

No. S25M0319

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In the  
**Supreme Court of Georgia**

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Republican National Committee, Inc. et al.,  
*Appellants,*

v.

Naomi Ayota, et al.,  
*Appellees.*

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

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**BRIEF OF THE STATE OF GEORGIA AS AMICUS  
CURIAE IN SUPPORT OF EMERGENCY MOTION**

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## INTRODUCTION

Before this lawsuit was filed, Cobb County had already taken action to ensure voters affected by its delays in mailing ballots received their ballots with time to return them. Those voters—like all Georgia voters—then had a multitude of options to return their absentee ballots before the statutory deadline or to otherwise ensure their votes counted. Despite this reality, the superior court took Georgia’s election structure into its own hands, creating a new deadline it believed worked better.

This Court should grant the emergency motion and stay the superior court’s order. Given the numerous options for ballot return and voting in Georgia, there is no irreparable harm to any voter. The superior court incorrectly analyzed the merits in this case, concluding irreparable harm existed, and then compounded that error by finding that every other element required for entry of the preliminary injunction was met. But in so doing, it created a structure that will inevitably lead to delays in reporting election results, changed election rules on the eve of an election, and manufactured different deadlines for voters depending on the county where they live.

The 2024 general election had clear and uniform rules of the road prior to the superior court’s order. There is no reason to change those rules now and doing so invites danger to the electoral system. This Court should grant the emergency motion.

## STATEMENT

### A. Factual background.

Georgia law sets clear deadlines for the receipt of absentee ballots: they must be received by 7:00 P.M. on Election Day. O.C.G.A. § 21-2-386(a)(1)(A), O.C.G.A. § 21-2-403. And Election Day matters because electors for President and Vice President must be appointed “on election day” and Congressional elections must also occur on the same day. 3 U.S.C. § 1, 2 U.S.C. § 7. This statutory structure “mandates holding all elections for Congress and the Presidency on a single day throughout the Union.” *Foster v. Love*, 522 U.S. 67, 70 (1997).

In preparation for the 2024 general election, Cobb County failed to send absentee ballots in a timely manner to approximately 3,240 voters (the Affected Voters). Order at 2. Facing this reality, Cobb County took proactive steps to address its failure to timely send absentee ballots to the Affected Voters. *Id.* That action included ensuring that every Affected Voter received his or her absentee ballot “on or before November 1, 2024,” with a prepaid return option. *Id.*

The Affected Voters—like all voters—have multiple options to ensure their vote is counted in the absence of the superior court’s order. Prior to the close of advance voting, any voter could appear in person and vote in person. O.C.G.A. § 21-2-385(d). An Affected Voter can utilize the prepaid express return option provided by Cobb County to ensure delivery by Election Day. A voter can personally deliver his or her absentee ballot to the registrar. O.C.G.A. § 21-2-385(a). A voter can hand the sealed absentee

ballot to his or her family members or household residents to deliver to the registrar. *Id.* A voter can bring his or her absentee ballot to the precinct on Election Day and vote on the touchscreen. O.C.G.A. § 21-2-388.

Cobb County also provided extended hours for voters to return their absentee ballots, accepting ballots delivered in person on Saturday, Sunday, and Monday, including staying open until 8pm on each day before the election. *See Cobb County Accepting Absentee by Mail Ballots*, <https://www.cobbcounty.org/elections/news/cobb-county-accepting-absentee-mail-ballots> (October 29, 2024).

Without the superior court's order, the Affected Voters had multiple ways available to ensure that they were able to cast a ballot in the 2024 general election.

### ARGUMENT

When considering a stay pending appeal, this Court “weigh[s] all of the pertinent equities, including the likelihood that the appellant will prevail on the merits of his appeal, the extent to which the applicant will suffer irreparable harm in the absence of a stay or injunction, the extent to which a stay or injunction would harm the other parties with an interest in the proceedings, and the public interest.” *Green Bull Ga. Partners LLC v. Register*, 301 Ga. 472, 473 (2017). While a superior court has “broad discretion” when structuring an interlocutory injunction, this Court should reverse the order if there is “an error of law that contributed to the decision, there was no evidence on an element essential to relief, or the

court manifestly abused its discretion.” *SRB Inv. Servs., LLLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011).

As discussed below, there is no basis to uphold the sweeping relief the superior court granted in this case.

