



Connie Taylor, Clerk of Superior Court
 Cobb County, Georgia

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

MADISON COOK, TESSA PARKER,)
 MARGARET WOLFE, and)
 LINDA WALTON, on behalf of themselves and)
 all others similarly situated, and COBB)
 COUNTY DEMOCRACY CENTER,)

Plaintiffs)

vs.)

COBB COUNTY BOARD OF)
 ELECTIONS & REGISTRATION,)
 JANINE EVELER,)
 in her official capacity as Cobb County)
 Director of Elections & Registration,)
 TORI SILAS, JESSICA M. BROOKS,)
 PAT GARTLAND, JENNIFER MOSBACHER,)
 and STEVEN F. BRUNING, in their official)
 capacities as members of the Cobb County Board)
 of Elections & Registration; BRAD)
 RAFFENSPERGER, Secretary of State)
 of Georgia, in his official capacity, GEORGIA)
 STATE ELECTION BOARD, WILLIAM S.)
 DUFFEY, JR., MATTHEW MASHBURN,)
 SARA TINDALL GHAZAL, EDWARD)
 LINDSEY, and JANICE W. JOHNSTON,)
 Members of the Georgia State Election Board,)
 in their official capacities,)

Defendants.)

Civil Action No.:

**EMERGENCY RELIEF
 REQUESTED**

**PLAINTIFFS' EMERGENCY MOTION FOR INTERLOCUTORY
 INJUNCTION AND TEMPORARY RESTRAINING ORDER**

Plaintiffs are Cobb County voters on the brink of disenfranchisement because the Cobb County Board of Elections and Registration (the "Cobb Board") has failed to issue absentee ballots as the law requires, as well as a non-profit organization committed to ensuring that eligible voters are able to participate in our democracy. In accordance with O.C.G.A. §§ 9-11-65 and 9-4-3,

Plaintiffs file this emergency motion for an interlocutory injunction and temporary restraining order (“TRO”) to require:

1. County Defendants to overnight mail a replacement absentee ballot to voters in the proposed class to whom the County Defendants have not yet overnighted replacement absentee ballots;
2. Defendants to extend the ballot receipt deadline for all replacement absentee ballots sent to voters in the proposed class to the same receipt deadline for Uniformed and Overseas Voters (“UOCAVA”) ballots (November 14, 2022);
3. Defendants to allow all voters in the proposed class who have not received an official absentee ballot by noon (local time) on November 8, 2022, to use the Federal Write-In Absentee Ballot (“FWAB”) to cast their ballots; and
4. County Defendants to provide immediate notice to all voters in the proposed class as to the extended ballot receipt deadline; their ability to postmark their absentee ballot by election day, November 8, 2022; and their ability to use the FWAB to cast their votes if they have not received an official absentee ballot by noon (local time) on election day, November 8, 2022.

Relief is urgently needed to ensure that hundreds of eligible Georgia voters will not be disenfranchised due to the failure of the Cobb Board to issue absentee ballots in accordance with the law.

Respectfully submitted, this 6th day of November, 2022.

/s/ Rahul Garabadu
Rahul Garabadu (Ga. Bar No. 553777)
Caitlin May (Ga. Bar No. 602081)
Cory Isaacson (Ga. Bar No. 983797)
American Civil Liberties Union

Foundation of Georgia, Inc.
P.O. Box 77208
Atlanta, GA 30357
Tel: 770-303-8111
rgarabadu@acluga.org
cmay@acluga.org
cisaacson@acluga.org

Sophia Lin Lakin*
Jonathan Topaz*
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212-519-7836
slakin@aclu.org
jtopaz@aclu.org

Bradley E. Heard (Ga. Bar No. 342209)
Pichaya Poy Winichakul (Ga. Bar No.
246858)
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, Georgia 30030
(404) 521-6700
bradley.heard@splcenter.org
poy.winichakul@splcenter.org

Neil S. Steiner*
DECHERT LLP
Three Bryant Park
1095 Avenue of The Americas
New York, NY 10036-6797
(212) 698-3500
neil.steiner@dechert.com

Angela Liu*
DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5800
angela.liu@dechert.com

Stefanie Tubbs*
Christopher J. Merken*
DECHERT LLP
Cira Centre 2929 Arch Street

Philadelphia, PA 19104-2808
(215) 994-4000
stefanie.tubbs@dechert.com
christopher.merken@dechert.com

**Pro hac vice applications forthcoming*
Attorneys for Plaintiffs

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Defendants.)

Civil Action No.:

**EMERGENCY RELIEF
REQUESTED**

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
EMERGENCY MOTION FOR INTERLOCUTORY INJUNCTION
AND TEMPORARY RESTRAINING ORDER**

In accordance with O.C.G.A. §§ 9-11-65 and 9-4-3, Plaintiffs file this emergency motion for an interlocutory injunction and temporary restraining order (“TRO”) requiring the Defendants: (1) overnight mail absentee ballots to voters in the proposed class to whom the County Defendants have not yet overnighted absentee ballots; (2) extend the receipt deadline for all absentee ballots

sent to voters in the proposed class to the same receipt deadline for Uniformed and Overseas Voters (“UOCAVA”) ballots (November 14, 2022); (3) allow all voters in the proposed class who have not received an official ballot by noon (local time) on election day to use the Federal Write-In Absentee Ballot (“FWAB”) to cast their ballots; and (4) provide immediate notice to all voters in the proposed class as to the extended receipt deadline, their ability to postmark their absentee ballot by election day, and their ability to use the FWAB to cast their votes if they have not received an official absentee ballot by noon on election day.

