

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**RHONDA J. MARTIN, DANA  
BOWERS, JASMINE CLARK, SMYTHE  
DUVAL, and JEANNE DUFORT,**

**Plaintiffs,**

**v.**

**BRIAN KEMP, et al.**

**Defendants.**

**Civil Action File No.**

**1:18-cv-04776-LMM**

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Rhonda J. Martin, Dana Bowers, Jasmine Clark, Smythe DuVal and Jeanne Dufort ("Plaintiffs") move this Court to enter an order immediately enjoining Defendant election officials from rejecting absentee ballots applications and absentee ballots without first giving electors reasonable notice and opportunity to cure perceived deficiencies.

Specifically, Plaintiffs pray that the Court enter a preliminary and permanent injunction ordering the Defendant state election officials:

1. To make a determination of eligibility for each mail ballot application within three business days of receipt of the electors' application. If the County

Election Officials find an application deficient, the County Election Officials shall, within one business day of making such determination, (a) send the applicant by first class mail a new application and notification informing the applicant in writing of the grounds of rejection and instructions for the cure of perceived deficiencies; and (b) if the applicant has provided a telephone number, call the applicant, *and* if the applicant has provided an email address, email the applicant, and inform the applicant of the grounds of ineligibility and instruction for the cure of such ineligibility. The notification shall include instructions for tracking the status and progress of the application and ballot issuance on the Secretary of State's website;

2. To make a determination of eligibility for each mail ballot received within three business days of receipt of the electors' ballot. If the County Election Officials reject a mail ballot, the County Election Officials shall within one business day of rejecting said mail ballot (a) send the elector by first class mail a notification informing the elector in writing of the grounds of such rejection, instructions for the cure of such rejection, and notification that the elector may cure such rejection at any point up to the close of business on the Friday after Election Day; and (b) if the elector has provided a telephone number, call the elector, *and* if the elector has provided an email address, email the elector, and inform the elector of the grounds of rejection and instruction for the cure of such rejection, and

notification that the elector may cure such rejection up to the close of business on the Friday after Election Day. The notification shall include instructions for tracking the status and progress of the ballot acceptance on the Secretary of State's website;

3. To not reject a ballot for the reason of a signature discrepancy unless and until it has been reviewed by the Signature Review Committee (as described below) and the Signature Review Committee has determined that the signature does not appear to be valid. The Signature Review Committee shall be appointed by the bi-partisan county election board, or other superintendent when there is no county election board, and composed of an equal number of members from the two parties represented on the county election board, with an adequate number of members to serve alternately throughout the mail ballot receipt period. Two members of the Signature Review Committee, one from each party appointing members, shall promptly review all oath signatures that are set aside by election officials as discrepant signatures. No ballot shall be rejected without the agreement of both members of the Signature Review Committee. Signatures determined to be discrepant by only a single party's appointed member shall be approved and the ballot accepted for counting;

4. To allow an elector receiving an official absentee ballot to mark and cast his or her absentee ballot until 7 p.m. on the day of the primary or the election by

personally delivering same to the board of registrars or to the absentee ballot clerk or, if the delivery is made on Election Day, to the elector's voting precinct, and shall allow delivery by a physically disabled elector to be made within said deadlines provided such delivery is otherwise made in accordance with O.C.G.A. § 21-2-385(a);

5. To not reject any mail ballot solely because of an incorrect or missing year of birth and to accept any mail ballot that was previously rejected for the sole reason of an incorrect or missing year of birth;

6. To review all mail ballot applications and mail ballots rejected to date for the November 6, 2018 election and immediately apply the relief requested in Paragraph 1 through 5, above, for each rejection; and

7. To ensure that pollwatchers who are authorized to observe elections also have the opportunity to observe the process of absentee application and absentee ballot processing, signature, scanning of voted ballots and chain of custody controls.

Pursuant to Rule 65(d), Plaintiffs have filed with this Motion a proposed order directed at the persons to be bound thereby, stating the reasons why the order should issue, stating the order's terms specifically, and describing the acts restrained and required.

Pursuant to Rule 7.1A of the Local Rules of the Northern District of Georgia, Plaintiffs have filed herewith a brief citing the legal authorities supporting the motion and the facts relied upon. Attached to the brief are declarations from the following:

1. Dana Bowers;
2. Jasmine Clark;
3. Jeanne Dufort;
4. Smythe DuVal;
5. Rhonda J. Martin.

Respectfully submitted this 19<sup>th</sup> day of October, 2018.

/s/ Bruce P. Brown

Bruce P. Brown

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Motion for Preliminary Injunction has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ Bruce P. Brown

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused the foregoing MOTION FOR PRELIMINARY to be served upon all other parties in this action by via electronic delivery using the PACER-ECF system. In addition, Plaintiffs have served this Motion upon the following via email:

Frank B. Strickland  
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Cristina Correia  
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Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

This 19<sup>th</sup> day of October, 2018.

/s/ Bruce P. Brown  
Bruce P. Brown

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**BRIEF IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY INJUNCTION**

Rhonda J. Martin, Dana Bowers, Jasmine Clark, Smythe DuVal and Jeanne Dufort (“Plaintiffs”) file this Brief in Support of their Motion for Preliminary Injunction.

**I. INTRODUCTION AND SUMMARY**

Given the highly-publicized dangers associated with voting in person using Georgia’s paperless Direct Recording Electronic (“DRE”) voting system, applications for paper mail absentee ballots has surged in advance of the 2018 general elections. Democratic, Republican, and Libertarian gubernatorial candidates are urging Georgia citizens to vote by mail, and the Libertarian



Secretary of State candidate is urging the same. (Complaint, Doc. 1, ¶ 3; DuVal Decl., Ex. 4, ¶ 10).

Recent information from the Secretary of State shows, however, that applications for absentee ballots, and absentee ballots themselves, are being rejected at an alarming high rate and for subjective, arbitrary and trivial reasons.<sup>1</sup> An absentee voter in Gwinnett County is *over five times* more likely to have his or vote rejected than an absentee voter elsewhere in Georgia, despite what is supposed to be a uniform application of identical laws. Asian voters in Gwinnett County are *four times* as likely as White voters in Gwinnett County to have their vote rejected. Hundreds of absentee ballots are being rejected by ballot clerks who have no training in handwriting analysis or signature comparison. These clerks are charged with making a final determination as to whether signatures “appear valid,” and if they do not, the voter is disenfranchised. Although Georgia statutes require that applicants and mail ballot voters be given notice when their application or ballot is rejected, Georgia law does *not* require that the notice be given before Election Day, and is silent as to whether the voter has a right to challenge the ballot rejection at all. The failure to provide due process to mail ballot voters stands in

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<sup>1</sup> <http://elections.sos.ga.gov/Elections/voterabsenteeinfo.do>. The numbers in the text are derived from data from the Secretary of State’s records. Plaintiffs will be filing a declaration explaining the calculations.

stark contrast to the numerous state and federal statutory protections provided to in-person voters whose eligibility is uncertain when they are attempting to vote in person at the polling place. *See generally* Part II(B).

Plaintiffs bring this civil rights action because the rejection of absentee mail ballot applications, and absentee mail ballots themselves, without giving voters any meaningful opportunity to cure perceived deficiencies in the applications or the ballots, constitutes “arbitrary impairment” of the right to vote in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *Baker v. Carr*, 369 U.S. 186, 208 (1962) (“citizen’s right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution”).

This Motion seeks limited but urgently needed relief. *First*, without respect to the reasons for rejections, applicants and voters should be given a reasonable opportunity to cure perceived deficiencies in applications and ballots *before* Election Day in time to cast an effective ballot. *Second*, before a ballot may be rejected because of a perceived discrepancy with the signature, election officials must take reasonable additional steps to ensure that no ballot is erroneously rejected on this basis. *Third*, Defendants should be ordered to not reject any otherwise legitimate ballot because the voter substituted the current date for the

year of his or her birth on the ballot, or other technical error (such as signing on the wrong line) that does not impact the voters' eligibility.

