

IN THE SUPERIOR COURT OF PAULDING COUNTY  
STATE OF GEORGIA

  
Sheila Butler, Clerk  
Paulding County, Georgia

THE NEW GEORGIA PROJECT,

Plaintiff,

v.

PEGGY WILLIS, in her official capacity as Chair of the Paulding County Board of Elections and Voter Registration; BILL MCFADDEN, in his official capacity as Vice Chair of the Paulding County Board of Elections and Voter Registration; BOBBIE LEE, in her official capacity as a Member of the Paulding County Board of Elections and Voter Registration; ERNEST MORSE, in his official capacity as a Member of the Paulding County Board of Elections and Voter Registration; RAYMOND PHILLIPS, in his official capacity as a Member of the Paulding County Board of Elections and Voter Registration,

Defendants.

Civil Action No.

EMERGENCY RELIEF REQUESTED

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
ITS EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PETITION FOR WRIT OF MANDAMUS**

**I. INTRODUCTION**

The issue presented by this lawsuit is simple. Georgia law requires counties to make advance voting available on certain, specified dates prior to a runoff election. There is a runoff election on January 5, 2021. Paulding County has announced its advance voting dates, which do not include some of the statutorily required dates. This failure of Paulding County to comply with its clear legal duty to offer advance voting on dates required by Georgia law threatens to severely and irreparably harm Plaintiff The New Georgia Project ("NGP") absent immediate injunctive

relief from the Court, as advance voting has already begun, the dates at issue are rapidly approaching, and no other legal remedy is available. To ensure that Plaintiff's members and constituents and other electors are able to exercise their clear legal right to cast their ballots, certain days must—as required by Georgia law—be designated for advance voting to accommodate public holidays occurring during the advance voting timeframe. Defendants have a clear and non-discretionary duty to provide for advance voting on the dates in question. The failure to do so could result in disenfranchisement, which, in this election in particular—which is being held during the middle of a once-in-a-lifetime dangerous pandemic and will decide Georgia's representation in the U.S. Senate—has particularly far-reaching consequences. In accordance with Georgia law and Defendants' duty, Plaintiff seeks an emergency order from this Court requiring Defendants to make advance voting available in the runoff election on December 19, 2020, and January 4, 2021.

Plaintiff therefore respectfully requests that the Court immediately enter a temporary restraining order and/or writ of mandamus requiring Defendants to allow (a) advance voting access on Saturday, December 19, 2020; and (b) advance voting access during regular business hours on January 4, 2021; enjoining Defendants from closing the polls on those dates; and directing Defendants to permit any voters seeking to cast their ballots on those dates to vote.

## **II. FACTS**

### **A. Background on Parties**

Plaintiff The New Georgia Project (“NGP”) is a nonpartisan, community-based nonprofit organization based in Fulton County, Georgia, and it is dedicated to registering eligible Georgians statewide to vote and to helping them become more civically engaged citizens. NGP has a unique and concrete stake in ensuring that its members are provided the opportunity to vote to which they are entitled by law. Its members and constituents include hundreds of registered voters in Paulding County. Verified Compl. ¶ 12.

Defendants are members of the Paulding County Board of Elections and Voter Registration and are sued in their official capacities. It is their duty to ensure that Paulding County provides for advance voting on all dates and at all times required by Georgia law. *See* O.C.G.A. § 21-2-385. According to the notice Paulding County has provided thus far, the County plans to offer advance voting on weekdays only from December 14 through December 31.

Plaintiff, through counsel, sent a letter to Defendants on December 12 seeking clarification by 2:00 p.m. on December 14 that Paulding County’s advance voting calendar would comply with the Georgia Election Code. Defendants have yet to respond.

**B. Georgia Law Regarding Advance Voting**

Georgia law requires runoff elections in certain circumstances, such as where no candidate in a general election receives a majority of votes cast. O.C.G.A. § 21-2-501. This year, three state-level offices, including both of Georgia’s U.S. Senate seats, require a runoff election based on the results of the November 3, 2020 election. *Id.* The runoff election is set for January 5, 2021.

