

In the
Supreme Court of Georgia

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Applicants,

v.

NAOMI AYOTA, *et al.*,

Appellees.

On Appeal from the Superior Court of Cobb County
Civil Action File No. 24GC08111

**APPELLEES' OPPOSITION TO THE
EMERGENCY MOTION FOR SUPERSEDEAS**

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RESPONSE TO EMERGENCY MOTION FOR SUPERSEDEAS AND BRIEF IN OPPOSITION

Naomi Ayota, Harrison Simmel, and Gabriel Dickson (“Appellees”) respectfully submit this response and brief in opposition to Intervenor-Defendants the Republican National Committee and Georgia Republican Party Inc.’s (“Applicants”) Emergency Motion for Supersedeas (“Application”) to stay the interlocutory injunction entered by the Superior Court (the “Injunction”) pending disposition of this appeal.

JURISDICTIONAL STATEMENT

Applicants failed to provide a basis for this Court to exercise jurisdiction over their emergency appeal. They cite O.C.G.A. § 5-6-34(a)(1), but Applicants are not appealing a “final judgment[].” *Cf.* Emergency Motion for Supersedeas (“Mot.”) at 2. Although Applicants could have attempted to invoke this Court’s jurisdiction under Ga. Const. art. VI, § 6, ¶ II(1), this Court still lacks jurisdiction because, as discussed *infra*, Section I, Applicants lack standing to appeal.

STATEMENT OF FACTS

On the afternoon of October 31, 2024—just five days before the November 5 General Election—Defendants announced that they had made a mistake: they had failed to timely mail absentee ballots to more than 3,000 lawfully registered Cobb County voters who had timely requested them

(“Affected Voters”). Defendants acknowledged that these voters had done everything right under Georgia law yet stood to be disenfranchised because Defendants did something wrong. After realizing the failure, Defendants took steps to get the Affected Voters their ballots as soon as possible, but the response did not ensure that the Affected Voters would be able to receive and return their ballots in time for them to be counted. Faced with this reality, all but one of the Defendants joined with Appellees to propose appropriate relief to the Superior Court.

The Superior Court entered the requested relief in the Injunction, which requires Defendants to send ballots to all Affected Voters by expedited mail with expedited return service, and to segregate and tabulate absentee ballots from the Affected Voters that are postmarked by 7:00 P.M. on Election Day and arrive by 5:00 P.M. on November 8, the same deadline for Uniformed Citizens and Overseas Voters Act (“UOCAVA”) ballots to be received and for absentee and provisional ballots to be cured under Georgia law.

Applicants’ Statement of Facts may give this Court the misimpression that the Superior Court ordered Defendants to count *any* absentee ballot that arrives by November 8, regardless of when it was mailed—but that is not the case. Under the Injunction, ballots returned by the Affected Voters must be postmarked by 7:00 P.M. on Tuesday, November 5, to be counted.

LEGAL STANDARD

This Court “must weigh all of the pertinent equities, including the likelihood that the appellant will prevail on the merits of his appeal, the extent to which the applicant will suffer irreparable harm in the absence of a stay or injunction, the extent to which a stay or injunction would harm the other parties with an interest in the proceedings, and the public interest.” *Green Bull Ga. Partners, LLC v. Reg.*, 301 Ga. 472, 473 (2017).

ARGUMENT

This Court should deny the Application for a stay pending appeal because none of the factors weighed by the Court favors Applicants. Applicants seemingly misunderstand the constitutional rights at issue and fail to grapple with the undisputed facts of this case. Appellees have already been severely prejudiced by Defendants’ failure to timely deliver their ballots, and the Superior Court’s order provides modest but meaningful relief. The court rightly held that failing to extend the receipt window for timely postmarked absentee ballots from Affected Voters would likely violate their fundamental right to vote and right to equal protection secured by the Georgia Constitution.

The other factors—irreparable harm to the Applicant, potential harm to others, and the public interest—also weigh strongly in favor of maintaining the Injunction. Applicants have failed to identify any harm to

themselves absent a stay. They simply assert that the relief hurts them without even attempting to explain how. As for Defendants, who are Cobb County elections officials, all but one jointly proposed the relief in the Injunction, so there is no basis for this Court to conclude that the county will be harmed by it. Nor will the public be harmed in any way—to the contrary, ensuring that voters who properly followed all relevant rules are allowed to cast a ballot that counts benefits the public. It is undisputed that the Injunction applies only to eligible Cobb County voters who complied with the law but stand to be disenfranchised anyway. The Injunction does not change who is eligible to vote in Cobb County, who is eligible to vote by absentee ballot, or when they must complete their ballots. All that it does is allow a three-day extension of when the Affected Voters' ballots must be received in response to Defendants' late transmission of absentee ballots to those voters. Finally, the Injunction requires Defendants to segregate any timely postmarked ballots from Affected Voters that arrive after 7:00 P.M. on Election Day, ensuring all ballots tabulated in the extended receipt period are identifiable. In short: Applicants cannot demonstrate that they or the public will suffer irreparable harm if this appeal is permitted to proceed to the merits.

Mere days ago, Applicant Republican National Committee asked a Pennsylvania court for a similar emergency order extending the statutory

deadline for voters to request absentee ballots because county workers had effectively prevented some voters from being able to obtain them by the deadline. There, the RNC argued that a “preliminary injunction” was “necessary to protect the rights of qualified [voters] who, through no fault of their own,” were deprived of their statutory right to vote by absentee ballot. *See* Emergency Petition for a Special and Preliminary Injunction at 4, *Donald J. Trump for President 2024 Inc. v. Bucks Cnty. Bd. of Election*, Case No. 2024-06880 (Pa. Ct. Common Pleas Oct. 30, 2024) (attached hereto as Exhibit 1) [hereinafter “RNC Bucks County Petition”]. Notably, that injunction was broader than the one at issue here, reaching *everyone* in Bucks County who may have needed extra time to get their ballot—even those who had not been directly injured by the county. Now, in this Court, Applicants have turned on their heels to oppose relief for a narrow class of eligible and approved absentee voters who have been directly injured and gravely prejudiced by their county elections officials’ failure to provide their ballots within the statutorily required timeline.

Because Applicants can neither articulate a legally protected interest in preventing these voters from voting nor identify any irreparable harm they face, this Court should deny their request for a stay.

I. Applicants Will Not Be Irreparably Harmed Absent a Stay.

Applicants have failed to demonstrate that they are likely to suffer *any* harm, let alone irreparable harm, because of the Injunction. *See Green Bull*, 301 Ga. at 473 (test is whether “the applicant will suffer irreparable harm in the absence of a stay”). Applicants do not even attempt to identify any harm to themselves absent a stay. They offer only a single, conclusory sentence for this Court’s consideration of their emergency request: “The Superior Court’s order is certain to injure the Republican candidates whom Appellants represent.” Mot. at 7. But Applicants cannot simply assert that harm is “certain.” They offer no analysis, argument, or citation to record evidence or even extra-record information that might support their conclusion of certain harm. Their failure to offer any explanation for how they are harmed by the Injunction is sufficient to deny the stay. *Cf. Stewart v. Johnson*, 358 Ga. App. 813, 817 (2021) (interlocutory injunction properly denied where, *inter alia*, applicants “offer[ed] no explanation” of how they would “suffer irreparable harm”).

Applicants’ failure to allege and substantiate any theory of direct harm casts doubt on their ability to obtain relief from this Court at all. *See, e.g., Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019) (“As the Court has repeatedly recognized, to appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing.”);

Morgan v. Miller, 191 Ga. App. 803, 803 (1989) (party lacked standing to appeal from a declaratory judgment that did not affect the party’s liability because it was not “aggrieved” by the judgment).

Applicants have not articulated any reason why the Injunction harms them. They gesture at a competitive interest in preventing this class of voters from having their ballots accepted if postmarked by Election Day and received by November 8, but they have not actually explained, let alone substantiated, how the Injunction harms them in particular or why such harm might be legally cognizable.

II. Appellees Will Be Irreparably Harmed if the Court Stays the Injunction.

Unlike Applicants, who have not demonstrated that they will suffer any harm absent a stay, Appellees will be severely and irreparably harmed if the Superior Court’s interlocutory injunction is stayed. *See Green Bull*, 301 Ga. at 473 (courts must consider “the extent to which a stay or injunction would harm the other parties with an interest in the proceedings”).