As explored in greater detail below, this Motion should be granted to preserve the right of all eligible Georgians to vote and to have their voted counted. Voting is a "fundamental political right, because preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). "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. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

## II. FACTUAL BACKGROUND

### A. Parties

The five plaintiffs are registered electors in the State of Georgia who intend to vote in each of the upcoming elections for which they are eligible. (*See generally* Declarations of Bowers, Clark, Dufort, DuVal and Martin, attached hereto as Exhibits 1 through 5). Plaintiff Rhonda J. Martin ("Martin") is resident of Fulton County; Plaintiff Dana Bowers ("Bowers") is resident of Gwinnett County. Plaintiff Jeanne Dufort ("Dufort") is a resident of Morgan County.

Martin, Bowers and Dufort intend to vote by absentee mail-in ballot in the November 6, 2018 election.

Plaintiff Jasmine Clark (“Clark”) is a resident of Gwinnett County and is the nominee of the Democratic Party of Georgia for the Georgia State House of Representatives for House District 108 in the upcoming 2018 elections. Clark wishes to vote an auditable paper ballot and not vote on an electronic machine, but fears that her mail ballot will be rejected given Gwinnett County’s history of disenfranchisement. She currently plans to vote on an electronic machine and accept the attendant risk, rather than the risk of rejection of her mail ballot. As a candidate, Clark has a legally cognizable interest in ensuring that the rights of her supporters to cast their votes are honored.

Plaintiff Smythe DuVal (“DuVal”) is a resident of Cobb County. DuVal intends to vote by absentee mail-in ballot in the upcoming November election. DuVal also is the nominee of the Libertarian Party of Georgia for the statewide contest to be Secretary of State in the upcoming 2018 elections. DuVal has urged, and expended campaign resources to encourage, his supporters to vote by absentee mail-in ballot in the upcoming elections. As a candidate, DuVal has a legally cognizable interest in ensuring that the rights of his supporters to cast their votes are honored.

Defendant Brian Kemp is sued for prospective declaratory and injunctive relief in his official capacity as the Secretary of State of Georgia. Secretary Kemp is a state official subject to suit in his official capacity because his office “imbues him with the responsibility to enforce the law or laws at issue in the suit,” *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11<sup>th</sup> Cir. 2011), specifically the election laws in the State of Georgia. Secretary Kemp also serves as the Chairman of the State Election Board.

Defendants Rebecca N. Sullivan, Ralph F. Simpson, David J. Worley, and Seth Harp are members of the State Election Board of Georgia (“State Election Board” or “State Election Board Members”). The State Election Board Members are responsible for, among other things, obtaining uniformity in election practices by promulgating rules and regulations to ensure the legality and purity of all elections. The State Board Members are authorized to take such other actions consistent with law to provide for the conduct of fair, legal, and orderly elections. Secretary Kemp and the State Election Board have the authority to direct officials in each county responsible for elections (that is, the county elections board or the superintendent of elections) (collectively “the County Election Officials”). *See generally* O.C.G.A. § 21-2-50.

Defendants Stephen Day, John Mangano, Alice O’Lenick, Ben Satterfield, and Beauty Baldwin are members of the Gwinnett County Board of Registration and Elections (“the Gwinnett Board”). The Gwinnett Board, acting through the Gwinnett Board Members, has the authority to, among other things, “make and issue such rules, regulations, and instructions, consistent with law, including the rules and regulations promulgated by the State Election Board.” O.C.G.A. § 21–2–70(7).

**B. Georgia’s Absentee Ballot Processing Causes the Arbitrary Impairment of the Right to Vote**

The State of Georgia allows any eligible elector to vote by mail (“absentee mail voters” or “mail voters”). The State of Georgia’s Election Code, however, creates unusual hardships and risks for voters choosing to vote by mail ballot. The first hurdle is obtaining an absentee ballot. O.C.G.A. § 21-2-381(a)(1)(C) directs the absentee ballot clerk to determine if the signature on the application “compare[s]” with the signature of the applicant on his or her voter registration card. That voter registration card could be decades old and not reflect the voter’s current signature style. If the application for a mail ballot is rejected, the applicant is supposed to be notified of the rejection, but not within a specific time – just “promptly,” O.C.G.A. § 21-2-381(b)(3), but the statute is silent on the voters’ ability to take action to challenge the rejection.

If the applicant obtains an absentee ballot in time to vote, the next hurdle is to avoid rejection by the absentee ballot clerk. Here, the penalty for even the smallest clerical error or a question about the voter's signature is disenfranchisement, with no meaningful opportunity to cure any perceived discrepancy. The mail ballot voter must complete and sign an oath that includes certain eligibility verification information. O.C.G.A. § 21-2-384(c)(1). At the end of the oath, the voter must give his or her address, sign the oath, and give his or her year of birth. These three pieces of information may seem easy enough, but have caused the arbitrary and needless rejection of hundreds of absentee ballots in Gwinnett County alone, as discussed in more detail below. The oath form is printed in small font and would appear complex and intimidating to many voters, and difficult to read for those with vision impairments. (See Exhibit A to Martin Declaration, which is attached as Exhibit 5).

The State of Georgia, and Gwinnett County in particular, have a history of rejecting an alarmingly high percentage of mail ballots. The MIT Election Data and Science Lab's Election Performance Index ranked Georgia as 42<sup>nd</sup> (8<sup>th</sup> worst) in the nation for high numbers of rejections of mail ballots.<sup>2</sup> In the May 2018 primary, Gwinnett County rejected 8% of timely received mailed ballots. Through

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<sup>2</sup> <https://elections.mit.edu/#state-GA>.

October 18, 2018, Gwinnett County has rejected 8.2% of the 7,203 mail ballots received. *See supra* Note 1.

The arbitrariness of these rejections is shown by comparing the rejection rates in Gwinnett County to the rejection rates in other counties. If the election laws were rational, and uniformly applied, one would expect rejection rates to be roughly the same across various counties, particularly given the increasingly large numbers of absentee ballots submitted. But absentee voters in Gwinnett County are *five* times more likely to be rejected than voters elsewhere in Georgia, and more than twice as likely than voters in neighboring DeKalb County. Henry County has rejected no ballots. Absentee voters in Fulton County are infinitely *less* likely to be rejected than voters elsewhere in Georgia because Fulton County, the most populous county in the State, also has rejected no ballots as of October 18, 2018.

Rejections rates in Gwinnett County also differ sharply between ethnic groups, as shown in the following table:



Gwinnett County As of October 18, 2018			
<b>Race</b>	<b>Total Ballots Received</b>	<b>Total Ballots Rejected</b>	<b>% of Ballots Rejected</b>
<b>African-American</b>	2331	258	11.1%
<b>Asian</b>	934	143	15.3%
<b>Caucasian</b>	2627	99	3.8%
<b>Hispanic</b>	470	28	6.0%
<b>Native American</b>	15	1	6.7%
<b>Other</b>	211	21	10.0%
<b>Unavailable</b>	587	44	7.5%

These freakish disparities, as a matter of law and of common sense, must be the result of an arbitrary impairment of voting rights (or worse); there simply is no other plausible, legitimate explanation.

The unconstitutional impact of these rejections might be mitigated if Georgia had a uniform process for allowing voters a meaningful opportunity to cure perceived deficiencies. But that is not the case. With respect to rejected ballot applications: Georgia law requires that election officials “promptly” notify a mail ballot elector if his or her mail ballot application has been rejected, but does not require such notification to be made within a specified time frame. O.C.G.A. § 21-2-381(b)(3). Counties appear to have their own possibly ad hoc policies and procedures for notification and for permitting re-application and cure. Nor does Georgia law require that the election official enclose with such notification a new

mail ballot application with instructions to resubmit, or instructions on how to vote in person instead.

With respect to rejected absentee ballots themselves: Georgia law likewise requires “prompt” notification to electors whose voted mail ballots have been rejected, but does not require that the initial decision to reject or not reject be made within a reasonable time. O.C.G.A. § 21-2-386(a)(1)(C). Under the law, therefore, counties can wait until a day before the election to reject an absentee ballot and then “promptly” notify the would-be voter *after* the Election Day—too late to take remedial action. Any discrepant mail ballots received on Election Day or the prior day would have almost no chance of cure given that, unlike provisional ballots of polling place voters, there are no post-Election Day cure processes that apply to mail ballots. The mail ballot rejection procedure is almost the antithesis of the in person voting provisional ballot process, prescribed by federal and state law, which entails immediate formal notification and permits cure for voters who cannot provide immediate proper identification in the polling place. *See generally* Complaint, Doc. 1, ¶¶ 37-42).