Georgia law provides for a period of advance voting prior to a runoff election. O.C.G.A. § 21-2-385. That period begins on the fourth Monday preceding the runoff election. O.C.G.A. § 21-2-385(d)(1)(A). This year, the first day of advance voting is December 14, 2020. The runoff election advance voting period typically ends “on the Friday immediately prior to each . . . runoff.” O.C.G.A. § 21-2-385(d)(1). This year, that would be January 1, 2021, a public and legal holiday under O.C.G.A. § 1-4-1.

During the runoff period, counties must make advance voting available during—at the minimum—certain specified dates and times.<sup>1</sup> On ordinary business days, advance voting must be

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<sup>1</sup> In addition to statutory minimums, with some exceptions, “counties and municipalities may extend the hours for voting beyond regular business hours and may provide for additional voting

made available during (again, at the least) regular business hours. Advance voting must also be made available on certain Saturdays during the advance voting period.<sup>2</sup> Ordinarily, advance voting must be made available on the second Saturday prior to a primary or election during the hours of 9:00 A.M. through 4:00 P.M. O.C.G.A. § 21-2-385(d)(1).

The default rules above vary depending on when state holidays fall in a given year. In relevant part, if the second Saturday “follows a public and legal holiday occurring on the Thursday or Friday immediately preceding” that Saturday, then “advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such . . . election.” *Id.* This reflects the General Assembly’s recognition that advance voting in a general election runoff where federal candidates are on the ballot falls over the year-end holiday season, in which many Georgia voters are often visiting family or otherwise unable to vote over weekends adjacent to legal and public holidays, and ensures that lawful voters will not be denied access to advance voting simply because of their observance of the holidays. This year, two of the days designated for advance voting under O.C.G.A. § 21-2-385(d)(1) fall on or immediately after a public holiday. The second Saturday before the runoff election—December 26, 2020—falls immediately after Christmas Day. And the final day of the advance voting period—Friday, January 1, 2021—is itself a public holiday under state law. O.C.G.A. § 1-4-1.

The operation of Georgia law in these circumstances is clear. First, advance voting must be available on the *third* Saturday prior to the election (Saturday, December 19), as the *second* Saturday prior to the election (Saturday, December 26) is the day after Christmas, a public holiday.

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locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option.” O.C.G.A. §21-2-385(d)(1)(D).

<sup>2</sup> Advance voting need not be provided on Saturday if there are no federal or state candidates on the ballot. O.C.G.A. §21-2-385(d)(1)(D). That provision does not apply to the January 5, 2021 runoff election.

See O.C.G.A. § 21-2-385(d)(1). Second, advance voting must be available *until* Monday, January 4th, because the Friday prior to the election (typically the last day of advance voting) is New Year's Day (Friday, January 1), which is also a public holiday. See O.C.G.A. § 21-2-385(d)(1). Georgia law provides:

Unless otherwise stated in a specific Code section of this chapter, time periods under this chapter include Saturdays, Sundays, and legal holidays. When the last day for the exercise of any privilege or the discharge of any duty prescribed or required by this chapter shall fall on a Saturday, Sunday, or legal holiday, the next succeeding business day shall be the last day for the exercise of such privilege or the discharge of such duty.

O.C.G.A. § 21-2-14. Thus, because Friday, January 1, 2021 is a legal holiday, under the operation of O.C.G.A. § 21-2-14, the last day for voters to exercise their right to vote by advance voting—and for Paulding County to discharge its duty to provide such advance voting—is Monday, January 4, 2021.<sup>3</sup>

### III. ARGUMENT

Currently, Paulding County plans to offer advance voting on weekdays only from December 14 through December 31. Absent emergency relief, Plaintiff's members and constituents in Paulding County will be deprived of statutorily required advance voting opportunities in this year's runoff election. That deprivation will be irreparable, and there is no other legal remedy that could provide the relief sought. To prevent it, this Court should issue a temporary restraining order and/or writ of mandamus to enforce Georgia law by ordering Defendants to comply with their duty to provide advance voting on December 19, 2020, and

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<sup>3</sup> As explained below, in the unusual circumstances presented here as to how Christmas, New Year's Day, and the runoff election fall, the County could potentially meet its statutory duty by designating Saturday, January 2, 2021, as a business day on which advance voting would be provided.