Appellees and the other Affected Voters face a substantial threat of irreparable harm without the Injunction because they will likely be disenfranchised without that relief. Harm is irreparable where monetary damages cannot adequately compensate the injured party. *See State v. Fed. Def. Program, Inc.*, 315 Ga. 319, 348 (2022). It is evident that no amount of

damages can redress the loss of the right to vote. Furthermore, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). “The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm.” *People First of Ala. v. Sec’y of State for Ala.*, 815 F. App’x 505, 515–16 (11th Cir. 2020) (Rosenbaum, J., and Pryor, J., concurring in denial of a stay) (quoting *Jones v. Governor of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020)); *see also Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (district court properly entered preliminary injunction where “over 18,000 Kansans stood to lose the right to vote in the coming general elections—elections that are less than one month away”); *Vote Forward v. DeJoy*, 490 F. Supp. 3d 110, 129 (D.D.C. 2020) (“The Court finds that the individual Plaintiffs have sufficiently shown they will likely suffer irreparable harm absent a preliminary injunction. As described above, Plaintiffs have provided ample evidence showing that, due to delays in the delivery of mail, there is a substantial risk that Plaintiffs will suffer an undue burden on their constitutional right to vote.”); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1340 (N.D. Ga. 2018) (granting preliminary injunction against Georgia law that burdened absentee voters, reasoning that “Plaintiffs have established irreparable injury as a violation of the right to vote cannot be undone through monetary relief and, once the election results are tallied, the

rejected electors will have been disenfranchised without a future opportunity to cast their votes”), *stay denied, Georgia Muslim Voter Project v. Kemp*, No. 18-14502-GG, 2018 WL 7822108, at *1 (11th Cir. Nov. 2, 2018); *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (granting preliminary injunction against enforcement of restriction on mailing voter registration applications because “plaintiffs will suffer irreparable harm if an injunction is not issued, first because the denial of a right of this magnitude under circumstances like these almost always inflicts irreparable harm, and second because when a plaintiff loses an opportunity to register a voter, the opportunity is gone forever”).

Applicants themselves recognized that deprivation of the right to vote constitutes irreparable harm when they represented to the court in Bucks County that an injunction extending the deadline to obtain an absentee ballot was necessary to “prevent immediate and irreparable harm to plaintiffs and to prevent widespread disenfranchisement.” RNC Bucks County Petition at 7. So too, here. A stay will irreparably harm Appellees because Defendants’ unlawful conduct has made it very difficult and, in many cases, likely impossible for Appellees and other Affected Voters to have their absentee ballots received by the County by Tuesday, November 5 (Election Day), at 7 P.M. Had Defendants timely mailed all absentee ballots, Affected Voters would have had sufficient time between the mailing date and Election Day.

Because of the County’s unlawful delays, though, absent the Injunction, these voters have, at most, four days from the County’s mailing date to receive, complete, return, and guarantee the arrival of their ballots by the existing Election Day receipt deadline. To the extent this turnaround is theoretically possible, it leaves zero room for error or delay in mail delivery during an extraordinarily busy time for the Postal Service (“USPS”).¹

In fact, there is already indication of continued delays. Even though Defendants represented that they would dispatch all outstanding mail ballots to out-of-state voters by November 1 via express mail, Ms. Ayota’s ballot is not scheduled to arrive until November 4. *See* Affidavit of Pichaya Poy Winichakul ¶ 2 (attached hereto as Exhibit 2). Should Ms. Ayota receive her ballot on November 4, vote her ballot, and mail it back immediately, it is unlikely that her ballot would arrive to Defendants by 7 P.M. the next day. Unfortunately, the same is true of other voters on the list of Affected Voters provided by Defendants. *See, e.g.,* Affidavit of Mary Grace Bingham (attached hereto as Exhibit 3); Affidavit of Andrew Wylie Bingham (attached hereto as Exhibit 4). What’s more, as of November 2, Defendants were still in the process of mailing out absentee ballots to Affected Voters, including voters

¹ Georgia election officials continue to report ballot-delivery delays, with postmarked ballots taking longer to arrive than the three- to five-business day standard for First Class delivery. *See* Stanley Dunlap, *Georgia leaders worry mail delays could cause many absentee ballots to arrive too late to count*, WABE (Sept. 16, 2024), <https://www.wabe.org/georgia-leaders-worry-mail-delays-could-cause-many-absentee-ballots-to-arrive-too-late-to-count/>.

who are out of state. Winichakul Aff. ¶ 4 (reflecting supplemental list of voters from November 2, 2024).

Applicants completely ignore the record evidence that the Affected Voters are relying on the availability of their absentee ballots in order to vote in the General Election. The affected out-of-state voters include people like Ms. Ayota, who is attending college out of state and does not have the means to return home to vote in-person. Compl. Ex. B ¶ 5. For people out of state, voting by absentee is their only way to cast a ballot, and their ability to do so will be significantly threatened or erased if the Injunction is stayed. The affected in-state voters include people like Mr. Dickson, who is legally blind and relies on an absentee ballot as a more accessible method of voting. Compl. Ex. D ¶ 8. Other in-state voters may be elderly, or lack access to reliable transportation, or have to work on Election Day. All of the 3,200 Affected Voters requested an absentee ballot for a reason, and the threat of irreparable harm is real and imminent for Appellees and all Affected Voters.

III. Applicants Are Unlikely to Succeed on the Merits of Their Appeal.

This Court should also leave the Superior Court's Injunction in place pending appeal because Applicants are unlikely to succeed on the merits of their appeal. It is undisputed that Defendants failed to timely mail absentee ballots to Appellees and more than 3,200 other eligible Cobb County voters

identified by the Defendants. The Superior Court was right to recognize that applying the ordinary absentee ballot return deadline against those voters under these circumstances would deprive them of their right to vote and to equal protection as secured by the Georgia Constitution. Additionally, lower courts have “broad discretion” to grant interlocutory injunctive relief. *SRB Inv. Servs., LLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011). This Court “will not reverse the trial court’s decision to grant or deny an interlocutory injunction ‘unless the trial court made an error of law that contributed to the decision, there was no evidence on an element essential to relief, or the court manifestly abused its discretion.’” *Id.*

A. Defendants Admittedly Violated Georgia Law.

The statutory violation is plain and undisputed. Plaintiffs and all other Affected Voters were entitled to request an absentee mail ballot up to 11 days before Tuesday’s election, or by October 25. *See* O.C.G.A. § 21-2-381(a)(1)(A). During the advance voting period, which began on October 19, Defendants were obligated to (“shall”) mail these voters their absentee ballots “within three days after receiving a timely application[.]” O.C.G.A. § 21-2-384(a)(2). That means any ballots requested by the deadline of Friday, October 25, had

to be mailed out to voters by Monday, October 28. *See* O.C.G.A. § 21-2-14 (computing time under the election code).²

It is undisputed that Defendants failed to do so. Appellee Naomi Ayota, for example, timely requested her ballot on October 21, and Defendants were required to mail it by October 24. Appellee Grant Simmel requested his ballot on the deadline of October 25, and Defendants were required to mail his ballot by October 28. And Appellee Gabriel Dickson timely requested his ballot on Wednesday, October 23, and Defendants were required to mail it by Monday, October 28, because the third day of the mailing period fell on a weekend. *See* O.C.G.A. § 21-2-14. Appellees' voter files stated that their ballots were "issued" on October 29 or 30—which would have been a statutory violation even if accurate—but those issue dates were *not* accurate.

Defendants have admitted that these ballots were not mailed until at least November 1—eight days late in the case of Ms. Ayota and four days late in the case of Mr. Simmel and Mr. Dickson. (And, in fact, Mr. Simmel's was postmarked even later, on November 2. *Winichakul Aff.* ¶ 3.) Plaintiffs and more than 3,200 other Affected Voters were therefore deprived of the

² Defendants have taken the erroneous position that the deadline to mail these ballots was Wednesday, October 30, ignoring the rules for computing time under the election code. *See* O.C.G.A. § 21-2-14. Because of this position, Defendants proposed that the remedy apply only to voters who timely requested their ballots by October 25 but were not mailed their ballots as of October 30. Appellees agreed to that definition, which is underinclusive, in order to ensure relief for the voters most likely to be impacted.

protections of O.C.G.A. § 21-2-384(a)(2) and are prejudiced in their ability to have their ballots received by the County by 7:00 P.M. on Election Day.

B. Failure to Count Affected Voters' Ballots if Received by November 8 Would Deprive Them of Their Constitutional Rights.