In addition, Georgia law does not allow mail ballot electors to personally deliver mail ballots to their home precinct on Election Day, and instead requires mail ballots, if personally delivered, to be delivered to the county’s central election

office which may require time-consuming and expensive travel, further reducing the opportunity to cure and cast an effective mail ballot. Further, Georgia law prohibits the voter from marking his or her mail ballot on Election Day even if the ballot is to be hand delivered to the election office on Election Day. The misguided statute infringes on the right for a voter to vote on Election Day with the benefit of the latest news and information.

### III. LEGAL STANDARDS

#### A. Granting of a Preliminary Injunction

Chief Justice Roberts summarized the familiar test for the granting of a preliminary injunction in *Winter v. NRDC*, 555 U.S. 7, 20 (2008):<sup>3</sup>

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

These are not rigid requirements to be applied by rote. “The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mold each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

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<sup>3</sup> See also *Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1131 (11th Cir. 2005).

## **B. Procedure and Evidence**

Though discovery in this case has not opened and the Defendants have not answered the Complaint, this Motion is not premature. “The grant of a temporary injunction need not await any procedural steps perfecting the pleadings or any other formality attendant upon a full-blown trial of this case.” *United States v. Lynd*, 301 F.2d 818, 823 (5th Cir. 1962) (Tuttle, J.).

In considering this Motion, the Court also is permitted to rely upon hearsay and upon affidavits in lieu of live testimony. “[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981); *Levi Strauss & Co. v. Sunrise Int’l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (at the “preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction”).

## **IV. ARGUMENT**

### **A. Plaintiffs Are Likely to Succeed on the Merits**

Plaintiffs are likely to succeed on their claims that the Defendants’ failure to give voters reasonable notice and opportunity to cure perceived deficiencies in absentee ballot applications and the ballots themselves burdens the Plaintiffs’

fundamental right to vote (Count One) and violates the Equal Protection Clause (Count Two).

*1. Fundamental Right to Vote*

Plaintiffs' fundamental-right-to-vote claim is straightforward: states may not, by arbitrary action or other unreasonable impairment, burden a citizen's right to vote. *Baker v. Carr*, 369 U.S. 186, 208 (1962) ("citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution"). "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000).

Plaintiffs need not establish at trial, much less at the preliminary injunction stage of the case, that their absentee ballot has not been counted *or* that it is certain that it will not be counted. Instead, Plaintiffs will prevail at trial with a showing that the burden imposed upon their rights by Defendants outweighs any interest put forward by the Defendants. *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 190 (2008).

The Defendants' rejection of absentee ballot applications, and absentee ballots themselves, without giving voters any meaningful opportunity to cure

perceived deficiencies in the applications or the ballots, constitutes “arbitrary impairment” of the right to vote for several independently adequate reasons.

First, the signature match requirement without opportunity to cure in both the ballot application process and the ballot counting process is unconstitutional for the reasons explained by Judge McCafferty explained in *Saucedo v. Garnder*, No. 17-cv-00183 (D. N.H., August 14, 2018):

The act of signing one’s name is often viewed as a rote task, a mechanical exercise yielding a fixed signature. A person’s signature, however, may vary for a variety of reasons, both intentional and unintentional. Unintentional factors include age, physical and mental condition, disability, medication, stress, accidents, and inherent differences in a person’s neuromuscular coordination and stance. Variations more prevalent in people who are not elderly, disabled, or who speak English as a second language. For the most part, signature variations are of little consequence in a person’s life. But in the context of absentee voting, these variations become profoundly consequential.

*Saucedo*, Order at page 1 (granting injunctive relief, declaring New Hampshire’s “signature match” law unconstitutional). What the Court said in striking down the New Hampshire law in *Saucedo* is instructive by comparison to the Georgia laws here:

[T]his signature matching process is fundamentally flawed. Not only is the disenfranchised voter given no right to participate in this process, but the voter is not even given notice that her ballot has been rejected due to a signature mismatch. Moreover, moderators receive no training in handwriting analysis or signature comparison; no statute, regulation, or guidance from the State provides functional

standards to distinguish the natural variations of one write from variations that suggest two different writers; and the moderator's assessment is final without any review of appeal. applies to Georgia law in this case:

Order, page 2. Georgia also has no requirement that the ballot clerk have any training in handwriting analysis or signature comparison, yet a single ballot clerk's decision – both on the application and the ballot itself – is final without any review or appeal. *See* O.C.G.A. § 21-2-386(a)(1)(C).

Worse, Georgia law offers no meaningful guidance to the ballot clerks who are charged with the responsibility of determining the validity of applications and of the ballots themselves. The statute addressing the application for a mail ballot says vaguely that the clerk is to compare the signature on the application to the signature on the registration, but does not say how close the comparison must be or give any other standard for determining whether the signatures are comparable enough to pass muster. Georgia's law governing the rejection of ballots themselves is no better, for it requires the clerk to reject the ballot if "the signature does not appear to be valid," with no guidance as to how the clerk is to make that determination. Even if detailed guidance were provided, however, it is not realistic to provide adequate handwriting analysis training and experience to absentee ballot clerks across the state. Even a handwriting expert should not be permitted to cancel

a voters' right to vote without a meaningful opportunity for the voter to challenge the decision.

Georgia does require that the disenfranchised voter be given notice of the reasons the application or ballot was rejected, but there is no requirement that the notice be given in time to cure the perceived deficiency before Election Day.

Second, rejecting ballots because the voter writes the current date beside the voter's signature instead of the voter's year of birth is arbitrary and serves absolutely no legitimate governmental purpose. This is a completely understandable mistake: typically, when a date follows a signature, the date that is called for is the date of the signature, *not* the year the signatory was born. And rejecting a ballot because a voter fills in the current date rather than the year of the voter's birth is completely without justification. If the State has authenticated the signature, there is no need for further verification of identity. In addition, the birth year itself is irrelevant information: the voter has to be registered to obtain a ballot in the first place, and if the voter is registered, it does not matter to the State if the voter is 19 or 95. Even though requiring the birth year serves no purpose whatsoever, Gwinnett County alone has already disenfranchised 218 ballots for no reason other than this understandable mistake. *See supra* Note 1.



Because the missing or incorrect birth year is not necessary for the state to determine the legitimacy of the application or the ballot, it is not a discrepancy that the applicant or the voter should have to cure. For this reason, Plaintiffs seek an order declaring that Defendants may not reject applications or ballots for this reason, and that any applications or ballots rejected in the past should be processed or counted, as the case may be, without further action required of the applicant or voter.

Third, there are any number of other unexplained reasons that applications and ballots are rejected. The Secretary of State's database shows hundreds of applications and ballots being rejected for reasons such as "insufficient oath information" and "current year as birthyear." *See supra* Note 1. Some rejections are for harmless errors such as Cherokee County rejected a disabled voters' ballot who "signed on the wrong line," and rejected another voter's ballot who "signed the wrong oath," (likely the oath of the person assisting the voter needing assistance.) Whatever the basis for these rejections, there is no reason applicants and voters should not be given a reasonable opportunity to cure the deficiency before Election Day, if indeed any cure is necessary to verify the identity and eligibility of the voter. Rejections for technicalities on information not needed to determine eligibility, such as signing on the wrong line, should be prohibited.

For the foregoing reasons, Plaintiffs are likely to succeed on the merits of their fundamental-right-to-vote claim.

2. *Equal Protection Claim*

As to Plaintiffs' claim under the Equal Protection Clause, the issue is whether Georgia voters voting absentee by mail are "less likely to cast an effective vote" than voters voting absentee in person (early voters). *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) ("[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.").

In Georgia, "absentee in person" voters are those who vote early in person. Unlike mail absentee voters, early voters are given the opportunity at the precinct to verify identity and to correct mistakes in the ballot application, called the "Voter's Certificate." To the extent that they cannot provide the required information while in the polling place, they are permitted to cast a provisional ballot and supply the missing information within three days of Election Day.

Without a reasonable opportunity to cure perceived mistakes in an absentee mail ballot, absentee mail voters are denied their "constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction."

*Blumstein*, 405 U.S. at 336.

Plaintiffs therefore are likely to succeed on the merits of their Equal Protection Claim.

