IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEMOCRATIC PARTY OF GEORGIA, INC., DSCC, and WARNOCK FOR GEORGIA,	)	
Plaintiffs,	)	
v.	)	**CIVIL ACTION NO.: 2022-CV-372734**
THE STATE OF GEORGIA,	)	
Defendant.	)	

GEORGIA REPUBLICAN PARTY, INC., NATIONAL REPUBLICAN SENATORIAL COMMITTEE, AND REPUBLICAN NATIONAL COMMITTEE'S OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR INTERLOCUTORY INJUNCTION

Intervenors Georgia Republican Party, Inc., National Republican Senatorial Committee ("NRSC"), and Republican National Committee ("RNC") submit this opposition to Plaintiffs' motion for declaratory relief, a temporary restraining order, or interlocutory injunction.

Introduction

Georgia will hold a runoff election on December 6, 2022, for one of Georgia's seats in the United States Senate, four weeks after the November 8, 2022, general election. The "run-off election … shall be a continuation of the … election … for the particular office concerned." O.C.G.A. § 21-2-501(a)(5). As with primary and general elections, the runoff will be overseen and administered by the Secretary of State (the "Secretary"), Ga. Const. art. V, § III, ¶ I; O.C.G.A. § 21-2-50, and the State Election Board (the "SEB"). O.C.G.A., § 21-2-31.

Georgia law allows for a period of advance voting that must begin "[a]s soon as possible prior to a runoff from any general . . . election but no later than the second Monday immediately

prior to such runoff." O.C.G.A. § 21-2-385(d)(1)(B). For this runoff, mandatory advance voting begins on Monday, November 28, 2022, and concludes Friday, December 2, 2022. *See id.* The law further provides for other permissible times and dates to hold advance voting on weekdays and weekends. *Id.*

The dispute in this case concerns the statutory language prohibiting advance voting on the second Saturday before the election "if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday." *Id.* This year's second Saturday qualifies, as both Thanksgiving Day and another state holiday on the day after Thanksgiving "immediately preced[e]" the second Saturday.

Prior to conducting advance voting, counties, in coordination with the Secretary, must complete a series of statutory requirements. These include, among other requirements, voting machine testing, O.C.G.A. §§ 21-2-374(b), 379.6(c), precertification tabulation audits, *id.* 21-2-498, and the Secretary's certification of the general election results, *id.* § 21-2-499. All those statutory requirements are ongoing or are still to be completed. *See, e.g.*, Bulletin, Pl.'s Compl., Ex. 1; Dover Affidavit at ¶ 7, attached as **Exhibit A**; Natt Affidavit at ¶ 7, attached as **Exhibit B**; O'Lenick Affidavit at ¶¶ 7, 11, attached as **Exhibit C**.

Counties are also required to publish information concerning the availability, times, dates, and locations of polling places at least one week before the beginning of advance voting. *See id.* § 21-2-385(d)(3) ("The board of registrars shall publish the dates, times, and locations of the availability of advance voting . . . no later than seven days prior to the beginning of the advance voting period for any run-off election."); *see also id.* § 21-2-385(d)(2) (requiring that registrars or absentee ballot clerks give "reasonable notice" to voters "of the availability of advance voting as well as the times, dates, and locations at which advance voting will be conducted"). Similarly,

political parties, such as the Intervenors, must submit lists for credentialed poll watchers at least seven days prior to the start of advance voting. *See id.* § 21-2-408(b)(1).

