

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

NAOMI AYOTA, HARRISON
SIMMEL, and GABRIEL DICKSON,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

TATE FALL, Director of the Cobb
County Board of Elections and
Registration in her individual capacity,
and STEVEN F. BRUNING, TORI
SILAS, STACY EFRAT, DEBBIE
FISCHER, JENNIFER
MOSBACHER, members of the Cobb
County Board of Registration and
Elections in their individual capacities,

Defendants.

Civil Action No.:

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**EMERGENCY RELIEF
REQUESTED**

**VERIFIED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs Naomi Ayota, Harrison “Grant” Simmel, and Gabriel Dickson, on behalf of themselves and all others similarly situated, by and through the undersigned attorneys, file this Complaint for declaratory and injunctive relief, seeking emergency relief to protect their fundamental right to vote as secured by the Georgia Constitution.

NATURE OF THE CASE

1. Plaintiffs and more than 3,000 other lawfully registered Cobb County voters are on the brink of disenfranchisement in the November 5 election because the Cobb County Board of Elections and Registration (the “Board”) was unable to issue their absentee ballots on time. Defendants admit the legal violation. Late in the afternoon on October 31—just five days before the General Election and the date that absentee ballots must generally be returned by voters—the Board announced that although “the deadline for mailing the ballots had passed,” “more than 3,000” timely requested ballots had not been sent.¹ This Court must intervene to protect Plaintiffs and the other 3,000+ voters affected by the delay.

2. Plaintiffs seek emergency Court intervention because although Defendants have taken some steps to help alleviate the problem, those actions are not nearly enough to safeguard their right to vote. Defendants have stated that it “will send most of [the unsent ballots] via USPS Express Mail or UPS Overnight Delivery by Friday [November 1] morning.” That is an important step, but even if Defendants were to send most of the ballots on Friday, November 1 with guaranteed next-day delivery, and even if those voters in fact received their ballots the next day (on Saturday, November 2), that would only leave those voters with

¹ Press Release, *Cobb Elections Express Shipping Thousands of Outstanding Absentee Ballots* (Oct. 31, 2024), <https://www.cobbcounty.org/communications/news/cobb-elections-express-shipping-thousands-outstanding-absentee-ballots>.

one business day to return their ballots and absolutely no guarantee that postal carriers will return them before polls close on November 5.² And it is unlikely that all affected voters will even receive their ballots by November 2, particularly because hundreds of the affected voters are temporarily living out of state or overseas.

3. Given Defendants' admitted violation of their duties and imminent prejudice to thousands of eligible Georgia voters in a general election solely because they reside in Cobb County, the Court should order emergency relief to ensure that absentee ballots are immediately delivered to the affected voters; that these voters have a fast and reliable method of returning them at no cost to themselves; and that all affected absentee ballots will be segregated and counted, so long as they arrive by the statutory deadline for curing absentee ballots and receiving ballots from overseas and military voters.

JURISDICTION AND VENUE

4. This action arises exclusively under the Constitution and laws of the State of Georgia. This Court has jurisdiction to grant declaratory and injunctive relief under O.C.G.A. §§ 9-4-2 and 9-4-9.

² See O.C.G.A. § 21-2-386(a)(1)(A) (deadline for return of completed absentee ballots).

5. Venue in this Court is proper under O.C.G.A. § 9-10-30 because at least one of the Defendant against whom substantial relief is prayed resides in Cobb County.

PARTIES

A. Plaintiffs

6. Plaintiff Naomi Ayota is a 19-year-old resident of Cobb County and a registered Cobb County voter who attends college in Harrisburg, Pennsylvania. She is a first-time voter. *See* Affidavit of Naomi Ayota (“Ayota Aff.”) ¶¶ 2, 3, 5.

7. Plaintiff Harrison “Grant” Simmel is a 20-year-old resident of Cobb County and a registered Cobb County voter who attends college in Boulder, Colorado. He has previously voted in Georgia. *See* Affidavit of Harrison Simmel (“Simmel Aff.”) ¶¶ 3, 5.

