



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

KAYLA CROWELL and KAREN SCOTT)
on behalf of themselves and)
all others similarly situated, and COBB)
COUNTY DEMOCRACY CENTER,)

Plaintiffs)

vs.)

Civil Action No.: 22107734

COBB COUNTY BOARD OF)
ELECTIONS AND REGISTRATION,)
JANINE EVELER,)
in her official capacity as Director of the)
Cobb County Department of Elections)
and Registration, and STEVEN F. BRUNING,)
TORI SILAS, JESSICA M. BROOKS,)
PAT GARTLAND, JENNIFER MOSBACHER,)
in their official capacities as members of the)
Cobb County Board of Elections and Registration,)

Defendants.)

**EMERGENCY RELIEF
REQUESTED**

**PLAINTIFFS' EMERGENCY MOTION FOR INTERLOCUTORY
INJUNCTION AND TEMPORARY RESTRAINING ORDER**

Plaintiffs are Cobb County voters on the brink of disenfranchisement because the Cobb County Board of Elections and Registration (the "Cobb Board") has, once again, failed to timely issue absentee ballots, as well as a non-profit organization committed to ensuring that eligible voters can participate in our democracy.

In accordance with O.C.G.A. §§ 9-11-65 and 9-4-3, Plaintiffs file this emergency motion for an interlocutory injunction and temporary restraining order ("TRO") to require Defendants to:

1. Extend the ballot receipt deadline in the upcoming runoff election for all replacement absentee ballots sent to voters in the proposed class to the same receipt deadline for Uniformed and Overseas Voters ("UOCAVA") ballots (December 9, 2022);

2. Allow all voters in the proposed class who have not received an official absentee ballot by December 6, 2022, to use the Federal Write-In Absentee Ballot (“FWAB”) to cast their ballots; and
3. Provide immediate notice to all voters in the proposed class as to the extended ballot deadline; their ability to postmark their absentee ballot by election day, December 6, 2022; the ability for those ballots to arrive by December 9, 2022; and their ability to use the FWAB if they have not received an official absentee ballot on election day for the runoff.

Relief is urgently needed to ensure that thousands of eligible Georgia voters will not be disenfranchised due to the failure of the Cobb Board to issue absentee ballots in accordance with the law.

Respectfully submitted, this 1st day of December, 2022.

/s/ Rahul Garabadu

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**Pro hac vice applications forthcoming*

Attorneys for Plaintiffs

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**EMERGENCY RELIEF
REQUESTED**

Defendants.)
_____)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
EMERGENCY MOTION FOR INTERLOCUTORY INJUNCTION
AND TEMPORARY RESTRAINING ORDER**

In accordance with O.C.G.A. §§ 9-11-65 and 9-4-3, Plaintiffs file this emergency motion for an interlocutory injunction and temporary restraining order (“TRO”) requiring Defendants to:

(1) extend the ballot receipt deadline in the upcoming runoff election for all absentee ballots sent to voters in the proposed class to the same receipt deadline for Uniformed and Overseas Voters (“UOCAVA”) ballots (December 9, 2022); (2) allow all voters in the proposed class who have not received an official absentee ballot on December 6, 2022, to use the Federal Write-In Absentee Ballot (“FWAB”) to cast their ballots; and (3) provide immediate notice to all voters in the proposed class as to the extended ballot deadline; their ability to postmark their absentee ballot

by election day, December 6, 2022; the ability for those ballots to arrive by December 9, 2022; and their ability to use the FWAB if they have not received an official absentee ballot on election day for the runoff.

Less than a month ago, this Court granted emergency relief to prevent the disenfranchisement of hundreds of Cobb County voters, after the County Board of Elections (the “Cobb Board”) had failed to deliver absentee ballots to more than 1,000 registered voters who had requested such ballots and whose applications were processed. Now, days before the upcoming runoff election, the Cobb Board has again failed to timely send absentee ballots to many county voters who requested them.

Defendants have publicly acknowledged that they delayed in sending absentee ballots to more than 3,400 Cobb County voters. Consequently, many voters—including the Individual Plaintiffs—have not yet received their absentee ballots and have no assurances about when they will receive those ballots. The state’s own data show, alarmingly, that Cobb County is lagging well behind its peer counties in terms of the percentage of absentee ballots that have been returned by the voters.

Once again, Defendants have failed to timely send absentee ballots to eligible voters ahead of a general election. Once again, these voters have relied on Defendants’ representations that they would receive an absentee ballot with enough time to mail them back in accordance with the receipt deadline. And once again, many Cobb County voters—especially individuals who, like Individual Plaintiffs, are temporarily residing out of state and cannot feasibly vote in-person—are on the brink of disenfranchisement through no fault of their own.

The emergency relief outlined above is urgently needed to ensure that Individual Plaintiffs do not lose their fundamental, constitutional right to vote, and are able to have their votes counted, in the upcoming runoff election.