To help counties comply with the statutory requirements to certify the general election and conduct advance voting for the runoff, the Secretary's Office circulated an Official Election Bulletin to county election officials on November 12, 2022. *See* Bulletin, Pl.'s Compl., Ex. 1. The Bulletin notified election officials that advance voting must be held November 28 through December 2 and explained that while advance voting may begin before November 28, advance voting "cannot occur on Thursday, November 24 (Thanksgiving Day), Friday, November 25 (Observance of State Holiday 1), or Saturday, November 26. Advanced Voting on Saturday, November 26 is prohibited by OCGA 21-2-385(d)(1), which states that if the second Saturday before the runoff follows a Thursday or Friday that is a state holiday, voting on that Saturday is not allowed." *Id.*

Each county across the State has since taken administrative and logistical measures to prepare for advanced voting for the runoff, in compliance with the Secretary's guidance. Despite unanimity amongst the counties that advance voting will *not* occur on November 26, 2022 (notwithstanding a change in the Secretary's guidance), Plaintiffs seek relief permitting advance voting on November 26, 2022, that, if entered, would create a disparate impact on counties and voters across the State. Accordingly, Intervenors ask that this Court deny Plaintiffs' request for injunctive relief.

Statutory Text

O.C.G.A. § 21-2-385(d)(1) states:

> There shall be a period of advance voting that shall commence:
>
> (A) On the fourth Monday immediately prior to each primary or election; and

> (B) As 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 and shall end on the Friday immediately prior to each primary, election, or runoff. Voting shall be conducted beginning at 9:00 A.M. and ending at 5:00 P.M. on weekdays, other than observed state holidays, during such period and shall be conducted on the second and third Saturdays during the hours of 9:00 A.M. through 5:00 P.M. and, if the registrar or absentee ballot clerk so chooses, the second Sunday, the third Sunday, or both the second and third Sundays prior to a primary or election during hours determined by the registrar or absentee ballot clerk, but no longer than 7:00 A.M. through 7:00 P.M.; provided, however, that, if such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary or election beginning at 9:00 A.M. and ending at 5:00 P.M. Except as otherwise provided in this paragraph, the registrars may extend the hours for voting to permit advance voting from 7:00 A.M. until 7:00 P.M. and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option; provided, however, that voting shall occur only on the days specified in this paragraph and counties and municipalities shall not be authorized to conduct advance voting on any other days.

See O.C.G.A. § 21-2-385(d)(1).

Legal Standard

"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." *Benton v. Patel*, 257 Ga. 669, 672 (1987).

> An interlocutory injunction should not be granted unless the moving party shows that: (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest.

City of Waycross v. Pierce Cnty. Bd. of Comm'rs, 300 Ga. 109, 111 (2016) (internal quotation omitted). An interlocutory injunction is an "extraordinary remedy, and the power to grant it must

be 'prudently and cautiously exercised.'" *SRB Inv. Servs., LLLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011) (quoting *Bishop v. Patton*, 288 Ga. 600, 604 (2011)).

Argument

A. The Secretary of State's position in the Official Election Bulletin is the correct interpretation of the statute.

On November 12, 2022, the Secretary of State's office circulated an Official Election Bulletin to county election officials. The only part that Plaintiffs dispute is the Bulletin's ruling that "Advanced Voting on Saturday, November 26th is prohibited by OCGA 21-2- 385(d)(1), which states that if the second Saturday before the runoff follows a Thursday or Friday that is a state holiday, voting on that Saturday is not allowed." *See* Bulletin, Pl.'s Compl., Ex. 1. The Secretary of State gives the correct reading of Section 21-2-385(d)(1) because his interpretation accords with principles of statutory construction. As the Bulletin states, and the text of the statute shows, advance voting on Saturday, November 26, 2022, is not allowed because it follows Thanksgiving and another state holiday, "public and legal holiday[s] occurring on the Thursday or Friday immediately preceding such second Saturday." *Id.* The Secretary reaches this conclusion by interpreting the term "election" to also include the term "runoff."

O.C.G.A. § 21-2-2(5), which sets out general definitions for this chapter, provides that "'[e]lection' ordinarily means any general or special election and shall not include a primary or special primary unless the context in which the term is used clearly requires that a primary or special primary is included." The drafters of the definition expressly excluded primaries *but not runoffs*. That is because runoffs are a natural continuation of general elections. *See* O.C.G.A. § 21-2-501(a)(5) ("[t]he run-off primary, special primary runoff, run-off election, or special election runoff *shall be a continuation of* the primary, special primary, election, or special election for the particular office concerned." (emphasis added)). Thus, following those statutory sections, the

Secretary correctly interprets the term "election" to also apply to rules and regulations for subsequent runoffs unless expressly stated otherwise.