Allowing Defendants to violate the law without affording any responsive remedy to Appellees would violate their fundamental right to vote and to equal protection of the laws under the Georgia Constitution. The Superior Court's ruling protecting Appellees' constitutional rights was correct, and it is likely to be upheld on appeal.

i. Applicants misunderstand and fail to refute Appellees' undue burden claim.

Applicants misunderstand how Defendants placed an undue burden on the Affected Voters' fundamental right to vote, and their Application attacks strawman arguments that Plaintiffs never made. Plaintiffs have not argued that Georgians have a constitutional right to vote absentee, and they have not challenged the statutory deadlines to request and return absentee ballots in the ordinary course. *Cf.* Mot. at 5. Rather, the law is clear that once the right to vote absentee has been granted, Defendants cannot unreasonably take that right away, such that voters are then effectively prevented from exercising their fundamental right to vote at all. *See, e.g., Frederick v. Lawson*, 481 F. Supp. 3d 774, 798 (S.D. Ind. 2020) (holding that rejecting

defective absentee ballots without notice placed undue burden on right to vote); *cf. Martin*, 341 F. Supp. 3d at 1338 (“Courts around the country have recognized that ‘[w]hile it is true that absentee voting is a privilege and a convenience to voters, this does not grant the state the latitude to deprive citizens of due process with respect to the exercise of this privilege.’”) (quoting *Raetzel v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990)).

Plaintiffs and all Affected Voters reasonably relied on state law providing that if they requested an absentee ballot by the statutory deadline, the county would mail it by the statutory deadline, and they would be able to return it by the receipt deadline. They complied with the law and expected the law to work as designed. But Defendants did not comply with the law, and that violation makes it very difficult or impossible for the Affected Voters to have their ballots received by Election Day. Applicants point to no state interest that could justify application of the ordinary ballot arrival window to these voters under these circumstances, and Defendants identified none. Applicants are unlikely to succeed on their appeal of Plaintiffs’ claim under Ga. Const. art. II, § 1, ¶ II. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1322 (11th Cir. 2019) (denying stay of injunction, holding Florida’s interest in “smooth administration” did “not warrant the complained-of burden on voters because Defendants have not demonstrated that permitting

voters who were belatedly notified of signature mismatch to cure their ballots would inordinately disrupt the smooth facilitation of the election”).

ii. Applicants ignore and fail to refute the equal protection claim.

Applicants also completely ignore Appellees’ equal protection claim. The Georgia Constitution provides that “[n]o person shall be denied the equal protection of the laws.” Ga. Const. art. I, § 1, ¶ II. It is axiomatic that once a state grants the right to vote in a particular way, it cannot arbitrarily deprive one class of voters of that right. *See, e.g., Democratic Exec. Comm. of Fla.*, 915 F.3d at 1320 (signature-matching scheme for absentee ballots created disparate treatment of Florida voters and likely violated equal protection clause of federal Constitution); *Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1403 (N.D. Ga. 2019) (unreliable voting machines created disparate treatment of Georgia voters and likely violated equal protection clause of federal Constitution); *see also Luft v. Evers*, 963 F.3d 665, 677 (7th Cir. 2020) (“The problem here is that students are treated differently from other potential voters, and the state has left that difference unjustified.”).

The Superior Court was correct to conclude that Appellees and the Affected Voters are likely to succeed on the merits of their claim that Defendants arbitrarily deprived them of their right to vote compared with similarly situated Georgia voters who also timely requested absentee ballots, simply because the Affected Voters live in Cobb County. *Cf. Obama for Am. v.*

Husted, 697 F.3d 423, 430 (6th Cir. 2012) (state could not apply different early-voting rules to similarly situated voters); *Mullins v. Cole*, 218 F. Supp. 3d 488, 494, 492 (S.D.W. Va. 2016) (enjoining burdensome voter registration procedure that applied only in one county because “[t]he constitution prohibits people from being classified in such a way that it unnecessarily abridges the right to vote”).³

IV. Leaving the Injunction in Place Serves the Public Interest.

The public interest weighs strongly in favor of keeping the Injunction in place pending appeal. *See, e.g., Democratic Exec. Comm. of Fla.*, 915 F.3d at 1327 (“A stay would disenfranchise many eligible electors whose ballots were rejected [through no fault of their own]. And public knowledge that legitimate votes were not counted due to no fault of the voters . . . would be harmful to the public’s perception of the election’s legitimacy.”). And it is axiomatic that “the public interest is served when constitutional rights are protected.” *Id.*; *see also Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012) (“The public interest . . . favors permitting as many qualified voters to vote as possible.”).

³ As noted *infra*, Section IV, Applicants wrongly suggest that it was actually the Superior Court’s order that created the equal protection problem, not the Defendants’ failure to timely provide the Affected Voters with their ballots. But the Affected Voters are not similarly situated to Georgia voters who were mailed their absentee ballots by the statutory deadline. The Affected Voters have been prejudiced as a class, and the remedy ordered by the Superior Court restores them to more equal footing with Georgia voters who likewise requested their ballots on time but received the benefits of O.C.G.A. § 21-2-384(a)(2).

Applicants do not even endeavor to specify any specific harms that the public might suffer absent a stay. They intone that it is in the public interest to never deviate from state law, Mot. at 8, but ignore the fact that Defendants admitted they *violated* state law and that failing to alleviate the resulting prejudice to the Affected Voters would violate the State Constitution.

Notably, Applicants have previously argued that it serves the public interest to modify state statutory deadlines when they believe it serves their partisan interests. *See, e.g.*, RNC Bucks County Petition at 7-8; *see also* Sarah Blaskey & Samuel Oakford, *Would-be mail-in voters in key Pennsylvania county can go in person, judge says*, WASH. POST (Nov. 2, 2024), *available at* <https://www.washingtonpost.com/elections/2024/11/02/erie-pennsylvania-mail-voting/> (attached hereto as Exhibit 5) (after failure to timely send mail ballots, both political parties, including Applicants, negotiated court-ordered relief to extend hours for voters to cancel their outstanding mail-in ballot request, be issued a new mail-in ballot immediately, and cast mail-in ballot).⁴

Applicants suggest that the Superior Court's order somehow privileges the Affected Voters and prejudices other voters. Mot. at 7. Far from it. The court's order simply places the discrete group of voters that was directly injured by the Defendants' error on more equal footing with similarly

⁴ *See* Order of the Court, *Penn. Democratic Party v. Erie Cnty. Bd. of Elections*, No. 12666-2024 (Pa. Ct. Common Pleas Nov. 1, 2024) (attached hereto as Exhibit 6).

situated Georgia voters who also submitted their ballot requests on time—which is precisely what the equal protection clause of the Georgia Constitution requires. *See supra* Section III.B.ii.

The Injunction provides limited relief that gives the Affected Voters a chance to have their ballots counted, where otherwise they would be deprived of the rights ensured to other Georgia voters through no fault of their own. The Injunction doesn't alter who is eligible to vote in Cobb County, or who is eligible to vote by absentee ballot, or allow for late requests of such ballots. And critically, the Injunction does not change the deadline for anyone to cast their ballot—which remains by the close of polls on Election Day, November 5. Rather, the Injunction just expedites mail ballot delivery and extends the arrival window for timely cast ballots (*i.e.*, those postmarked by Election Day) to attempt to make up at least *some* of the days these voters lost because of Defendants' error.

Applicants try to sneak in an argument predicated on *Purcell v. Gonzalez*, 549 U.S. 1 (2006), without directly invoking that federal doctrine, Mot. at 9-10, arguing that proximity to the approaching election counsels in favor of a stay. This argument is baseless for at least two reasons. First, *Purcell* has no place here, and the Court should reject the invitation to inject a purely federal doctrine into this case. Second, proximity to the election

cannot be a bar to relief in this case, as Appellees (and everyone else) only learned of the County’s error less than a week before Election Day.

On the first point: *Purcell* is a federal-law equitable doctrine, grounded in federalism and specific to federal courts, which may limit the power of those courts to grant certain relief that would be disruptive to state law in the period close to an election. The doctrine guards against “*federal* intrusion into state lawmaking processes.” *Democratic Nat’l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 28 (2020) (emphasis added). It doesn’t apply to state courts: “Different bodies of law and different precedents govern” federal and state judicial “intervention[s]” in the state administration of elections. *Id.*

For this reason, state high courts have held that *Purcell* “doesn’t limit state judicial authority where . . . a state court must intervene to remedy violations of the State Constitution.” *Harkenrider v. Hochul*, 197 N.E.3d 437, 454 n.16 (N.Y. 2022); *see also Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 15 (Iowa 2020) (Appel, J., specially concurring). Indeed, state appellate courts, including this one, have entered important judgments on questions of state election law that concern Tuesday’s election in recent weeks. *See Republican Nat’l Comm. v. Eternal Vigilance Action, Inc.*, Case No. S25M0259 (Ga. Oct. 22, 2024) (denying application for supersedeas and expedited appeal of state court order enjoining enforcement of state election rules over applicants’ *Purcell* argument); *Genser v. Burton Cnty. Bd. of*

Elections, Case No. J-82A-2024 (Pa. Oct. 23, 2024) (affirming judgment construing state law to allow voters to cast provisional ballots if their mail ballots were rejected).

