



Connie Taylor, Clerk of Superior Court
 Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

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

**PLAINTIFFS’ MOTION FOR LEAVE
 TO FILE SUPPLEMENTAL COMPLAINT**

Pursuant to O.C.G.A. § 9-11-15(d), Plaintiffs respectfully request leave to file the Supplemental Complaint attached herein, which sets forth facts and requesting certain relief related to events that have occurred since the date of Plaintiffs’ original pleading in this matter.

The events in Plaintiffs’ original pleadings related to Cobb County voters’ absentee ballots for the November 7, 2022, election; the proposed Supplemental Complaint concerns Cobb County voters’ absentee ballots for the December 6, 2022, runoff election. As alleged more fully in the Supplemental Complaint, 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. Days before the upcoming runoff election, the Cobb Board has again failed to timely send absentee ballots to many Cobb County voters who timely requested them, resulting in the need to file Plaintiffs’ Supplemental Complaint and request for additional emergency relief to prevent the disenfranchisement of Cobb County voters.

Given these new facts and events that have transpired since Plaintiffs’ original pleading, Plaintiffs respectfully request that the Court grant this motion for leave to file the Supplemental Complaint.

Dated: December 1, 2022

Respectfully submitted,

/s/ Rahul Garabadu

Rahul Garabadu (Ga. Bar No. 553777)

Caitlin May (Ga. Bar No. 602081)

Cory Isaacson (Ga. Bar No. 983797)

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.

P.O. Box 570738

Atlanta, GA 30357

Tel: 770-303-8111

rgarabadu@acluga.org

cmay@acluga.org

cisaacson@acluga.org

Sophia Lin Lakin*

Davin Rosborough*

Jonathan Topaz*

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION, INC.

125 Broad Street, 18th Floor

New York, NY 10004

Tel: 212-519-7836
slakin@aclu.org
drosborough@aclu.org
jtopaz@aclu.org

Bradley E. Heard (Ga. Bar No. 342209)
Pichaya Poy Winichakul (Ga. Bar No.
246858)
Sabrina Khan*
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, Georgia 30030
(404) 521-6700
bradley.heard@splcenter.org
poy.winichakul@splcenter.org
sabrina.khan@splcenter.org

Neil S. Steiner*
DECHERT LLP
Three Bryant Park
1095 Avenue of The Americas
New York, NY 10036-6797
(212) 698-3500
neil.steiner@dechert.com

Angela Liu*
DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5800
angela.liu@dechert.com

Stefanie Tubbs*
Christopher Merken*
DECHERT LLP
Cira Centre 2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-4000
stefanie.tubbs@dechert.com
christopher.merken@dechert.com

**Pro hac vice applications forthcoming*

Attorneys for Plaintiffs

**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**

**VERIFIED SUPPLEMENTAL COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Kayla Crowell and Karen Scott, on behalf of themselves and all others similarly situated, and Cobb County Democracy Center, by and through the undersigned attorneys, file this Supplemental Complaint for declaratory and injunctive relief.

NATURE OF THE CASE

1. Thousands of Cobb County voters are on the brink of disenfranchisement due to the failure—once again—of the Cobb County Board of Elections and Registration (the “Cobb Board”) to timely issue absentee ballots ahead of an upcoming election. These voters, as well as a non-profit organization committed to ensuring that eligible voters can participate in our

democracy, have been harmed by Defendants’ failure to meet their obligations to protect the fundamental right to vote.

2. Absent relief, these voters will likely not be able to cast an effective ballot in the December 6, 2022 runoff election, or do so without unreasonable burdens, despite properly registering to vote, requesting their absentee ballot well ahead of the absentee ballot request deadline, and receiving representations from the Cobb Board that their ballots had been issued.

3. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). As the U.S. Supreme Court recognized in *Wesberry*, the right to vote and to have that vote counted is a fundamental constitutional right for all United States citizens. “Voting alone is not enough to keep democracy’s heart beating. Legitimately cast votes must then be counted.” *Democratic Executive Committee v. Lee*, 915 F.3d 1312, 1315 (11th Cir. 2019); *see also Common Cause Georgia v. Kemp*, 347 F. Supp. 3d 1270, 1292 (N.D. Ga. 2018) (“The right to vote includes the right of qualified voters within a state to cast their ballots and have them counted. State and local laws that unconstitutionally burden that right are impermissible.”).

4. Article II, Section 1, Paragraph II of the Georgia Constitution protects the right of Georgians to vote by providing that “[e]very person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law *shall be entitled to vote* at any election by the people.” Ga. Const. art. II, § 1, ¶ II (emphasis added). Indeed, the Georgia Supreme Court has recognized that “[t]he right to vote is fundamental, forming the

bedrock of our democracy.” *Favorito v. Handel*, 285 Ga. 795, 796 (2009) (quoting *Wexler v. Anderson*, 452 F.3d 1226, 1232 (11th Cir. 2006)).

5. Georgia law provides for a Board of Registration and Elections to operate in each county and to fulfill the duty of ensuring that elections are “honestly, efficiently, and uniformly conducted.” O.C.G.A. § 21-2-270. Relevant here, the Board of Registration and Elections must mail absentee ballots to voters whose absentee ballot applications it has accepted. O.C.G.A. § 21-2-381(b)(2)(A). And during the early voting period, the Board of Registration and Elections must mail absentee ballots “within 3 business days after receiving the absentee ballot applications.” GA Regs. 183-1-14-.11.

6. But the Cobb Board failed to timely send absentee ballots to all voters whose absentee ballot applications had been duly accepted. For the November 2022 general election, the Cobb Board failed to timely send absentee ballots, for instance, to over 1,000 voters whose absentee ballot applications had been marked as issued on October 13, 2022, and October 22, 2022. Voters risked being disenfranchised because of the Cobb Board’s error, and this Court intervened by issuing emergency relief mandating that Cobb County overnight-mail ballots to voters.

7. For the December 2022 runoff election, the Cobb Board—by its Election Director’s own admission—failed to timely send absentee ballots to more than 3,400 voters whose absentee ballots had been marked as issued on November 23, 2022. It is expected that ballots marked as issued on other dates were also not timely processed or mailed, given that Cobb County lags well behind its peer counties in terms of absentee ballots that have been returned by voters.

8. Defendant Eveler has acknowledged that Cobb County’s delays in sending absentee ballots ahead of the December runoff election make it “really rough” for voters to return those ballots on time. Now—as was the case in the general election—only this Court can provide the relief necessary to ensure the Cobb Board’s error does not result in mass disenfranchisement.

9. Given that Defendants’ conduct violates Plaintiffs’ constitutional right to vote, and given the imminence of the upcoming runoff election, the Court should require Defendants to: (1) extend the ballot receipt deadline in the upcoming runoff general election for all absentee ballots sent to voters in the proposed class and postmarked by December 6, 2022, 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.

10. Absent such relief, Plaintiff voters, and all those similarly situated, will be disenfranchised—an injury that money cannot compensate. The public interest will be served by ensuring voters have the opportunity to vote and have their votes counted.

JURISDICTION AND VENUE

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

12. Venue in this Court is proper under O.C.G.A. § 9-10-30 because at least one of the defendants against whom substantial relief is prayed resides in Cobb County.

PARTIES

A. Plaintiffs

13. Plaintiff Kayla Crowell is a 29-year-old resident of Cobb County who is currently in California for a temporary job.

14. Plaintiff Karen Scott is a 62-year-old resident of Cobb County who is currently in New York caring for her elderly mother.

15. Plaintiff Cobb County Democracy Center (“CCDC”) is an organization that educates Cobb County voters about issues related to casting their ballot. The organization’s central mission includes a commitment to democracy, free and fair elections, and ensuring that eligible Cobb County voters can exercise their fundamental right to vote. CCDC assists voters in checking their voter registration status, registering to vote, arranging free rides to the polls, Get Out the Vote efforts, and ensuring that voters have the correct forms of voter identification.