8. Plaintiff Gabriel Dickson is a resident of Cobb County and a registered Cobb County voter who requested an absentee ballot because he is legally blind and it is incredibly burdensome for him to vote in person. *See* Affidavit of Gabriel Dickson (“Dickson Aff.”) ¶¶ 2-3.

B. Defendants

9. Defendant Tate Fall is the Director of the Cobb County Board of Elections and Registration, and she is being sued in her individual capacity.

10. Defendants Steven Bruning, Tori Silas, Stacy Efrat, Debbie Fischer, and Jennifer Mosbacher are the members of the Cobb County Board of Registration and Elections, which is the election superintendent for Cobb County. The superintendent is charged with overseeing the conduct of Cobb County elections and implementing laws and regulations, including managing the process for absentee voting and tabulating valid absentee ballots. O.C.G.A. § 21-2-381; O.C.G.A. § 21-2-386(a)(2)(A). They are being sued in their individual capacities.

FACTUAL ALLEGATIONS

11. Eligible Georgia voters may, for any reason, request to vote by an absentee mail ballot up to 11 days before any election. O.C.G.A. § 21-2-381(a)(1)(A). The deadline to request an absentee ballot ahead of the November 5, 2024 general election was October 25, 2024.

12. On the afternoon of October 31, 2024, the Cobb County Board of Elections issued a press release in which it announced that it had not timely mailed out more than 3,000 absentee ballots requested before the deadline, in violation of Georgia law.

13. Plaintiff Naomi Ayota was one of the voters affected by Defendants' failure to timely mail absentee ballots. Ms. Ayota timely requested her absentee ballot on October 21, and Defendants were required to mail her ballot by October 24. Her My Voter Page says that her application was accepted and that her absentee

ballot as issued on October 29—more than a week later; but on information and belief, Defendants did not actually send her absentee ballot even on that late date. As of the date of filing, Ms. Ayota still had not received her ballot.

14. Plaintiff Grant Simmel requested an absentee ballot on October 25, and his timely application was also accepted. Defendants were required to mail his ballot by October 28. His My Voter Page says that his absentee ballot was issued on October 30—five days later; but on information and belief, Defendants did not actually send his absentee ballot on that late date. As of the time of filing, Mr. Simmel still had not received his ballot.

15. Ms. Ayota and Mr. Simmel are college students temporarily residing out of state and cannot travel home to Cobb County to vote in person. *See Ayota Aff.* ¶ 10; *Simmel Aff.* ¶ 10. Even if they received their absentee ballots in the mail on Saturday, November 1 or later, they would not know how they could act to ensure that they are returned by the close of polls on November 5 and counted. *Ayota Aff.* ¶ 11; *Simmel Aff.* ¶ 11.

16. Plaintiff Gabriel Dickson timely requested an absentee ballot on October 23. Defendants were required to mail his ballot by October 26. According to his My Voter Page, his ballot was issued on October 29. But on information and belief, his ballot was not actually sent on October 29, and as of the date of filing, he still has not received his absentee ballot. Because Mr. Dickson is legally blind,

it would be very burdensome and resource-intensive for him to vote in person instead of by mail. Dickson Aff. ¶ 8.

17. If this Court does not intervene and extend the deadline for receipt of these ballots, Plaintiffs, and almost 3,000 others similarly situated, will likely be disenfranchised.

CLASS ACTION ALLEGATIONS

18. Plaintiffs seek class certification under O.C.G.A. § 9-11-23.

19. The proposed class is defined as eligible and registered Cobb County voters who timely requested absentee ballots for the November 5, 2024, election and whose absentee ballots for the November 5, 2024, election were not mailed by the statutory deadline, as admitted by Cobb County.³

20. The proposed class satisfies the requirements of O.C.G.A. § 9-11-23(a). The proposed class is sufficiently numerous because it contains at least 3,000 Georgia voters, based on the representations of Defendants.⁴ The allegations of the proposed class have common questions of law or fact. Plaintiffs' claims are typical of the claims of the proposed class. Plaintiffs will fairly and adequately protect the interests of the proposed class.

