Case No. S25M0319

In the

Supreme Court of Georgia

REPUBLICAN NATIONAL COMMITTEE, et al.
Appellants,

v.

NAOMI AYOTA, et al.
Appellees.

On Appeal from the Superior Court of Cobb County
Civil Action File No. 24GC08111

APPELLANTS' REPLY IN SUPPORT OF EMERGENCY MOTION FOR SUPERSEDEAS

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The State of Georgia agrees with Appellants that the Superior Court's eleventh-hour suspension of election rules for 3,000 voters should be stayed. *See* State Amicus Br. 11. The Plaintiffs and the Democratic intervenors oppose the emergency motion to stay that injunction. But their responses confirm that a stay is necessary to preserve the integrity of Georgia's election statewide.

First, the Plaintiffs confirm that they rely on idiosyncratic burdens of voters. The Court must "identify a burden before [the Court] can weigh it." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1261 (11th Cir. 2020) (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring)). And for Plaintiffs to prevail on their undue-burden claim, the burden must impose a "significant increase over the usual burdens of voting" for "most voters." *Crawford*, 553 U.S. at 198 (plurality op.). But the Plaintiffs rely on burdens that are "irrelevant" because they are "'special burden[s] on' some voters," not categorical burdens on all voters. *Id.* at 204 (Scalia, J., concurring) (citation omitted). That is, the Plaintiffs' claim is not that the late ballot delivery is an undue burden *itself*, but that the late delivery combined with voters' unusual circumstances (out of state, or disability) results in an undue burden. "Never mind that voters have also been free to seek and return absentee ballots" for weeks. *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Gorsuch, J., concurral).

The Plaintiffs admit that they have no evidence of how many voters in the uncertified class experience those burdens. Even if each voters' unusual circumstances were relevant, the Plaintiffs admit they "do not know which voters are disabled, lack access to transportation, have a job that prevents them from voting in person on Election Day, or otherwise." Appellees' Opp. 22-23. The Democratic intervenors admit that only "one-third" of the uncertified class are "out of state" voters. DNC Opp. 1. Even if the out-of-staters suffered an undue burden—*contra* State Amicus Br. 4-6—the Plaintiffs provide no evidence, estimates, or even speculation about how many voters in that class suffer disabilities that prevent them from voting in person or casting a timely absentee ballot.

Second, the Plaintiffs' response proves that the Superior Court's relief is overbroad. The Plaintiffs claim that "all the Affected Voters suffered the same legal harm." Appellees' Opp. 22. But their own account of the facts shows that's not true. They admit that the affected voters "*include* people like Ms. Ayota, who is attending college out of state," and they "*include* people like Mr. Dickson, who is legally blind." Appellees' Opp. 11 (emphasis added). The Plaintiffs rely on those idiosyncratic burdens for the merits of their undue-burden claim, but then dismiss those idiosyncratic burdens as "irrelevant" when it comes to tailoring relief. Appellees' Opp. 23. That argument admits a "lack of

connection between the claims pled and ... relief requested." *Benning v. Comm'r, Ga. Dep't of Corrections*, 71 F.4th 1324, 1340 (11th Cir. 2023).

Third, the Plaintiffs rely on a Pennsylvania case in which the RNC obtained an injunction permitting voters in Bucks County additional time to *request* an absentee ballot. *Donald J. Trump for President 2024 Inc. v. Bucks Cnty. Bd. of Election*, Case No. 2024-06880 (Pa. Ct. Common Pleas Oct. 30, 2024). The case distinguishes itself. Extending the mail-ballot *request* deadline is a far cry from extending the mail-ballot *receipt* deadline. The latter changes what constitutes a valid ballot, which fundamentally alters the results of the election. "To state the obvious, a State cannot conduct an election without deadlines." *Democratic Nat'l Comm.*, 141 S. Ct. at 33 (Kavanaugh, J., concurral). "Elections must end sometime, a single deadline supplies clear notice, and requiring ballots be in by election day puts all voters on the same footing." *Id.* at 28 (Gorsuch, J., concurral). That's why, in 2020, when a Wisconsin district court unilaterally extended the ballot-receipt deadline by six days, the Seventh Circuit stayed the injunction, and the Supreme Court left that stay in place. *Id.*

Fourth, the Plaintiffs admit that the Superior Court failed to certify a class. They have no response to the courts failure to acknowledge the mandatory class certification procedures in O.C.G.A. §9-11-23 (b). Instead, they retreat to the courts "broad discretion to fashion an equitable remedy." Appellees'

Opp. 21 (quoting *Tafel v. Lion Antique Cars & Investments*, 297 Ga. 334, 339 (4) (2015)). But if that discretion could excuse a court from class-certification procedures, we wouldn't have class actions in the first place.

