris Harvey is attached as Exhibit 2.

lead to greater possibility of voter confusion, as voters would receive more instructions and letters in the mail about voting absentee in the June 9, 2020 primary election, and it would create delays in getting absentee ballots mailed to voters, as new inserts would have to be added to the absentee ballot packet which would disturb the printing vendors current processes. Plaintiffs have failed to meet their burden for a temporary restraining order or other preliminary relief under Rules 65(a) and 65(b) of the Federal Rules of Civil Procedure, and as such, the TRO Motion should be denied.

Respectfully submitted this 13th day of May 2020.

Christopher M. Carr  
Attorney General  
Ga. Bar No. 112505  
Bryan K. Webb  
Deputy Attorney General  
Ga. Bar No. 743580  
Russell Willard  
Sr. Asst. Attorney General  
Ga. Bar No. 760280  
Charlene McGowan  
Asst. Attorney General  
Ga. Bar No. 697316  
**Georgia Department of Law**  
40 Capitol Square SW  
Atlanta, GA 30334  
Tel: 404-656-3389  
Fax: 404-651-9325

*/s/ Vincent R. Russo*

---

Josh Belinfante  
Georgia Bar No. 047399

jbelinfante@robbinsfirm.com

Vincent R. Russo

Georgia Bar No. 242628

vrusso@robbinsfirm.com

Carey Miller

Georgia Bar No. 976240

cmiller@robbinsfirm.com

Melanie Johnson

Georgia Bar No. 466756

mjohnson@robbinsfirm.com

**Robbins Ross Alloy Belinfante Littlefield  
LLC**

500 14th Street, N.W.

Atlanta, Georgia 30318

Telephone: (678) 701-9381

Facsimile: (404) 856-3250

Bryan P. Tyson

Georgia Bar No. 515411

btyson@taylorenghish.com

Diane Festin LaRoss

Georgia Bar No. 430830

dlaross@taylorenghish.com

Bryan F. Jacoutot

Georgia Bar No. 668272

bjacoutot@taylorenghish.com

Loree Anne Paradise

Georgia Bar No. 382202

lparadise@taylorenghish.com

**Taylor English Duma LLP**

1600 Parkwood Circle, Suite 200

Atlanta, Georgia 30339

770.434.6868 (telephone)

*Counsel for State Defendants*

**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), I certify that DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND OTHER EMERGENCY INJUNCTIVE RELIEF has been prepared in Century Schoolbook 13-point font, approved by the Court in Local Rule 5.1(C).

*/s/ Vincent Russo*

Vincent R. Russo

Georgia Bar No. 242628