**B. Plaintiffs Are Likely to Suffer Irreparable Harm**

The harm to Plaintiffs if the injunction is not granted is by its very nature irreparable. Voting is a “fundamental political right, because preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

Defendants may contend that Plaintiffs cannot prove that their absentee mail ballot votes will not be counted. This argument misstates the legal test and miscomprehends the nature and extent of the threatened injuries. First, the test for granting equitable relief is not whether injury is certain to occur, but whether it is “likely” to occur. *Winter*, 555 U.S. at 20. Second, the likely miscounting of *any* votes infringes upon Plaintiffs’ constitutional rights. *Anderson v. United States*, 417 U.S. 211, 226 (1974) (Marshall, J.) (“The deposit of forged ballots in the ballot boxes, no matter how small or great their number, dilutes the influence of honest votes in an election, and whether in greater or less degree is immaterial.”).

Third, Georgia’s arbitrary and non-uniform rejection among the counties of mail ballot absentee applications and absentee mail ballots increases the risk of irreparable harm, and the increased risk of harm constitutes actual injury. *See Monsanto Co. v. Geerston Seed Farms*, 561 U.S. 139, 153-154 (2010) (“A

substantial risk of gene flow injures respondents in several ways”); *Massachusetts v. E.P.A.*, 549 U.S. 497, 526 (2007) (“The risk of catastrophic harm, though remote, is nevertheless real.”); *Farmer v. Brennan*, 511 U.S. 825, 828 (1994) (“A prison official's ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment.”).

Finally, the widespread acceptance of the legitimacy and accuracy of an election is itself a value that is certain to be irreparably harmed if Defendants continue the arbitrary rejection of absentee ballots. What Judge Biery said in *Casarez v. Valverde County* over twenty years ago unquestionably remains true today: “Those who have studied history and have observed the fragility of democratic institutes in our own time realize that one of country’s most precious possessions is . . . widespread acceptance of election results.” 957 F. Supp. 847, 865 (W.D. Tex. 1997) (citation omitted).

### **C. Balance of Equities Favors Granting the Injunction**

The balance of equities tips heavily in Plaintiffs favor. On the one hand, the weight of Plaintiffs’ equities is substantial. “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. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry*, 376 U.S. at 17.

On the other hand, the injunction will not cause Defendants any harm at all. The requested relief requires the Defendants to do what Georgia law requires it to do – give applicants and voters notice; it simply adds the requirement that the notice be given in time for it to make a difference, and to install a process for cure for eligible voters. The additional procedures for verification or rejection of signatures serves the State’s interest in ensuring that no absentee mail ballot is erroneously rejected. And, since requiring the birth year serves no purpose if the voter has been identified through verification of signature, eliminating mistakes relating thereto as a ground for rejection causes the State no harm.

Defendants may contend that the State will incur administrative costs if the injunctive relief is granted. This is doubtful but, in any event, district courts have repeatedly found that fundamental voting rights outweigh the administrative cost associated with fixing election systems or procedures. “Although these reforms may result in some administrative expenses for Defendants, such expenses are likely to be minimal and are far outweighed by the fundamental right at issue.” *United States v. Berks County*, 250 F. Supp. 2d 525, 541 (E.D. Pa. 2003) (granting preliminary injunction); *see also Johnson v. Halifax County*, 594 F. Supp. 161, 171 (E.D.N.C. 1984) (granting preliminary injunction, finding that administrative and financial burdens on defendant not undue in light of irreparable harm caused by

unequal opportunity to participate in county election); *NAACP v. Cortes*, 591 F. Supp. 2d 757 (E.D. Pa. 2008).

#### **D. Injunction Is in the Public Interest**

Granting this Motion unquestionably is in the public interest because public confidence in Georgia's election systems will be greatly enhanced by the granting of the requested relief. "The public must have confidence that the election process is fair." *Casarez*, 957 F. Supp. at 865 (granting preliminary injunction in election case) (citation omitted).

#### **V. CONCLUSION**

For the foregoing reasons, the Motion should be granted.

This 19<sup>th</sup> day of October, 2018.

/s/ Bruce P. Brown

Bruce P. Brown

Georgia Bar No. 064460

BRUCE P. BROWN LAW LLC

Attorney for Plaintiffs

1123 Zonolite Rd. NE

Suite 6

Atlanta, Georgia 30306

(404) 881-0700

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Brief in Support of Motion for Preliminary Injunction has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ Bruce P. Brown

Bruce P. Brown

Georgia Bar No. 064460

BRUCE P. BROWN LAW LLC

Attorney for Plaintiffs

1123 Zonolite Rd. NE

Suite 6

Atlanta, Georgia 30306

(404) 881-0700

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused the foregoing Brief in Support of Motion for Preliminary Injunction to be served upon all other parties in this action by via electronic delivery using the PACER-ECF system. In addition, Plaintiffs have served this Motion upon the following via email:

Frank B. Strickland  
Bryan Tyson  
Strickland Brockington Lewis LLP  
1170 Peachtree St. NE  
Atlanta, Georgia 30309

Richard A. Carothers  
Brian R. Dempsey  
Carothers & Mitchell, LLC  
1809 Buford Highway  
Buford, Georgia 30518

Cristina Correia  
Senior Assistant Attorney General  
Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

This 19<sup>th</sup> day of October, 2018.

/s/ Bruce P. Brown  
Bruce P. Brown



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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**RHONDA J. MARTIN, DANA  
BOWERS, JASMINE CLARK,  
SMYTHE DUVAL, and JEANNE  
DUFORT,**

**Plaintiffs,**

**v.**

**BRIAN KEMP, et al.**

**Defendants.**

**Civil Action File No.**

**1:18-cv-04776-LMM**

**DECLARATION OF DANA BOWERS**

**DANA BOWERS** hereby declares as follows:

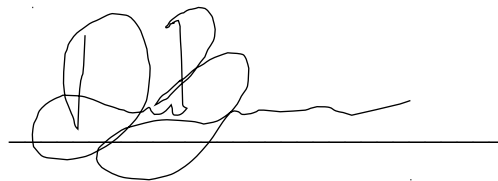
1. I am have been a Georgia voter since May 7, 2002 and am currently registered to vote at 3514 Debbie Ct. Duluth, GA 30097 I have been registered to vote at this address continuously since April 16, 2013.
2. I am active in numerous candidate campaigns in Gwinett County for the upcoming November 6, 2018 election, and on the campaign staff of Josh McCall, candidate for US Congress in District 9. The 9<sup>th</sup> Congressional Ditriect spans 20 counties.

3. I am aware that through October 18, 2018 the Gwinnett County rejection rate for mail ballots submitted exceeded 8% for the November 6, 2018 election. I consider this rejection rate to be unreasonable and far too high to accept.
4. In my opinion, the mail ballot voters in Gwinnett County have an unacceptably high risk of being disenfranchised because of small, correctable discrepancies on the ballot return envelope. I cannot confidently encourage people to vote by mail ballot because of this risk, although I believe that voting on the electronic voting machines is unsafe as well as has been demonstrated by experts in court hearings.
5. As a member of the McCall campaign staff, I have become aware of serious flaws in Georgia's electronic election system. I am extremely concerned about the unreliability of both the un-auditable electronic voting system and the mail ballot option of voting that, if handled carefully by officials, can at least produce an auditable paper trail.
6. I am urging all our campaign's supporters to vote, and I am cautiously encouraging voters to vote on mail ballots, but I inform that they must follow the progress of the ballot to assure that it is accepted and not rejected without timely notice.

7. I am uncomfortable voting on unsafe, flawed and unreliable electronic equipment in the polling place, and trying to factor in the documented risk of ballot rejection in Gwinnett County, I am nervously choosing to take the risk of voting by mail ballot and will daily monitor the progress of my ballot to assure that it is not rejected, an exercise that should not be necessary.
8. I feel that it is unfair to voters like myself and campaigns such as the ones I am involved with to have no safe method of voting to recommend. I spend hours every week answering voters' questions about the risks of the two methods of voting. Sadly there are no good answers. I can offer with confidence. All methods of voting should be safe and secure and reliable. Voters and campaigns should not have to worry about which voting method produces less risk.
9. If voters are given the chance to cure perceived discrepancies, the campaigns I am involved with will devote resources to contacting voters and helping them cure their ballot envelope information or mail ballot applications.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on this date, October 19, 2018.

