

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,

DEMOCRATIC NATIONAL
COMMITTEE, and DEMOCRATIC
PARTY OF GEORGIA, INC.,

Intervenor-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,

REPUBLICAN NATIONAL
COMMITTEE and GEORGIA
REPUBLICAN PARTY, INC.,

Intervenor-Defendants.

Civil Action No.:

24GC08111

CONNIE TAYLOR
SUPERIOR COURT CLERK
COBB COUNTY, GEORGIA
BY: Alicia McCallie
DEPUTY CLERK

DATE: 11/1/24 4:48 PM

ORDER

This matter comes before the Court on Plaintiffs' Complaint for Declaratory Judgment and Injunctive Relief and Plaintiffs' Motion for Temporary Restraining Order.¹ Defendants failed to timely send absentee ballots to approximately 3,240 voters who were generally identified by Defendants in their related public statement.² For voters who requested their absentee ballot by the statutory deadline to request an absentee ballot, October 25, 2024, but were not sent their ballot by Wednesday, October 30, 2024 ("Affected Voters"), Defendants have already or will send by express delivery absentee ballots with a prepaid express return envelope on or before November 1, 2024. Considering the materials presented by the parties and relevant legal authority, this Court now finds:

Declaratory judgment is appropriate here because there is an actual legal controversy and court action is needed "to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights." *Clein v. Kaplan*, 201 Ga. 396, 404 (1946). It is undisputed by the parties that Plaintiffs are entitled to declaratory relief as they are at risk of their ballots not being counted and the asked-for "declaration would prevent them from suffering" that

¹ This Court held a hearing in this action on November 1, 2024, at which the Democratic National Committee and Democratic Party of Georgia moved orally to intervene as Plaintiffs and the Republican National Committee and Georgia Republican Party moved orally to intervene as Defendants. The Court granted these motions at the hearing allowing these parties to intervene.

² 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> (identifying more than 3,000 absentee ballots impacted).

harm. *Cobb Cnty. v. Floam*, 319 Ga. 89, 99 (2024). Therefore, this Court declares that Defendants' delay in mailing absentee ballots to the Affected Voters violated Georgia law and likely Plaintiffs' and similarly situated voters' state constitutional rights.

This Court has "broad discretion" whether to grant interlocutory relief. *SRB Inv. Servs., LLLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011). Injunctions provide relief to litigants who do not have an adequate remedy at law. *Wood v. Wade*, 363 Ga. App. 139, 150 (2022), recons. denied (Mar. 10, 2022). This remedy is "a stop-gap measure to prevent irreparable injury or harm to those involved in the litigation." *India-Am. Cultural Ass'n, Inc. v. iLink Pros., Inc.*, 296 Ga. 668, 670 (2015). Thus, in deciding whether to issue an interlocutory injunction, this Court considers whether:

1. there is a substantial threat that Plaintiffs will suffer irreparable injury if the injunction is not granted;
2. there is a substantial likelihood that Plaintiffs will prevail on the merits of its claims at trial;
3. the threatened injury to Plaintiffs outweighs the threatened harm that the injunction may do to the Defendants;
4. granting the requested interlocutory injunction will not disserve the public interest.

SRB Inv. Servs., 289 Ga. at 5. Each of these four factors weighs heavily in favor of granting the emergency relief requested.

Irreparable injury "is the most important" factor in the analysis of determining whether to grant an interlocutory injunction. *W. Sky Fin., LLC v. State ex rel. Olenz*,

300 Ga. 340, 354 (2016). There can be no doubt that this factor weighs heavily in favor of relief here. Absent preliminary relief, Plaintiffs are likely to suffer irreparable injury because they will—through no fault of their own—become disenfranchised for the upcoming November election. The violation of constitutional rights “unquestionably constitutes irreparable injury.” *Great Am. Dream, Inc. v. DeKalb Cnty.*, 290 Ga. 749, 752 (2012).

Plaintiffs are also likely to succeed on the merits of their claim. There is no question that Defendants’ conduct here constitutes a severe burden on Plaintiffs’ fundamental right to vote. Plaintiffs testify that—despite being eligible voters and having their absentee ballot applications submitted by the statutory deadline—they have not received their absentee ballots as of October 31, 2024, five days before the deadline to return those ballots on Election Day, and Defendants admit that they did not timely send those absentee ballots. Plaintiffs only first learned that Defendants had erroneously failed to send thousands of absentee ballots to voters on that same day, October 31, 2024. Absent relief, Defendants’ failure to send absentee ballots to the Affected Voters by the time required under the law may result in total disenfranchisement for Plaintiffs—the very definition of a severe burden on the right to vote. Moreover, even if this heightened standard did not govern, Defendants’ failure cannot be justified under any standard of review. Defendants have already acknowledged that they missed the statutory deadline in failing to send the absentee

ballots to Cobb County voters. Defendants do not contest that these eligible Cobb County voters were entitled to receive their absentee ballots in a timely manner, nor does it contest that it had a legal obligation to provide those absentee ballots under Georgia law and that they failed to meet that obligation. Just as the State “has no interest in enforcing an unconstitutional law,” *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010), Defendants have no interest in failing to adhere to Georgia law, especially in a way that threatens Georgians’ fundamental right to vote.