B. Defendants

16. Defendant Cobb County Board of Elections and Registration is the entity charged with overseeing the conduct of Cobb County elections and implementing election laws and regulations. This includes managing the process for absentee by mail voting. O.C.G.A. § 21-2-381.

17. Defendant Janine Eveler is the Director of the Cobb Board and is sued in her official capacity. Defendant Eveler is responsible for the day-to-day operations of running

elections in Cobb County, to the extent such power does not conflict with the power of Georgia’s Secretary of State.

18. Defendants Steven Bruning, Tori Silas, Jessica Brooks, Pat Gartland, and Jennifer Mosbacher are the Members of the Cobb Board and responsible for all decisions made by the Board via majority vote. These Defendants all reside in Cobb County and are sued in their official capacities.

FACTUAL ALLEGATIONS

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

20. In the 2022 runoff elections, over 228,000 voters statewide timely requested mailed absentee ballots, and over 90,000 of those, or over 38%, were returned by November 30, 2022. GEORGIA SECRETARY OF STATE, *Data Hub*, <https://sos.ga.gov/data-hub-december-6-2022-runoff> (last accessed Dec. 1, 2022) (absentee voting tab).

21. By contrast, in Cobb County specifically, approximately 24,000 voters timely requested absentee ballots in the 2022 runoff elections, with just over 3,600—approximately 15%—returned, as of November 30, 2022. *Id.*

22. Among the voters who requested an absentee ballot were Plaintiffs Crowell and Scott (“Individual Plaintiffs”) and Affiant David Medof.

23. Plaintiff Crowell requested an absentee ballot on November 14, 2022. Ex. A (Crowell Aff.) ¶ 5. Plaintiff Crowell’s request was recorded as received on November 18, 2022, on the “My Voter Page” website. *Id.* ¶ 8. On November 21, 2022, Plaintiff Crowell received a text message from Cobb County notifying her that the County had mailed her absentee ballot. *Id.* ¶ 7. Plaintiff Crowell’s My Voter Page shows that Cobb County issued her absentee ballot on

November 23, 2022. *Id.* ¶ 8. 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 ballot. *Id.* The County responded by email on November 30, 2022, and told Plaintiff Crowell to wait a few more days for its arrival, vote early in person, or vote on election day. *Id.* The County informed Plaintiff Crowell that the deadline for submitting another application for an absentee ballot had passed. *Id.* 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, who is temporarily residing in California, likely does not have sufficient time to return her absentee ballot to Cobb County before 7:00 p.m. on election day. *Id.* ¶ 15. Plaintiff Crowell is unable to travel to Cobb County in order to vote in person. *Id.* ¶ 13.

24. Plaintiff Scott requested her absentee ballot on November 21, 2022. Ex. B (Scott Aff.) ¶ 4. Her request was marked as recorded on the Secretary of State’s My Voter Page on November 22, 2022, and was listed as issued on November 23, 2022. *Id.* ¶ 6. She has not received her ballot as of December 1, 2022. *Id.* ¶ 7. No one from the Cobb County Board of Elections contacted Plaintiff Scott to inform her that her absentee ballot was impacted by any loss or failure to timely mail absentee ballots to voters. *Id.* ¶ 9. Plaintiff Scott, who is temporarily living in New York to care for her elderly mother, will be unable to vote in person and does not believe she will have enough time to mail back her ballot to Cobb County under the existing deadline. *Id.* ¶¶ 8, 10.

25. Affiant Medof requested his absentee ballot on November 16, 2022. Ex. D (Medof Aff.) ¶ 3. His My Voter Page showed that Cobb County issued his absentee ballot on November 22, 2022. *Id.* ¶ 4. He did not receive his absentee ballot until December 1, 2022, nine days after

Cobb County issued his ballot. *Id.* ¶ 6. The Cobb County Board of Elections did not contact Mr. Medof to inform him that his absentee ballot was impacted by a failure to timely mail approved absentee ballots in Cobb County. *Id.* ¶ 10.