REQUEST FOR EMERGENCY TREATMENT

Plaintiffs request expedited treatment of this motion under Superior Court Rule 6.7. The fundamental right to vote is at stake for thousands of voters in Cobb County, with less than a week until absentee ballots are due. Plaintiffs therefore respectfully request that the Court give this motion expedited treatment and set a hearing as soon as possible on December 2, 2022, to prevent the disenfranchisement of these voters.

FACTUAL BACKGROUND

Voters in Georgia are eligible to request absentee ballots between 78 and 11 days before the election, without providing a reason to vote absentee. O.C.G.A. § 21-2-381(a)(1)(A). In the runoff elections, approximately 236,000 voters statewide requested mailed absentee ballots, and over 90,000 (about 38%) were returned by December 1, 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). In Cobb County specifically, almost 24,000 voters requested mailed absentee ballots in the December 2022 runoff election, with just over 3,642—about 15%—returned, as of December 1, 2022. *Id.* Among the voters who requested an absentee ballot were Plaintiffs Crowell and Scott (“Individual Plaintiffs”). Affidavit of Kayla Crowell (Exhibit A) ¶ 5; Affidavit of Karen Scott (Exhibit B) ¶ 4. Other voters who contacted Plaintiff Cobb County Democracy Center (“CCDC”) also faced delays. Affidavit of Cobb Democracy Center (Exhibit C) ¶ 4. Numerous other voters, including Affiant David Medof, also requested absentee ballots and faced extraordinary delays. Affidavit of David Medof (Exhibit D).

Plaintiff Kayla Crowell, a Cobb County voter temporarily residing out of state for work, requested her absentee ballot on November 14, 2022. Ex. A, ¶ 5. That 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 Cobb County issued her absentee ballot on November 23, 2022. *Id.* ¶ 8. On November 30, 2022, Plaintiff Crowell *still* had not received her absentee ballot. *Id.* ¶ 9.

Plaintiff Crowell emailed the Cobb County Board of Elections on November 30, 2022 to inquire as to the status of her absentee ballot, and received an email response that she should wait a few more days for its arrival, vote early in person, or vote on election day. *Id.* ¶ 9. The County also informed Plaintiff Crowell that the deadline for submitting another application for an absentee ballot had passed. *Id.* ¶ 9.

The Cobb County Board of Elections did not contact Plaintiff Crowell to inform her that her absentee ballot was impacted by a failure to timely mail approved absentee ballots in Cobb County. *Id.* ¶ 12. Plaintiff Crowell likely does not have sufficient time to return her absentee ballot to Cobb County before 7:00 p.m. on election day, December 6, 2022. *Id.* ¶ 15.

Other Cobb County voters have faced extraordinarily long delays in receiving their approved absentee ballots. Affiant David Medof, a Cobb County voter, requested his absentee ballot on or around November 16, 2022. 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. *Id.* ¶ 10. The Cobb County Board of Elections did

not contact Affiant Medof to inform him that his absentee ballot was impacted by a failure to timely mail approved absentee ballots in Cobb County. *Id.* ¶ 7.

On November 30, Defendant Janine Eveler, Cobb County Director of Elections & Registration, told the Marietta Daily Journal that Cobb County delayed in issuing more than 3,400 absentee ballots for December 2022 runoff elections. Chart Riggall, *Delay in Ballot Mailing Due to Thanksgiving Holiday, Elections Director Says*, MARIETTA DAILY JOURNAL (Nov. 30, 2022) (Exhibit F). Legislators and the chairs of both political parties also reported having heard from multiple voters who had timely requested an absentee ballot, but who have not received one. *Id.* Defendant Eveler acknowledged that the delays in issuing absentee ballots would make it “really rough” for voters to return their ballots on time. *Id.*

This is not the first time Cobb County has failed to timely mail out absentee ballots during this election cycle. In the November 2022 general election, this Court issued emergency relief requiring Cobb County to overnight mail ballots to hundreds of voters and extend the absentee ballot deadlines after officials failed to mail them. Amended Consent Order (Exhibit E). Despite having made earlier assurances that they had mailed out absentee ballots, Defendant Eveler admitted after the close of in-person early voting that Cobb County had neglected to send over 1,000 absentee ballots. Plaintiffs learned their ballots had not been issued just three days before the election, after early voting had ended. Many had no option to vote in person, and were only able to vote because this Court issued relief. *See Riggall, Delay in Ballot Mailing, Exhibit F.*

Here, Individual Plaintiffs did not discover that the Cobb Board failed to timely send out their absentee ballots until less than a week before election day, with only two more days of early voting available. Ex. A (Crowell) ¶ 9; Ex. B (Scott) ¶ 7. Plaintiffs Crowell and Scott will both be hundreds or thousands of miles away from Cobb County on election day, and it is not feasible for

them to travel to Cobb County to cast a ballot in person, especially on such short notice. Ex. A (Crowell) ¶¶ 4, 10, 13; Ex. B (Scott) ¶¶ 3, 8. With two business days remaining until election day, absent relief, it is increasingly unlikely that Individual Plaintiffs will receive their ballots and then be able to return these ballots by the absentee receipt deadline on election day.