The Secretary of State's conclusion that "election" includes a runoff election is also consistent with Georgia caselaw. Numerous decisions from the Supreme Court of Georgia use the terms "election," "run-off election," and "runoff" interchangeably in reference to the same election. *See, e.g., Fuller v. Thomas*, 284 Ga. 397 (2008) (referring to a contested run-off election as an "election," "runoff," and "runoff election" throughout the decision); *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835 (2010) (same); *Meade v. Williamson*, 293 Ga. 142 (2013) (same). In considering the statutory meaning, those decisions should also be taken into account. *See Hasty v. Castleberry*, 293 Ga. 727, 731, 749 S.E.2d 676, 681 (2013) (a statute is "to be construed in connection and in harmony with the existing law, and as a part of a general and uniform system of jurisprudence," "with reference to other statutes and the decisions of the courts").

Likewise, this interpretation is correct under the maxim that statutory construction requires "read[ing] a particular statute as a whole, considering specific words and phrases not in isolation, but in relation to each other." *Gary v. State*, 338 Ga. App. 403, 405 (Ga. Ct. App. 2016). Although "runoff" does not appear in the second sentence of Section 21-2-385(d)(1), "runoff" does appear at the beginning of the prior sentence in a preceding phrase: "There shall be a period of advance voting that shall commence as 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* and shall end on the Friday immediately prior to each primary, election, or *runoff*." O.C.G.A. § 21-2-385(d)(1) (cleaned up) (emphasis added). This indicates that all the text that follows, including the second

sentence, thus applies to runoffs. The text of this provision, read as a whole, shows that the General Assembly intended for "election" to encompass runoffs as well.

B. This Court should not overturn the Secretary of State's guidance to election officials in the Bulletin.

This Court should decline Plaintiffs' request to order advance voting in contravention of the ruling from the Secretary of State's Bulletin. The Secretary of State is the "state's chief election official." O.C.G.A. § 21-2-50(b). His duties in administering the state's election laws are extensively defined by statute, O.C.G.A. § 21-2-50(a), as well as constitutional provisions. Ga. Const. art. II, § II, I. As such, this Court should apply every presumption in favor of the Secretary's guidance. *See Gundy v. Balli*, 362 Ga. App. 304, 311 (Ga. Ct. App. 2022) ("Finally, we adhere to the well-settled principle that courts should presume public officials, such as senators, acted in accordance with their statutory duties and read the statute in a manner that renders their conduct proper."); *see also Selph v. Williams*, 284 Ga. 349, 352, 667 S.E.2d 40 (2008) ("there is a presumption of regularity that requires the courts to presume that public officers have properly discharged their official duties"). This Court should lend deference to the Secretary's guidance in the Bulletin that advance voting may not be held on Saturday, November 26.

C. Plaintiffs fail to prove a preliminary injunction is warranted.

Plaintiffs' requested relief is an extraordinary remedy, and Plaintiffs have not met their burden of proof on each of the four elements required to earn such relief: (1) a substantial threat that they will suffer irreparable injury; (2) that the threatened injury outweighs the threatened harm that the injunction may do to the party being enjoined (*i.e.*, the State of Georgia); (3) a substantial likelihood that they prevail on the merits of her claims at trial; and (4) that the public interest will not be disserved by granting the interlocutory injunction. *City of Waycross*, 300 Ga. at 111. Rather,

Plaintiffs' request is a politically motivated misinterpretation of Georgia law that would have a disparate impact on Georgia voters, counties, and interested political parties.