On the second point: To conclude that proximity to an election would bar relief in this case would be an invitation for voters' rights to be consistently violated without repercussion, provided that an election is close at hand. This would be a preposterous state of the law.

V. The Injunction Is Not Overbroad.

Applicants ask this Court to allow for relief only for the three named Plaintiffs and not the additional approximately 3,200 voters with the same legal injury whom Defendants identified for the Parties. Mot. at 2. This Court should reject Applicants' attempt to limit relief only to the three voters who happened to get in touch with lawyers at an opportune time.

C. The Superior Court Acted Well Within Its Equitable Discretion to Tailor the Remedy.

"[A] trial court has broad discretion to fashion an equitable remedy based upon the exigencies of the case, and an appellate court sustains the trial court's action where such discretion has not been abused." *Tafel v. Lion Antique Cars & Investments*, 297 Ga. 334, 339 (4) (2015) (citation and punctuation omitted). A short extension, tied to an existing statutory deadline, for receipt of timely cast absentee ballots for a limited and clear list

of voters is far from an abuse of discretion. The Superior Court granted relief to the defined group of “Affected Voters” “who requested their absentee ballot by the statutory deadline to request an absentee ballot, October 25, 2024, but were not sent their ballot by Wednesday, October 30, 2024.” Order at 2, 8. This equitable remedy is reasoned, limited, necessary to protect a fundamental right, and well within the jurisdiction of a superior court. The remedy is within the bounds of the law, requiring all ballots to be postmarked by the time polls close and only allowing for receipt on the same timeline that Georgia statute already provides for the receipt of UOCAVA ballots and for cure of provisional ballots. The Injunction does not in any way alter the deadlines for the tabulation or reporting of election results.

Applicants argue that because some Affected Voters are not out of state or may not need to overcome disabilities in order to vote in person, the relief should not go beyond the three named Plaintiffs. In making this argument, they do not address the fact that at least some of the Affected Voters are in the same or similar position to the named Plaintiffs. *See, e.g.*, Ex. 3 (M. Bingham Aff.); Ex. 4 (A. Bingham Aff.). And perhaps more critically, they ignore that *all* the Affected Voters suffered the same legal harm: Through no fault of their own, they were not sent their ballots on time. Applicants offer no reasonable alternative subgroup of Affected Voters who deserve the relief provided by the Injunction over others. And they cannot, because we do not

know which voters are disabled, lack access to transportation, have a job that prevents them from voting in person on Election Day, or otherwise, and knowing the individual situations of the thousands of Affected Voters is irrelevant when it is known that each and every one of them had their rights violated. Providing a failsafe as a result of their ballots arriving late due to Defendants' error is the only logical solution. And it is a solution that Cobb County has provided to voters in the past when it failed to timely mail out absentee ballots, with no adverse consequences for election workers or other voters. *See Cook v. Cobb Cnty. Bd. of Elections & Registration*, No. 22107734 (Super. Ct. Cobb Cnty. 2022).

Overly broad relief is that which shows a “lack of connection between the claims pled and . . . relief requested.” *Benning v. Comm’r, Ga. Dep’t of Corrections*, 71 F.4th 1324, 1340 (11th Cir. 2023). That is plainly not the case here, where the relief requested connects directly to the Defendants’ failure to meet the requirements of Georgia law. The purpose of preventing overly broad relief is to prevent relief which is unreasonable or greater than necessary to redress the complaint. *See, e.g., Gwinnett Cnty. v. McManus*, 294 Ga. 702, 704 (2014). Here, the relief is drawn narrowly to remedy the harm to a discrete set of voters identified *by the Defendants* who had their right to vote placed at risk by an admitted error on the part of Defendants. There is

no risk of relief being applied any more broadly than to those whose ballots were delayed through no fault of their own.

D. Classwide Relief Was Appropriate.

For the reasons above, the Superior Court did not need to make any findings with respect to class certification in order to grant the Injunction because it had equitable authority to fashion a remedy for the harm. Regardless, classwide relief would not have been error. While “the better practice” may be to “address each factor and to set out separate findings of fact and conclusions of law,” that is not required in every case. *See Roland v. Ford Motor Co., Inc.*, 288 Ga. App. 625, 628 (Ga. Ct. App. 2007). In this case, a cursory walk through the class requirements within an emergency order is especially unnecessary because the class was clearly and narrowly defined by *Defendants*.⁵

Applicants misapprehend the purpose of a class. All Affected Voters validly applied for an absentee ballot and were not sent that ballot within the time required by Georgia law. Their ability to overcome the wrong committed against them need not be the same. Although some may have been able to

⁵ As noted *supra*, n.2, O.C.G.A. § 21-2-384(a)(2) required Defendants send out absentee ballots “within three days after receiving a timely application for an absentee ballot,” which means all ballots should have been mailed by October 28. However, Appellees agreed to limit the relief to a class of Affected Voters who requested their ballots by the deadline but whose ballots were not mailed out as of October 30. This means that there may be additional voters who suffered a statutory violation earlier in time. In this way, the class is already more limited than would be warranted under Georgia law.

vote in person or have made plans to do so, their status remains the same. In another context, a car dealership who sells 3,000 faulty cars may have a class certified against them, even though some of the buyers may have access to another car or better insurance and the injury may not actually prevent them from driving. The legal injury and, therefore, the appropriate remedy is the same. Because of Defendants' failures, the Affected Voters face a very difficult or impossible timeline for getting their ballots back to the County by 7 P.M. on Election Day. If some of the Affected Voters are able to vote in person or have their absentee ballot received by the County by the normal deadline, their ballots will be counted in the ordinary course. If they are unable to do so because of the delay caused by Defendants, the Injunction affords them an opportunity to have their vote counted. Any Affected Voter who ends up needing the extra three days for their ballot to be received still must send their ballot on its way for receipt by the same time as every other Georgia voter must cast their ballot.

As the case cited by Applicants against the class notes, “[w]hen faced with resolving the question of whether class certification is appropriate, a trial court enjoys broad discretion.” *Vest Monroe, LLC v. Doe*, 319 Ga. 649, 649 (Sup. Ct. Ga. 2024). Those decisions are not to be disturbed unless “clearly erroneous.” *Liberty Lending Services v. Canada*, 293 Ga. App. 731,

735-36 (Ga. Ct. App. 2008). The list of “Affected Voters” meets the requirements for class certification under O.C.G.A. § 9-11-23. Compl. at 7-8.

CONCLUSION

Because all of the relevant factors counsel against the issuance of a stay pending appeal, this Court should deny Applicants’ motion.

RULE 20 CERTIFICATION

This submission does not exceed the word-count limit imposed by Rule 20.

Respectfully submitted this 4th day of November, 2024,

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Exhibit 1

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY,
PENNSYLVANIA

orig. up

DONALD J. TRUMP FOR PRESIDENT CIVIL DIVISION
2024 INC., ET AL.,

Plaintiffs,

No. 2024-06880



Case #: 2024-06880-0003 13787818
Main (Public)
Code: 303 Judge:39
Rcpt: Z2855895 10/30/2024 11:55:07 AM

v.

BUCKS COUNTY BOARD OF
ELECTION, ET AL.,

Defendants.

RULE TO SHOW CAUSE

AND NOW, this _____ day of _____, 2024, upon consideration of the foregoing **Emergency** Petition for a Special and Permanent Injunction, it is hereby **ORDERED** that defendants show cause before this Court on the ____ day of 2024, at _____ in Courtroom _____, or as soon thereafter as counsel can be heard why a Special and Preliminary Injunction providing the relief sought in the accompanying Petition should not be entered; and

IT IS FURTHER ORDERED that respondents/defendants and anyone acting on their behalf are enjoined and precluded from refusing, prohibiting, or denying any registered and qualified elector from requesting, receiving, voting, and submitting a mailed-in or absentee ballot until further order of the Court.