Organizations helping educate and empower eligible Cobb County voters have also been affected by the Cobb County Defendants' failure to send absentee ballots in a timely manner. Plaintiff CCDC is a civic organization whose central mission includes a commitment to democracy, free and fair elections, and ensuring that every eligible Cobb County voter can exercise their fundamental right to vote. Affidavit of Plaintiff CCDC (Exhibit C) ¶ 1. The organization assists voters in checking their voter registration, helps to arrange free rides to the polls, holds Get Out the Vote initiatives, and leads voter education efforts. *Id.* On November 30, 2022, less than a week before election day, CCDC again learned that the Defendants had failed to timely mail absentee ballots to voters who had successfully applied for absentee ballots. *Id.* ¶ 3. Based on this information, Plaintiff CCDC has again diverted time and money to address this issue in the crucial final days before the December 6th election and will continue to do so. *Id.* ¶ 5.

Data from the Secretary of State's Absentee Voter File (the "File") confirms Cobb County as an outlier in timely processing absentee applications and mailing absentee ballots for the upcoming runoff election. The File contains information entered by the County that reflect the ballot application date, the issue date, the return date, and the method of return (mail or in-person). *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). 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. By contrast, 29.3% of the 12,181 Fulton voters with the same issue date had returned their ballots by mail, and 27.1% of the 1,501 DeKalb voters with the same issue date. Similarly, for the 1,935 Cobb voters with 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 that issue date of 23%, 19.6%, and 41.6%, respectively. And for ballots issued 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.

These data create a strong inference that Cobb has been processing and sending absentee ballots at a far slower rate than its peer counties, and a rate that will lead many of these voters to face disenfranchisement at worst and unreasonable burdens at best.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO DECLARATORY RELIEF

Plaintiffs are entitled to declaratory judgment that Defendants' systematic delay in processing and sending absentee ballots unconstitutionally burdens their right to vote. State law provides for relief under the Declaratory Judgment Act in "cases of actual controversy," O.C.G.A. § 9-4-2-(a), (b), "to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights." *Clein v. Kaplan*, 201 Ga. 396, 404 (1946). Declaratory judgment is appropriate "where a legal judgment is sought that would control or direct future action,' under circumstances where that action might jeopardize or affect the rights, . . . of the party seeking the declaratory judgment." *City of Atlanta v. Southern States Police Benev. Ass'n of Ga.*, 276 Ga. App. 446, 451 (Ct. App. 2005) (internal citations omitted). In addition to

declaratory relief, “[t]he court . . . may grant injunction or other interlocutory extraordinary relief” where “the pleadings and evidence may show him to be entitled.” O.C.G.A. § 9-4-3(a)(b).

Despite representations that they timely issued ballots to voters, Defendants admit that they delayed in delivering absentee ballots to at least 3,400 eligible voters whose ballots were marked as issued on November 23, 2022—a group of voters that includes Plaintiff Crowell. Individual Plaintiffs—who currently reside outside Georgia and are thus unable to vote in-person on such short notice—have not yet received their absentee ballots. Even if they do receive their ballots, it is unlikely that they will be able to mail back those ballots in time for them to count under the current absentee ballot receipt deadline. And the data indicating lower percentages of returned ballots in Cobb County as compared to its peer counties demonstrate Defendants’ delays in delivering absentee ballots may in fact be more widespread, affecting potentially thousands of other eligible voters whose ballots are marked with pre- or post-November 23, 2022 issue dates. As a result of Defendants’ undue delay, Individual Plaintiffs and thousands of other voters are on the brink of disenfranchisement in violation of their fundamental and constitutional right to vote. Plaintiffs are therefore entitled to declaratory judgment that Defendants’ unwarranted delay violated the Georgia Constitution.

II. PLAINTIFFS ARE ENTITLED TO INTERLOCUTORY RELIEF

In determining whether to grant an interlocutory injunction, superior courts have “broad discretion.” *See e.g., SRB Inv. Servs., LLLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011). “The purpose for granting interlocutory injunctions is to preserve the status quo, as well as balance the conveniences of the parties, pending a final adjudication of the case.” *Kinard v. Ryman Farm Homeowners’ Ass’n, Inc.*, 278 Ga. 149, 149 (2004) (internal quotation marks omitted). Injunctions provide relief to litigants who do not have an adequate remedy at law. *Wood v. Wade*, 363 Ga.

App. 139, 150 (2022), *recons. denied* (Mar. 10, 2022). This remedy is “a stop-gap measure to prevent irreparable injury or harm to those involved in the litigation.” *India-Am. Cultural Ass’n, Inc. v. iLink Pros., Inc.*, 296 Ga. 668, 670 (2015). Thus, in deciding whether to issue an interlocutory injunction, the Court should consider whether:

1. there is a substantial threat that Plaintiffs will suffer irreparable injury if the injunction is not granted;
2. there is a substantial likelihood that Plaintiffs will prevail on the merits of its claims at trial;
3. the threatened injury to Plaintiffs outweighs the threatened harm that the injunction may do to the Defendants;
4. granting the requested interlocutory injunction will not disserve the public interest.