A handwritten signature in black ink, appearing to read 'Dana Bowers', is written over a horizontal line.

Dana Bowers

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**RHONDA J. MARTIN, DANA  
BOWERS, JASMINE CLARK,  
SMYTHE DUVAL, and JEANNE  
DUFORT,**

**Plaintiffs,**

**v.**

**BRIAN KEMP, et al.**

**Defendants.**

**Civil Action File No.**

**1:18-cv-04776-LMM**

**DECLARATION OF JASMINE CLARK**

**JASMINE CLARK** hereby declares as follows:

1. I have been a Georgia voter since 2006 and am currently registered to vote at 280 Braxton Place in Gwinnett County.
2. I am a candidate for Georgia House of Representatives District 108 in the upcoming November 6, 2018 election. House District 108 is all within Gwinnett County and does not extend into other counties.
3. As of October 18, 2018, 478 mail ballots appear to have been cast in House District 108 for the November 6 election, where I am a candidate and a voter.

Of those 478 ballots cast, 39 were rejected, for an 8.2% rejection rate. Of those 39 rejected, 12 ballots were cast by “elderly” or “disabled” voters. The rejection rates seem far too high and strongly suggest an unfair process in my opinion.

4. In my opinion, the mail ballot voters in Gwinnett County, including in House District 108 have an inordinate chance of being disenfranchised because of hypertechnical perceived discrepancies on the ballot return envelope. I cannot in good conscience encourage people to vote by mail ballot because of this risk, although I believe that voting on the electronic voting machines is unsafe as well as has been demonstrated by the expert voting system community.
5. As a candidate, I have become aware of chronic problems in Georgia’s electronic election system and I follow the news of Georgia voting problems. I followed news reports of the security failures and breach of the KSU election server and voter files, as well as numerous problems reported with the electronic voting system that cannot produce a auditable record of votes cast. To learn more about the security issues in the upcoming election, I attended the September 12, 2018 hearing in the Curling v Kemp case (17cv2989).



6. As a candidate, I am extremely concerned about the unreliability of both the un-auditable electronic voting system and the mail ballot option of voting that, if handled carefully by officials, can at least produce an auditable paper trail.
7. I am urging all voters to vote, but I am not encouraging mail ballot voting because of the high risk of mail ballot rejection in Gwinnett County and the inability for voters to cure any minor errors or discrepancies in completing their return envelope ballot oath.
8. Although I am uncomfortable voting on flawed and unreliable electronic equipment in the polling place, given the documented risk of ballot rejection in Gwinnett County, I am unhappily choosing to take the risk to vote by electronic machine in the polling place, which I perceive could be a lower risk of disenfranchisement.
9. In my opinion, when voters must choose the method to vote given Georgia's two options, both of which are insecure, they are having to evaluate the known risk of rejection (over 8% in Gwinnett County) to the unknown but real risk of vote manipulation of the DRE machines. Such choices are patently unfair to voters wanting their vote to count.
10. As a candidate, I am spending considerable time explaining to voters that if they choose to vote by mail ballot, they must understand the risk, and be diligent in tracking their application and ballot progress and acceptance on the

Secretary of State's website to avoid having their vote rejected without notice.

Many voters simply do not have the skill set, or access to internet services to electronically monitor the ballot progress.

11. As a candidate, I appreciate that many voters prefer to wait until Election Day or very close to Election Day to cast their ballot so that they may study the candidates and the ballot questions carefully, taking into account the latest news before election day. However, for those voting by mail ballot, I advise them to vote earlier than they would prefer because of the high rejection rate in Gwinnett County, and the need for time to mitigate a possible rejection if that can be accomplished.

12. The need to urge people to vote earlier to avoid disenfranchisement detracts from the time I should spend informing voters of my platform and hearing their concerns. Having to push early voting and frequent status checks for voters who choose mail ballots forces my campaign to expend resources to urge early voting and front load campaign efforts and expenses.

13. Given the high mail ballot rejection rates in Gwinnett County, I am particularly concerned about House District 108 voters who are elderly and disabled and need to vote by mail ballot. Many of these voters would have difficulty monitoring their ballot progress on the website or making a trip to the election

office to attempt to resolve discrepancies if they happen to become aware of their ballot or application being rejected.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on this date, October 19, 2018.

A handwritten signature in blue ink, appearing to read 'J. Clark', is written over a horizontal line.

Jasmine Clark

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**RHONDA J. MARTIN, DANA  
BOWERS, JASMINE CLARK,  
SMYTHE DUVAL, and JEANNE  
DUFORT,**

**Civil Action File No.**

**1:18-cv-04776-LMM**

**Plaintiffs,**

**v.**

**BRIAN KEMP, et al.**

**Defendants.**

**DECLARATION OF JEANNE DUFORT**

**JEANNE DUFORT** hereby declares as follows:

1. I am Georgia voter and am currently registered to vote at 1360 Apalachee River Road, Madison Georgia in Morgan County.
2. I plan to vote in the November 6, 2018 election and in all future elections for which I am eligible to vote.
3. For some time I have been aware of chronic problems in Georgia's electronic election system and I follow the news of Georgia voting problems, and have attended numerous public meetings on the topic of election security. I

followed news reports of the security failures and breaches of the state's election server and voter files, as well as numerous problems reported with the electronic voting system that cannot produce an auditable record of votes cast.

4. I have actively lobbied Morgan County officials to abandon the un-auditable and unreliable DRE machines in favor of paper ballots for the November 2018 election. Morgan County chose to continue the use of DREs.
5. I appeared before the State Election Board in September, requesting that they adopt paper ballots for the mid-terms statewide, or at the least declare rule 183-1-12-.01 improper and inform local bodies that that may follow the law and adopt paper ballots.
6. I am choosing to vote by mail ballot, because it provides the benefit of an auditable paper trail, although I have serious concerns about whether mail ballot applications and mail ballots will be properly and fairly handled in counties such as Gwinnett County and Fulton County, given their history of absentee ballot delivery problems.<sup>1</sup>
7. I am satisfied that Morgan County's processes will issue mail ballots to all eligible voters who request them and reject any fraudulent ballots. I have

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<sup>1</sup> [https://www.cbs46.com/news/absentee-ballots-delivered-to-fulton-county-voters-days-after-run/article\\_a2317780-225e-592b-a65a-6e68604e8e13.html](https://www.cbs46.com/news/absentee-ballots-delivered-to-fulton-county-voters-days-after-run/article_a2317780-225e-592b-a65a-6e68604e8e13.html)

personally reviewed materials and discussed the Morgan County process with Elections Supervisor, Jennifer Doran to understand the diligent efforts undertaken by Election Department staff to promptly locate voters with perceived discrepancies and ensure that no eligible voter is disenfranchised.

8. It is clear that these routine processes as undertaken by Morgan County are feasible and can be undertaken easily by other counties as well to avoid disenfranchising mail ballot voters. Morgan County has rejected only 4 ballots to date – three were unsigned and one was signed by the assisting person. Letters were mailed explaining the problem on the same day the ballots were received and reviewed, and staff is confident the ballots will be resubmitted and counted. I have reviewed Morgan County's history of handling mail ballots from data available on the Secretary of State's website, and the historic data shows a very low rate of rejected ballots.
9. I have received my mail ballot, and personally delivered my marked ballot to the Elections Office on Friday, October 19, 2018. I presented my ID to Sue DoorenBos, Deputy Registrar, who checked it and confirmed my ballot would be accepted. I plan to carefully track its progress daily on the Secretary of State's website to be certain the record shows that it was accepted.
10. While at the Board of Elections office on Friday, October 19, 2018, I asked Jennifer Doran, Election Supervisor, to show me the screen that would be

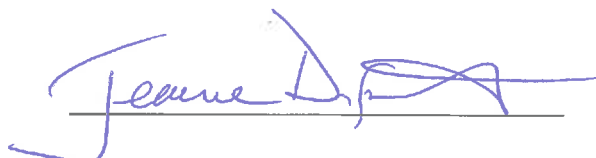
accessed to check my ballot envelope signature had my ballot arrived by mail. Using my name, she pulled up the screen that is used and allowed me to view it. In addition to signature, voter number, and name, the screen showed other voter identification information, including race and age, plus the record of voting in recent elections.