On November 4, 2022—four days before the November 2022 general election, and after early voting had ended—the Cobb County Board of Elections (the “Cobb Board”) announced that it had failed to deliver absentee ballots to more than 1,000 registered voters who had requested such ballots and whose applications were processed. These voters relied on County Defendants’ own representations that their applications were processed, and Georgia law requiring County Defendants to timely mail those ballots. Although some of these voters have voted in person and County Defendants overnight mailed absentee ballots to a small number of others, hundreds of other Cobb County voters—through no fault of their own—find themselves nearing total disenfranchisement because they never received the absentee ballots Defendants pledged and had a duty to provide.

Even County Defendants acknowledge that their mistakes “let these voters down” and constitute “a critical error” for hundreds of voters. Indeed, for these hundreds of duly qualified voters—who did all they were supposed to do to obtain an absentee ballot—the result of County Defendants’ “critical error” and failure to properly perform their duties to mail absentee ballots under O.C.G.A. § 21-2-381 may be nothing less than disenfranchisement. The emergency relief

outlined above is urgently needed to ensure that Individual Plaintiffs have the opportunity to vote and have their votes counted.

REQUEST FOR EMERGENCY TREATMENT

Plaintiffs request expedited treatment of this motion under Superior Court Rule 6.7. The fundamental right to vote is at stake for hundreds of voters in Cobb County, with less than 2 days until absentee ballots are due. Plaintiffs therefore respectfully request that the Court give this motion expedited treatment and set a hearing as soon as possible on November 7, 2022, to prevent the total disenfranchisement of hundreds of voters.

FACTUAL BACKGROUND

Voters in Georgia are eligible to request absentee ballots between 78 and 11 days before the election, without providing a reason to vote absentee. O.C.G.A. § 21-2-381(a)(1)(A). In the 2022 midterm elections, approximately 279,000 voters statewide requested absentee ballots, and about 76% of those were returned by November 5, 2022. Mark Niese, *Over 1,000 absentee ballots never mailed to Cobb County voters*, The Atlanta Journal-Constitution (Nov. 5, 2022), <https://www.ajc.com/politics/georgia-election-2022-over-1k-absentee-ballots-never-sent-in-cobb/6C5SQEUUJ5FIPLLDKIOGMEB6QY/> (Exhibit F). In Cobb County specifically, approximately 30,000 voters requested absentee ballots in the 2022 midterm elections, with only about 69% returned as of November 5, 2022. *Id.* Among the voters who requested an absentee ballot were Plaintiffs Cook, Parker, Wolfe, and Walton and Affiant Doe. Affidavit of Madison Cook (Exhibit A) ¶ 6; Affidavit of Tessa Parker (Exhibit B) ¶¶ 5-6; Affidavit of Margaret Wolfe (Exhibit C) ¶ 5; Affidavit of Linda Walton (Exhibit D) ¶ 5; Affidavit of Jane Doe (Exhibit J) ¶ 6. When Plaintiffs Cook, Parker, and Walton inquired about the status of their absentee ballots when they did not receive them, County Defendants never told them that their ballots had not gone out

as the county website indicated they had. Ex. A (Cook) ¶ 8; Ex. B (Parker) ¶¶ 9, 12; Ex. D (Walton) ¶¶ 8, 10.

On November 3, 2022, a journalist for The Atlanta Journal-Constitution reported on Twitter that some absentee ballots mailed on October 13, 2022, in Cobb County were “lost in the mail.” Mark Niesse (@markniesse), Twitter (Nov. 3, 2022, 9:20 AM), <https://twitter.com/markniesse/status/1588159294528266240> (Exhibit G). That same day, Defendant Eveler said that her statements had been misinterpreted and that reports of issues with the October 13, 2022 ballots were “completely anecdotal.” Hunter Riggall, *Cobb elections chief quells concerns about mailed absentee ballots*, Marietta Daily Journal (Nov. 3, 2022), https://www.mdjonline.com/elections/cobb-elections-chief-quells-concerns-about-mailed-absentee-ballots/article_797984aa-5b93-11ed-a453-c736ba27c890.html (Exhibit H).

On the evening of November 4, 2022, the last day of in-person early voting, Defendant Eveler admitted in an email to the Cobb Board that approximately 1,036 absentee ballots issued on October 13, 2022, and October 22, 2022, were never mailed due to staff error. Email from Janine Eveler to Cobb County Board of Elections & Registration Members, November 4, 2022, 8:55 PM (Exhibit I). Specifically, she stated that of the 194 ballots marked as issued on October 22, 2022, none were mailed and that the daily file was never uploaded to the mailing machine, so the ballots were never even created. *Id.* Defendant Eveler also stated that of the 1,227 ballots marked as issued on October 13, 2022, 842 were believed to be unmailed as of November 4, 2022, and that the daily file was again not uploaded to the mailing machine, preventing those ballots from being created. *Id.*

In her November 4, 2022 email, Defendant Eveler stated that she and her staff had chosen to prepare the identified ballots for out-of-state voters and send those ballots to their listed out-of-

state address on the morning of November 5, 2022. *Id.* According to Defendant Eveler, there are hundreds of remaining Cobb County voters—those to whom Defendants did not plan to overnight ballots—for whom the County’s only response is that they will “hopefully be able to vote on election day.” *Id.* In her November 4 email, Defendant Eveler stated that she was “so sorry that this office let these voters down,” and that “there is no excuse for such a critical error” from her office.