SRB Inv. Servs., 289 Ga. at 5. Courts balance these four factors; the movant need not prove each factor for the Court to grant an interlocutory injunction. *City of Waycross v. Pierce Cnty. Bd. of Comm’rs*, 300 Ga. 109, 111–12 (2016). Every factor supports interlocutory relief here.

A. There Is a Substantial Threat that Plaintiffs will Suffer Irreparable Injury if the Injunction Is Not Granted

Irreparable injury “is the most important” factor in the analysis of determining whether to grant an interlocutory injunction. *W. Sky Fin., LLC v. State ex rel. Olens*, 300 Ga. 340, 354 (2016). There can be no doubt that this factor weighs heavily in favor of relief here. Absent preliminary relief, Individual Plaintiffs will suffer irreparable injury because they will—through no fault of their own—become disenfranchised for the upcoming runoff election.

The violation of constitutional rights “unquestionably constitutes irreparable injury.” *Great Am. Dream, Inc. v. DeKalb Cnty.*, 290 Ga. 749, 752 (2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373)). Indeed, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of N.C. v. N. Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (finding when voting rights “are threatened or impaired, irreparable injury is presumed”); *see also generally Wesberry v. Sanders*,

376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”). The severe burden on Individual Plaintiffs’ right to vote here—the direct consequence of Defendants’ conduct—is thus textbook irreparable injury.

A party suffers irreparable injury where “money damages would [not] provide an adequate remedy at law.” *Glass v. Faircloth*, 363 Ga. App. 232, 234 (2001). Organizational Plaintiffs would also suffer irreparable harm absent relief because Defendants’ errors have already forced, and will continue to force, them to divert resources from their core activities in advance of the runoff election. For both Individual and Organizational Plaintiffs, “once the [runoff] election occurs, there can be no do-over and no redress.” *League of Women Voters of N.C.*, 769 F.3d at 248.

B. Plaintiffs Are Likely to Succeed on the Merits of Their Claims

“The right to vote is fundamental, forming the bedrock of our democracy.” *Favorito v. Handel*, 285 Ga. 795, 796 (2009) (internal quotation marks omitted). Under the so-called *Anderson-Burdick* framework, a law or election practice “that severely burdens the right to vote must be narrowly drawn to serve a compelling state interest.” *Rhoden v. Athens-Clarke Cnty. Bd. of Elec.*, 310 Ga. 266, 272 (2020) (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)).

There is no question that Defendants’ conduct here constitutes a severe burden on Individual Plaintiffs’ fundamental right to vote. Individual Plaintiffs testify that—despite being eligible voters and having their absentee ballot applications issued more than a week ago, well in advance of election day—they have not received their absentee ballots as of December 1, 2022, mere days before the deadline to submit those ballots.

In other words, Individual Plaintiffs—based on Defendants’ representations that their applications were processed, and based on Defendants’ obligations under state law to mail those absentee ballots—reasonably relied on those representations and reasonably expected to receive

their absentee ballots with enough time to mail them back and have their votes counted. Now, just days before election day, Individual Plaintiffs will be disenfranchised because they never received their absentee ballots. Indeed, Individual Plaintiffs are temporarily residing out of state—thousands of miles away from Georgia—and are unable to vote in-person *See* Ex. A (Crowell) at ¶¶ 4, 10, 13; Ex. B (Scott) at ¶¶ 3, 8. And even if Individual Plaintiffs receive their ballots, it is unlikely that they will be able to mail them back in time to comply with the existing receipt deadline. Absent relief extending that receipt deadline, Defendants’ unlawful conduct will result in total disenfranchisement for Individual Plaintiffs—the very definition of a severe burden on the right to vote.

Regardless, Defendants’ conduct cannot satisfy any standard. Defendant Janine Eveler has already acknowledged that her office delayed in sending absentee ballots to more than 3,400 Cobb County voters. Riggall, *Delay in Ballot Mailing*, Ex. F. Defendants do not contest that these eligible Cobb County voters were entitled to receive their absentee ballots in a timely manner. The State has no interest in failing to timely deliver absentee ballots to eligible voters in a manner that imperils those voters’ constitutional right to vote.

Defendants further have no legitimate interest here because it is likely that their undue delay violated state statutory law. O.G.C.A § 21-2-384(a)(2) provides that “[d]uring the period for advance voting set forth in Code Section 21-2-385, the board of registrars or absentee ballot clerk shall make such determinations and mail or issue absentee ballots . . . within three days after receiving a timely application for an absentee ballot.” In turn, O.G.C.A § 21-2-384(d)(1) sets the advance voting period for a runoff election as commencing “[a]s soon as possible prior to a runoff from any general primary or election but no later than the second Monday immediately prior to such runoff.”