26. On November 30, Defendant Janine Eveler acknowledged to the Marietta Daily Journal that Cobb County had delayed in sending out more than 3,400 absentee ballots. Chart Riggall, *Delay in Ballot Mailing Due to Thanksgiving Holiday, Elections Director Says*, MARIETTA DAILY JOURNAL (Nov. 30, 2022) (Ex. F). Defendant Eveler said that the compressed timeline for processing absentee ballots made it difficult for the county to issue ballots in a timely manner. *Id.* And she noted it would be “really rough” for voters to return them before the receipt deadline. *Id.*

27. Defendant Eveler confirmed that the delay has impacted at least those ballots marked as issued on November 23, 2022. *Id.*

28. Multiple state lawmakers and the county chairs of both political parties have also heard from voters that their absentee ballots never arrived. *Id.*

29. Although Defendant Eveler claims that Cobb County has sent out absentee ballots, evidence—from voters, legislators, and party officials alike—demonstrates that the county has not provided ballots in a timely manner.

30. Cobb County made unreliable statements about its processing of absentee ballots in the lead-up to the November 2022 elections. On November 3, 2022, Defendant Eveler dismissed complaints from voters about not receiving absentee ballots as “completely anecdotal.” Hunter Riggall, *Cobb elections chief quells concerns about mailed absentee ballots*, Marietta Daily Journal (Nov. 3, 2022), https://www.mdjonline.com/elections/cobb-elections-chief-quells-concerns-about-mailed-absentee-ballots/article_797984aa-5b93-11ed-a453-

c736ba27c890.html. But Eveler later revealed that over 1,000 ballots had never been mailed due to staff error. Riggall, *Delay in Ballot Mailing*, Ex. F.

31. Absent the relief sought here, many, if not all, of the Individual Plaintiffs will likely be able to participate in the 2022 general election because they have not received their absentee ballot as of December 1, 2022.

32. Plaintiff CCDC is an organization that 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. Ex. C (CCDC Aff.) ¶ 1.

33. On November 30, 2022, less than a week before election day, CCDC learned that the Cobb County Board of Elections—again—failed to mail absentee ballots in a timely manner to voters who had successfully applied for absentee ballots. *Id.* ¶ 3.

34. Based on this information, CCDC had to divert time and money to address this issue. *Id.* ¶ 4.

35. 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 general 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 27.14% 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.

36. 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.

CLASS ACTION ALLEGATIONS

37. Individual Plaintiffs seek class certification under O.C.G.A. § 9-11-23.

38. The proposed class is defined as eligible Cobb County voters who requested absentee ballots for the December 6, 2022, runoff election, who have not received those absentee ballots as of today, and whose vote has not yet been recorded as of this filing.

39. The proposed class satisfies the requirements of O.C.G.A. § 9-11-23(a). The proposed class is sufficiently numerous because it contains up to 17,952 Georgia voters, upon information and belief based on publicly available voter information. The allegations of the proposed class have common questions of law or fact. Individual Plaintiffs' claims are typical of the claims of the proposed class. They will fairly and adequately protect the interests of the proposed class.

40. The proposed class also satisfies the requirements of O.C.G.A. § 9-11-23(b)(1)-(3). The prosecution of separate actions by individual members of the proposed class would create a risk of inconsistent adjudications with respect to individual members of the proposed

class. County Defendants have acted or refused to act on grounds generally applicable to the class by not mailing absentee ballots to all Georgia voters who requested them in a timely manner, which justifies class-wide injunctive relief. There is also a predominance of legal or factual questions common to the members of the proposed class such that a class action is the superior mechanism for the fair and efficient adjudication of their claims.