By the time Plaintiffs Cook, Parker, Wolfe, and Walton found out that the Cobb Board may have failed to send out their absentee ballots, early voting had already ended. Ex. A (Cook) ¶ 9; Ex. B (Parker) ¶ 10; Ex. C (Wolfe) ¶ 7; Ex. D (Walton) ¶ 7. Plaintiffs Cook, Parker, Wolfe, and Walton will all be hundreds of miles away from Cobb County on Election Day, and it is not feasible for them to travel to Cobb County to cast a ballot in person. Ex. A (Cook) ¶¶ 12-14; Ex. B (Parker) ¶¶ 13-14; Ex. C (Wolfe) ¶¶ 10-11; Ex. D (Walton) ¶¶ 11-12. With less than two days remaining until election day, absent relief, it is increasingly unlikely that Plaintiffs Cook, Parker, Wolfe, and Walton will receive their ballots and then be able to return these ballots by the absentee receipt deadline on election day.

Organizations helping educate and empower eligible Cobb County voters have also been affected by the Cobb County Defendants’ failure to send absentee ballots in a timely manner. Plaintiff Cobb County Democracy Center (“CCDC”) is a civic organization whose central mission includes a commitment to democracy, free and fair elections, and ensuring that every eligible Cobb County voter is able to exercise their fundamental right to vote. Affidavit of Plaintiff CCDC (Exhibit E) ¶ 1. The organization assists voters in checking their voter registration, helps to arrange free rides to the polls, holds Get Out the Vote initiatives, and leads voter education efforts. *Id.* On November 4, 2022, the last day of early voting, CCDC learned that the Cobb County Defendants

had failed to mail absentee ballots to voters who had successfully applied for absentee ballots. *Id.* ¶ 3.

Based on this information, Plaintiff CCDC has already diverted time and money to address this issue in the crucial final days before the November 8th election and will continue to do so. *Id.* ¶ 4. CCDC had to change its script for canvassers who were knocking on doors and stay abreast of developments related to this issue. *Id.* ¶¶ 4-5. CCDC has also called and sent text messages to voters to find out who has been affected by this issue and are now tracking this information to get a better sense of the scope of the problem. *Id.* ¶ 6. Since learning of this issue on the last day of early voting, CCDC is fielding questions from Cobb County voters who have not received their absentee ballots yet. *Id.* ¶ 7. CCDC had to redirect resources from other organizational priorities to address these issues, all on the last weekend before election day. *Id.* ¶ 4. The organization will have to continue diverting resources from other organizational priorities to stay apprised of any developments related to this issue and will have to field questions from voters about this issue through election day. *Id.* ¶¶ 9, 10.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO DECLARATORY RELIEF

Plaintiffs are entitled to declaratory judgment that County Defendants' violation of state law will adversely affect Plaintiffs' right to vote. State law provides for relief under the Declaratory Judgment Act in "cases of actual controversy," O.C.G.A. § 9-4-2-(a), (b), "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). Declaratory judgment is appropriate "where a legal judgment is sought that would control or direct future action, under circumstances where that action might jeopardize or affect the rights, . . . of the party seeking the declaratory judgment."

City of Atlanta v. Southern States Police Benev. Ass'n of Ga., 276 Ga. App. 446, 451 (Ct. App. 2005) (internal citations omitted). In addition to declaratory relief, “[t]he court . . . may grant injunction or other interlocutory extraordinary relief” where “the pleadings and evidence may show him to be entitled.” O.C.G.A. § 9-4-3(a)(b).

Despite previous representations that they mailed ballots to Individual Plaintiffs, County Defendants admitted, four days before the November 2022 general election and after early voting had ended, that they failed to deliver absentee ballots to at least 1,000 eligible voters whose ballots were processed on October 13, 2022, and October 22, 2022—including Individual Plaintiffs. In doing so, County Defendants violated their legal obligations to “mail the ballot” to the voter, O.C.G.A. § 21-2-381(b)(2)(A), “within 3 business days after receiving the absentee ballot applications.” Ga. Reg. 183-1-14-.11. County Defendants’ failure to properly perform their duties to mail absentee ballots under O.C.G.A. § 21-2-381 violates state law. As a result of County Defendants’ actions, Individual Plaintiffs face total disenfranchisement in violation of their fundamental and constitutional right to vote. Plaintiffs are therefore entitled to declaratory judgment that County Defendants’ failure to comply with state law will violate Individual Plaintiffs’ right to vote.

II. PLAINTIFFS ARE ENTITLED TO INTERLOCUTORY RELIEF

In determining whether to grant an interlocutory injunction, superior courts have “broad discretion.” *See e.g., SRB Inv. Servs., LLLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011). “The purpose for granting interlocutory injunctions is to preserve the status quo, as well as balance the conveniences of the parties, pending a final adjudication of the case.” *Kinard v. Ryman Farm Homeowners’ Ass’n, Inc.*, 278 Ga. 149, 149 (2004) (internal quotation marks omitted). 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, the Court should consider 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. These factors are a balancing test, and the movant need not prove each factor for the Court to grant an interlocutory injunction. *City of Waycross v. Pierce Cnty. Bd. of Comm’rs*, 300 Ga. 109, 111–12 (2016). Every factor supports interlocutory relief here.

A. There Is a Substantial Threat that Plaintiffs will Suffer Irreparable Injury if the Injunction Is Not Granted

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. Olens*, 300 Ga. 340, 354 (2016). There can be no doubt that this factor weighs heavily in favor of relief here. Absent preliminary relief, Individual Plaintiffs will 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) (quoting *Elrod v. Burns*, 427 U.S. 347, 373(1976)). Indeed, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of N.C. v. N. Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (finding when voting rights “are threatened or impaired, irreparable injury is presumed”); *see also generally Wesberry v. Sanders*,

376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”). A party suffers irreparable injury where “money damages would [not] provide an adequate remedy at law.” *Glass v. Faircloth*, 363 Ga. App. 232, 234 (2001). Organizational Plaintiffs would thus also suffer irreparable harm absent relief because Defendants’ errors have already forced, and will continue to force, them to divert resources from their core activities in advance of the November 8, 2022 election. For both Individual and Organizational Plaintiffs, “once the [November] election occurs, there can be no do-over and no redress.” *League of Women Voters of N.C.*, 769 F.3d at 248.