Here, according to the Secretary of State, the advance voting period began on November 22. *See* OFFICIAL ELECTION BULLETIN FROM BLAKE EVANS, “Certification Target for General Election and Advance Voting for December 6th Runoff,” GEORGIA SECRETARY OF STATE, Nov. 12, 2022. (Elections Division Director affirming that the advance voting period begins “prior to Thanksgiving” after state certification of the general election on November 21). According to records from the Secretary of State, 2,272 Georgians voted on November 22, the first day of the advance voting period. *See* Data Hub - December 6 2022 Runoff, Georgia Secretary of State, <https://sos.ga.gov/data-hub-december-6-2022-runoff>; *see also* Twitter, Gabriel Sterling (Dec. 1. 2022 8:02 am), <https://twitter.com/GabrielSterling/status/1598301625923538950> (Chief Operating Officer for Secretary of State tweeting that Tuesday, November 22 was the date from which all counties could commence advance voting for the runoff).

Plaintiff Crowell submitted her absentee ballot application on November 14, and her application was still in the Cobb Board’s possession on November 22, the start of the Advance Voting period. Plaintiff Crowell’s application, however, was not mailed until at least November 28—more than the three business days from receipt the statute and regulation require. As such, Defendants have likely failed to comply with § 21-2-384(a)(2) as to Plaintiff Crowell and other similarly situated voters, because they have not properly issued those ballots within three business days after receiving the applications. Just as the State “has no interest in enforcing an unconstitutional law,” *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010), Defendants have no interest in failing to adhere to Georgia law, especially in a way that gravely threatens Georgians’ fundamental right to vote.

C. The Threatened Injury to Plaintiffs Outweighs the Threatened Harm that the Injunction may do to the Defendants

The balance of the equities unquestionably weighs in favor of Plaintiffs. As noted above, absent an injunction, Individual Plaintiffs will be disenfranchised for the upcoming election—a *per se* irreparable and grave injury based on the loss of a constitutional right. Defendants, by contrast, do not appear to suffer any harm from an injunction. By virtue of processing Individual Plaintiffs' absentee ballot requests, Defendants have already determined that those are eligible voters; Defendants share an interest with Plaintiffs in ensuring that all eligible voters can vote in the upcoming runoff election.

To the extent Defendants claim some sort of administrative burden in the event of an injunction—based on their need to contact voters and extend the deadline until December 9, 2022—this argument must fail for two reasons. First, “[t]here is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [the Secretary of State’s] office and other state and local offices involved in elections.” *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016); *see also United States v. Georgia*, 892 F. Supp. 2d 1367, 1377 (N.D. Ga. 2018) (finding that administrative, time, and financial burdens on the state are “minor when balanced against the right to vote, a right that is essential to an effective democracy”); *Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338, 1348 (N.D. Ga. 2015) (granting injunction under Section 2 of VRA, even though county board of commissioners (“BOC”) would face administrative burdens from an injunction, because “the harm [plaintiffs] would suffer by way of vote dilution outweighs the harm to the BOC”).

Second, Defendants cannot claim irreparable injury, or even administrative burden, for fulfilling their obligations. Pushing back the receipt deadline will not cause any practical harm or tabulation delays, given that Plaintiffs ask this Court to adopt the same deadline Cobb County and the rest of Georgia already uses for UOCAVA voters. And as a legal matter, it is “elementary that

a party may not claim equity in his own defaults.” *Long v. Robinson*, 432 F.2d 977, 981 (4th Cir. 1970). Here, any “irreparable injury which defendants claim that they will suffer . . . is injury of their own making.” *Id.* Defendants cannot claim any irreparable injury—let alone an injury so grave as to outweigh Plaintiffs’ fundamental constitutional rights.

D. Granting the Requested Interlocutory Injunction will not Disserve the Public Interest

“[T]he public interest is served when constitutional rights are protected.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019); *see also Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”). It is also “always in the public interest to . . . ensure compliance with state law.” *Our Lady’s Inn v. City of St. Louis*, 349 F. Supp. 3d 805, 824 (E.D. Mo. 2018); *see also Parents Defending Educ. v. Linn-Mar Comm. Sch. Dist.*, No. 22-CV-78 CJW-MAR, 2022 WL 4232912, at *4 (N.D. Iowa Sept. 12, 2022) (“It is in the public interest to ensure schools comply with state law.”).

In failing to deliver Individual Plaintiffs’ absentee ballots, Defendants have severely threatened Plaintiffs’ constitutional right to vote. Absent an injunction, Individual Plaintiffs will likely be disenfranchised in the runoff election. An injunction clearly serves the public interest.

III. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court provide expedite treatment of this motion, and issue a temporary restraining order requiring that Defendants: (1) extend the ballot receipt deadline in the upcoming runoff election for all replacement absentee ballots sent to voters in the proposed class to the same receipt deadline for Uniformed and Overseas Voters (“UOCAVA”) ballots (December 9, 2022); (2) allow all voters in the proposed class who have not received an official absentee ballot by December 6, 2022, to use

the Federal Write-In Absentee Ballot (“FWAB”) to cast their ballots; and (3) provide immediate notice to all voters in the proposed class as to the extended ballot deadline; their ability to postmark their absentee ballot by election day, December 6, 2022; the ability for those ballots to arrive by December 9, 2022; and their ability to use the FWAB if they have not received an official absentee ballot by election day for the runoff.