11. I am active in the Democratic Party and actively work as a volunteer in several multi-county campaigns. The impact of the lack of uniformity and the effect of officials rejecting ballots for insignificant errors has the very real potential to result in a flawed election.

12. I am concerned about the integrity of Gwinnett County and the other counties' disparate processes and the lack of uniform treatment of voters and the impact on the results of the upcoming elections.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on this date, October 19, 2018.



Jeanne Dufort



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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**RHONDA J. MARTIN, DANA  
BOWERS, JASMINE CLARK,  
SMYTHE DUVAL, and JEANNE  
DUFORT,**

**Plaintiffs,**

**v.**

**BRIAN KEMP, et al.**

**Defendants.**

**Civil Action File No.**

**1:18-cv-04776-LMM**

**DECLARATION OF J. SMYTHE DUVAL**

**J. SMYTHE DUVAL** hereby declares as follows:

1. I am the Libertarian Party of Georgia's candidate for Secretary of State in the November 6, 2018 election. The Secretary of State's race is a statewide race, and my name is on the ballot in all 159 counties.
2. I am a Georgia voter registered to vote in Cobb County, and plan to vote in the November 6, 2018 election and all future elections for which I am eligible to vote.
3. Because of my experience and technical knowledge of information technology and cyber-security risk assessment, I am aware of the security

deficiencies of Georgia's DRE voting system, and have read the press reports of Georgia voting system's security flaws and have reviewed several declarations of experts in this case, to include serious operational deficiencies in the SOS's implementation of an IT security and compliance program.

4. Following the press reports that foreign entities were analyzing Georgia government websites, including the Cobb Board of Elections website, I reviewed the experts' recommended solution of using optical scanners to count paper ballots for conducting the November election and as a candidate, publicly endorsed that solution.
5. I have carefully followed and actively participated in voters' statewide efforts to advocate for paper ballots in the polling place in the November election. I have spoken at numerous public meetings advocating for the essential and urgent need for paper ballots in Georgia elections to secure our elections so that they may be audited and recounted.
6. I attended the September 12, 2018 hearing in the Curling v Kemp election security case (17cv2989) and heard the testimony of Secretary of State's office professionals. I was stunned to learn that no remediation efforts have been taken nor any forensic review undertaken by the Secretary of State's

office since the KSU server was exposed to anyone with an internet connection.

7. After the Court's decision not to require paper ballots for the November 6, 2018 election, I reluctantly began advocating that voters opt for voting by mail ballot, because paper ballots can be recounted and audited and used as evidence in any potential post-election challenge.
8. As a candidate, I have a strong interest in having a reliable, legally conducted election that can be recounted, audited, or reviewed in an election challenge—and only paper ballots can provide that.
9. Given that most counties are refusing to voluntarily adopt paper ballots in the polling place for either early voting or Election Day, in my campaign, I am reluctantly suggesting that voters vote by mail if their home county will not offer paper ballots in the polling place, so that there is at least a paper trail of the votes as cast.
10. Ted Metz, the Libertarian Party gubernatorial candidate, is also advocating for voting by mail ballot, given the lack of security of the electronic voting system.
11. I have recently become more aware of the meaningful risk of mail ballot rejection and mail voter disenfranchisement over technicalities because

Georgia law does not provide protections of mail ballot applicants and voters in the same manner that such protections are provided in the polling place.

12. I have reviewed analysis of rejections of mail ballot applications and voted ballots for recent elections, as prepared by Libertarian Party officials from publicly available data. I am very concerned about the voting rights of Georgia voters based on our analysis showing significant mail ballot rejection rates.

13. Analysis of the ballot rejections in Gwinnett County in particular appears to indicate a racial bias that causes a disproportionately higher rejection rate among Asian-Pacific voters and Black voters. In my opinion, such unacceptable and illegal practices must be stopped in order to have a fair election.

14. My strong preference is to vote on Election Day in my local precinct along with other voters, particularly since I am a candidate, and I want to be seen by voters exercising the right to vote. I also want the full benefit of acquiring the latest news and information on all matters on the ballot, right up until and including Election Day. I want all voters to have these same two benefits of voting on Election Day.

15. However, I will not cast my vote on an unreliable electronic voting machine, so I must vote by mail ballot. I wish to have the benefit of voting on

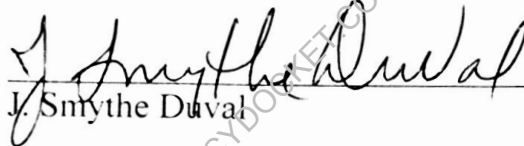
Election Day with the most current information and not before. I understand that current Georgia law prohibits voting a mail ballot on Election Day.

16. Under current law, I must forego those two important benefits to cast a ballot with an auditable paper trail, and encourage others to do so, given that Election Day voting is limited to unauditable and unreliable DRE voting.
17. My overriding goal is to cast a secure ballot that I am confident reflects my intent that can be recounted and tested. Therefore, I am making the reluctant choice to vote several days prior to Election Day by mail ballot, foregoing the benefits of voting on Election Day, and suggesting that voters do the same.
18. I have completed and mailed my application for a mail ballot to Cobb County elections office.
19. When I receive my ballot, I will mail or deliver my mail ballot well before Election Day in order to ensure that it is delivered and accepted in time for me to remedy possible delivery failure or signature differences or technical errors in the oath information details, and will encourage voters statewide to do the same.
20. Although this is a disadvantage in casting my ballot before Election Day, I unhappily accept the mail ballot disadvantages and risks for the benefit of

casting a paper ballot that can be audited, and am concerned that voters must accept this unnecessary risk as well.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on this date, October 19, 2018

  
J. Smythe Duval

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**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

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**RHONDA MARTIN, et al.**

**Plaintiff,**

**vs.**

**BRIAN P. KEMP, et al.**

**Defendant.**

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**DECLARATION OF RHONDA J. MARTIN**

**RHONDA J. MARTIN** hereby declares as follows:

1. I am Georgia voter and am currently registered to vote at 2500 Peachtree Road NW Apt. 606, Atlanta, Georgia in Fulton County.
2. I plan to vote in the November 6, 2018 election and in all future elections for which I am eligible to vote.
3. For some time I have been aware of chronic problems in Georgia's electronic election system and I follow the news of Georgia voting problems, and have attended numerous public meetings on the topic of election security. I followed news reports of the security failures and breaches of the state's election server and voter files, as well as numerous problems reported with

the electronic voting system that cannot produce a auditable record of votes cast.

4. I am reluctantly choosing to vote by mail ballot, because it provides the benefit of an auditable paper trail, although I have serious concerns about whether mail ballot applications and mail ballots (mine and other voters) will be properly and fairly handled. Fulton County has a history of absentee ballot delivery problems.<sup>1</sup>
5. I received my mail ballot packet (Exhibit A) and plan to mark my ballot soon to return it to Fulton County via mail or personal hand delivery.
6. I will watch the progress of my ballot daily to ensure that it is accepted, given the past history of absentee ballot problems in Fulton, and the rejection rates I am observing in other Georgia counties.
7. I have noted that no mail ballots have been reported as rejected to date by Fulton County, nor were any reported as rejected in the November 2016 election. This causes me to wonder whether rejected mail ballots are not being reported to the Secretary of State, or whether mail ballots are not being reviewed to exclude ineligible ballots. A zero rejection rate in Georgia's most populous county implies a process that lacks accuracy and integrity.

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<sup>1</sup> [https://www.cbs46.com/news/absentee-ballots-delivered-to-fulton-county-voters-days-after-run/article\\_a2317780-225e-592b-a65a-6e68604e8e13.html](https://www.cbs46.com/news/absentee-ballots-delivered-to-fulton-county-voters-days-after-run/article_a2317780-225e-592b-a65a-6e68604e8e13.html)

8. I am concerned that the unnecessary and wrongful rejection or acceptance of mail ballots will impact the outcome of some of the close races in November.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on this date, October 19, 2018.

A handwritten signature in black ink, reading "Rhonda J. Martin". The signature is written in a cursive style with a large initial "R" and a long horizontal stroke at the end.