CAUSES OF ACTION

Count I

*Declaratory and Injunctive Relief under O.C.G.A. § 9-4-1 et seq. for Violation of the
Fundamental Right to Vote under Article I, Section 1,
Paragraph II, and Article II, Section 1, of the Georgia Constitution*

41. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

42. The Georgia Declaratory Judgment Act, O.C.G.A. § 9-4-1 et seq., provides for relief by declaratory judgment to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights. O.C.G.A. § 9-4-2(a) provides: “In cases of actual controversy, the respective superior courts of this state . . . shall have the power, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party petitioning for such declaration.”

43. O.C.G.A. § 9-4-2(c) provides: “Relief by declaratory judgment shall be available, notwithstanding the fact that the complaining party has any other adequate legal or equitable remedy or remedies.”

44. O.C.G.A. § 9-4-3(a) further provides: “Further plenary relief, legal or equitable, including but not limited to . . . injunction [or] mandamus, . . . may be sought in a petition seeking

declaratory judgment.” Moreover, “[i]n all such cases, the court shall award to the petitioning party such relief as the pleadings and evidence may show him to be entitled.”

45. O.C.G.A. § 9-4-3(b) further provides: “The court, in order to . . . preserve equitable rights, may grant injunction and other interlocutory extraordinary relief.”

46. The Constitution of the State of Georgia protects the fundamental right to vote. Article II, Section 1, Paragraph II of the Georgia Constitution provides: “Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people.” GA. CONST. art. II, § 1, ¶ II.

47. Article I, Section 1, Paragraph II of the Georgia Constitution provides: “Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.” GA. CONST. art. I, § 1, ¶ II.

48. Individual Plaintiffs are eligible voters under Georgia law who timely requested an absentee ballot, and those requests were later listed as issued by the Cobb Board. Based on Defendants’ representations that those applications were processed and issued, and based on Defendants’ obligations under state law to mail absentee ballots to Individual Plaintiffs, Individual Plaintiffs reasonably relied on those representations and reasonably expected to timely receive their absentee ballots.

49. Individual Plaintiffs did not learn about Defendants’ delay until mere days before election day and the deadline to deliver absentee ballots.

50. Several Individual Plaintiffs are unable to vote in person, especially on such short notice.

51. Absent relief, many, if not all, Individual Plaintiffs—through no fault of their own—will be unable to vote in the December 2022 runoff elections. Thus, Defendants’ admitted delay in mailing absentee ballots—mere days away from election day—constitutes a severe burden on Plaintiffs’ fundamental right to vote.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs submit this prayer for relief and seek the following:

- A. That this Court issue a judgment declaring that Defendants have violated Article II, Section 1, Paragraph II and Article I, Section 1, Paragraph II of the Georgia State Constitution;
- B. That this Court enter an injunction requiring, effective immediately, 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 receipt deadline; their ability to postmark their absentee ballot by election day, December 6, 2022; and their ability to use the FWAB to cast their votes if they have not received an official absentee ballot by election day, December 6, 2022;
- E. That all costs of this action be taxed against Defendants; and

F. That the Court award any additional or alternative relief as may be deemed appropriate under the circumstances.

Dated: December 1, 2022

Respectfully submitted,

/s/ Rahul Garabadu

Rahul Garabadu (Ga. Bar No. 553777)
Caitlin May (Ga. Bar No. 602081)
Cory Isaacson (Ga. Bar No. 983797)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.
P.O. Box 570738
Atlanta, GA 30357
Tel: 770-303-8111
rgarabadu@acluga.org
cmay@acluga.org
cisaacson@acluga.org

Sophia Lin Lakin*
Jonathan Topaz*
Davin Rosborough*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212-519-7836
slakin@aclu.org
jtopaz@aclu.org
drosborough@aclu.org

Bradley E. Heard (Ga. Bar No. 342209)
Pichaya Poy Winichakul (Ga. Bar No.
246858)
Sabrina Khan*
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, Georgia 30030
(404) 521-6700
bradley.heard@splcenter.org
poy.winichakul@splcenter.org
sabrina.khan@splcenter.org

Neil S. Steiner*
DECHERT LLP
Three Bryant Park

1095 Avenue of The Americas
New York, NY 10036-6797
(212) 698-3500
neil.steiner@dechert.com

Angela Liu*
DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5800
angela.liu@dechert.com

Stefanie Tubbs*
Christopher J. Merken*
DECHERT LLP
Cira Centre 2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-4000
stefanie.tubbs@dechert.com
christopher.merken@dechert.com

**Pro hac vice applications forthcoming*

Attorneys for Plaintiffs

Exhibit A

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.