BY THE COURT:

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY,
PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT CIVIL DIVISION
2024 INC., ET AL.,

Plaintiffs,

No. 2024-06880

v.

BUCKS COUNTY BOARD OF
ELECTION, ET. AL.,

Defendants.

ORDER FOR SPECIAL AND PRELIMINARY INJUNCTION

AND NOW, this _____ day of _____ 2024, upon consideration of the
Petition for an Emergency Special and Preliminary Injunction of Plaintiffs, Verified
Complaint, and Supporting Memorandum of Law and after a hearing held on
_____, the Court it is hereby **ORDERED AND DECREED** as follows:

- a) Defendants actions in turning away voters who sought to apply for a
mail-in ballot and receive one in person before the deadline of 5:00 p.m.
on October 29, 2024 violated the Pennsylvania Election Code,
- b) Defendants shall permit any persons who wishes to apply for, receive,
vote, and return a mail-in ballot to appear at the Elections Bureau office
and do so during normal business hours before the close of business on
October 30, 2024.

BY THE COURT:

**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY,
PENNSYLVANIA**

**DONALD J. TRUMP FOR PRESIDENT CIVIL DIVISION
2004 INC., ET AL.,**

Plaintiffs,

No. 2024-06880

v.

**BUCKS COUNTY BOARD OF
ELECTION, ET AL.,**

Defendants.

**RECEIVED
2024 OCT 30 A 11:50
PROthonary
OF BUCKS COUNTY**

**EMERGENCY PETITION FOR A
SPECIAL AND PRELIMINARY INJUNCTION**

Under Pennsylvania Rule of Civil Procedure 1531(a), this Court is empowered to issue a special injunction without a hearing to prevent immediate and irreparable harm. This is a textbook case of a matter requiring a special injunction. Plaintiffs bring this emergency petition for a special and preliminary injunction to prevent widespread disenfranchisement and immediate irreparable harm to the statutory right to vote on-demand.

In Pennsylvania, any qualified elector is permitted to request and cast a mail-in ballot without having to provide a reason for doing so. See 25 P.S. §§ 3150.11-3150.17. Qualified electors can go in person to their local election office and request, receive, vote, and submit a mail-in ballot (the “On Demand Mail-in-Ballot Voting”). Pennsylvania Department of State, On-Demand Mail Ballot Voting, <https://www.pa.gov/en/agencies/vote/voter-support/mail-in-and-absentee-ballot/mail->

[ballot-before-election-day.html](#). (“If you are a registered Pennsylvania voter, you have the convenient option of applying for a mail ballot in person at their county elections office, then completing the ballot while there. In one visit, voters can apply for and submit their mail ballot.”)

The deadline for voters to apply for an absentee ballot or a mail-in ballot is “five o’clock P.M. [on] the first Tuesday prior to the day of any primary or election.” 25 P.S. §§ 3146.2a(a)3150.12a(a). For purposes of the upcoming November 5, 2024, General Election, the last day to apply for a mail-in ballot was 5:00 p.m. on October 29, 2024. (the “Application Date”). On October 29, 2024, the Secretary of the Commonwealth informed voters on October 29, 2024, of their right to travel to their county election bureau and request and receive a mail-in ballot. PA Department of State (@PAStateDept), X (Oct. 29, 2024, 1:26 P.M.) <https://x.com/PAStateDept/status/1851314765533970938>. Secretary Schmidt expressly advised voters that those who were in line by 5:00 p.m. on October 29, 2024, should be permitted to apply for and receive a mail-in ballot, yet this is not what happened in Bucks County.



PA Department of State
@PAStateDept

If you are in line at a county elections office tonight at 5 p.m. to apply for your mail-in ballot, counties must give you an opportunity to do so. Our team continues to work with all counties to ensure every eligible voter who wants to vote by mail ballot is able to.

Id.

Despite this clear statutory right and pronouncement from the Secretary of the Commonwealth, Defendants denied an untold number of qualified electors the ability to their statutorily guaranteed right to On Demand Mail-In Voting. Indeed, the Defendants **ordered** persons who were waiting to apply for, receive and vote a mail-in ballot removed from the premises, without allowing Ms. Sinclair and others the opportunity to even submit her application. See Declarations voters, attached hereto as Exhibit A; Linda Stein, *Bucks County Early Voters Turned Away; Fitzpatrick Demands Action*, Delaware Valley Journal, (October 29, 2024) <https://delawarevalleyjournal.com/fitzpatrick-republican-legislators-send-stern-letter-to-bucks-co-commissioners/>; Mike Catalini, *A clumsy early voting option has backed up election offices in Pennsylvania and frustrated voters*, Associated Press, (October 29, 2024), <https://apnews.com/article/pennsylvania-early-voting-problems-bucks-county-bdc20bfb2c82e29d8698c1a22feb0eae>.¹ In doing so the Defendants acted in derogation of its obligations under the Election Code to process mail in ballot applications and in direct contravention of the statement of the October 29, 2024, statement of the Secretary of the Commonwealth. **Worse, Defendants had security officials to remove voters who had been in line prior to 5:00 p.m., some of whom had been standing in line for hours only to be turned away.** Colin Rugg (@CollinRugg), X (October 29, 2024, 6:41 p.m.) <https://x.com/CollinRugg/status/1851393891632607574>

¹ Under Rule 1531(a), “in determining whether a preliminary or special injunction should be granted and whether notice or hearing should be required, the court may act on the averments of the pleadings or petition and may consider affidavits of third persons or any other proof which the court may require.”

Immediate action by this Court is needed to prevent immediate and irreparable harm to plaintiffs and to prevent widespread disenfranchisement.

1. Petitioners incorporate their verified complaint by reference.

2. A special and preliminary injunction is necessary to prevent the defendants from violating the Election Code and denying qualified electors the right to On-Demand Mail-in Voting.

3. A special and preliminary injunction is further necessary to protect the rights of qualified who, through no fault of their own, went to an election office during posted operating hours by 5:00 p.m., Tuesday, October 29, 2024, to exercise their right to On-Demand Mail-in Voting and were told they could not exercise that right and were turned away.

4. The five elements for the issuance of a preliminary injunction are (1) the injunction is necessary to prevent immediate and irreparable harm, which cannot be compensated by damages; (2) greater injury would result by refusing it than by granting it; (3) an injunction will restore the parties to the status quo as it existed immediately before the alleged wrongful conduct; (4) the alleged wrong is manifest, and the injunction is reasonably suited to abate it; and (5) the plaintiff's right to relief is clear. *Kierski v. Twp. of Robinson*, 810 A.2d 196, 198 (Pa.Cmwlt. 2002).

5. Each of these five elements exists here.

6. First, plaintiffs will suffer immediate and irreparable harm because "the right to vote, in Pennsylvania, as vested in eligible, qualified voters, is a fundamental one." *Applewhite v. Com.*, 617 Pa. 563, 566, 54 A.3d 1, 3 (2012). Moreover, "a as the

unlawful action by the Election Board per se constitutes immediate and irreparable harm.” *Hempfield Sch. Dist. v. Election Bd. of Lancaster Cnty.*, 574 A.2d 1190, 1193 (Pa. Commw. Ct. 1990). *See also, Shaeffer v. City of Lancaster*, 754 A.2d 719, 723 (Pa. Commw. Ct. 2000) (“Statutory violations are sufficiently injurious to constitute irreparable harm.”)

7. Second, greater injury will result if the injunction is not entered than if it is granted.

8. Third, the injunction will maintain the status quo because it will assure that the defendants comply with the Election Code and will assure those who relied upon representations that if they were in line by 5:00 p.m. on Tuesday, October 29, 2024, they would be permitted to exercise their right to On-Demand Mailed-in Voting.

9. Fourth, the requested injunction is limited to abate the harm.

10. Upon information and belief other counties, including Philadelphia and Lehigh Counties, have extended the On-Demand Mailed-in Voting deadline.

11. Fifth, plaintiffs’ right to relief is clear.

PRAYER FOR RELIEF

Petitioners respectfully request that this Honorable Court grant them the following relief:

- a) Declare that the Bucks County’s actions in turning away voters who sought to apply for a mail-in ballot and receive one in person before the deadline of 5:00 p.m. on October 29, 2024 violated the Pennsylvania Election Code,

- b) Order the Bucks' County Board of Elections to permit any persons who wish to apply for and receive a mail-in ballot to appear at the Elections Bureau office and do so during normal business hours before the close of business on October 30, 2024.