January 4, 2021. This relief is necessary to ensure that voters are given the full period of time to which they are entitled under Georgia law to cast an in-person advance ballot.

In ruling on a motion for temporary restraining order, courts consider whether: “(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest.” *Grossi Consulting, LLC v. Sterling Currency Grp., LLC*, 290 Ga. 386, 388 (2012) (internal quotations omitted). Furthermore, mandamus is appropriate where there is “the failure of a public official to perform a clear duty.” *Bibb Cty. v. Monroe Cty.*, 294 Ga. 730, 734 (2014) (quoting *S. LNG, Inc. v. MacGinnitie*, 294 Ga. 657, 661(3)(a) (decided March 3, 2014)). “The writ of mandamus is properly issued only if (1) no other adequate legal remedy is available to effectuate the relief sought; and (2) the applicant has a clear legal right to such relief.” *Id.* (citations omitted).

This case presents a paradigmatic case for emergency relief, and Plaintiff clearly satisfies the standards for a temporary restraining order and writ of mandamus.

**A. Plaintiff is likely to succeed on the merits of its claims.**

Plaintiff is likely to succeed on the merits because Defendants’ violation of their duty to provide advance voting is clearly unlawful under both Georgia law and Plaintiff is entitled to the relief of mandamus. Section 21-2-385(d)(1) of the Georgia Election Code specifies that advance voting “shall be conducted on the second Saturday prior to a primary or election during the hours

of 9:00 A.M. through 4:00 P.M.” O.C.G.A. § 21-2-385(d)(1).<sup>4</sup> However, “if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday . . . such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary or election.” *Id.* The second Saturday prior to the January 5, 2021 election is December 26, 2020, which the day after Christmas—a public holiday. Therefore, advance voting is required on the third Saturday prior to the election—December 19, 2020.

The same law also specifies that advance voting shall end “on the Friday immediately prior to each primary, election, or runoff.” O.C.G.A. § 21-2-385(d)(1). However, the Friday immediately prior to the runoff is January 1, 2021—a public holiday. Georgia election law provides that, unless a specific Code section excludes Saturdays, Sundays, and legal holidays from a given time period (which O.C.G.A. § 21-2-385 does not), “[w]hen the last day for the exercise of any privilege or the discharge of any duty prescribed or required by this chapter shall fall on a Saturday, Sunday, or legal holiday, the next succeeding business day shall be the last day for the exercise of such privilege or the discharge of such duty.” O.C.G.A. § 21-2-14. As such, advance voting for the January 5, 2021 election should be available until Monday, January 4, 2021.

No other adequate legal remedy exists to ensure that Plaintiff’s members and constituents have the full statutory timeframe to cast their votes. And voters have a clear legal right to the full

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<sup>4</sup> Under Georgia law, a runoff election is merely a continuation of a general election or primary in which a candidate for public office did not receive a majority of the votes cast to fill that office. *See* O.C.G.A. § 21-2-501; *Pub. Citizen, Inc. v. Miller*, 813 F. Supp. 821, 830 (N.D. Ga.), *aff’d*, 992 F.2d 1548 (11th Cir. 1993) (interpreting § 21-2-501 to require “an election resulting in a mere plurality” to “*continue* into a run-off” and noting “[t]he run-off does not reschedule the earlier general election” (emphasis added)); *Craig v. Simon*, 978 F.3d 1043, 1048 (8th Cir. 2020) (interpreting *Public Citizen* as approving “Georgia’s definition of the time for holding the election as ‘continuing’ through the run-off election” (quoting *Public Citizen*, 813 F. Supp. at 830)).