1. Plaintiffs have not shown a substantial likelihood of success on the merits.

Plaintiffs fail to demonstrate they are likely to succeed on the merits of their claim. The statutory section under dispute consists of two sentences:

> (d)(1) There shall be a period of advance voting that shall commence:
>
> > (A) On the fourth Monday immediately prior to each primary or election; and
> >
> > (B) As 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
> >
> > and shall end on the Friday immediately prior to each primary, election, or runoff. Voting shall be conducted beginning at 9:00 A.M. and ending at 5:00 P.M. on weekdays, other than observed state holidays, during such period and shall be conducted on the second and third Saturdays during the hours of 9:00 A.M. through 5:00 P.M. and, if the registrar or absentee ballot clerk so chooses, the second Sunday, the third Sunday, or both the second and third Sundays ***prior to a primary or election*** during hours determined by the registrar or absentee ballot clerk, but no longer than 7:00 A.M. through 7:00 P.M.; provided, however, that, if such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, ***such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary or election*** beginning at 9:00 A.M. and ending at 5:00 P.M.

O.C.G.A. § 21-2-385(d)(1) (emphasis added). Plaintiffs focus on the second instance of "primary or election" (which is in the last line of the block quote above); the same phrase also appears roughly halfway through the sentence.

Plaintiffs want this Court to declare that advance voting may[1] occur on November 26. They argue that the second-Saturday holiday prohibition at the end of Section 21-2-385(d)(1) "expressly applies only to primary or general elections, and not runoffs." Pls.' Memo. at 6–7. As detailed in Section A, that is not consistent with Georgia statute or case law.

Even if "primary or election" as used in Section 21-2-385(d)(1) does not include runoff elections, Plaintiffs' interpretation fails because the "primary or election" phrase at issue only modifies a small section of the statute. The second-Saturday prohibition in this sentence states, "if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, ... such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary or election ...." O.C.G.A. § 21-2-385(d)(1). Plaintiffs construe this portion of the sentence as meaning (1) if the conditional clause is satisfied (the second Saturday follows a legal holiday on the preceding Thursday or Friday), then (2) advance voting is prohibited on the second Saturday *only before primaries and general elections, but not for runoffs*. The better reading, however, is that (1) if the second Saturday follows a legal holiday on the preceding Thursday or Friday, then (2) advance voting is prohibited on the Saturday *for all elections*, primaries, general elections and runoffs, (3) but then advance voting "shall be held on the third Saturday prior to such primary or election" (which excludes runoffs). This interpretation follows from the function of the word "but," which separates two clauses. Therefore, the phrase "primary or election" at the end of the second clause

[1] Notably, Plaintiffs are not seeking for the Court to enter an order mandating all counties "shall" have early voting on Saturday, November 26, despite the statute plainly stating that advance voting "shall be conducted on the second and third Saturdays during the hours of 9:00 A.M. through 5:00 P.M." O.C.G.A. § 21-2-385(d)(1). This is dubious; "shall" is a mandatory phrase while "may" is permissive. *See McGee v. Patterson*, 323 Ga.App. 103, 111 (Ga. Ct. App. 2013) ("In general, the use of the term 'shall' indicates a command or a mandatory requirement."); *Jones v. State*, 246 Ga.App. 596, 597 (Ga. Ct. App. 2000) ("The word 'may' is permissive, rather than mandatory.").

shouldn't be read to modify anything from the first clause, that is, all the words before "but." The upshot is that the second-Saturday holiday prohibition does apply to all elections, including runoffs, and it is only the third Saturday guarantee of advance voting that is restricted to primaries and general elections.

This interpretation also makes sense of the legislative intent behind this rule. The Georgia Assembly did not want to open voting, and place practical burdens on county election workers, on the second Saturday immediately after a holiday. In such instances, however, the third Saturday will still be open for advance voting. But because advance voting on third Saturdays may not be possible before runoffs (as a result of the compressed calendar between the general election and the runoff), the Assembly made that third-Saturday guarantee as to only a "primary or [general] election" and intended to exclude runoffs. Without that qualification, then this provision would end up mandating third-Saturday voting in runoffs, which raises a host of logistical problems for election officials.