The balance of the equities unquestionably weighs in favor of Plaintiffs. As noted above, absent an injunction, Plaintiffs may be disenfranchised for the upcoming election—a per se irreparable and grave injury based on the loss of a constitutional right. Defendants, by contrast, do not appear to suffer any harm from an injunction, and indeed readily admits their own error. Defendants acknowledge that they missed the deadline and were taking steps to mitigate their own errors—an acknowledgment not just that Plaintiffs are eligible voters for the November election, but also that Defendants have an interest in correcting their mistake.

The public interest also weighs heavily in favor of the requested relief. “[T]he public interest is served when constitutional rights are protected.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019); see also *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.”). It is also

“always in the public interest to . . . ensure compliance with state law.” *Our Lady’s Inn v. City of St. Louis*, 349 F. Supp. 3d 805, 824 (E.D. Mo. 2018); *see also Parents Defending Educ. v. Linn-Mar Comm. Sch. Dist.*, No. 22-CV-78 CJW- MAR, 2022 WL 4232912, at *4 (N.D. Iowa Sept. 12, 2022) (“It is in the public interest to ensure schools comply with state law.”).

Having determined that each of the four relevant factors weighs in favor of granting the requested relief, this Court now ORDERS, that

1. For voters affected by this issue (“Affected Voters”), Defendants have already or will mail absentee ballots with a prepaid express return envelope on or before November 1, 2024 by express delivery, to be treated by overnight delivery;
 - a. As permitted by law, for Affected Voters who are required to be mailed a provisional absentee ballot, Defendants will include an affidavit by which those voters may substantiate their eligibility to vote and the affidavit may be returned in the prepaid express return envelope. Defendants shall process received provisional ballots and affidavits by Affected Voters in accordance with state law to ensure that an Affected Voter’s privacy is protected and their vote is only recorded once;
2. The ballot receipt deadline for all Affected Voters is extended to the


same receipt deadline for Uniformed and Overseas Voters (“UOCAVA”) ballots (on or before 5:00 P.M. on November 8, 2024);

3. Defendants shall accept all returned ballots by Affected Voters that are postmarked by 7:00 P.M. on Election Day, November 5, 2024, and received by Defendants on or before 5:00 P.M. on November 8, 2024. Defendants shall process received ballots by Affected Voters in accordance with state law to ensure that an Affected Voter’s privacy is protected and their vote is only recorded once;
 - a. Defendants will segregate ballots of Affected Voters that are received after 7:00 P.M. on Election Day, November 5, 2024, and on or before 5:00 P.M. on November 8, 2024 in a secure, safe and sealed container separate from other voted ballots;
4. Defendants will provide notice as soon as possible, by email and text message, to all Affected Voters, unless Defendants do not have an email address and/or phone number for the voter. Notice shall include the following content:
 - a. Defendants have mailed or will mail an express absentee ballot to every Affected Voter with a prepaid overnight return envelope by November 1, 2024;
 - b. The Affected Voter may view a sample ballot by logging into

their My Voter Page at mvp.sos.ga.gov.

- c. The Affected Voter must have their absentee ballot postmarked by 7:00 P.M. on Election Day, November 5, 2024, and received by Defendants by 5:00 P.M. on November 8, 2024;
5. Defendants shall release a public announcement on their website alerting Affected Voters that any eligible voter who has not yet received their absentee ballot and who has not yet voted may do so in person on Election Day. This notice will include a copy of this Order and the list of Affected Voters.
6. On November 1, 2024, Defendants shall provide to the Parties, including Intervenors, a copy of the list of Affected Voters that includes all information related to those Voters that is publicly available through the Secretary of State's voter file. Defendants shall supplement this list daily through Election Day, November 5, 2024.

So ORDERED this 1st day of November, 2024.


_____, Judge
Superior Court of Cobb County

ROBERT E. FLOURNOY III
SENIOR JUDGE, STATE OF GEORGIA
PRESIDING IN COBB JUDICIAL CIRCUIT

4:45 PM
EST

Order prepared and presented by:

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**Pro hac vice applications forthcoming*

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