

IN THE SUPERIOR COURT OF PAULDING COUNTY  
STATE OF GEORGIA

THE NEW GEORGIA PROJECT,

Plaintiff,

v.

PEGGY WILLIS, in her official capacity as Chair of the Paulding County Board of Elections and Voter Registration; BILL MCFADDEN, in his official capacity as Vice Chair of the Paulding County Board of Elections and Voter Registration; BOBBIE LEE, in her official capacity as a Member of the Paulding County Board of Elections and Voter Registration; ERNEST MORSE, in his official capacity as a Member of the Paulding County Board of Elections and Voter Registration; RAYMOND PHILLIPS, in his official capacity as a Member of the Paulding County Board of Elections and Voter Registration,

Defendants.

Civil Action No.

EMERGENCY RELIEF REQUESTED

  
Sheila Butler, Clerk  
Paulding County, Georgia

**PETITION FOR WRIT OF MANDAMUS**  
**AND VERIFIED COMPLAINT FOR EMERGENCY INJUNCTIVE AND**  
**DECLARATORY RELIEF**

Plaintiff The New Georgia Project (“NGP”) alleges as follows:

**PRELIMINARY STATEMENT**

1. This is an emergency action for mandamus, injunctive, and declaratory relief to vindicate Georgians’ right to vote in the January 5, 2021 runoff election under Georgia law and require that Defendants exercise their clear and non-discretionary duty to provide for advance voting as required by Georgia law. Specifically, in the coming runoff election, Georgia law requires a period of advance voting beginning Monday, December 14, 2020, and ending Monday,

January 4, 2021. As to advance voting on the weekend, counties must—at a minimum—make advance voting available on Saturday, December 19, 2020. Advance voting has already begun. As of the date of this filing, Paulding County has indicated that it does not intend to offer advance voting on the dates and to the extent that it is required to under the law.

2. The upcoming runoff election is of tremendous importance, even more so than in an ordinary election cycle. Among other races, both of Georgia's seats in the U.S. Senate are on the ballot. Thus, Georgia's entire representation in the U.S. Senate will be decided in this single runoff election. Georgia voters who are unable to vote in the January runoff will not have another opportunity to cast their ballots and have their voices heard regarding who should represent Georgia in the U.S. Senate until 2022.

3. Georgians will be heading to the polls in this critical election under challenging conditions. The runoff election is only two short months after the November general election. Georgians must exercise their right to vote during the holiday season. Many Georgians will be traveling and may have scant time and availability to make their way to the polls. Many other Georgians, during the ongoing global pandemic, will be exercising significant precautions by seeking to vote at times when they are less likely to be exposed to large crowds. Simply put, every day of advance voting provided under Georgia law matters and helps ensure that voters are not disenfranchised as a result of inadequate access to the polls.

4. In Paulding County, however, advance voting will not take place on all dates required by Georgia law. Specifically, Paulding County does not intend to offer advance voting on December 19, 2020, or January 4, 2021. The final day for advance voting in Paulding County will be December 31, 2020.

5. As a result, voters among Plaintiff's membership and constituency will have their right to vote unduly burdened, and in some cases entirely denied, as a result of Paulding County's refusal to offer advance voting on dates required to be made available for advance voting by Georgia law.

6. Plaintiff hereby seeks emergency relief to ensure that the right to vote of its members and constituents is not burdened or denied in direct violation of Georgia law. Specifically, Plaintiff seeks an emergency injunction ordering Defendants and their officers, agents, servants, employees, and all persons in active concert or participation with them, to provide for advance voting in Paulding County on Saturday, December 19, 2020 from 9:00 a.m. to 4:00 p.m.; and during regular business hours on January 4, 2021, at all advance voting locations identified by the County, so that voters will be permitted to cast their ballots during on those dates as required by Georgia law.

#### **JURISDICTION AND VENUE**

7. This action arises under the laws and Constitution of the State of Georgia, and this Court has jurisdiction over such actions.