In addition, there is another flaw in Plaintiffs' interpretation: construing "primary or election" as excluding runoffs would logically entail that almost none of the advance voting rules apply to runoffs. As mentioned earlier, "primary or election" appears twice in the second sentence of Section 21-2-385(d)(1). Plaintiffs discuss only the second instance of "primary or election" in the sentence, and fail to mention that "primary or election" also appears much earlier in the sentence: "Voting shall be conducted beginning at 9:00 A.M. and ending at 5:00 P.M. on weekdays, other than observed state holidays, during such period and shall be conducted on the second and third Saturdays during the hours of 9:00 A.M. through 5:00 P.M. and, if the registrar or absentee ballot clerk so chooses, the second Sunday, the third Sunday, or both the second and third Sundays ***prior to a primary or election*** …" O.C.G.A. § 21-2-385(d)(1) (emphasis added).

There is no reason why that first use of "primary or election" would include runoffs if the second use does not. *Zaldivar v. Prickett*, 297 Ga. 589, 592 (2015) ("After all, 'there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.'" (quoting *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932)).

If runoffs are excluded from "primary or election," then the second-Saturday holiday prohibition is not the only provision that would cease to apply to runoffs. The earlier provisions containing rules about both weekday and weekend voting would have no application to the runoff either. That would include rules for applicable hours to vote and permissible and mandatory times for weekend voting. Under Plaintiffs' interpretation, counties could presumably open advance voting for half-an-hour on Monday, November 28, and half-an-hour on Friday, December 2, nothing more. Simply put, Plaintiffs cannot remove the holiday exception from runoff elections without removing the other rules in the second sentence as well. To borrow a phrase from Plaintiffs, the extension of their interpretation of the statute would be "nonsensical." "The judiciary has the duty to reject a construction of a statute which will result in unreasonable consequences or absurd results not contemplated by the legislature." *Haugen v. Henry County*, 277 Ga. 743, 746 (2004). A radical and unreasonable interpretation that eviscerates the statutory rules applying to runoff elections must be rejected when a far more reasonable one—here, the Secretary's—is available.

The choice between the two proffered interpretations of the statute is an easy one. Plaintiffs' premise that "primary or election" excludes runoffs, if applied consistently to this statute, would knock out nearly all the rules for advance voting in runoffs, creating utter chaos for this year's runoff election. The Secretary's interpretation allows weekend voting and voting before

Thanksgiving, if possible. This year, however, the second Saturday is unavailable for voting because it falls after Thanksgiving. The Secretary's interpretation is the one that all counties in Georgia have followed as they solicit poll workers, test voting machines, prepare polling places for advance voting, and fulfill their other election duties. The Secretary's interpretation ought to be adopted because it gives the better construction of the statutory text, deserves deference from courts, and has been relied upon by county election officials. As a result, Plaintiffs have not shown a "substantial likelihood of success on the merits."[2]

2. Plaintiffs have not shown that they will suffer any irreparable harm.

Plaintiffs cannot show that the Court's denial of their requested relief will cause them irreparable harm. Again, the Plaintiffs have the burden of proof on this element. *Waycross*, 300 Ga. at 11. It is not clear what, if any, harm Plaintiffs may suffer if advance voting is not available across the State of Georgia on Saturday, November 26, in advance of the runoff.

By their own admission, Plaintiffs are "dedicated to electing candidates of the Democratic Party to public office," including Senator Warnock. Compl., ¶¶ 8–10. Yet Plaintiffs couch their arguments about irreparable harm in much broader terms, referencing the fundamental right to vote. It is widely recognized that "voting is of the most fundamental significance under our constitutional structure." *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). And any restriction on the right to vote can constitute an injury for *voters*. *See Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012). But if there is any harm caused by the Secretary's