B. Plaintiffs Are Likely to Succeed on the Merits of Their Claims

“The right to vote is fundamental, forming the bedrock of our democracy.” *Favorito v. Handel*, 285 Ga. 795, 796 (2009) (internal quotation marks omitted). Under the so-called *Anderson-Burdick* framework, a law or election practice “that severely burdens the right to vote must be narrowly drawn to serve a compelling state interest.” *Rhoden v. Athens-Clarke Cnty. Bd. of Elec.*, 310 Ga. 266, 272 (2020) (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992)).

There is no question that County Defendants’ conduct here constitutes a severe burden on Individual Plaintiffs’ fundamental right to vote. Individual Plaintiffs testify that—despite being eligible voters and having their absentee ballot applications processed many weeks ago, well in advance of election day—they have not received their absentee ballots as of November 5, 2022, three days before the deadline to submit those ballots. Individual Plaintiffs only first learned that Cobb County had erroneously failed to send more than 1,000 absentee ballots to voters on that same day.

In other words, Individual Plaintiffs—based on County Defendants’ representations that their applications were processed, and based on County Defendants’ obligations under state law

to mail those absentee ballots—reasonably relied on those representations and reasonably expected to receive their absentee ballots, as required under state law. Now, just days before election day, Individual Plaintiffs will be completely disenfranchised because they never received their absentee ballots and they are unable to vote in person on election day. Indeed, one plaintiff has testified that it would take her more than 500 miles roundtrip to vote in person, and she does not have access to a car. Ex. A (Cook) ¶¶ 12-13. Other Individual Plaintiffs live even farther away than that. *See* Ex. D (Walton) ¶¶ 11-12 (more than 4,200 miles roundtrip); Ex. B (Parker) ¶ 13 (more than 1,300 miles roundtrip); Ex. C (Wolfe) ¶ 10 (more than 800 miles roundtrip). Absent relief, County Defendants’ unlawful conduct will result in total disenfranchisement for Individual Plaintiffs—the very definition of a severe burden on the right to vote.

Regardless, Defendants’ conduct cannot satisfy any standard. Elections Director Janine Eveler has already acknowledged that her office made “a critical error” in failing to send the absentee ballots to Cobb County voters and that she is “so sorry that this office let these voters down.” Ex. I (Eveler email). In these public statements, County Defendants do not contest that these eligible Cobb County voters were entitled to receive their absentee ballots in a timely manner, nor do they contest that Defendants 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 gravely threatens Georgians’ fundamental right to vote.

C. The Threatened Injury to Plaintiffs Outweighs the Threatened Harm That the Injunction May Do to the Defendants

The balance of the equities unquestionably weighs in favor of Plaintiffs. As noted above, absent an injunction, Individual Plaintiffs will 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. By virtue of processing Individual Plaintiffs’ absentee ballot requests, Defendants have already determined that those are eligible voters; the State and County Defendants share an interest with Plaintiffs in ensuring that all eligible voters can vote in the upcoming November election. Indeed, County Defendants insist that they have “let these voters down”—an acknowledgment not just that Plaintiffs are eligible voters for the November election, but also that County Defendants have an interest in correcting their mistake.

To the extent Defendants claim some sort of administrative burden in the event of an injunction—based on their need to contact voters, mail them their ballots, and extend the deadline until November 14, 2022—this argument must fail for two reasons. First, “[t]here is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [the Secretary of State’s] office and other state and local offices involved in elections.” *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016); *see also United States v. Georgia*, 892 F. Supp. 2d 1367, 1377 (N.D. Ga. 2018) (finding that administrative, time, and financial burdens on the state are “minor when balanced against the right to vote, a right that is essential to an effective democracy”); *Georgia State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338, 1348 (N.D. Ga. 2015) (granting injunction under Section 2 of VRA, even though county board of commissioners (“BOC”) would face administrative burdens from an injunction, because “the harm [plaintiffs] would suffer by way of vote dilution outweighs the harm to the BOC”).

Second, Defendants cannot claim irreparable injury, or even administrative burden, for failure to fulfill a legal obligation. As a practical matter, County Defendants were supposed to send

these ballots to all the voters in Cobb County who did not receive them. Plaintiffs ask simply that Defendants fulfill this exact, statutorily required task. Pushing back the deadline also will not cause any practical harm or tabulation delays, given that Plaintiffs ask this Court to adopt the same deadline Cobb County and the rest of Georgia already uses for UOCAVA voters. And as a legal matter, it is “elementary that a party may not claim equity in his own defaults.” *Long v. Robinson*, 432 F.2d 977, 981 (4th Cir. 1970). Here, any “irreparable injury which defendants claim that they will suffer . . . is injury of their own making.” *Id.* Defendants cannot claim any irreparable injury—let alone an injury so grave as to outweigh Plaintiffs’ fundamental constitutional rights.

D. Granting the Requested Interlocutory Injunction Will Not Disserve the Public Interest

“[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.”).

In failing to deliver Individual Plaintiffs’ absentee ballots, County Defendants have plainly violated state law, in a way that gravely threatens Plaintiffs’ constitutional right to vote. Absent an injunction, Defendants’ violation of state law will go unremedied, and Individual Plaintiffs will be disenfranchised in the November election. An injunction clearly serves the public interest.

III. IN THE ALTERNATIVE, A WRIT OF MANDAMUS IS WARRANTED

In the alternative, if declaratory and injunctive relief is not available here, the Court should order a writ of mandamus because the County Defendants have failed to perform their statutorily required duties to provide Individual Plaintiffs with access to absentee voting, and because a damages remedy, or any other remedy, is inadequate to remedy the harm to Plaintiffs.