Attempting to shore up the Superior Court's errors, the Appellees rely on *Roland v. Ford Motor Co.*, 288 Ga. App. 625 (Ga. Ct. App. 2007). *See* Appellees' Opp. at 24. But that case concerned a *denial* of class certification where the Court reasoned that "[a] trial court may deny class certification where a plaintiff fails to establish even one of the required Rule 23 factors." *Roland*, 288 Ga. App. at 623. But in this case the Court has *granted* class-wide relief. In that situation, "[t]he order" must "specify the findings of fact and conclusions of law the trial court used in evaluating whether each of the five factors was present." *Griffin Indus., Inc. v. Green*, 280 Ga. App. 858, 859 (Ga. Ct. App. 2006). "Because the trial court did not make the necessary findings of fact and conclusions of law, we have no basis to evaluate whether the trial court properly exercised its discretion in granting class certification." *Id.* at 860.

Fifth, the Republican Appellants cited several authorities establishing that political candidates and committees suffer irreparable harm from late-breaking rule changes that affect the final vote tally. *See, e.g.*, *Bush v. Gore*, 531 U.S. 1046, 1047 (2000) (granting stay) (Scalia, J., concurring); *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir. 2020); *Trump v. Wis. Elections Comm'n*, 506 F. Supp. 3d 620, 632 (E.D. Wis. 2020). The Plaintiffs don't respond to these

authorities. *See* Appellees' Opp. 3-7. It's plain why: courts have long held that candidates and committees have interests in winning elections. Changing voting rules not only changes the final vote tally, but directly affects their on-the-ground operations. And ballots that are counted in violation of the law necessarily harm those who are running in the election. *Bush v. Gore*, 531 U.S. at 1047 granting stay) (Scalia, J., concurring) ("The counting of votes that are of questionable legality ... threaten[s] irreparable harm."). The Plaintiffs have no response to these well-established rules.

If the Court has any lingering doubts about Appellants' standing or irreparable harm, it need only observe the DNC's opposition to the Appellants' emergency motion. The Democratic intervenors argue that they "have standing to seek relief for the injury to the Democratic candidates for office they represent" and "a cognizable interest in ensuring that the final vote tally accurately reflects the legally valid votes cast." DNC Opp. 18. If the Democratic Intervenors have standing, then it follows that the RNC has appellate standing to seek relief from the trial court's order which will assuredly result in an "inaccurate vote tally," which is "a concrete and particularized injury to candidates." DNC Opp. 18.

Finally, the Superior Court didn't grant relief on the Plaintiffs' equal protection claim. The court found that Cobb County's actions caused "a severe burden on Plaintiffs' fundamental right to vote." Op. 4. It said nothing about

whether it amounted to a denial of the equal protection of the laws. That claim is not before this Court. Even if it were, the Superior Court made no findings that would support a holding that Cobb County "*arbitrarily* deprived" the Plaintiffs of their right to vote "simply *because* the Affected Voters live in Cobb County." Appellees' Opp. 16 (emphasis added).

* * *

That Cobb County might have violated state law by failing to send ballots in time does not justify suspension of other uniform election laws. *Contra* Appellees' Opp. 12-14. The express delivery of ballots, combined with including prepaid express envelopes, is sufficient relief that did not require the suspension of state law. The Superior Court's overbroad relief suspends ballot-casting deadlines for a select group of voters. That relief lacks a legal basis, disrupts election administration, and will sow the seeds of distrust in the election results. This Court should grant the stay.

Respectfully submitted this 1st day of November 2024.

/s/ Alex B. Kaufman

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RULE 20 CERTIFICATION

This submission does not exceed the word-count limit under Rule 20.

/s/ Alex B. Kaufman

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CERTIFICATE OF SERVICE

I certify that I served copy of the foregoing document on all parties and counsel of record via U.S. mail. In view of the expedited nature of this appeal, I have also sent same by electronic mail to below-listed counsel:

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