Dated: October 30, 2024

Respectfully submitted,


/s/ Walter S. Zimolong

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Attorney for Friends of Dave McCormick and David McCormick

**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: October 30, 2024

Respectfully submitted,


/s/ Walter S. Zimolong

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Walter S. Zimolong

Signature: Walter Zimolong

Name: Walter S. Zimolong

Attorney No. (if applicable): 89151

Exhibit 2

**AFFIDAVIT OF PICHAYA POY WINICHAKUL IN SUPPORT
APPELLEES' OPPOSITION TO THE EMERGENCY MOTION FOR
SUPERSEDEAS**

I, Pichaya Poy Winichakul, hereby declare as follows:

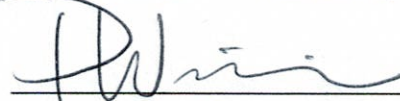
1. I am over the age of 18 and competent to make this declaration. I am an attorney with the Southern Poverty Law Center and am counsel for Appellees Naomi Ayota, Harrison Simmel, and Gabriel Dickson.
2. On November 3, 2024, I checked the UPS tracking information for my client, Naomi Ayota. That tracking information showed that her ballot is scheduled to arrive on Monday, November 4, 2024, at 10:30am.

Attached as Exhibit A is a true and correct copy of screenshot of this tracking information taken at 12:18 P.M. on Sunday, November 3, 2024.
3. On November 3, 2024, I checked the UPS tracking information for my client, Harrison Simmel. That tracking information showed that his ballot was sent to UPS on November 2, 2024. It has not yet been assigned a delivery date. Attached as Exhibit B is a true and correct copy of screenshot of this tracking information taken at 6:30 P.M. on Sunday, November 3, 2024.
4. Attached as Exhibit C is a true and correct copy of a November 2, 2024 Email sent to me by Daniel White, counsel for Defendants Fall,

Mosbacher, Efrat, Bruning, and Silas, and the attached Supplement to the List of Affected Voters. The Email and Supplement were sent pursuant to the Cobb County Superior Court's Injunction ordering Defendants to provide to the Parties a daily supplement to the list of Affected Voters through Election Day. This November 2 Supplement displays six additional Affected Voters who were sent absentee provisional ballots. Personal identifying information of voters has been redacted from the Supplement.

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

Executed on November 3, 2024.



Pichaya Poy Winichakul

Sworn to before me this 3rd day of November, 2024
by Pichaya Poy Winichakul.

Notary Public:



My commission expires:

2/8/2026

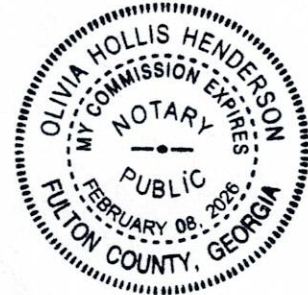


Exhibit A

UPS Ballot Tracking Information: Naomi Ayota

[Shipping](#)[Tracking](#)[Products & Services](#)[The UPS Store](#)

Your shipment
1Z3947480197540147

Estimated delivery

Tomorrow, November 04 by 10:30 A.M.

Your package has arrived at a local UPS location and is still being processed for delivery.

If you prefer to pick up your package at an eligible facility, select Change My Delivery to make arrangements.

[View delivery time window and more with UPS My Choice™.](#) [Continue >](#)

Ship To

MIDDLETOWN, PA US

- Label Created**
United States
10/31/2024, 4:50 P.M.
- We Have Your Package**
Louisville, KY, United States
11/02/2024, 1:01 A.M.
- On the Way**
Middletown, PA, United States
11/03/2024, 12:55 P.M.
- Out for Delivery**
- Delivery**

Exhibit B

UPS Ballot Tracking Information: Harrison Simmel

Your shipment
1Z3947482210022348

Estimated delivery

The delivery date will be provided as soon as possible.



On the Way

Commerce City, CO, United States
11/02/2024, 6:58 A.M.



Out for Delivery



Delivery

[View All Shipping Details](#) >

Get Answers Fast

If you need help, use the [Virtual Assistant](#). Still stuck? Try our [Tracking Support](#) for more specific guidance.

[Get Updates](#) >

[Change My Delivery](#)

Exhibit C

Poy Winichakul

From: Daniel White <dwhite@hlw-law.com>
Sent: Saturday, November 2, 2024 5:58 PM
To: Poy Winichakul; Caitlin May; Sachin Varghese; spassantino@versalawfirm.com; wbrown@chalmersadams.com; akaufman@chalmersadams.com
Cc: S. Grubbs; Bill Pinto
Subject: RE: Cobb BOER - List of Affected Voters
Attachments: Supplement 1_2024-11-02.xlsx

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please see attached Supplement 1 spreadsheet with 6 additional provisional affected voters added this morning. All are out of state and these provisional ballots were sent out this morning consistent with the order. They will be added to the master list being kept by the absentee clerk.

Daniel W. White
Haynie, Litchfield & White, PC
222 Washington Avenue
Marietta, Georgia 30060
770-422-8901 (direct)

From: Daniel White
Sent: Friday, November 1, 2024 9:25 PM
To: Poy Winichakul <poy.winichakul@splcenter.org>; Caitlin May <cmay@acluga.org>; Sachin Varghese <varghese@bmelaw.com>; spassantino@versalawfirm.com; wbrown@chalmersadams.com; akaufman@chalmersadams.com
Cc: S. Grubbs <salgrubbs@gmail.com>; Bill Pinto <bpinto@hlw-law.com>
Subject: Cobb BOER - List of Affected Voters

All,

Per the Court's order from this afternoon, please find the attached spreadsheet showing the list of Affected Voters.

The first tab is just a breakdown of the categories/numbers as of this evening. The second tab is the publicly available data for each voter. Hopefully this is all of them, but if more are discovered we will supplement.

Let me know if you have any follow up questions or if you think I left anyone off the distribution list.

Daniel W. White
Haynie, Litchfield & White, PC
222 Washington Avenue
Marietta, Georgia 30060
770-422-8901 (direct)

Voter Registration #	Last Name	First Name	Middle Name	Suffix	Absentee Absentee Mailing Street Name	Absentee I Absentee Mailing City	Absentee Mailing Zip Code	Absentee Mailing State
12071805	TURNER	LAUREN	ASHLEY				76227	TX
12535620	MCCLURKEN	SEAN	MICHAEL LEE				78641	TX
13559288	SMITH	JADE	YA'JAIRA				37235	TN
12403261	WRIGHT	CLAUDIA	FAYE				37013	TN
11435408	WILKERSON	PERRY	MILFORD				35022	AL
11992820	WINCH	REBECCA	PAIGE				20003	DC

Exhibit 3

AFFIDAVIT OF MARY GRACE BINGHAM

1. My name is Mary Grace Bingham. 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 am 18 years old.

3. I am registered to vote in Cobb County, Georgia.

4. This will be my first time voting in an election.

5. I chose to request an absentee ballot for this election because I am attending college in Alabama and it would be very difficult for me to return to Cobb County and vote. I do not have my own car and do not have one available to me on November 5. It would be very difficult for me to find another way to get to Cobb County on election day.

6. Additionally, I have classes and required-attendance in-class exams on November 4 and November 5. Attendance in class is part of the grade. I have other obligations on those days, as well.

7. I requested my absentee ballot via the Georgia Secretary of State's website on October 24, 2024. I had been told that this was enough time to receive, complete, and return my absentee ballot for the November 5, 2024 election.

8. According to the Georgia My Voter Page, my ballot request was received on October 25, even though I submitted it on the 24th. The site says my ballot was issued on October 29.

9. As of November 3, 2024, I have not received my absentee ballot.

10. I live in a dormitory, and my mail has to be processed through a distribution center. I do not receive my mail immediately after it is delivered to the distribution center, and it usually takes at least a day before it is actually delivered to me. So, even if my ballot were technically delivered on Monday, November 4, I would not receive it until the next day, the day of the election.

11. Even after I receive the ballot, I would have difficulty arranging transportation to a post office or business where I can return the ballot via overnight mail or other delivery service. Going there would also interfere with my academic and other obligations.

12. Thus, I cannot be certain that my ballot would be returned to Cobb County in time to be counted for the November 5 election.

13. On November 2, I learned that Cobb County is being sued for failing to send out ballots on time.

14. Despite my best efforts, I do not believe I will be able to vote in the 2024 election.

I declare under penalty of perjury that the foregoing affidavit is true and correct to the best of my knowledge.

Executed on November 3rd, 2024.