Under O.C.G.A. § 9-6-20, “whenever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights.” Where the “question is one of public right and the object is to procure the enforcement of a public duty, no legal or special interest need be shown, but it shall be sufficient that a plaintiff is interested in having the laws executed and the duty in question enforced.” O.C.G.A. § 9-6-24.

To succeed on a petition for a writ of mandamus, a petitioner must satisfy a two-prong test. First, they must demonstrate a legal right to the relief sought. *Willis v. Dep’t of Revenue*, 255 Ga. 649, 650, 340 S.E.2d 591, 593 (1986). Second, they must demonstrate that there is no other adequate remedy. *Watson v. Matthews*, 286 Ga. 784, 786, 692 S.E.2d 338, 340 (2010).

Plaintiffs satisfy the first prong because Georgia law establishes a clear legal right to the relief at issue. Plaintiff Voters have a legal right to choose to vote absentee under Georgia law, which allows “every eligible voter in Georgia” to “make a decision to vote utilizing absentee ballots.” *Favorito v. Handel*, 285 Ga. 795, 798 (2009) (citing O.C.G.A. § 21-2-380(b)). And more specifically, Georgia law provides Plaintiff Voters a legal right to receive those ballots in a timely fashion, which allows them to fill them out and deliver them ahead of election day. To ensure that voters can effectuate this legal right, Georgia law requires the County Defendants to mail absentee ballots to all applicants deemed eligible “within 3 business days after receiving the absentee ballot

applications.” Ga. Regs. 183-1-14-11; *see also* O.C.G.A § 21-2-381(b)(2)(A) (mandating that registrars “[s]hall mail the ballot” once they confirm an absentee ballot applicant’s eligibility). In this way, County Defendants have plainly failed to comply with Georgia law. In failing “to perform acts and duties clearly required of them by law,” *Wrightsville Consol. Sch. Dist. v. Selig Co.*, 195 Ga. 408, 409 (1943)—to timely mail absentee ballots to hundreds of Cobb County voters who had long been deemed eligible—Defendants have prevented Individual Plaintiffs from vindicating their legal right.

In the event that this Court determines that the declaratory and injunctive relief outlined in Counts I and II is unavailable, Plaintiffs also satisfy the second prong meriting the issue of a writ of mandamus because there would be no other remedy for the legal rights at issue. As noted *supra*, damages remedy would be inadequate to remedy the harm to Individual Plaintiffs of being prevented from exercising their rights to vote in the November 2022 election. The only remedy Plaintiffs seek is the ability to exercise their right to vote and to have their votes counted; without the declaratory and injunctive relief in Counts I and II, mandamus is the only remaining viable remedy. *See Thompson v. Willson*, 155 S.E.2d 401, 403 (Ga. 1967) (mandamus is “proper remedy” for petitioner seeking to have his vote counted in an election).¹

For the foregoing reasons, Plaintiffs have shown a likelihood of success of the merits on their writ of mandamus.

¹ For purposes of mandamus, a statute may require an action either “expressly or by necessary implication.” *Bland Farms, LLC v. Georgia Dept. of Agr.*, 637 S.E.2d 37, 39 (Ga. 2006). It is a “necessary implication” of the statute requiring Defendants to mail absentee ballots to voters that Plaintiffs also have a meaningful opportunity to complete and submit those ballots. Thus, in this context—where Plaintiffs would not have enough time to fill out and deliver their ballots without a change to the postmark deadline—pushing back the delivery deadline to the receipt deadline for UOCAVA and military ballots is a “necessary implication” of the statute in this instance.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court provide expedite treatment of this motion, and issue a temporary restraining order requiring that Defendants: (1) overnight mail absentee ballots to voters in the proposed class to whom the County Defendants have not yet overnighted absentee ballots; (2) extend the receipt deadline for all absentee ballots sent to voters in the proposed class to the same receipt deadline for Uniformed and Overseas Voters ballots (November 14, 2022); (3) allow all voters in the proposed class who have not received an official ballot by noon (local time) on election day to use the Federal Write-In Absentee Ballot to cast their ballots; and (4) provide immediate notice to all voters in the proposed class as to the extended receipt deadline, their ability to postmark their absentee ballot by election day, and their ability to use the FWAB to cast their votes if they have not received an official absentee ballot by noon on election day.

Respectfully submitted, this 6th day of November, 2022.

/s/ Rahul Garabadu
Rahul Garabadu (Ga. Bar No. 553777)
Caitlin May (Ga. Bar No. 602081)
Cory Isaacson (Ga. Bar No. 983797)
American Civil Liberties Union
Foundation of Georgia, Inc.
P.O. Box 77208
Atlanta, GA 30357
Tel: 770-303-8111
rgarabadu@acluga.org
cmay@acluga.org
cisaacson@acluga.org

Sophia Lin Lakin*
Jonathan Topaz*
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212-519-7836
slakin@aclu.org

jtopaz@aclu.org

Bradley E. Heard (Ga. Bar No. 342209)
Pichaya Poy Winichakul (Ga. Bar No.
246858)
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, Georgia 30030
(404) 521-6700
bradley.heard@splcenter.org
poy.winichakul@splcenter.org

Neil S. Steiner*
DECHERT LLP
Three Bryant Park
1095 Avenue of The Americas
New York, NY 10036-6797
(212) 698-3500
neil.steiner@dechert.com

Angela Liu*
DECHERT LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5800
angela.liu@dechert.com

Stefanie Tubbs*
Christopher J. Merken*
DECHERT LLP
Cira Centre 2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-4000
stefanie.tubbs@dechert.com
christopher.merken@dechert.com

**Pro hac vice applications forthcoming*

Attorneys for Plaintiffs

Exhibit A

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

MADISON COOK, TESSA PARKER,)
MARGARET WOLFE, and)
LINDA WALTON, on behalf of themselves and)
all others similarly situated, and COBB)
COUNTY DEMOCRACY CENTER,)

Plaintiffs)

vs.)