[2] Even if the Court finds that Section 21-2-385(d)(1) is ambiguous, Plaintiffs are still unlikely to be successful on the merits. "Where statutory provisions are ambiguous, courts should give great weight to the interpretation adopted by the administrative agency charged with enforcing the statute." *Moulder v. Bartow Cnty. Bd. of Educ.*, 267 Ga. App. 339, 341 (Ga. Ct. App. 2004). The Secretary of State chairs the State Election Board, *see* O.C.G.A. §§ 21-2-30, 21-2-31, and has broad powers and duties regarding elections, *see id.* § 21-2-50 et seq.

guidance, it would be to an individual voter whose only chance to vote in the runoff election is in-person on Saturday, November 26. This harm, of course, results only if an individual voter has no means to (1) request an absentee ballot and vote by mail,[3] (2) vote in person during Georgia's permissive or mandatory advance voting period, or (3) vote in person on the day of the runoff. Plaintiffs are not the appropriate party to allege such harm.

Plaintiffs assert that losing one day of advance voting will impede their efforts to increase turnout. As support, they cite *Georgia Coalition for the People's Agenda v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018). But that case concerned a specific class of voters—individuals flagged by the State of Georgia as ineligible to vote because of errors with their voter registration. *Id.* at 1255. The Secretary's guidance does not affect a specific class of voters.[4] Rather, the guidance has the same effect for all voters equally, and so it is not a legally recognized harm. *See Gwinnett Cnty. NAACP v. Gwinnett Cnty. Bd. of Registration & Elections*, 446 F. Supp. 3d 1111, 1126 (N.D. Ga. 2020) (finding no irreparable harm when a voting regulation "applies equally to all . . . voters" without any "indication that th[e] decision was used as a proxy for voter suppression or targeted a protected class"). Furthermore, like the plaintiffs in *Gwinnett County NAACP*, Plaintiffs do not allege that any voters will be "entirely unable to vote" if a single day—Saturday, November 26—is not available for advance voting. *See id.*

In addition, any injury to Plaintiffs would be highly speculative. "Allegations of mere speculative or contingent injuries, with nothing to show that in fact they will happen, are

[3] Georgia law allows for any registered voter to request an absentee ballot and vote by mail. O.C.G.A. § 21-2-385(a).

[4] If *voters able to vote only via advance voting on November 26* were a legally protected class, there would be no limited principle. *Voters able to vote only via advance voting on Thanksgiving Day* would have the same basis to claim harm from the law. Without such a limiting principle, there is no plausible class creation.

insufficient to support a prayer for injunctive relief." *Powell v. Garmany*, 208 Ga. 550, 551 (1951). Intervenors can only presume that Plaintiffs seek relief because they believe it might benefit Senator Warnock's chances at reelection. Of course, Plaintiffs offer no evidence to support any such political benefit. It is just as possible that if certain Republican-leaning counties were able to satisfy the statutory notice periods and open for advance voting on Saturday, November 26, Intervenors would likely benefit. This is exactly why Plaintiffs' requested relief cannot be granted. This is nothing more than a political ruse because Plaintiffs are aware that certain Democrat-leaning counties intend to open on Saturday, November 26 if allowed via Court order; whereas other counties are relying on the Secretary's guidance and will be unable to open on that day.

Because Plaintiffs have not alleged a specific, non-speculative injury to themselves rather than to voters generally, they have not shown that *they themselves* will be irreparably harmed.

3. Plaintiffs have not shown that the speculative harm to Plaintiffs outweighs the State's interest in applying its election laws as written.

Plaintiffs' request for an injunction also fails because they have not carried their burden to show that any possible injury that they might suffer outweighs the harm to the defendant State of Georgia. *See City of Waycross*, 300 Ga. at 111. Plaintiffs cannot demonstrate this element given the State of Georgia's compelling interests in conducting an efficient, fair, and free election.

The State of Georgia, through the Secretary of State, *see, e.g.*, Ga. Const. art. V, § III, ¶ I; O.C.G.A. § 21-2-50, and the State Election Board, *see* O.C.G.A., § 21-2-31, has a legal duty and compelling interest to oversee and administer this election. "A State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. San Francisco Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). Georgia's interest in "conducting an efficient election, maintaining order, quickly certifying election results, and preventing voter fraud" are "strong" and "important" interests. *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020).