8. Venue is proper in this Court because the actions complained of occurred in part or in whole in this County.

#### **PARTIES**

9. Plaintiff NGP is a nonpartisan, community-based nonprofit organization based in Fulton County, Georgia. NGP is dedicated to registering eligible Georgians statewide to vote and to helping them become more civically engaged. NGP engages in voter education and registration activities in communities across the state to reach voters and help them to register, and eventually, to vote.

10. NGP's mission is to register all eligible, unregistered citizens of color in Georgia. As of December 2020, NGP has registered almost 500,000 Georgians in all 159 counties in the state.

11. The majority of voters registered by NGP are people of color, young voters, first-time voters (due to age or being newly naturalized citizens), and/or members of other underrepresented and vulnerable populations, including Georgians with disabilities and the elderly. NGP considers these half a million individuals it has registered to be a core part of its constituency.

12. NGP has members and constituents across the State of Georgia, including hundreds of eligible voters registered to vote in Paulding County, whose right to vote will be burdened or denied as a result of Paulding County's failure to allow advance voting on December 19 and January 4, and are threatened with severe irreparable harm unless the requested injunction issues. NGP brings these claims on its own behalf, as well as on behalf of its member voters and constituents, who stand to be irreparably harmed absent an injunction.

13. Defendant PEGGY WILLIS is Chair of the Paulding County Board of Elections and Voter Registration. It is her duty to ensure that Paulding County provides for advance voting on all dates and at all times required by Georgia law. *See* O.C.G.A. § 21-2-385(d)(1). Defendant Willis is sued in her official capacity only.

14. Defendant BILL MCFADDEN is Vice Chair of the Paulding County Board of Elections and Voter Registration. It is his duty to ensure that Paulding County provides for advance voting on all dates and at all times required by Georgia law. *See* O.C.G.A. § 21-2-385(d)(1). Defendant McFadden is sued in his official capacity only.

15. Defendant BOBBIE LEE is a Member of the Paulding County Board of Elections and Voter Registration. It is her duty to ensure that Paulding County provides for advance voting on all dates and at all times required by Georgia law. *See* O.C.G.A. § 21-2-385(d)(1). Defendant Lee is sued in her official capacity only.

16. Defendant ERNEST MORSE is a Member of the Paulding County Board of Elections and Voter Registration. It is his duty to ensure that Paulding County provides for advance voting on all dates and at all times required by Georgia law. *See* O.C.G.A. § 21-2-385(d)(1). Defendant Morse is sued in his official capacity only.

17. Defendant RAYMOND PHILLIPS is a Member of the Paulding County Board of Elections and Voter Registration. It is his duty to ensure that Paulding County provides for advance voting on all dates and at all times required by Georgia law. *See* O.C.G.A. § 21-2-385(d)(1). Defendant Phillips is sued in his official capacity only.

### **FACTS**

18. Millions of Georgia voters cast their ballots in the recent November 2020 election, in which both of Georgia's U.S. Senate seats were on the ballot. This included the seat which Senator David Purdue has occupied since 2015, in which he was up for re-election, and the seat that Senator Kelly Loeffler has occupied since December 2019, when she was appointed by Governor Kemp after Senator Johnny Isakson retired.

19. Georgia is one of only a few states that requires that its members of Congress be elected by a majority (i.e., at least 50%) of the vote in order to win the election. O.C.G.A. § 21-2-501(a)(1). If no candidate wins a majority of the vote, then a runoff election is held between the top two vote-getters. *Id.* In November, both U.S. Senate races fell within this category. As a result, Georgia voters will decide their entire representation in the U.S. Senate in a runoff election to be

held on January 5, 2021. Access to that election is thus tremendously important to ensure that the individuals who Georgia ultimately sends to represent it in the U.S. Senate are, in fact, elected under a selection process to which Georgia voters had free and fair access and that reflects the will of the Georgia electorate.

20. All qualified voters, as provided for in Georgia law, are entitled to vote in all elections, including the runoff election being held on January 5, 2021. *See* Ga. Const. art. II, § 1, ¶ II (“Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people. . . .”).

