



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

: [OBJ]

No: 22107734

v.

:

:

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

:

:

Defendants.

:

:

INTERLOCUTORY INJUNCTION

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

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

cast their ballots in person on election day.

A. Factual Findings

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

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

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

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

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

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

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

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

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

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

B. Legal Positions of the Parties

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

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

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

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

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

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

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

So ORDERED this 2nd day of December, 2022.



Kellie Hill, Judge
Superior Court of Cobb County

Order prepared and presented by:

/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

Consented to by:

HAYNIE, LITCHFIELD & WHITE, PC

/s/ Daniel W. White

DANIEL W. WHITE

Georgia Bar No. 153033

Attorneys for Cobb County Defendants

222 Washington Avenue

Marietta, GA 30060
(770) 422-8900
dwhite@hlw-law.com