As such, states like Georgia must have "a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). The Supreme Court has repeatedly emphasized that courts "should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S.Ct. 1205, 1207 (April 6, 2020) (per curiam) (citing Purcell v. Gonzalez, 549 U.S. 1 (2006)); *see also New Ga. Project*, 976 F.3d at 1283 (11th Cir. 2020).

The Secretary of State issued the Bulletin to provide uniform guidance to counties across the state in advance of the runoff. County election officials have been relying on the guidance as they plan for the runoff election. *See* Dover Affidavit (Ex. A) ¶ 8; Natt Affidavit (Ex. B) ¶ 8; O'Lenick Affidavit (Ex. C) ¶ 8. According to their sworn testimony, officials have recruited poll workers and planned the dates for logic and accuracy testing of voting machines, delivery of machines, and other runoff preparations under the assumption that the polling locations would not be open on Saturday, November 26. Dover Affidavit (Ex. A) ¶¶ 7-8, 11-13; Natt Affidavit (Ex. B) ¶¶ 7-8, 11-13; O'Lenick Affidavit (Ex. C) ¶¶ 7-8, 10-13.

If Plaintiffs' requested relief were granted, and some, but not all, counties were able to conduct advancing voting on November 26, 2022, counties would no longer be acting uniformly on Saturday, November 26, nor acting in compliance with state law. As detailed above, Section C.1, Plaintiffs' interpretation of the statute would eviscerate the majority of the advance voting rules that county election officials have been planning to implement for this runoff election. Counties would operate in a state of anarchy, with the Secretary and the SEB having no clear rules to oversee and administer the runoff election.

Georgia also has an interest in its election laws being applied as written. A judicially mandated, last-minute change to the election laws passed by elected representatives and signed by an elected Governor would undermine credibility and faith in the democratic process. In *New Georgia Project v. Raffensperger*, the Eleventh Circuit held that Georgia would suffer irreparable harm if a court barred "the State from conducting . . . elections pursuant to a statute enacted by the Legislature unless the statute is unconstitutional." 976 F.3d at 1283 (internal quotation omitted). This is no different, except Plaintiffs are not even alleging the statute is unconstitutional.

Relatedly, granting the injunction requested by Plaintiffs would be a mistake because it *alters* rather than *preserves* the status quo. *See Benton*, 257 Ga. at 672 ("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."). The status quo is what the Secretary of State has ruled: that advance voting will not be available on Saturday, November 26. Granting the Plaintiffs an injunction would not be consistent with the purposes of injunctive relief. The State has compelling reasons for preserving the status quo. And Plaintiffs have not shown that their speculative theory of harm outweighs those interests.

4. Plaintiffs have not shown that an injunction serves the public interest.

Finally, Plaintiffs do not carry their burden of proof as to whether an injunction would serve the public interest. *City of Waycross*, 300 Ga. at 111 ("An interlocutory injunction should not be granted unless the moving party shows … granting the interlocutory injunction will not disserve the public interest."). Just as the State has an interest in fair, orderly, and predictable elections, so too does the public. The most prudent course is to follow the Secretary's interpretation that election officials have already planned to implement. There are 159 counties in Georgia. To Intervenors' knowledge, only Fulton County and DeKalb County are prepared to open polls on

Saturday, November 26, if the Court grants Plaintiffs' requested relief.[5] Most of the other 157 counties do not have the time or the resources to open polls on such short notice after the Thanksgiving holiday.