Mary Grace Bingham
Mary Grace Bingham

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned authority, in and for said County and State, hereby certify that **Mary Grace Bingham**, whose name is signed to the foregoing and who is known to me, who being first duly sworn on oath, acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the 3rd day of November, 2024.

Notary Public:

Dehelle Shells

My commission expires:

01/26/2027

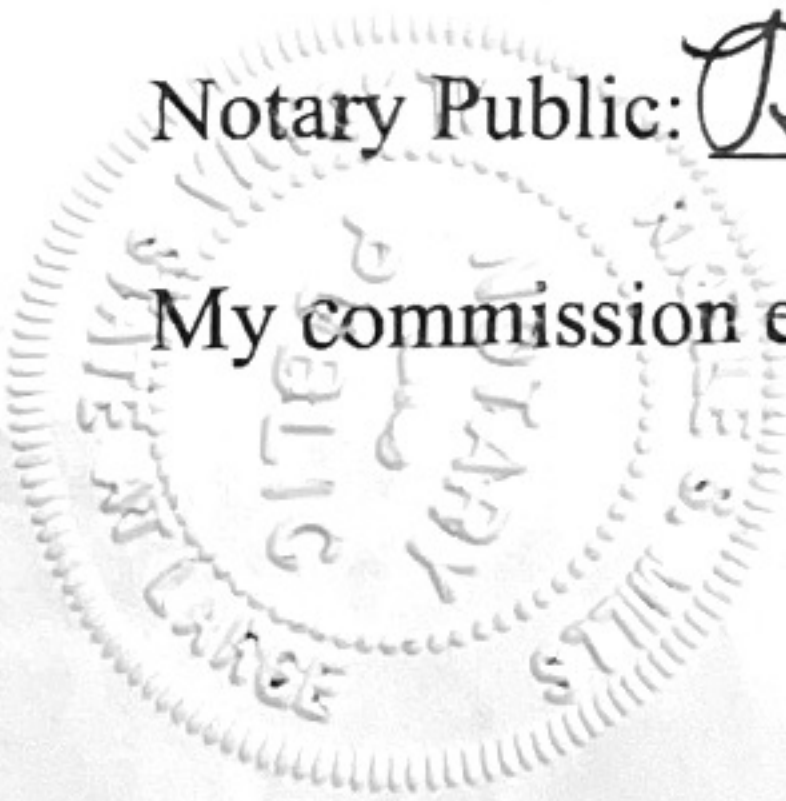


Exhibit 4

AFFIDAVIT OF ANDREW WYLIE BHINGHAM

1. My name is Andrew Wylie Bingham. 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 am 20 years old.

3. I am registered to vote in Cobb County, Georgia.

4. I voted in the 2022 general election by absentee ballot, and I voted in person for the resulting run-off election. I received that absentee ballot without any problems.

5. I chose to request an absentee ballot for this election because I am attending college in Alabama, and it would be very difficult for me to return to Cobb County and vote.

6. I am studying to be a pilot, and I have a flight block (where I fly an aircraft with an instructor) that I must attend on November 5. The flight blocks are scheduled far in advance, and I would be fined \$200 if I were to miss it. I would also receive an academic penalty for missing it. I also have class on Tuesday, and classes are not cancelled.

7. I requested my absentee ballot via the Georgia Secretary of State's website on October 17, 2024. I had been told that this was enough time to receive, complete, and return my absentee ballot for the November 5, 2024 election.

8. According to the Georgia My Voter Page, my ballot request was not even received until October 21, even though I submitted it on the 17th. The Georgia My Voter Page website says my absentee ballot was issued on October 29.

9. As of the evening of November 3, 2024, I have not received my absentee ballot.

10. Thus, I cannot be certain that my ballot would be returned to Cobb County in time to be counted for the November 5 election.

11. On November 1, I learned that Cobb County is being sued for failing to send out ballots on time.

12. Despite my best efforts, I do not believe I will be able to vote in the 2024 election because of the delayed ballot.

I declare under penalty of perjury that the foregoing affidavit is true and correct to the best of my knowledge.

Executed on November 3rd, 2024.



Andrew Wylie Bingham

STATE OF ALABAMA
COUNTY OF LEE

I, the undersigned authority, in and for said County and State, hereby certify that **Andrew Wylie Bingham**, whose name is signed to the foregoing and who is known to me, who being first duly sworn on oath, acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the 3rd day of November, 2024.

Notary Public: DeKelle S. Hulls

My commission expires: 01/26/2027

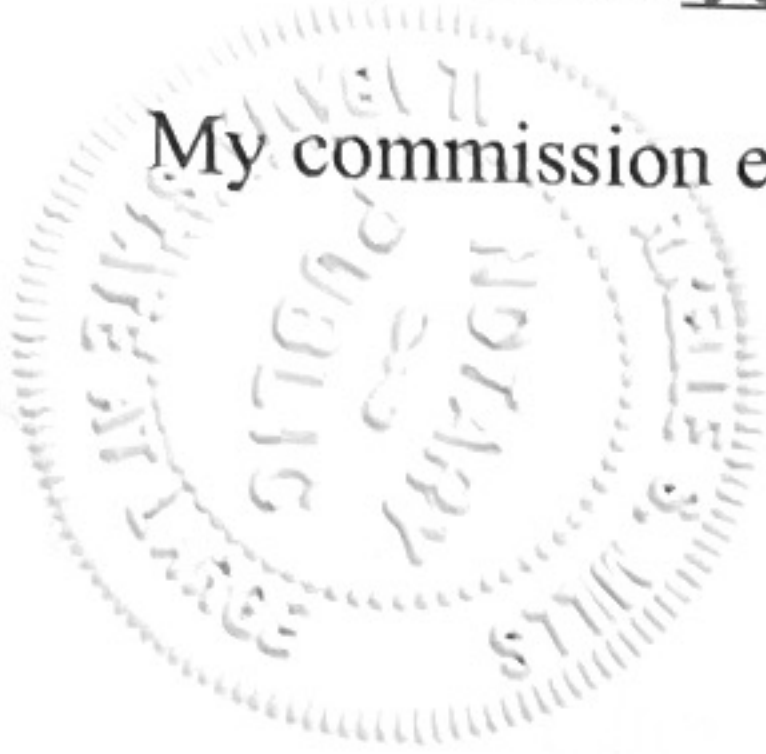


Exhibit 5

Democracy Dies in Darkness

DEMOCRACY IN AMERICA

Would-be mail-in voters in key Pennsylvania county can go in person, judge says

A judge's order would apply to at least 14,000 in the crucial swing county of Erie, Pennsylvania, who say they never got their requested mail-in ballots, in a move hailed by both major parties.

🕒 5 min ➦ 📌 🗨 414

By [Sarah Blaskey](#) and [Samuel Oakford](#)

November 2, 2024 at 4:03 a.m. EDT

At least 14,000 or more voters in Erie County, Pennsylvania, who wanted to submit mail-in ballots will be allowed to vote in person before Election Day after officials were unable to verify whether they ever received the ones they requested, according to an order from Erie County Judge David Ridge on Friday.

The affected Erie County voters who could have mailed in or dropped off their ballots in a designated box now face the prospect of long lines with significant wait times, because they will have to have their previous mail-in ballot requests canceled to cast new ones.

The challenges are even steeper for those who were counting on being able to vote by mail because they are unable to go to the courthouse, either because they are out of town or incapacitated. The affected voters have little time left before Tuesday's Election Day, when all mail-in ballots must be received by 8 p.m., and the county is also running out of paper ballots and envelopes.

Still, both major parties are hailing the judge's decision. On Wednesday, the Pennsylvania Democratic Party filed a lawsuit against the Erie County Board of Elections, alleging multiple errors by the third-party vendor responsible for printing and sending mail-in ballots, which resulted in thousands not receiving the ballots requested. The court-ordered remedies were negotiated with bipartisan support after the state Republican Party formally joined the suit on Thursday.

The Democrats' attorney, Timothy McNair, said in a statement to The Washington Post on Thursday that he did not blame problems on the county's elections department, which "acted in nothing but the utmost good faith throughout, and has been working around the clock to try to recover" from the vendor's failures. McNair added that attorneys for the state and national Republican Party "were also cooperative throughout and worked toward the same goal as us with no rancor."

Logistical problems are not uncommon during elections, but with the outcome predicted to be decided by razor-thin margins in Pennsylvania, losing even a small number of voters as a result of these errors could make a difference in who wins the state. Erie County is also a bellwether being closely watched, after it went in turn for Barack Obama, Donald Trump and Joe Biden.