³ Press Release, Cobb Elections Express Shipping Thousands of Outstanding Absentee Ballots (Oct. 31, 2024), <https://www.cobbcounty.org/communications/news/cobb-elections-express-shipping-thousands-outstanding-absentee-ballots>.

⁴ See *id.* (identifying more than 3,000 absentee ballots impacted).

21. The proposed class also satisfies the requirements of O.C.G.A. § 9-11-23(b)(1)-(3). The prosecution of separate actions by individual members of the proposed class would create a risk of inconsistent adjudications with respect to individual members of the proposed class. Defendants have acted or refused to act on grounds generally applicable to the class by not mailing absentee ballots by the statutory deadline to all Cobb County voters who requested them, which justifies class-wide injunctive relief. There is also a predominance of legal or factual questions common to the members of the proposed class such that a class action is the superior mechanism for the fair and efficient adjudication of their claims.

CAUSES OF ACTION

COUNT I

Declaratory and Injunctive Relief under O.C.G.A. § 9-4-1 et seq. Violations of O.C.G.A. § 21-2-381(b)(2)(A); O.C.G.A. § 21-2-384(a)(2)

22. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

23. All Georgians are entitled to exercise their right to vote by mail, including Georgia voters who temporarily reside out of state for permissible reasons or have disabilities that make it difficult for them to vote in person. *See* O.C.G.A. § 21-2-380(b) (providing for no-excuse absentee voting).

24. Voters must timely apply for an absentee ballot, and the election superintendent must mail ballots to voters whose applications have been accepted.

See O.C.G.A. § 21-2-381(b)(2)(A) (“If found eligible, the registrar or absentee ballot clerk shall certify by signing in the proper place on the application and then . . . Shall mail the ballot as provided in this Code section[.]”).

25. During the advance voting period, which this year began on October 19⁵, the superintendent “shall . . . mail or issue absentee ballots, provisional absentee ballots, and notices of rejection of application **within three days** after receiving a timely application for an absentee ballot.” O.C.G.A. § 21-2-384(a)(2) (emphasis added).

26. Defendants acknowledge that they missed the deadline set by O.C.G.A. § 21-2-384(a)(2) and did not mail absentee ballots to class members who had timely requested them within three days of receiving their applications. Because of Defendants’ legal violations, it will likely be *impossible* for Plaintiffs and approximately 3,000 other absentee voters to exercise their fundamental right to vote in the November 5 election unless this Court grants their requested relief.

27. The Georgia Declaratory Judgment Act, O.C.G.A. § 9-4-1 *et seq.*, provides for relief by declaratory judgment to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights. O.C.G.A. § 9-4-2(a) provides: “In cases of actual controversy, the

⁵ Office of the Secretary of State, 2024 STATE ELECTION COMPREHENSIVE CALENDAR, https://sos.ga.gov/sites/default/files/2024-01/29.1.2024%20Comp-Cal_State.01.12.24.Rev_.pdf.

respective superior courts of this state . . . shall have the power, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party petitioning for such declaration.”

28. O.C.G.A. § 9-4-2(c) provides: “Relief by declaratory judgment shall be available, notwithstanding the fact that the complaining party has any other adequate legal or equitable remedy or remedies.”

29. O.C.G.A. § 9-4-3(a) further provides: “Further plenary relief, legal or equitable, including but not limited to . . . injunction [or] mandamus, . . . may be sought in a petition seeking declaratory judgment.” Moreover, “[i]n all such cases, the court shall award to the petitioning party such relief as the pleadings and evidence may show him to be entitled.”

30. O.C.G.A. § 9-4-3(b) further provides: “The court, in order to . . . preserve equitable rights, may grant injunction and other interlocutory extraordinary relief.”