Civil Action No.:

COBB COUNTY BOARD OF)
ELECTIONS & REGISTRATION,)
JANINE EVELER,)
in her official capacity as Cobb County)
Director of Elections & Registration,)
TORI SILAS, JESSICA M. BROOKS,)
PAT GARTLAND, JENNIFER MOSBACHER,)
and STEVEN F. BRUNING, in their official)
capacities as members of the Cobb County Board)
of Elections & Registration; BRAD)
RAFFENSPERGER, Secretary of State)
of Georgia, in his official capacity, GEORGIA)
STATE ELECTION BOARD, WILLIAM S.)
DUFFEY, JR., MATTHEW MASHBURN,)
SARA TINDALL GHAZAL, EDWARD)
LINDSEY, and JANICE W. JOHNSTON,)
Members of the Georgia State Election Board,)
in their official capacities,)

Defendants.)

AFFIDAVIT

1. My name is Madison Cook. I am over the age of 18 and fully competent to sign this affidavit. Under penalty of perjury, I declare the following based upon my personal knowledge:
2. I have been registered to vote in Cobb County (at 4253 Glenlake Parkway Northeast Kennesaw, Georgia) since June 21, 2020.
3. I am nineteen years old. I have voted in early in person in every election since I turned eighteen.
4. This was my first time attempting to vote absentee by mail.
5. I chose to vote absentee in this election because I am attending college in Mississippi and could not make it home in order to vote in person.
6. I requested my absentee ballot on October 10, 2022. My request was listed as processed on October 13, 2022. Based on this representation, I believed that this was plenty of time to receive, complete, and return my absentee ballot for the November 8, 2022 election.
7. I checked my mailbox for my absentee ballot throughout the month of October, and contacted family members to help.
8. I reached out via phone to the Cobb County Board of Elections on five separate occasions as the election approached (October 23, 24, 27, 28, and 31, 2022). None of these phone calls resulted in the county telling me that my ballot had not gone out as the website indicated.
9. On November 5, 2022, I learned for the first time that Cobb County had failed to send out many absentee ballots requested by voters.
10. As of November 5, 2022, I have not received my absentee ballot.
11. No one from the Cobb County Board of Elections has contacted me to tell me that my ballot was impacted by any loss of absentee ballots.
12. In order to drive to Cobb County, it would require more than 500 miles of travel round-trip, which would take many hours.
13. My car is in the shop, so I am unable to make the drive to Cobb County to vote in person on election day.
14. Despite my best efforts, I do not believe I will be able to vote in the 2022 election.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2022.

State of MS County of Oktibbeha
Subscribed and sworn to (or affirmed) before me on this
6 day of November, 2022 by
Madison Cook Madison Cook proved to me on the basis
of satisfactory evidence to be the person(s) who appeared before me.
Notary Signature Veronica Outlaw

Madison Cook
Madison Cook



Exhibit B

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

MADISON COOK, TESSA PARKER,)
MARGARET WOLFE, and)
LINDA WALTON, on behalf of themselves and)
all others similarly situated, and COBB)
COUNTY DEMOCRACY CENTER,)

Plaintiffs)

vs.)

Civil Action No.:

COBB COUNTY BOARD OF)
ELECTIONS & REGISTRATION,)
JANINE EVELER,)
in her official capacity as Cobb County)
Director of Elections & Registration,)
TORI SILAS, JESSICA M. BROOKS,)
PAT GARTLAND, JENNIFER MOSBACHER,)
and STEVEN F. BRUNING, in their official)
capacities as members of the Cobb County Board)
of Elections & Registration; BRAD)
RAFFENSPERGER, Secretary of State)
of Georgia, in his official capacity, GEORGIA)
STATE ELECTION BOARD, WILLIAM S.)
DUFFEY, JR., MATTHEW MASHBURN,)
SARA TINDALL GHAZAL, EDWARD)
LINDSEY, and JANICE W. JOHNSTON,)
Members of the Georgia State Election Board,)
in their official capacities,)

Defendants.)

AFFIDAVIT

1. My name is Tessa Caroline Parker. I am over the age of 18 and fully competent to sign this affidavit. Under penalty of perjury, I declare the following based upon my personal knowledge:
2. I have been registered to vote in Cobb County (at 3871 Brentview Place, Kennesaw, Georgia) since December 18, 2021.
3. I am 18 years old. I have voted in person or absentee by mail in every election since I turned eighteen.
4. I chose to vote absentee in this election because I am attending college in Chicago and could not make it home in order to vote in person.
5. I initially requested my absentee ballot on August 30, 2022. However, after I made my initial request, I saw that there was no record of my application.
6. I then made a second request for an absentee ballot on October 19, 2022. This request was recorded and showed up on My Voter Page.
7. I believed that this was plenty of time to receive, complete, and return my absentee ballot for the November 8, 2022 election.
8. I checked my mailbox for my absentee ballot throughout the month of October, multiple times a day.
9. On November 2, 2022, I called the Cobb elections office to ask what happened to my absentee ballot. The person who answered the phone told me an absentee ballot had been mailed out, and because I lived out of state, I had no other option to vote besides waiting for the Postal Service to ship my ballot.
10. On November 5, 2022, I learned for the first time that Cobb County had failed to send out many absentee ballots requested by voters.
11. As of November 5, 2022, I have not received my absentee ballot.
12. No one from the Cobb County Board of Elections has contacted me to tell me that my ballot was impacted by any loss of absentee ballots.
13. In order to drive to Cobb County, it would require over 1300 miles of travel round-trip, which would take many hours on a day when I have class.
14. Despite my best efforts, I do not believe I will be able to vote in the 2022 election.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2022.