21. Georgia law provides for “a period of advance voting that shall commence . . . [o]n the fourth Monday immediately prior to a runoff from a general election in which there are candidates for a federal office on the ballot in the runoff.” O.C.G.A. § 21-2-385(d)(1)(C).

22. For the January 5, 2021 runoff election for U.S. Senate, the fourth Monday immediately prior to the election is December 14, 2020. The advance voting period starts on December 14, 2020 and (as explained below) ends on January 4, 2021.

23. Generally, Georgia law also provides that advance voting “shall be conducted during normal business hours on weekdays during such period and shall be conducted on the second Saturday prior to a primary or election during the hours of 9:00 A.M. through 4:00 P.M.” O.C.G.A. § 21-2-385(d)(1). If, however, the “second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, . . . such advance voting shall” instead “be held on the third Saturday prior to such . . . election.” *Id.*

24. Thus, advance voting must be made available during normal business hours on weekdays during the advance voting period, and on certain Saturdays during that period. Counties and municipalities have discretion to offer extended advance voting hours beyond these statutory minimums. *See* O.C.G.A. §§ 21-2-385(d)(1).

25. This year, the second Saturday preceding the January 5, 2021 runoff election is December 26, 2020. The immediately preceding day—Friday, December 25—is Christmas Day.

26. Christmas Day is a public and legal holiday under O.C.G.A. § 1-4-1.

27. Accordingly, the third Saturday preceding the January 5, 2021 runoff election must be available for advance voting. That date is December 19, 2020.

28. Georgia law further provides that, generally, advance voting “shall end on the Friday immediately prior to each primary, election, or runoff.” O.C.G.A. § 21-2-385(d)(1). That same chapter, however, provides that “[w]hen the last day for the exercise of any privilege or the discharge of any duty prescribed by this chapter shall fall on a Saturday, Sunday, or legal holiday, the next succeeding business day shall be the last day for the exercise of such privilege or the discharge of such duty.” O.C.G.A. § 21-2-14.

29. The Friday immediately prior to the January 5, 2021 runoff election is January 1, 2021. That date—New Year’s Day—is a public and legal holiday under O.C.G.A. § 1-4-1.

30. Accordingly, under the operation of O.C.G.A. § 21-2-14, the date on which advance voting ends for the January 5, 2021 runoff election is the next business day succeeding New Year’s Day. That date is Monday, January 4, 2021.

31. Georgia law therefore requires that advance voting shall take place during normal business hours between December 14, 2020, and January 4, 2021. Of particular note to this

litigation, Paulding County must make advance voting available on December 19, 2020, and January 4, 2021, for the January 5, 2021 runoff election.

32. Paulding County has provided public notice of the dates on which it will make advance voting available for the January 5, 2021 runoff election. *See Paulding County, Georgia, Early Voting in Paulding County*, <https://www.paulding.gov/216/Elections-Voter-Registration>.

33. The notice makes no mention of voting on any weekend day, including the statutorily required date of Saturday, December 19. *See id.*

34. January 4, 2021 does not appear in the notice. Rather, the Paulding County notice provides that the last advance voting day is Thursday, December 31. *See id.*

35. Plaintiff, through counsel, sent a letter to Defendants on December 12 seeking clarification by 2:00 p.m. on December 14 that Paulding County's advance voting calendar would comply with the Georgia Election Code. Defendants have yet to respond.

36. As a result, voters among Plaintiff's membership and constituency will be unable to cast ballots on those statutorily required dates.

37. Accordingly, Defendants are failing to perform their clear legal duty of providing advance voting on all dates required by Georgia law.

38. By such actions, Defendants have caused and will continue to cause Plaintiff and its members and constituents to suffer actual, immediate, and irreparable injury for which Plaintiff has no adequate remedy at law. Without redress by this Court, Plaintiff's members and constituents will be deprived of their right to vote on all advance voting days provided under Georgia law. Immediate and effective relief is essential to protect against that irreparable harm.

39. Greater injury would be inflicted upon Plaintiff by the denial of relief than will be inflicted upon Defendants by the granting of relief.