Respectfully submitted, this 1st day of December, 2022.

/s/ Rahul Garabadu

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**Pro hac vice applications forthcoming*

Attorneys for Plaintiffs

Exhibit A

RETRIEVED FROM DEMOCRACYDOCKET.COM

AFFIDAVIT

1. My name is Kayla Marie Crowell. I am over the age of 18 and fully competent to sign this affidavit.

Under penalty of perjury, I declare the following based upon my personal knowledge:

- 2. I have been registered to vote in Cobb County (at [REDACTED] Georgia) since September 12, 2011.
- 3. I am 29 years old. I am a consistent voter and try to vote in every election. I believe voting is crucial to have a voice on the wide range of issues I care about.
- 4. I maintain a permanent residence in Georgia and intend to return in the future, but I chose to vote absentee in this election because I am in California for a temporary job.
- 5. I initially requested my absentee ballot for the December General Runoff election on November 14, 2022 via email.
- 6. I believed that this was plenty of time to receive, complete, and return my absentee ballot for the December General runoff election.
- 7. On November 21, 2022, I received a text notification from Cobb County that they had mailed my absentee ballot for the December General Runoff election.
- 8. On My Voter Page, my request was recorded as received on November 18, 2022, and my ballot shows up as having been issued to me on November 23, 2022.
- 9. On November 30, 2022, I had not yet received my ballot. I emailed Cobb County that day to follow up on the status of my ballot. That same day, Cobb County responded by email advising me to wait another day or two for its arrival, vote early in person, or vote on election day. That email noted that the deadline for submitting another application for another absentee ballot had passed.
- 10. Because I live out of state, I have no option but to wait for my originally-requested ballot to arrive and to vote by absentee ballot.
- 11. Later on November 30, 2022, I learned for the first time that I was not alone in experiencing severe delays in receiving my absentee ballot from Cobb County.
- 12. No one from the Cobb County Board of Elections has contacted me to tell me that my ballot was impacted by any loss or failure to timely mail absentee ballots to voters.
- 13. I am unable to afford to travel home to vote in person on short notice, so I urgently need my absentee ballot to be able to cast my vote.
- 14. I continue to track my ballot using USPS's Informed Delivery tool. As of the date of this affidavit, USPS does not show that my ballot has arrived.
- 15. Unless I receive my absentee ballot in the next two days, I do not believe I will have enough time to mail my ballot back in time for Cobb County to receive it by 7pm on election day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 30, 2022.

Kayla Marie Crowell
Kayla Marie Crowell

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California, County of Los Angeles
Subscribed and Sworn to (or affirmed)
Before me on this 30 day of Nov. 2022 by
KAYLA MARIE CROWELL

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

[Signature]
Signature of Notary Public

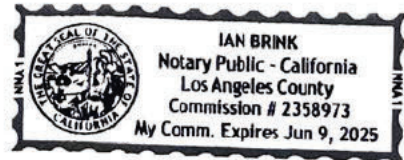


Exhibit B

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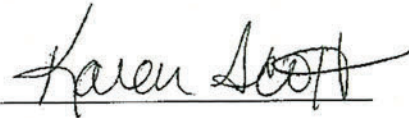
AFFIDAVIT

My name is Karen Scott. I am over the age of 18 and fully competent to sign this affidavit.
Under penalty of perjury, I declare the following based upon my personal knowledge:

1. I am registered to vote in Cobb County (at 3189 Old 41 Highway NW, Kennesaw, Georgia).
2. I am 62 years old. I am a consistent voter and try to vote in every election.
3. I maintain a permanent residence in Georgia, but I chose to vote absentee in this election because I am temporarily in New York to care for my mother who is elderly and ill.
4. I initially requested my absentee ballot for the December General Runoff election on November 21, 2022 via the online portal.
5. I believed that this was plenty of time to receive, complete, and return my absentee ballot for the December General runoff election.
6. On the Secretary of State's My Voter Page, my request was recorded as received on November 22, 2022, and my ballot shows up as having been issued to me on November 23, 2022.
7. As of December 1, 2022, I had not yet received my ballot.
8. Because I am currently out of state and I care for my elderly mother, I have no option but to wait for my ballot to arrive and to vote by absentee ballot. I am not able to return to Georgia to vote in person for the remaining early voting period or on election day.
9. No one from the Cobb County Board of Elections and Registration has contacted me to tell me that my ballot was impacted by any loss or failure to timely mail absentee ballots to voters.
10. I do not believe I will have enough time to mail my ballot back in time for Cobb County to receive it by 7pm on election day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2022.