By way of example, according to sworn testimony from election officials for Cherokee, Gwinnett, and Forsyth counties, it will be impossible for those counties' advance voting locations to be adequately staffed with poll workers on Saturday, November 26. Dover Affidavit (Ex. A) ¶¶ 10-11, 14; Natt Affidavit (Ex. B) ¶¶ 10-11, 13; O'Lenick Affidavit (Ex. C) ¶¶ 10, 13. In addition to the problem of finding poll workers, the staff of those counties' election boards will be fully occupied with the statewide risk-limiting audit that began today, processing absentee ballot and vote by mail requests, conducting the legally mandated logic and accuracy testing for voting machines, and delivering and setting up the machines, Dover Affidavit (Ex. A) ¶¶ 5-7, 11-13; Natt Affidavit (Ex. B) ¶¶ 5-7, 11-12; O'Lenick Affidavit (Ex. C) ¶¶ 5-7, 10-12. As of the date of this filing, there are only nine days until November 26, two of which are legal state holidays. It is completely unrealistic to expect these county officials to now turn on a dime and have advance voting open on November 26 that complies with all the legal and practical requirements.

Any potential harm to Plaintiffs is far outweighed by a scenario where only some counties have early voting on Saturday, November 26, in turn creating a disparate impact on the election results. *Cf. Gwinnett County NAACP*, 446 F. Supp. 3d at 1126. Ironically, Plaintiffs make this very argument for Intervenors. *See* Pls.' Mem. at 11. If Plaintiffs' requested relief is granted, a significant class of Georgia voters will be denied access to advance voting on Saturday, November 26; whereas a limited class of voters in a small group of counties will be able to vote. At this stage,

[5] Neither Fulton County Board of Elections nor DeKalb County Board of Elections have posted minutes from their November 15, 2022, meetings in which they voted to hold early voting on Saturday, November 26, if Plaintiffs' requested relief is granted.

issuing an injunction will sow confusion into the voting process and inevitably end up with county-by-county early voting rather than a uniform rule.

Intervenors, like Plaintiffs, have "a direct, particularized interest in the outcome of an election," *see, e.g.*, *N.C. State Conf. of NAACP v. McCrory*, 997 F.Supp.2d 322, 342 (M.D.N.C. 2014), *aff'd in part, rev'd in part and remanded sub nom. League of Women Voters of N.C. v. N.C.*, 769 F.3d 224 (4th Cir. 2014), and in ensuring that its Senatorial candidate enjoys a fair electoral environment in accord with state election laws and the United States Constitution. *See, e.g.*, *McCrory*, 997 F.Supp.2d at 342; *New Georgia Project v. Raffensperger*, 1:21-CV-01229-JPB, 2021 WL 2450647, at *2 (N.D. Ga. June 4, 2021). If the Court grants Plaintiffs' requested relief, Intervenors and the State of Georgia will have no means to ensure a fair electoral environment for all Georgians on Saturday, November 26.

Conclusion

The Court should deny Plaintiffs' motion for declaratory and injunctive relief. Because any decision at this stage will likely be the last word before votes are cast, it is of the upmost importance that the Court consider the merits here. The Secretary's interpretation of Section 21-2-385(d)(1) is reasonable and presents the most tenable outcome. Plaintiffs' proffered interpretation would dissolve rules for advance voting in runoffs entirely and create utter chaos. Even a tailored order to grant Plaintiffs' requested relief as to advance voting on Saturday, November 26, will result in the disparate impact of opening advance voting for a very limited number of counties, while leaving most other counties (rural, suburban and urban) to stick with their existing advance voting schedules. For the foregoing reasons, Plaintiffs cannot show a substantial likelihood of success on the merits, and because Plaintiffs also failed to meet their burden for the remaining three factors, injunctive relief is inappropriate.

DATED: November 17, 2022 Respectfully submitted,

/s/ Mark D. Johnson
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CERTIFICATE OF SERVICE

I, Mark D. Johnson, do hereby certify that on the 17th day of November, 2022, a true and correct copy of the foregoing **Georgia Republican Party, Inc., National Republican Senatorial Committee and Republican National Committee's Opposition to Plaintiffs' Emergency Motion for Temporary Restraining Order and/or Interlocutory Injunction** was served via First-Class United States Mail, postage prepaid, addressed to:

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This 17th day of November, 2022.

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