40. Issuance of an injunction granting relief to Plaintiff will not substantially harm Defendants. An injunction will properly restore the parties to their status as it existed prior to the wrongful conduct described herein.

41. The public interest weighs heavily in favor of entry of an injunction designed to protect the right to a full and fair election.

42. The relief sought by Plaintiff is reasonably suited to abate the offending activity.

43. Plaintiff has no reason to believe that the wrongful conduct alleged above will cease unless enjoined.

## **COUNT I**

### **Request for Writ of Mandamus**

44. Plaintiff realleges and incorporates paragraphs 1 through 43 of this Complaint as if fully set forth herein.

45. Georgia law requires that advance voting for the January 5, 2021 runoff election be available on the third Saturday preceding that election. O.C.G.A. § 21-2-385(d)(1). That date is December 19, 2020.

46. Georgia law requires that if the final day to exercise any privilege, such as advance voting, falls on a legal holiday, then the next business day succeeding the legal holiday shall be the last day to exercise the privilege. O.C.G.A. § 21-2-14. The final day for advance voting for the January 5, 2021 runoff election would be Friday, January 1, 2021. Because that date is a public and legal holiday under O.C.G.A. § 1-4-1, the final day for advance voting is Monday, January 4, 2021.

47. As shown in Paulding County's notice listing the dates on which advance voting shall be provided, December 19 and January 4 will not be provided for advance voting in Paulding County.

48. Under O.C.G.A. § 9-6-20 *et seq.*, Plaintiff seeks a writ of mandamus from the Court requiring Defendants to provide for advance voting on December 19, 2020, and January 4, 2021.

49. Plaintiff is entitled to the relief it seeks. *See* O.C.G.A. § 9-6-24 (“Where the question is one of public right and the object is to procure the enforcement of a public duty, no legal or special interest need be shown, but it shall be sufficient that a plaintiff is interested in having the laws executed and the duty in question enforced.”).

50. Plaintiff's members and constituents have a clear legal right to cast ballots for the January 5, 2021 runoff election on December 19, 2020, and January 4, 2021. *See* O.C.G.A. §§ 21-2-385, 21-2-14, 1-4-1; Ga. Const. art. II, § 1, ¶ II.

51. Defendants have a non-discretionary duty to provide for advance voting on December 19, 2020, and January 4, 2021. *See* O.C.G.A. §§ 21-2-385, 21-2-14.

52. Defendants' refusal to provide for advance voting on December 19, 2020, and January 4, 2021, is a violation of Georgia law. *See* O.C.G.A. §§ 21-2-385, 21-2-14, 1-4-1.

53. On information and belief, there is no issue of fact raised by Plaintiff's request for a writ of mandamus. O.C.G.A. § 9-6-27(b).

54. As a result of Defendants' actions, Plaintiff and its members and constituents will suffer actual, imminent, and irreparable harm for which there is no adequate remedy at law.

55. Plaintiff requests a writ of mandamus from this Court ordering Defendants to immediately perform their official duties, including making December 19, 2020, and January 4,

2021, available for advance voting and notifying the voters of Paulding County of same, as required by Georgia law.

## **COUNT II**

### **Request for Declaratory Relief**

56. Plaintiff realleges and incorporates paragraphs 1 through 56 of this Complaint as if fully set forth herein.

57. Defendants' actions have created uncertainty and insecurity regarding the right of Plaintiff's members and constituents and similarly situated persons to cast ballots for the January 5, 2021 runoff election during the advance voting period for that election on December 19, 2020, and January 4, 2021. Defendants have notified the public that they will not make advance voting available on these statutorily required dates.

58. Defendants' actions have created a real and actual controversy exists between Plaintiff and Defendants in that Plaintiff's members and constituents face an imminent risk of suffering the loss of the right to vote during the advance voting period on the statutorily required dates.

59. Plaintiff is entitled to a declaration from this Court that Defendants have violated Georgia law by failing to allow advance voting for the January 5, 2021 runoff election on December 19, 2020, and January 4, 2021.