Tessa Caroline Parker



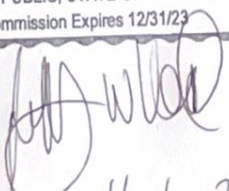

11-6-2022

Exhibit C

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

MADISON COOK, TESSA PARKER,)
MARGARET WOLFE, and)
LINDA WALTON, on behalf of themselves and)
all others similarly situated, and COBB)
COUNTY DEMOCRACY CENTER,)

Plaintiffs)

vs.)

Civil Action No.:

COBB COUNTY BOARD OF)
ELECTIONS & REGISTRATION,)
JANINE EVELER,)
in her official capacity as Cobb County)
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TORI SILAS, JESSICA M. BROOKS,)
PAT GARTLAND, JENNIFER MOSBACHER,)
and STEVEN F. BRUNING, in their official)
capacities as members of the Cobb County Board)
of Elections & Registration; BRAD)
RAFFENSPERGER, Secretary of State)
of Georgia, in his official capacity, GEORGIA)
STATE ELECTION BOARD, WILLIAM S.)
DUFFEY, JR., MATTHEW MASHBURN,)
SARA TINDALL GHAZAL, EDWARD)
LINDSEY, and JANICE W. JOHNSTON,)
Members of the Georgia State Election Board,)
in their official capacities,)

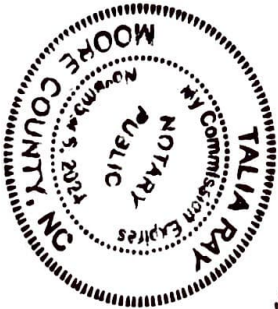
Defendants.)

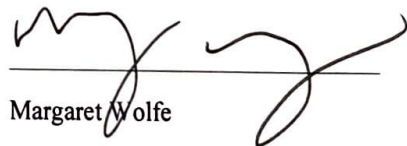
AFFIDAVIT

1. My name is Margaret Wolfe. I am over the age of 18 and fully competent to sign this affidavit. Under penalty of perjury, I declare the following based upon my personal knowledge:
2. I have been registered to vote in Cobb County (at 362 Mayes Road Powder Springs, Georgia) since October 7, 2019.
3. I am 21 years old. I have voted in person or absentee by mail in every election since I turned eighteen.
4. I chose to vote absentee in this election because I am attending college in North Carolina and could not make it home in order to vote in person.
5. I requested my absentee ballot on October 12, 2022. My request was listed as issued on October 13, 2022. Based on this representation, I believed that this was plenty of time to receive, complete, and return my absentee ballot for the November 8, 2022 election.
6. I checked my mailbox for my absentee ballot throughout the month of October, and Duke University mail services to make sure they had not received my ballot.
7. On November 5, 2022, I learned for the first time that Cobb County had failed to send out many absentee ballots requested by voters.
8. As of November 5, 2022, I have not received my absentee ballot.
9. No one from the Cobb County Board of Elections & Registration has contacted me to tell me that my ballot was impacted by any loss of absentee ballots.
10. In order to drive to Cobb County, it would require over 800 miles of travel round-trip, which would take many hours on a day when I have class.
11. Despite my best efforts, I do not believe I will be able to vote in the 2022 election.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2022.




Margaret Wolfe

Talia Ray
My Commission Expires: Nov. 6th, 2024

Exhibit D

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

MADISON COOK, TESSA PARKER,)
MARGARET WOLFE, and)
LINDA WALTON, on behalf of themselves and)
all others similarly situated, and COBB)
COUNTY DEMOCRACY CENTER,)

Plaintiffs)

vs.)

Civil Action No.:

COBB COUNTY BOARD OF)
ELECTIONS & REGISTRATION,)
JANINE EVELER,)
in her official capacity as Cobb County)
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TORI SILAS, JESSICA M. BROOKS,)
PAT GARTLAND, JENNIFER MOSBACHER,)
and STEVEN F. BRUNING, in their official)
capacities as members of the Cobb County Board)
of Elections & Registration; BRAD)
RAFFENSPERGER, Secretary of State)
of Georgia, in his official capacity, GEORGIA)
STATE ELECTION BOARD, WILLIAM S.)
DUFFEY, JR., MATTHEW MASHBURN,)
SARA TINDALL GHAZAL, EDWARD)
LINDSEY, and JANICE W. JOHNSTON,)
Members of the Georgia State Election Board,)
in their official capacities,)

Defendants.)

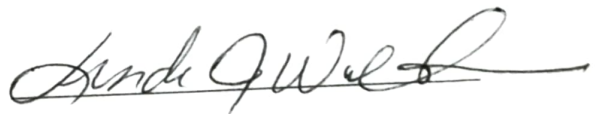
AFFIDAVIT

1. My name is Linda Walton. I am over the age of 18 and fully competent to sign this affidavit. Under penalty of perjury, I declare the following based upon my personal knowledge:
2. I have been registered to vote in Cobb County (at 7069 Wade Road Austell, Georgia) since January 10, 2013.
3. I am 64 years old. I have voted in person or absentee by mail many times before.
4. I chose to vote absentee in this election because I am taking care of my mother in California and could not make it home in order to vote in person.
5. I requested my absentee ballot on October 12, 2022. My request was listed as issued on October 13, 2022. Based on this representation, I believed that this was plenty of time to receive, complete, and return my absentee ballot for the November 8, 2022 election.
6. I checked my mailbox for my absentee ballot throughout the month of October.
7. On November 5, 2022, I learned for the first time that Cobb County had failed to send out many absentee ballots requested by voters.
8. I called the Cobb County Board of Elections & Registration twice. The first time was in late October. The second time was on November 2, 2022. On November 2, 2022, I waited online until I was disconnected.
9. As of November 5, 2022, I have not received my absentee ballot.
10. No one from the Cobb County Board of Elections & Registration has contacted me to tell me that my ballot was impacted by any loss of absentee ballots.
11. In order to drive to Cobb County, it would require over 4,200 miles of travel round-trip, which would take many hours and financial resources.
12. Despite my best efforts, I do not believe I will be able to vote in the 2022 election.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 5, 2022.