Rhonda J. Martin

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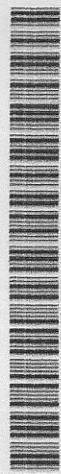
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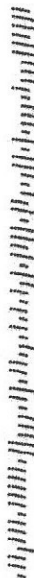
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# Official Absentee Ballot

RHONDA JO MARTIN  
2500 PEACHTREE RD NW UNIT 606  
ATLANTA GA 30305-

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## OATH OF ELECTOR

I, the undersigned, do swear (or affirm) that I am a citizen of the United States and of the State of Georgia; that my residence address is

(No. R.F.D., Street or Road) \_\_\_\_\_  
 \_\_\_\_\_ In the County of \_\_\_\_\_  
 (City) (State) (Zip) \_\_\_\_\_, that the date of my birth is \_\_\_\_\_  
 \_\_\_\_\_; that I possess the  
 (Month and Day) \_\_\_\_\_

qualification of an elector required by the laws of the State of Georgia; that I am entitled to vote in the precinct containing my residence or, in the case of a permanent overseas elector entitled to vote in Georgia, my former residence in the primary or election in which this ballot is to be cast; that I am eligible to vote by absentee ballot; that I have not marked or mailed any other absentee ballot, nor will I mark or mail another absentee ballot for voting in such primary or election; nor shall I vote therein in person and that I have read and understand the instructions accompanying this ballot and that I have carefully complied with such instructions in completing the ballot.

I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law. O.C.G.A. Section 21-2-384(c), and O.C.G.A. Section 21-2-570.

Sign here: \_\_\_\_\_

**SIGNATURE OR MARK OF ELECTOR**

## OATH OF PERSON ASSISTING ELECTOR (IF ANY)

I, the undersigned, do swear (or affirm) that I assisted the above named elector in marking such elector's absentee ballot as such elector personally communicated such elector's preference to me and that such elector is entitled to receive assistance in voting under provisions of subsection (a) of Code Section 21-2-409.

This, the \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_, 20 \_\_\_\_\_

Reason for assistance ( Check appropriate square).

- ☐ Elector is unable to read the English Language.  
☐ Elector requires assistance due to physical disability.

## SIGNATURE OF PERSON ASSISTING ELECTOR-RELATIONSHIP

**CAUTION:** "Any voter who requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 42 U.S.C. §1973aa-6.

**PENALTIES:** Georgia law provides that any person who knowingly falsifies information so as to vote illegally by absentee ballot, or who illegally gives or receives assistance in voting as specified in Code Sections 21-2-573 or 21-2-579, shall be guilty of a felony.

(OFFICE USE ONLY)

Date and Time Received: \_\_\_\_\_

Certified and Approved: \_\_\_\_\_  
 (Signature of Registrar)

**FULL NAME**

08H RHONDA JO MARTIN N0008H1

05646441N101318



**STOP**

- Have you placed your ballot in the white envelope and sealed it?
- Have you placed the sealed white envelope in the yellow return envelope and sealed it?
- Have you signed the oath?
- Have you affixed sufficient postage?



From: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PLACE  
STAMP  
HERE



## Official Absentee Ballot

BOARD OF REGISTRARS  
FULTON COUNTY REGISTRATION AND ELECTIONS  
ABSENTEE BALLOT UNIT  
130 PEACHTREE ST. SW. SUITE 2186  
ATLANTA GEORGIA 30303-3443



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The accompanying ballot and two envelopes are sent to you in response to a request made by you or a member of your family.

**YOU MUST FOLLOW THESE INSTRUCTIONS FOR YOUR VOTE TO COUNT:**

1. At any time after receiving your official absentee ballot, but before the day of the primary or election (with the exception of elector confined to a hospital), you may vote your absentee ballot. Mark the ballot according to these instructions:

**No witness is required.**

- A. Use a black or blue pen to mark your ballot. Be sure the ink is dry before folding the ballot and placing it in the envelope.
- B. Completely fill in the oval next to the name of the candidate for whom you wish to vote and the response you wish to give to a question (if applicable).
- C. To vote for a person whose name does not appear on the ballot for a general election or a special election, follow the directions on the ballot for casting a write-in vote. Write-in votes are not allowed in primary elections.

**EXAMPLE  
OFFICIAL OFFICE TITLE**

(Vote for One)	
<input type="radio"/>	CANDIDATE NAME
<input checked="" type="radio"/>	CANDIDATE NAME
<input type="radio"/>	Write-in _____

2. If while voting you inadvertently make an error, spoil, or otherwise deface the ballot, IMMEDIATELY contact the Board of Registrars of your county or the municipal absentee ballot clerk, whichever is applicable, to receive a replacement ballot. **Note: No replacement absentee ballot can be mailed by the registrars or absentee ballot clerk's office on the day prior to a primary or election.**
3. After voting your ballot, enclose and securely seal the ballot in the smaller of the two envelopes provided, which is white and on which is printed "Official Absentee Ballot."
4. Place this envelope in the second (or larger) envelope, which is yellow, and complete the oath on the back of the envelope, then sign on the line provided.
5. Mail or personally deliver to the Board of Registrars or the municipal absentee ballot clerk, whichever is applicable. Be sure to use sufficient postage if mailing.



NOTE: After an absentee ballot has been voted, delivery by a physically disabled elector may be made by any adult upon satisfactory proof that such adult is such elector's mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or an individual residing in the household of such disabled elector. A elector who is confined to a hospital on a primary or election day to whom an absentee ballot is delivered by the registrar or absentee ballot clerk shall then and there vote the ballot, seal it properly, and return it to the registrar or absentee ballot clerk.

**O.C.G.A. § 21-2-385(b):** A physically disabled or illiterate elector may receive assistance in preparing his or her ballot from one of the following: any elector who is qualified to vote in the same county or municipality as the disabled or illiterate elector; an attendant care provider or a person providing attendant care; or the mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of the disabled or illiterate elector. The person rendering assistance to the elector in preparing the ballot shall sign the oath printed on the same envelope as the oath to be signed by the elector. If the disabled or illiterate elector is sojourning outside his or her own county or municipality, a notary public of the jurisdiction may give such assistance and shall sign the oath printed on the same envelope as the oath to be signed by the elector. No person shall assist more than ten such electors in any primary, election, or runoff in which there is no federal candidate on the ballot.

In any election in which federal candidates appear on the ballot, the following code section shall apply: **U.S. Code Sec. 1973aa-6:** Any elector who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the elector's choice, other than the elector's employer or agent of that employer or officer or agent of the elector's union.

**AN ABSENTEE BALLOT MUST BE RECEIVED IN THE OFFICE OF THE BOARD OF REGISTRARS BY 7:00 P.M. (CLOSE OF THE POLLS) ON THE PRIMARY OR ELECTION DAY IN ORDER TO BE COUNTED. ALTHOUGH GEORGIA LAW PROHIBITS ANYONE FROM VOTING AN ABSENTEE BALLOT ON PRIMARY OR ELECTION DAY, IT DOES NOT PROHIBIT A PERSON FROM MAILING AN ABSENTEE BALLOT WHICH HAS ALREADY BEEN VOTED ON THAT DAY; HOWEVER, IT WILL NOT BE COUNTED UNLESS RECEIVED IN THE REGISTRAR'S OFFICE BY 7:00 P.M. EXCEPTION: A REGISTRAR MAY DELIVER, ON THE DAY OF THE PRIMARY OR ELECTION, AN ABSENTEE BALLOT TO AN ELECTOR CONFINED IN A HOSPITAL, AND SUCH ELECTOR MAY THEN AND THERE VOTE THE ABSENTEE BALLOT.**

# **OFFICIAL ABSENTEE BALLOT**

## **BALLOT MUST BE ENCLOSED**

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**CIV-S-07-OPT**



## FULTON COUNTY



## OFFICIAL ABSENTEE/PROVISIONAL/CHALLENGED BALLOT

 OFFICIAL GENERAL ELECTION BALLOT  
 OF THE STATE OF GEORGIA  
 NOVEMBER 6, 2018

PRECINCT-N0008H1

To vote, blacken the Oval (●) next to the candidate of your choice. To vote for a person whose name is not on the ballot, manually WRITE his or her name in the write-in section and blacken the Oval (●) next to the write-in section. If you desire to vote YES or NO for a PROPOSED QUESTION, blacken the corresponding Oval (●). Use only blue or black pen or pencil.

Do not vote for more candidates than the number allowed for each specific office. Do not cross out or erase. If you erase or make other marks on the ballot or tear the ballot, your vote may not count.

