

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE GEORGIA SENATE BILL 202

Master Case No.:  
1:21-mi-55555-JPB

**INTERVENORS' MOTION FOR EXPEDITED SUMMARY JUDGMENT  
ON CHALLENGES TO BIRTHDATE REQUIREMENT**

The Republican Intervenor-Defendants respectfully request that this Court expedite its resolution of the motions for summary judgment on Plaintiffs' claims that the birthdate requirement for mail ballots violates the Materiality Provision of the Civil Rights Act. Docs. 761, 763. There is good cause for an expedited resolution of summary judgment. This Court preliminarily enjoined some counties—but not others—from enforcing Georgia's birthdate requirement for casting an absentee ballot. Since that decision, the Third Circuit has clarified that the Materiality Provision does not apply to vote-casting rules like the birthdate requirement. *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120, 134 (3d Cir. 2024). But without an expedited decision on summary judgment, some counties will be barred from enforcing this ballot casting rule in November, resulting in unequal treatment of absentee ballots in different counties. *Bush v. Gore*, 531 U.S. 98, 106-07 (2000)

Georgia's Senate Bill 202 sets rules for a voter to cast a valid absentee ballot. One of these rules requires the voter to place "his or her date of birth" on an outer envelope along with other identifying information. Ga. Code §21-2-385(a). The county registrar or clerk then uses that information to confirm the identity of the absentee voter. *Id.* §21-2-386(a)(1)(B). If the birthdate does

not match the voter's registration records, the registrar rejects the ballot. *Id.* §21-2-386(a)(1)(C).

Last year, several Plaintiffs obtained a preliminary injunction from this Court barring the application of this ballot-casting rule in some Georgia counties. The Court found that the birthdate requirement likely violates the Materiality Provision of the Civil Rights Act. Doc. 613 at 18-29. The Materiality Provision prohibits any State from “denying the right to vote” because of “an error or omission” on papers “relating to any application, registration, or other act requisite to voting” when the error is “not material in determining whether such individual is qualified under State law to vote.” 52 U.S.C. §10101(a)(2)(B). This Court found that the birthdate requirement was “not used to determine whether the individual is qualified to vote.” Doc. 613 at 22-23. The Court also found that the Materiality Provision reaches ballot-casting rules, not just documents used in assessing a voter's qualifications. *Id.* at 28-29. The Court enjoined officials in some Georgia counties—including Bibb, Chatham, Clayton, Cobb, Columbia, DeKalb, Fulton, Gwinnett, Hall, and Richmond counties—from rejecting ballots because of the birthdate requirement. *Id.* at 38.

Since the issuance of the preliminary injunction, the Materiality Provision's inapplicability to ballot-casting rules has been clarified. This Court cited the Eastern District of Pennsylvania's decision in *Pennsylvania State Conference of the NAACP Branches v. Secretary, Commonwealth of Pennsylvania* for the proposition that the Materiality Provision reaches ballot-casting rules. 2023 WL 3902954, at \*7. But the Third Circuit reversed that decision, explaining that extending the Materiality Provision to vote-casting rules “makes no

sense.” *Pa. State Conf. of NAACP Branches*, 97 F.4th at 134. Instead, the Materiality Provision “governs voter qualification determinations,” not “vote-casting rules that are divorced from the process of ascertaining whether an individual is qualified to vote.” *Id.* at 131, 134.

Plaintiffs’ challenge to the birthdate requirement is now ripe for a final decision from this Court. Defendants moved for summary judgment on this claim last October. *See* Doc. 761, 763. Plaintiffs filed their oppositions to summary judgment in January. *See* Doc. 830. And Defendants filed their replies in May. *See* Docs. 856, 859.

Without a decision on summary judgment from this Court, different counties will have different ballot casting rules for the 2024 election. Since only a small group of Georgia counties were subject to this Court’s injunction, the rest of Georgia’s counties will be required to follow SB 202’s birthdate requirement. Briefing is still ongoing in the appeal of that decision, and is unlikely to be completed in time for a decision before the November general election. Docs. 639, 643. As a result, there will be no “adequate statewide standards for determining what is a legal [absentee] vote.” *Bush v. Gore*, 531 U.S. at 110. This “unequal evaluation of [absentee] ballots” means that Georgia’s absentee voters will not receive “equal treatment.” *Id.* at 106-07.

For the foregoing reasons, the Republican Intervenors respectfully request that this Court expedite its consideration of the motions for summary judgment addressing challenges to the birthdate requirement. Docs. 761, 763.

Counsel for the Republican Intervenors reached out to counsel for all parties in this case. The State Defendants, the United States, and the NGP

Plaintiffs take no position on the motion. The Georgia NAACP Plaintiffs, AME Plaintiffs, and CBC Plaintiffs oppose the motion. Counsel for the Republican Intervenors have not heard from the remaining parties.

Dated: August 1, 2024

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Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

This document complies with Local Rule 5.1(B) because it uses 13-point Century Schoolbook.

*/s/ Baxter D. Drennon*

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### **CERTIFICATE OF SERVICE**

On August 1, 2024, I e-filed this document on ECF, which will email everyone requiring service.

*/s/ Baxter D. Drennon*

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