31. Plaintiffs are entitled to declaratory, injunctive, and interlocutory extraordinary relief. Defendants had a clear legal duty to issue absentee ballots within three days of receiving a timely application from an eligible voter. Plaintiffs timely submitted their applications for absentee ballots, *see* O.C.G.A. § 21-2-381(a)(1)(A), their applications were accepted by Defendants, but their ballots were not timely mailed to them. They now face disenfranchisement.

32. Absent declaratory and injunctive relief clarifying Defendants' obligations to Plaintiffs and all others similarly situated, Plaintiffs and all others similarly situated—through no fault of their own—will be unable to vote in the November 2024 election.

COUNT II
Declaratory and Injunctive Relief under O.C.G.A. § 9-4-1 et seq.
Violation of the Constitutional Right to Vote

33. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

34. “The right to vote is fundamental, forming the bedrock of our democracy.” *Favorito v. Handel*, 285 Ga. 795, 796 (2009) (quoting *Wexler v. Anderson*, 452 F.3d 1226, 1232 (11th Cir. 2006)).

35. Article II, Section 1, Paragraph II of the Georgia Constitution protects the fundamental right to vote by providing that “[e]very 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.” Ga. Const. art. II, § 1, ¶ II. Article I, Section 1, Paragraph II of the Georgia Constitution provides: “Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.” Ga. Const. art. I, § 1, ¶ II.

36. Plaintiffs and all absent class members have the right to vote without undue interference by Defendants.

37. Plaintiffs and absent class members are eligible Georgia voters who timely submitted an application for an absentee ballot, and those applications were processed and accepted by Defendants, but their ballots were not sent.

38. Plaintiffs are unable to vote in person, especially on such short notice.

39. Defendant's admitted failure to deliver absentee ballots—in violation of state law, and mere days away from Election Day—constitutes a severe burden on Plaintiffs' fundamental right to vote.

COUNT III

Declaratory and Injunctive Relief under O.C.G.A. § 9-4-1 et seq. Violation of Equal Protection Clause

40. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

41. Article I, Section 1, Paragraph II of the Georgia Constitution provides: "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws." Ga. Const. art. I, § 1, ¶ II.

42. It is well-established that it violates equal protection when certain voters are arbitrarily deprived of their right to vote because of where they live. *See,*

e.g., Democratic Exec. Comm. of Fla. v. Lee, 915 F.3d 1312, 1320 (11th Cir. 2019); *Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1403 (N.D. Ga. 2019).

43. Plaintiffs and class members have been arbitrarily deprived of their right to vote compared with other Georgia voters who received their absentee ballots on time, simply because they live in Cobb County.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs submit this prayer for relief and seek the following:

A. That this Court issue a judgment declaring that Defendant have violated O.C.G.A. § 21-2-381(b)(2)(A); O.C.G.A. § 21-2-384(a)(2); Article II, Section 1, Paragraph II and Article I, Section 1, Paragraph II of the Georgia State Constitution;

B. That this Court enter an injunction requiring Defendants to (1) send by express (overnight) mail an absentee ballot to all Affected Voters, including overnight return mailing; (2) accept the Affected Voters' complete and otherwise valid absentee ballots that are postmarked by Election Day by the same deadline set for the receipt of Uniformed and Overseas Voters ("UOCAVA") ballots, which is November 8, 2024; (3) provide immediate notice to all voters in the proposed class as to the extended ballot receipt deadline and their ability to postmark their absentee ballot by election day, November 5, 2024; and (4) tabulate the absentee ballots of the Affected Voters whose ballot were postmarked by but received after Election

Day and on or before November 8, 2024, but segregate these ballots in a secure, safe and sealed container separate from other voted ballots.

C. That all fees and costs of this action be taxed against Defendants; and

D. That the Court award any additional or alternative relief as may be deemed appropriate under the circumstances.

Respectfully submitted, this 1st day of November, 2024.

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**Motion for admission pro hac vice
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 2024, a true and correct copy of the foregoing was electronically filed with the Court using the Court's eFileGA electronic filing system and was served upon Defendants personally and by electronic mail to:

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