If you change your mind or make a mistake, you may return the ballot by writing "Spoiled" across the face of the ballot and return envelope. You may then mail the spoiled ballot back to your county board of registrars, and you will be issued another official absentee ballot. Alternatively, you may surrender the ballot to the poll manager of an early voting site within your county or the precinct to which you are assigned. You will then be permitted to vote a regular ballot.

*I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law." [OCGA 21-2-285(h) and 21-2-383(a)]*

**For Governor**  
 (Vote for One)

- ☐ BRIAN KEMP  
Republican
- ☐ STACEY ABRAMS  
Democrat
- ☐ TED METZ  
Libertarian
- ☐

Write-in

**For Commissioner of Insurance**  
 (Vote for One)

- ☐ JIM BECK  
Republican
- ☐ JANICE LAWS  
Democrat
- ☐ DONNIE FOSTER  
Libertarian
- ☐

Write-in

**For U.S. Representative in 116<sup>th</sup> Congress From the 5<sup>th</sup> Congressional District of Georgia**  
 (Vote for One)

- ☐ JOHN R. LEWIS  
(Incumbent) Democrat
- ☐

Write-in

**For Fulton County Soil and Water Conservation District Supervisor**  
 (Vote for Two)

- ☐ WALTER S. REKUC, JR  
(Incumbent)
- ☐ JASON ROBERT ULSETH
- ☐

Write-in

**For Lieutenant Governor**  
 (Vote for One)

- ☐ GEOFF DUNCAN  
Republican
- ☐ SARAH RIGGS AMICO  
Democrat
- ☐

Write-in

**For State School Superintendent**  
 (Vote for One)

- ☐ RICHARD WOODS  
(Incumbent) Republican
- ☐ OTHA E. THORNTON, JR.  
Democrat
- ☐

Write-in

**For State Senator From 39<sup>th</sup> District**  
 (Vote For One)

- ☐ NIKEMA WILLIAMS  
(Incumbent) Democrat
- ☐

Write-in

**For Secretary of State**  
 (Vote for One)

- ☐ BRAD RAFFENSPERGER  
Republican
- ☐ JOHN BARROW  
Democrat
- ☐ SMYTHE DUVAL  
Libertarian

**For Commissioner of Labor**  
 (Vote for One)

- ☐ MARK BUTLER  
(Incumbent) Republican
- ☐ RICHARD KEATLEY  
Democrat
- ☐

**For State Representative in the General Assembly From 54<sup>th</sup> District**  
 (Vote for One)

- ☐ BETH BESKIN  
(Incumbent) Republican
- ☐ BETSY HOLLAND  
Democrat
- ☐

**PROPOSED CONSTITUTIONAL AMENDMENTS**

- 1 -

**Creates the Georgia Outdoor Stewardship Trust Fund to protect water quality, wildlife habitat, and parks.**

House Resolution No. 238  
 Resolution Act No. 414  
 Ga. L. 2018, p. 1138  
 "Without increasing the current state sales tax rate, shall the Constitution of Georgia be amended so as to create the Georgia Outdoor Stewardship

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

**RHONDA J. MARTIN, DANA  
BOWERS, JASMINE CLARK, SMYTHE  
DUVAL, and JEANNE DUFORT,**

**Plaintiffs,**

**v.**

**BRIAN KEMP, et al.**

**Defendants.**

**Civil Action File No.**

**1:18-cv-04776-LMM**

**PROPOSED ORDER GRANTING  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

This matter is before the Court on the Motion for Preliminary Injunction of Plaintiffs Rhonda J. Martin, Dana Bowers, Jasmine Clark, Smythe DuVal and Jeanne Dufort ("Plaintiffs").

Upon considering the motion and supporting authorities, the response from the Defendants, and the evidence and pleadings of record, the Court finds that Plaintiffs are likely to succeed on the merits of their claims, that they will be irreparably harmed if this motion is not granted, that the balance of equities tip in Plaintiffs' favor, and that an injunction is in the public interest. *See Winter v. Nat.*

*Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Court accordingly GRANTS the motion and issues the relief set forth below.

DEFENDANTS are HEREBY enjoined, until further order of this Court:

1. To make a determination of eligibility for each mail ballot application within three business days of receipt of the electors' application. If the County Election Officials find an application deficient, the County Election Officials shall, within one business day of making such determination, (a) send the applicant by first class mail a new application and notification informing the applicant in writing of the grounds of rejection and instructions for the cure of perceived deficiencies; and (b) if the applicant has provided a telephone number, call the applicant, *and* if the applicant has provided an email address, email the applicant, and inform the applicant of the grounds of ineligibility and instruction for the cure of such ineligibility. The notification shall include instructions for tracking the status and progress of the application and ballot issuance on the Secretary of State's website;

2. To make a determination of eligibility for each mail ballot received within three business days of receipt of the electors' ballot. If the County Election Officials reject a mail ballot, the County Election Officials shall within one business day of rejecting said mail ballot (a) send the elector by first class mail a



notification informing the elector in writing of the grounds of such rejection, instructions for the cure of such rejection, and notification that the elector may cure such rejection at any point up to the close of business on the Friday after Election Day; and (b) if the elector has provided a telephone number, call the elector, *and* if the elector has provided an email address, email the elector, and inform the elector of the grounds of rejection and instruction for the cure of such rejection, and notification that the elector may cure such rejection up to the close of business on the Friday after Election Day. The notification shall include instructions for tracking the status and progress of the ballot acceptance on the Secretary of State's website;

3. To not reject a ballot for the reason of a signature discrepancy unless and until it has been reviewed by the Signature Review Committee (as described below) and the Signature Review Committee has determined that the signature does not appear to be valid. The Signature Review Committee shall be appointed by the bi-partisan county election board, or other superintendent when there is no county election board, and composed of an equal number of members from the two parties represented on the county election board, with an adequate number of members to serve alternately throughout the mail ballot receipt period. Two members of the Signature Review Committee, one from each party appointing

members, shall promptly review all oath signatures that are set aside by election officials as discrepant signatures. No ballot shall be rejected without the agreement of both members of the Signature Review Committee. Signatures determined to be discrepant by only a single party's appointed member shall be approved and the ballot accepted for counting;

4. To allow an elector receiving an official absentee ballot to mark and cast his or her absentee ballot until 7 p.m. on the day of the primary or the election by personally delivering same to the board of registrars or to the absentee ballot clerk or, if the delivery is made on Election Day, to the elector's voting precinct, and shall allow delivery by a physically disabled elector to be made within said deadlines provided such delivery is otherwise made in accordance with O.C.G.A. § 21-2-385(a);

5. To not reject any mail ballot solely because of an incorrect or missing year of birth and to accept any mail ballot that was previously rejected for the sole reason of an incorrect or missing year of birth;

6. To review all mail ballot applications and mail ballots rejected to date for the November 6, 2018 election and immediately apply the relief requested in Paragraph 1 through 5, above, for each rejection; and

7. To ensure that pollwatchers who are authorized to observe elections also have the opportunity to observe the process of absentee application and absentee ballot processing, signature, scanning of voted ballots and chain of custody controls.

This \_\_\_\_ day of \_\_\_\_\_, 2018.

---

U.S. District Court Judge Leigh Martin May

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Proposed Order Granting Motion for Preliminary Injunction has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ Bruce P. Brown

Bruce P. Brown

Georgia Bar No. 064460

BRUCE P. BROWN LAW LLC

Attorney for Plaintiffs

1123 Zonolite Rd. NE

Suite 6

Atlanta, Georgia 30306

(404) 881-0700

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused the foregoing PROPOSED ORDER GRANTING MOTION FOR PRELIMINARY to be served upon all other parties in this action by via electronic delivery using the PACER-ECF system. In addition, Plaintiffs have served this Motion upon the following via email:

Frank B. Strickland  
Bryan Tyson  
Strickland Brockington Lewis LLP  
1170 Peachtree St. NE  
Atlanta, Georgia 30309

Richard A. Carothers  
Brian R. Dempsey  
Carothers & Mitchell, LLC  
1809 Buford Highway  
Buford, Georgia 30518

Cristina Correia  
Senior Assistant Attorney General  
Georgia Department of Law  
40 Capitol Square SW  
Atlanta, Georgia 30334

This 19<sup>th</sup> day of October, 2018.

/s/ Bruce P. Brown  
Bruce P. Brown