60. Plaintiff is further entitled to injunctive relief ordering Defendants to immediately perform their official duties, including making December 19, 2020, and January 4, 2021, available for advance voting and notifying the voters of Paulding County of same, as required by Georgia law.

### COUNT III

#### Request for Temporary Restraining Order and/or Preliminary Injunctive Relief

61. Plaintiff realleges and incorporates paragraphs 1 through 60 of this Complaint as if fully set forth herein.

62. Plaintiff is entitled to a temporary restraining order and/or preliminary injunctive relief ordering Defendants to immediately perform their official duties, including making December 19, 2020, and January 4, 2021, available for advance voting and notifying the voters of Paulding County of same, as required by Georgia law.

63. Defendants have caused and will continue to cause Plaintiff and its members and constituents to suffer actual, immediate, and irreparable injury for which Plaintiff has no adequate remedy at law.

64. Without temporary injunctive relief, Plaintiff's members and constituents will be deprived of their right to vote on all statutorily required dates during the advance voting period. Immediate and effective relief is essential to protect against that irreparable harm.

65. Greater injury would be inflicted upon Plaintiff by the denial of relief than will be inflicted upon Defendants by the granting of relief.

66. Issuance of an injunction granting relief to Plaintiff will not substantially harm Defendants. An injunction will properly restore the parties to their status as it existed prior to the wrongful conduct described herein.

67. The public interest weighs heavily in favor of entry of an injunction designed to protect the right to a full and fair election.

**COUNT IV**

**Litigation Costs**

68. Plaintiff realleges and incorporates paragraphs 1 through 67 of this Complaint as if fully set forth herein.

69. Plaintiff is entitled to recover all costs associated with filing this action the extent available under O.C.G.A. §§ 9-4-9, 9-15-1, and other applicable law.

**PRAYER FOR RELIEF**

Plaintiff prays that this Court:

1. Issue an order directing Defendants to provide for advance voting in Paulding County on Saturday, December 19, 2020 from 9:00 a.m. to 4:00 p.m.; and during regular business hours on January 4, 2021, at all advance voting locations identified by the County, and prohibiting Defendants from denying the right of any and all voters to cast their ballots at those advance voting locations during those dates and times; and
2. Grant such other and further relief as the Court deems necessary, appropriate, and equitable.

Respectfully submitted on this 15th day of December 2020.

**KREVOLIN & HORST, LLC**

*/s/ Adam M. Sparks*

Adam M. Sparks

Georgia Bar No. 341578

One Atlantic Center

1201 W. Peachtree Street, NW, Ste. 3250

Atlanta, GA 30309

Telephone: (404) 888-9700

Facsimile: (404) 888-9577

sparks@khlawfirm.com

Marc E. Elias (DC #442007)\*  
Jyoti Jasrasaria (DC #1671527)\*  
Joel J. Ramirez (CA # 320047)\*  
PERKINS COIE LLP  
700 Thirteenth Street NW, Suite 800  
Washington, DC 20005  
(202) 654-6200

William B. Stafford (WA #39849)\*  
PERKINS COIE LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
(206) 359-8000

Elise S. Edlin (CA #2937565)\*  
PERKINS COIE LLP  
505 Howard Street, Suite 1000  
San Francisco, CA 94105  
(415) 344-7000

*Attorneys for Plaintiff  
The New Georgia Project*

*\*Pro hac vice application forthcoming*

**VERIFICATION**

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Kendra D. Cotton and who on oath, does depose and say that I have reviewed the PETITION FOR WRIT OF MANDAMUS AND VERIFIED COMPLAINT FOR EMERGENCY INJUNCTIVE AND DECLARATORY RELIEF with regard to the facts contained therein, and that the facts set forth therein are true where derived from my own knowledge and are believed to be true where derived from the knowledge of others, derived from publicly-available documents that are maintained by others, or stated to be alleged on information and belief.

Dated: December 15, 2020

By: Kendra D. Cotton

For: The New Georgia Project

Its: Chief Operating Officer

Sworn to and subscribed before me  
This 15th day of December 2020.

Crystal Nicole Goss  
Notary Public