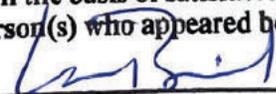


Kayla Marie Crowell

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 of Notary Public

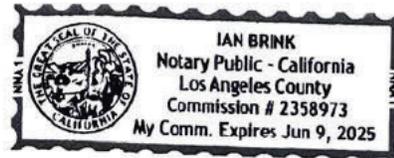


Exhibit B

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

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.

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

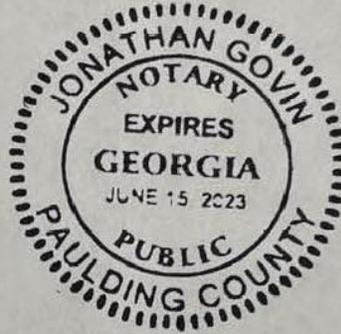


Exhibit D

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



Exhibit E

IN THE SUPERIOR COURT FOR THE COUNTY OF COBB

STATE OF GEORGIA

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

AMENDED CONSENT ORDER

This matter comes before the Court on Plaintiffs’ Complaint for Declaratory Judgment and Injunctive Relief, and Plaintiffs’ Motion for Temporary Restraining Order. A hearing was held by consent of the parties on November 7, 2022, and after considering the evidence presented at the hearing, and with the consent of the parties, a Consent Order was entered on November 7, 2022. The Parties have now requested that the Consent Order add language permitting any remaining unsent absentee ballots be delivered to Affected Voters by the deputy registrars, attorneys barred by the State of Georgia who are not law enforcement officers, or private courier services. Accordingly, the Court hereby enters the following order.

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:

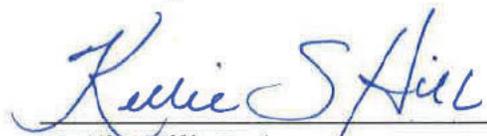
a. instructions for completing a FWAB and a link to access the FWAB form. These instructions should include notice that voters should disregard the field "Who are you? Pick one" on the FWAB;

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

Haynie Litchfield & White, P.C.
222 Washington Ave
Marietta, GA 30060
770-422-8900
dwhite@hlw-law.com
gel@hlw-law.com

/s/ Rahul Garabadu
Rahul Garabadu (Ga. Bar No. 553777)
Caitlin May (Ga. Bar No. 602081)
Cory Isaacson (Ga. Bar No. 983797)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
Tel: 770-303-8111
rgarabadu@acluga.org
cmay@acluga.org
cisaacson@acluga.org

Sophia Lin Lakin*
Jonathan Topaz*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212-519-7836
slakin@aclu.org
jtopaz@aclu.org

Bradley E. Heard (Ga. Bar No. 342209)
Pichaya Poy Winichakul (Ga. Bar No. 246858)
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, Georgia 30030
(404) 521-6700
bradley.heard@splcenter.org
poy.winichakul@splcenter.org

Neil S. Steiner*
DECHERT LLP
Three Bryant Park
1095 Avenue of The Americas
New York, NY 10036-6797
(212) 698-3500
neil.steiner@dechert.com

Angela Liu*
DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5800
angela.liu@dechert.com

Stefanie Tubbs*
Christopher Merken*
DECHERT LLP
Cira Centre 2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-4000
stefanie.tubbs@dechert.com
christopher.merken@dechert.com

**Pro hac vice applications forthcoming*

Attorneys for Plaintiffs

Exhibit F

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.