The Trump campaign has also sought to cast doubt among voters about election integrity, and as some Erie County residents waited for their mail-in ballots, they worried the delay was more than just a mistake.

Responding to swirling conspiracy theories, the Pennsylvania Republican Party's general counsel Tom King said: "The problems in Erie were a result of significant failures by the vendor and the inability of the County Election Bureau to do anything about it without Court intervention."

King added that the order would help the many Trump supporters who have opted for mail-in ballots this year. "I think it's a good thing for democracy and a good thing for the process and it's a victory for us," King said.

Court records show the county was unable to determine the delivery status of between 13,000 and 17,000 requested mail-in ballots. Another 1,200 Erie voters who temporarily reside outside the state also may not have received their ballots, according to the judge's order, and at least 365 voters received duplicate ballots with bar codes belonging to another voter.

The judge's order also extends the election office's hours of operation to include the weekend to facilitate those who want to cast ballots. The court also ordered the Erie County Board of Elections to add another printer immediately to help reduce wait times. The elections board will also overnight ballots to temporarily out-of-state voters.

Such a remedy "could cause confusion for voters and raises mobility issues for folks voting by mail because they can't travel to a polling location," noted Daniel Mallinson, a professor at Pennsylvania State University in Harrisburg. "But it's also so close to the election that this is likely the best way to make sure their votes are cast in time."

The county did not respond to requests for comment. The vendor, Ohio-based ElectionIQ, also did not respond to The Post.

Pamela Tilley, a 67-year-old Erie County resident, said she received an email from myballot@pa.gov on Oct. 9 stating that her ballot was being prepared and would be sent soon. But she then received another email from the Pennsylvania Department of State on Oct. 16, informing her that her ballot had been mailed "7 days ago." Her ballot never arrived, she said.

“It’s never been a problem,” said Tilley, who voted by mail in previous elections. “To this day even, I have not received it.”

Tilley, a registered Democrat, said she contacted state and local officials and even attempted to contact ElectionIQ after seeing it named in a local news report. She and her husband, Al, drove to the Erie County courthouse on Oct. 25, hoping to cancel their requested ballots and obtain new ones to fill out on the spot.

Tilley and her husband, who is being treated for cancer, waited in line for more than an hour before giving up and going home. Videos and photographs taken this week showed lines snaking through the building.

Pennsylvania does not have traditional early-voting days, but voters can request a mail ballot in person and then fill it out on the spot. Such “on-demand” mail-ballot voting, however, is a labor-intensive process that takes more time than other methods of voting. This process has resulted in long lines across the state as more voters have opted to vote early in person this election.

Tilley said she went back to the courthouse alone on the last day of on-demand voting and waited in line for more than four hours before election officials let her cancel her undelivered ballot and cast a new one. She said her husband voted the next day after the county extended the deadline for those who had not received requested mail-in ballots.

Exhibit 6

PENNSYLVANIA DEMOCRATIC :
PARTY, :
Plaintiff, :

v. :

ERIE COUNTY BOARD OF :
ELECTIONS, :
Defendant, :

and :

PENNSYLVANIA REPUBLICAN :
PARTY, :
Intervenor. :

IN THE COURT OF COMMON PLEAS
OF ERIE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

No. 12666-2024

COMMON PLEAS COURT
ERIE, PA
2024 NOV - 1 PM 4:08
CLERK OF RECORDS
PROTHONOTARY

ORDER OF THE COURT

On this 1 day of November 2024, this Court has conducted a hearing and oral argument regarding the Plaintiff's Petition for Special and Preliminary Injunction, and Complaint seeking Mandamus Relief to Enforce Provisions of the Election Code and Injunction Relief to Address Failure to Do So. The Court granted the Consent Order permitting the Pennsylvania Republican Party to formally join the litigation as an Intervenor. After reviewing the pleadings and testimony, and after conducting oral argument, the Court believes that the specific rulings set forth below provide the appropriate remedy and relief in an attempt to ensure all registered voters who did comply with the requirements for mail-in ballots are given full opportunity to complete their right to vote, and also ensure that each individual's vote will only be counted once.

WHEREAS, the parties in the above-captioned matter held a hearing on October 31, 2024 (the "Hearing") to address the Pennsylvania Democratic Party's ("PDP") Petition for Special and Preliminary Injunction;

WHEREAS, all parties agreed to the intervention of the Pennsylvania Republican Party (“PRP”) in the above-captioned matter;

WHEREAS, the Hearing established the following:

- At minimum, 365 duplicate ballots were sent to voters which contained a mail-in ballot with a barcode corresponding to a separate voter;
- Up to 13,000 – 17,000 Erie County voters (“Affected Voters”) who timely applied for and requested a mail-in ballot may not have received their ballots through no fault of their own;
- Some unknown number of voters who timely requested mail-in ballots may not have received their mail-in ballots;
- The Erie County Board of Elections (“BOE”), its vendor, ElectionIQ (“Vendor”), and the USPS are unable to accurately determine the delivery status of these 13,000 – 17,000;
- Around 1,200 Erie County voters who temporarily reside out-of-state (“Out of State Voters”) who timely applied for and requested a mail-in ballot may not have received their ballots through no fault of their own;
- The BOE currently is short anticipated ballots that can be scanned by the voting machines and may also be short envelopes used for provisional ballots;
- The BOE is attempting to obtain as many ballots and envelopes as may be required; and
- Primarily due to the failures of the Vendor, there have been administrative challenges necessitating this Court to order and grant the relief herein.

WHEREAS, the Election Code establishes district election boards (a "District Election Board") consisting of a judge of election, a majority inspector of election and a minority inspector of election. 25 P.S. § 2671.

NOW THEREFORE, after conducting oral argument on November 1, 2024, it is HEREBY ORDERED THAT:

1. The BOE shall extend the operating hours to the public of its office in the Erie County Courthouse up to Election Day as follows:

a. Friday, November 1, 2024 and Monday, November 4, 2024, 8:00am – 6:00pm;
and

b. Saturday, November 2, 2024 and Sunday, November 3, 2024: 8:00 – 4:00pm.

2. The BOE shall be required to immediately add an additional printer to its office at the Erie County Courthouse to reduce wait times and shall be required to allow voters who timely applied for a mail-in ballot to cancel their outstanding mail-in ballot request, be issued a new mail-in ballot immediately, and cast that mail-in ballot at the Erie County Courthouse (either through the dropbox at the BOE office or via the dropbox located outside the Erie County Courthouse).

3. The BOE shall ensure that an adequate number of ballots and provisional ballots are available at all polling locations in Erie County.

4. The BOE shall as soon as practicable release the names and email addresses of the Out of State Voters to the parties in the above-captioned matter.

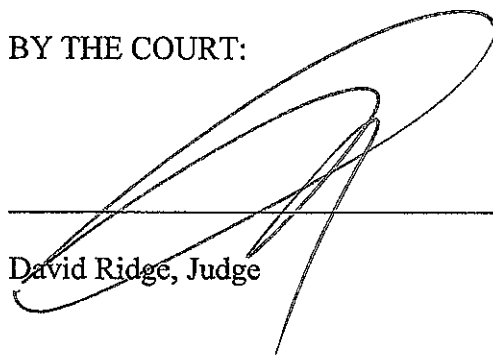
5. The BOE will have discretion to hire and utilize a company that provides overnight delivery services to send a replacement mail-in ballot to any Out of State Voter who properly requested a mail-in ballot.

6. As to the duplicate ballots received by voters, the BOE shall promptly contact all voters who received a duplicate ballot and all voters whose name appeared on a duplicate ballot

intended for another voter. These voters shall be given the opportunity to cancel any previous ballot cast in their name by submitting a new ballot to the BOE. All of these votes shall be segregated. However, provided that a voter does not cast a new ballot, the BOE, with representatives from the PDP and PRP present, shall determine whether the ballot received is accurate by comparing the name and signature on the envelope. Where the name and signature match, that ballot shall be counted. Where the name and signature on the envelope do not match, the BOE shall segregate such ballots for post-Election Day review and treatment.

7. Each party shall be responsible for its own counsel fees and costs.

BY THE COURT:



A handwritten signature in black ink, appearing to be 'David Ridge', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke.

David Ridge, Judge

cc: Clifford Levine, Esquire
Tim McNair, Esquire
Thomas Talarico, Esquire
Thomas King, Esquire
Kathleen Gallagher, Esquire