Karen Scott

Sworn before me on
December 1, 2022



ELIZABETH HUL GYORI
NOTARY PUBLIC-STATE OF NEW YORK
No. 02GY6419377
Qualified in Kings County
My Commission Expires 07-06-2025

This remote notarial act involved the use of communications technology

Exhibit C

RETRIEVED FROM DEMOCRACYDOCKET.COM

AFFIDAVIT

My name is Dr. Monica Wills Brown. I am over the age of 18 and fully competent to sign this affidavit. Under penalty of perjury, I declare the following based upon my personal knowledge:


1. I am the Chief Organizer of the Cobb County Democracy Center, an organization that educates voters about issues related to casting their ballot. Our organization's central mission includes a commitment to democracy, free and fair elections, and ensuring that eligible Cobb County voters are able to exercise their fundamental right to vote. Our organization assists voters in checking their voter registration, helping arrange free rides to the polls, Get Out the Vote efforts (GOTV), and holding voter education events—including for the December 2022 Runoff election.
2. Our organization consists of two volunteer staff members.
3. On November 30, 2022, our organization learned that Cobb County Board of Elections and Registration did not timely mail absentee ballots to certain voters who had successfully applied for an absentee ballot.
4. Based on this information, our organization has already had to spend time and money to address this issue instead of spending the time and money, as we ordinarily would, on other organizational priorities. For example, I had to contact voters who I had identified as absentee voters to provide them additional information about how they could vote in person or on election day if they do not receive their absentee ballots. The Cobb County Democracy Center also changed and posted new social media content to raise awareness of these absentee ballot issues. We have also had to field questions from Cobb County voters who have not received their absentee ballots yet.
5. We are also now dedicating resources to stay apprised of any new information that Cobb County may provide regarding the absentee ballots that were not timely mailed to voters.
6. We will have to continue to dedicate resources to answering voters' questions about this issue.
7. Absent any changes, we will continue to need to spend money and other resources to address this issue, through Election Day.
8. Diverting resources to providing general education to voters who may not receive or timely receive their absentee ballots, tracking voters who have had problems with absentee ballots, fielding questions from voters who have not received their absentee ballots, and staying abreast of developments around the absentee ballots that were not sent out means that our staff members and other volunteers have less time to devote to other voter education and GOTV efforts. This includes analyzing real-time voting data and canvassing new areas or calling voters to ensure they get out and vote. This is especially important because it is less than one week before Election Day.

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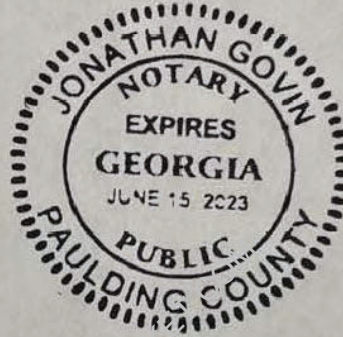
I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 1, 2022.

Monica Wills Brown
Monica Wills Brown

Notary Public: 

Date: 12/1/2022



RETRIEVED FROM DEMOCRACYDOCS

Exhibit D

RETRIEVED FROM DEMOCRACYDOCKET.COM

AFFIDAVIT

My name is David Foster Medof. I am over the age of 18 and fully competent to sign this affidavit. Under penalty of perjury, I declare the following based upon my personal knowledge:

1. I am a Cobb County resident, and I am registered to vote at 4715 Cambridge Approach Cir NE.
2. I am a very active voter and have been ever since I turned 18. I chose to vote by mail for the December General Runoff election because I am a college student at an educational institution in Georgia that is located outside of Cobb County, and I am immersed in classes and final exams.
3. I requested my absentee ballot application on November 16, 2022 as reflected on the Secretary of State's My Voter Page, which was well before the deadline for absentee ballot applications for the December 6 runoff election.
4. The My Voter Page shows my ballot was issued on November 22, 2022.
5. On November 30, 2022, I had not yet received my absentee ballot. I was concerned about my ballot status because I do not have a car and I have to study for finals and have final exams throughout the early voting period and election day. My situation therefore makes it very difficult for me to travel to vote in person during the early voting period or election day.
6. On December 1, 2022, with only two days of early voting remaining and only five days before election day, I finally received my absentee ballot from Cobb County.
7. Although I requested my ballot on or around November 16, 2022, and My Voter Page states that my ballot was issued on November 22, 2022, the front of the envelope of my ballot shows a mailing date of November 26, 2022, which I believe is ten days and six business days from when it was received.
8. I immediately completed my ballot and mailed it back to Cobb County on December 1, but I am still concerned that my ballot will not arrive by 7:00pm on election day in time to be counted.
9. My father also requested his absentee ballot on or around November 15, 2022, and also faced similar delays in receiving his ballot.
10. At no point did anyone from the Cobb County Board of Elections and Registration contact me to tell me anything about the status of my ballot. My father similarly received no communications from the Cobb County Board of Elections and Registration.
11. I am deeply disappointed that my ballot arrived only three business days before the election, through no fault of my own, and that my right to vote may be in peril if my absentee ballot is not received by 7:00pm on election day, despite my best efforts to request an absentee ballot, complete my ballot, and return my ballot in a timely manner.
12. I am especially concerned for voters who requested an absentee ballot to be delivered to an out-of-state address who have not yet received their absentee ballot through no fault of their own or who requested their ballot even a day or two later than me.

I declare under penalty of perjury that the foregoing is true and correct.

Notary

Derrick Robinson 12/1/2022
Derrick Robinson

Executed on December 1, 2022.