advance voting period under the Georgia Code. The provisions at issue will be violated by any county that does not perform its official, non-discretionary duty under the Georgia Election Code to allow advance voting on December 19, 2020, and January 4, 2021. At this time, Paulding County does not intend to open its advance voting polls on December 19, 2020, nor does it intend to extend advance voting until January 4, 2021 to compensate for the New Year's Day holiday. Thus, absent an injunction and/or writ of mandamus from this Court instructing Paulding County to provide advance voting on these dates, Plaintiff's members and constituents will have been denied access to the polls for advance voting, as required by Georgia law.

**B. Plaintiff will suffer irreparable injury absent the relief requested.**

Plaintiff will suffer immediate and irreparable harm absent a temporary restraining order. Absent immediate relief from this Court, Defendants have announced that they will fail to carry out their clear legal duty of providing advance voting on all days required by Georgia law. There is scant time for voters to vote in advance of the January 5, 2021 runoff election and every day matters: Voters must exercise the franchise over the holiday season, in the midst of a global pandemic and resulting economic hardship, and while taking precautions to avoid coming into close contact with others. "Courts routinely deem restrictions on fundamental voting rights irreparable injury." *League of Women Voters of N. C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014), *cert. denied*, 575 U.S. 950 (2015); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("A restriction on the fundamental right to vote therefore constitutes irreparable injury.").

That is because Plaintiff's members' and constituents' loss of the clear legal right to vote deprives them of fundamental aspects of their citizenship. *See Reynolds v. Sims*, 377 U.S. 533, 567 (1964) ("To the extent that a citizen's right to vote is debased, he is that much less a citizen."); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that



of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”); *see also Rhoden v. Paulding Cty. Bd. of Elections*, No. S21A0030, 2020 WL 6122297, at \*8 (Ga. Oct. 19, 2020) (“[C]ourts have recognized the fundamental nature of the right to vote, including the right . . . to have an elector’s vote counted on equal terms with those cast by other electors.”). Accordingly, only an immediate order that Defendants provide advance voting as described and in compliance with Georgia law will vindicate the fundamental right to vote of all voters.

**C. Defendants would suffer, at most, administrative inconvenience if required to exercise their duties under law.**

In marked contrast to Plaintiff’s members’ and constituents’ loss of statutorily required early voting opportunities, Defendants will suffer no cognizable harm if this Court enters a temporary restraining order. As discussed above, no one has a legitimate interest in preventing qualified voters from casting a ballot in clear violation of Georgia law. Further, while the County may incur some additional administrative cost associated with opening advance voting sites on two additional days, this is scarcely an “injury.” Defendants cannot assert that the costs associated with complying with Georgia law justify the Court declining to compel Defendants to comply with Georgia law. As such, there is no counterweight to Plaintiff’s members’ fundamental interest in exercising their right to vote.

**D. Granting the requested relief is in the public interest.**

The temporary restraining order that Plaintiff seeks is squarely in the public interest as it will ensure that Georgia voters will not be denied access to advance voting as a result of their observance of the holidays and in accordance with Georgia law and public policy. *Reynolds*, 377 U.S. at 561–62 (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society.”); *Burdick v. Takushi*, 504 U.S. 428, 433 (“It is beyond cavil that voting is of

the most fundamental significance under our constitutional structure.” (internal quotation marks and citation omitted)). On the other hand, barring voters from participating in that process as a result of these circumstances, which were beyond their control and which Defendants had the power to promptly address (but failed to adequately do so), or deferring a remedy for that harm until after the election, will subvert the most fundamental public policy of our political system.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter a temporary restraining order requiring Defendants to allow advance voting (a) on Saturday, December 19, 2020; and (b) during regular business hours on January 4, 2021; enjoining Defendants from closing the polls on those dates; and directing Defendants to permit any voters seeking to cast their ballots on those dates to vote.

Respectfully submitted on this 15th day of December 2020.

#### **KREVOLIN & HORST, LLC**

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