

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' REPLY IN SUPORT OF MOTION FOR EXPEDITED  
SUMMARY JUDGMENT ON CHALLENGES TO BIRTHDATE  
REQUIREMENT**

The Georgia NAACP Plaintiffs' opposition to the Republican Intervenors' motion to expedite shows that this Court can and should expedite summary judgment on the challenges to Georgia's birthdate requirement for absentee ballots. The NAACP Plaintiffs insist that this Court lacks jurisdiction to decide summary judgment because its preliminary-injunction decision has been appealed. But Eleventh Circuit precedent confirms that this Court "ha[s] jurisdiction to grant summary judgment ... despite the pending interlocutory appeal." *Alabama v. EPA*, 871 F.2d 1548, 1553-54 (11th Cir. 1989). And the NAACP Plaintiffs' only suggestion to ensure equal treatment of absentee ballots in Georgia without an expedited decision from this Court is for election officials to ignore state law. *But see Bush v. Gore*, 531 U.S. 98, 106-07 (2000). This Court should grant the motion for expedited consideration.

*First*, the NAACP Plaintiffs' argument that this Court lacks jurisdiction to resolve the Materiality Provision claim at summary judgment ignores Eleventh Circuit precedent. The NAACP Plaintiffs cite a district court decision for the proposition that an appeal of the preliminary injunction decision deprives this Court of jurisdiction to resolve summary judgment. Doc. 896 at 1-2. But the Eleventh Circuit has rejected that argument. In *Alabama v. EPA*, the

district court granted summary judgment while a preliminary-injunction appeal was pending. 871 F.2d at 1553-54. The Eleventh Circuit confirmed that “[t]he district court had jurisdiction to grant summary judgment ... despite the pending interlocutory appeal.” *Id.* “That decision did not divest” the Eleventh Circuit of jurisdiction “over the interlocutory appeal of the preliminary injunction.” *Id.* at 1554. The NAACP Plaintiffs ignore this authority.

*Second*, the NAACP Plaintiffs give no reason to limit *Bush v. Gore*’s admonition against applying unequal standard to ballots to recounts taking place after an election. Doc. 896 at 3-4. The constitutional problem identified in *Bush v. Gore* was the “unequal evaluation of ballots.” 531 U.S. 98, 106 (2000). That unequal treatment is no less serious when it is part of the initial vote count instead of a recount. And Plaintiffs’ insistence that Georgia officials could choose to violate state law only highlights that the only lawful means to have “adequate statewide standards for determining what is a legal [absentee] vote” is an expedited summary judgment decision from this Court. *Id.* at 110; Doc. 896 at 5.

*Third*, the NAACP Plaintiffs give no other reason this Court should not expedite summary judgment. They argue that this Court’s preliminary injunction decision was right on the merits. Doc. 896 at 2-3. But the decision to expedite is about *when* to reevaluate that preliminary assessment, not *whether* to. In any event, the NAACP Plaintiffs’ insistence that this Court’s preliminary decision was correct does not address the need for equal statewide standards. *See Bush v. Gore*, 531 U.S. at 110. It also gives no meaningful response to a Third Circuit decision providing the most thorough judicial examination of the

materiality provision's inapplicability to ballot-casting rules that issued since this Court's preliminary decision. *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120 (3d Cir. 2024). And Plaintiffs' insistence that the Republican Intervenors should have sought an expedited summary judgment decision earlier simply ignores that for most of the year since the preliminary-injunction decision no motion for summary judgment has been ripe for decision. *Compare* Doc. 896 at 4 with Doc. 882 at 3.

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.

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Respectfully submitted,

Dated: August 20, 2024

/s/ William Bradley Carver, Sr.

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### **CERTIFICATE OF COMPLIANCE**

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

*/s/ William Bradley Carver, Sr.*

### **CERTIFICATE OF SERVICE**

On August 20, 2024, I e-filed this document on ECF, which will email everyone requiring service.

*/s/ William Bradley Carver, Sr.*

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