### **I. There is no irreparable injury to the Affected Voters.**

The superior court relied on the irreparable injury of what it believed was likely disenfranchisement of the Affected Voters. Order at 3–4. But when there are only “mere apprehensions of injury,” there is no irreparable injury sufficient to support an injunction. *Lue v. Eady*, 297 Ga. 321, 329 (2015). Given the actions already taken by Cobb County and the extensive options for the return of ballots and having the opportunity to vote discussed above, the superior court’s order only addressed apprehensions of injury because it jumped straight to the conclusion of disenfranchisement—when each of the Affected Voters had a multitude of ways to timely exercise their right to vote. *See, e.g., McDonald v. Bd. of Election Comm’rs of Chi.*, 394 U.S. 802, 807 (1969) (“It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots.”). Further, it entered relief for more than 3,000 voters, only three of whom were parties to the case. The remaining voters had already received their absentee ballots and were already able to make their own plans for their return before the superior court intervened. As a result, there was insufficient evidence in the record to conclude there was any irreparable injury and it was an error of law to make such a finding. This Court should grant the stay on the lack of irreparable injury alone.

## II. Plaintiffs are unlikely to succeed on the merits.

Moving to the other elements, the superior court also found that Plaintiffs were likely to succeed on the merits of their claim by categorizing the burden on the right to vote as “severe.” Order at 4. In doing so, it failed to consider whether there is any constitutional right to vote by mail, instead immediately concluding that such a right was violated by the late delivery of absentee ballots. But the Georgia Constitution “does not require that qualified citizens be allowed to vote in any particular manner.”

*Democratic Party of Georgia, Inc. v. Perdue*, 288 Ga. 720, 726 (2011); see also *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“right to vote in any manner” not absolute). The superior court thus committed another error of law when it jumped to the conclusion that the injury asserted was of a constitutional magnitude.

Further, by concluding existing election deadlines were a severe burden on the right to vote, the superior court mirrored the error of another court, which in 2020 similarly found a severe burden and extended deadlines for absentee-ballot receipt in light of the COVID pandemic and postal service delays. In reversing that decision, the Eleventh Circuit explained that “Georgia’s Election Day deadline does not implicate the right to vote at all. Georgia has provided numerous avenues to mitigate chances that voters will be unable to cast their ballots.” *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1281 (11th Cir. 2020). As was the case in 2020, “[v]oters must simply take reasonable steps and exert some effort to ensure that their ballots are submitted on time, whether through

absentee or in-person voting.” *Id.* at 1282. The superior court did not consider any of this, nor did it consider whether there is any difference in the burden on the right to vote by dropping an absentee ballot off at the registrar’s office during the weekend before voting versus dropping the ballot off with the Post Office by Election Day.

Thus, by reaching its sweeping conclusion affecting thousands of voters, the superior court committed additional errors of law that all warrant a stay of that court’s order altering the uniform absentee ballot receipt deadline for a subset of Georgia voters.

### **III. The balance of the equities and public interest weigh heavily against the relief granted by the superior court.**

The superior court also abused its discretion when it found the balance of the equities and public interest weighed in favor of the injunction. Order at 5–6. Not only were the superior court’s conclusions thoroughly infected by its earlier errors of law about irreparable injury and likelihood of success, but it also completely failed to consider the dangers of changing the rules so close to an election and the impact the order would have on the actual counting of votes.

By entering its order, the superior court enjoined Cobb County from enforcing a uniform and generally applicable election deadline because of an error that it had already remedied. Unlike other superior courts that grappled with the dilemma of disrupting or delaying an election at the eleventh hour, the superior court here did not even contemplate the effect of its order on the orderly administration of the election. *Compare Al-Bari*

*v. Pigg*, No. S25A0177, 2024 WL 4284250, at \*10 (Ga. Sept. 25, 2024) (superior court weighed impact of administration of elections and found insufficient time to strike candidate names from the ballot). Worse still, the injunction applies only to a select set of individuals. In effect, the superior court created a parallel system of elections with different treatment for more than 3,000 Cobb County voters who now may cast their vote beyond the statutorily established deadline for domestic voters. The order therefore violates the principle of equal protection by granting this preferred electoral status to some voters but not others.

**A. The superior court's order will likely delay election results if not stayed.**

Georgia made several changes to state law after the 2020 election specifically designed to increase the speed at which election results were reported. *See* O.C.G.A. §§ 21-2-421 (must report total number of votes by 11:59 PM), 21-2-386(a)(3) (must report absentee results by 8:00 PM on day of election); *see also Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1274 (N.D. Ga. 2023) (motive for passage of SB 202 “was to alleviate stress on the electoral system and increase voter confidence”). But the superior court's order unilaterally undoes this work by delaying the final tabulation of votes for thousands of voters for an additional three days beyond Election Day. And—perhaps most troubling—the order is devoid of any analysis into the ramifications of this change, including its potential effect on overall voter confidence in the election outcome.