David Foster Medof



COBB COUNTY BOARD OF
ELECTIONS AND REGISTRATION
P.O. BOX 649
MARIETTA, GA 30061-0649

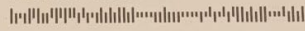
RETURN SERVICE REQUESTED



OFFICIAL VOTE-BY-MAIL BALLOTING MATERIAL FIRST-CLASS MAIL



DAVID FOSTER MEDOF
4715 CAMBRIDGE APPROACH CIR NE
ROSWELL GA 30075-5201



RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit E

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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.

9. To the extent Defendants are unable to send all of the ballots to the Affected Voters by UPS as described in Paragraph 2 above due to time constraints, Defendants are authorized to utilize the deputy registrars, attorneys barred in the State of Georgia who are not law enforcement officers, or private couriers to effect delivery of any remaining ballots to Affected Voters within Cobb County between the hours of 8:00 a.m. and 2:00 p.m. on November 8, 2022. For any absentee ballots that need to be delivered to Affected Voters outside of Cobb County and for any ballots that are unable to be delivered inside the county by deputy registrars, Defendants are authorized to use courier services or attorneys barred in the State of Georgia who are not law enforcement officers to attempt delivery of those ballots.

So ORDERED this 8th 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

Daniel W. White

Georgia Bar No. 153033
Gregg E. Litchfield
Georgia Bar No. 454040
Attorneys for the Cobb County Board of Election and Registration

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**Pro hac vice applications forthcoming*

Attorneys for Plaintiffs

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Exhibit F

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https://www.mdjonline.com/news/local/delay-in-ballot-mailing-due-to-thanksgiving-holiday-elections-director-says/article_390d8838-70da-11ed-a3b0-135d25134a92.html

Delay in ballot mailing due to Thanksgiving holiday, elections director says

Chart Riggall criggall@mdjonline.com

Nov 30, 2022



Cobb Elections Director Janine Eveler

Jake Busch jbusch@mdjonline.com

A reported delay in absentee ballot mailings for the Dec. 6 U.S. Senate runoff election was due to office closures for the Thanksgiving holiday, Cobb's elections chief said Wednesday.

Elections Director Janine Eveler said more than 3,400 ballots were affected by the delay, but have since been mailed to voters.

"Everything is out the door," she said.

Those ballots were originally marked as issued on Nov. 23, the day before Thanksgiving. Multiple state lawmakers told the MDJ they'd heard from constituents that their ballots — marked as issued — had still not been received as of earlier this week.

In the case of the 3,442 ballots marked issued on the 23rd, Eveler said they were mailed out Monday because her office was closed on Thanksgiving Day and the day after.

“That’s just how long the process takes with a two day holiday,” she added. “... It can take a couple of days to pack it and check it — usually about a day and a half. So then they get into the mail stream on the second day after the issue date.”

Eveler said ballots have not necessarily been mailed when they are first marked as issued, which refers to when they are generated in the system.

“They assume that means that ballot was mailed that day, but that’s not the mailing date. That’s the date that the ballot was issued in the system,” she said.

The reported delays sparked concerns the ballots were not mailed at all, as happened with more than 1,000 ballots in the weeks prior to the Nov. 6 general election. In that instance, Eveler initially said there was no evidence a significant number of ballots were missing, but days later announced the ballots had never been mailed.

State Rep. David Wilkerson, D-Powder Springs, said he’d been tracking the ballot requests in the secretary of state’s system, but it’s too early to tell if there have been any errors. When the issue was made public before the general election, it was weeks after the ballots had supposedly been mailed.

“Nobody had returned them, so you could easily see that. The problem with this is if these were put into the system on Wednesday, and didn’t go out until Monday, you’re not going to see that yet,” Wilkerson said. “... At this point, because it is so close, it’s hard to tell, because it makes sense that people would not have returned them yet.”

Cobb Democrats Chair Jacquelyn Bettadapur, meanwhile, said she remains skeptical.

“This happened before, and we were told everything was fine, and it wasn’t,” she said. “This is the same situation ... We heard from a lot of people that weren’t necessarily in those two days (when ballots weren’t mailed) for the general election, that they just never got ballots. Many folks just go to the polls because they don’t have a ballot, but again, there are some who cannot just go to the polls, and they are deprived of their right to vote,” Bettadapur said.

Cobb GOP Chair Salleigh Grubbs said she had also received reports of voters not receiving their ballots and was looking into the issue.

In this runoff election, the timeframe to request, receive and return ballots has been compressed. Georgia’s runoff period was previously nine weeks, but was shortened to four weeks with the passage last year of SB 202, the law that overhauled Georgia’s election system.

Monday was the last day to request an absentee ballot, and Eveler recommended earlier this week that voters cast a ballot in-person if possible.

“It’s really rough to get everything out in time for people to get it back to us,” she said on Monday, about absentee ballots.

All absentee ballots must be returned by the time the polls close at 7 p.m. on Dec. 6. Voters can check the status of their absentee ballot at mvp.sos.ga.gov.