“There are strong state interests in ‘conducting an efficient election, maintaining order, [and] quickly certifying election results.’” *New Ga. Project*, 976 F.3d at 1284. And although “[t]he right to vote is fundamental, forming the bedrock of our democracy[,] it is also clear that states are entitled to broad leeway in enacting reasonable, even-handed legislation to ensure that elections are carried out in a fair and orderly manner.” *Rhoden v. Athens-Clarke County Board of Elections*, 310 Ga. 266, 278 (2020) (alterations original) (quoting *Favorito v. Handel*, 285 Ga. 795, 796 (2009)). Further, it is well understood and increasingly relevant that “orderly administration tends to decrease voter confusion and increase voter confidence in elections.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 681 (2021). Yet the superior court never weighed any of these interests against those of Plaintiffs and the putative (but uncertified) class of Affected Voters. Instead, it leaned entirely on the conclusory and unremarkable proposition that “it is always in the public interest to ensure compliance with state law.” Order at 6 (cleaned up).

Georgia law provides an orderly counting process that ensures quick reporting of results. Undoing that process without considering the massive implications is reversible error and supports granting a stay of the injunction. *See, e.g., SRB Inv. Servs., LLLP*, 289 Ga. at 5.

**B. The superior court’s order changes the rules on the eve of an election.**

Not only does the superior court’s order alter the process for ensuring quick reporting of election results, but it also alters election rules while the

election is underway. There is a strong public interest in the integrity of the election process and in orderly elections. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). And, as U.S. District Court Judge Steve Jones recently determined in a federal-court effort to alter election processes, “election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process.” *Alpha Phi Alpha Fraternity v. Raffensperger*, 587 F. Supp. 3d 1222, 1324 (N.D. Ga. 2022). That is why, “[w]hen an election is close at hand, the rules of the road must be clear and settled.” *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). Federal courts utilize the “*Purcell* Principle” to ensure that those clear rules are not changed in the runup to an election. *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022).

The same logic used by federal courts applies here. The need for reliable and uniform statutory deadlines in elections is not dissimilar to the need for a swift litigation track in election contests. As is true of judicial decisions in election contests, a court’s unilateral alteration of specifically chosen statewide election deadlines implicates the public interest because they, too, “reflect[] the legislature’s strong desire to avoid election uncertainty and the confusion and prejudice which can come in its wake.” *Swain v. Thompson*, 281 Ga. 30, 31 (2006). And, like election contests more generally, election deadlines “balance[] citizens’ franchise against the need to finalize election results, which in turn, facilitates the orderly and peaceful transition of power that is the hallmark of our

government.” *Martin v. Fulton County Board of Registration and Elections*, 307 Ga. 193, 194 (2019). Thus, election deadlines are *intertwined* with the public interest and should not be so lightly departed from close to an election because a hasty departure could itself sow seeds of distrust and skepticism.<sup>1</sup> But that is precisely what the superior court did here, extending the deadline for accepting absentee ballots less than a week before Election Day.

Because the superior court did not consider or attempt to balance the public interest in maintaining the statutory Election Day deadline for absentee ballots on the eve of an election, this Court should stay the injunction granted below.

**C. The superior court’s order creates different deadlines for different voters.**

In addition to flouting the public interests of the conduct of orderly elections and promoting widespread election confidence, the superior court’s injunction creates the additional problem of creating a set of separate rules for one group of voters in a single county. The order creating these special election rules—applicable to only a certain subset of voters within just one of Georgia’s 159 counties—fails by its terms to abide by the basic constitutional mandate that voters be given “at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.” *Bush v. Gore*, 531 U.S. 98, 109 (2000). That provides

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<sup>1</sup> For example, Georgia law requires specific evidentiary requirements for altering polling hours. O.C.G.A. § 21-2-403(b).

yet another basis on which this Court should stay the ruling—to avoid disparate treatment of voters across the State of Georgia.

### CONCLUSION

For these reasons, the Court should grant the emergency motion and stay the decision below.

### CERTIFICATION OF WORD COUNT

The submission does not exceed the word-count limit imposed by Rule 20.

/s/ Elizabeth T. Young

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## CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2024, I served a copy of this brief by U.S. Mail on all parties and counsel of record. In addition, given the expedited nature of this appeal, I also provided a PDF copy of this brief via email, addressed as follows:

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