**See Attached
Certificate**



Linda Walton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Riverside

On November 5th, 2022 before me, Miguel Martinez-Ibarra, Notary Public
(insert name and title of the officer)

personally appeared Linda Jean Walton
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity (ies), and that by his her their signature (s) on the instrument the person (s) or the entity upon behalf of which the person (s) acted, executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Miguel Martinez-Ibarra (Seal)

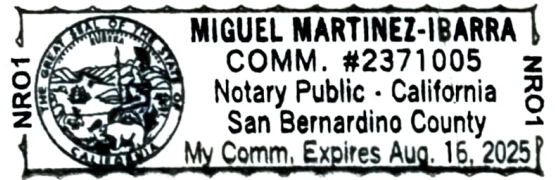


Exhibit E

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

MADISON COOK, TESSA PARKER,)
MARGARET WOLFE, and)
LINDA WALTON, on behalf of themselves and)
all others similarly situated, and COBB)
COUNTY DEMOCRACY CENTER,)

Plaintiffs)

vs.)

Civil Action No.:

COBB COUNTY BOARD OF)
ELECTIONS & REGISTRATION,)
JANINE EVELER,)
in her official capacity as Cobb County)
Director of Elections & Registration,)
TORI SILAS, JESSICA M. BROOKS,)
PAT GARTLAND, JENNIFER MOSBACHER,)
and STEVEN F. BRUNING, in their official)
capacities as members of the Cobb County Board)
of Elections & Registration; BRAD)
RAFFENSPERGER, Secretary of State)
of Georgia, in his official capacity, GEORGIA)
STATE ELECTION BOARD, WILLIAM S.)
DUFFEY, JR., MATTHEW MASHBURN,)
SARA TINDALL GHAZAL, EDWARD)
LINDSEY, and JANICE W. JOHNSTON,)
Members of the Georgia State Election Board,)
in their official capacities,)

Defendants.)

AFFIDAVIT

My name is Dr. Monica Wills Brown. I am over the age of 18 and fully competent to sign this affidavit. Under penalty of perjury, I declare the following based upon my personal knowledge:

1. I am the Chief Organizer of the Cobb County Democracy Center, an organization that educates voters about issues related to casting their ballot. Our organization's central mission includes a commitment to democracy, free and fair elections, and ensuring that eligible Cobb County voters are able to exercise their fundamental right to vote. Our organization assists voters in checking their voter registration, helping arrange free rides to the polls, Get Out the Vote efforts (GOTV), and holding voter education events—including for the November 2022 general election.
2. Our organization consists of two volunteer staff members.
3. On November 4, 2022, our organization learned that Cobb County Board of Elections and Registration did not mail absentee ballots to certain voters who had successfully applied for an absentee ballot.
4. Based on this information, our organization has already had to spend time and money to address this issue instead of spending the time and money, as we ordinarily would, on other organizational priorities. For example, I had to change the scripts that volunteer canvassers use when going around the community to educate voters.
5. Specifically, we changed the script to inform voters who may have requested an absentee ballot that they should vote in-person on Election Day if possible. We also amended the script to inform voters who received an absentee ballot on November 5 or November 6 to drop off their ballot to certain Cobb County libraries who were receiving absentee ballots as part of a pilot program.
6. Since learning about this issue, we have also called and sent text messages to voters to find out who has been affected by this issue. We are now tracking this information to get a better sense of the scope of the problem.
7. We have also had to field questions from Cobb County voters who have not received their absentee ballots yet.
8. We are also now dedicating resources to stay apprised of any new information that Cobb County may provide regarding the absentee ballots that were not sent out.
9. We will have to continue to dedicate resources to answering voters' questions about this issue.
10. Absent any changes, we will continue to need to spend money and other resources to address this issue, through Election Day. Diverting resources to amend these scripts, tracking voters who have had problems with absentee ballots, fielding questions from voters who have not received their absentee ballots, and staying abreast of developments around the absentee ballots that were not sent out means that our staff members and other volunteers have less time to devote to other voter education and GOTV efforts. This is especially important because this is the last weekend before Election Day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2022.

Monica Willis Brown
Monica Willis Brown
Willis



Subscribed and sworn to before me
by the affiant who is personally
known to me.

Pichaya Poy Winichakul

Date: 11/6/2022

My commission expires: May 17, 2026

Exhibit F



Over 1,000 absentee ballots never mailed to Cobb County voters



Credit: Steve Schaefer

POLITICS

By Mark Niese, The Atlanta Journal-Constitution

23 hours ago

Election Day in Georgia is last option for most voters



Cobb County election officials made a “critical error” and failed to mail over 1,000 absentee ballots to voters who had requested them, the county’s elections director said Friday night.

Advertisement

Most of the voters who weren’t sent their ballots will now have to vote in person on Election Day if they want to participate in the election. The county is mailing ballots by overnight delivery to out-of-state voters, but ballots will only be counted if they’re received back at the county’s elections office before polls close at 7 p.m., according to state law.

Elections Director Janine Eveler wrote in an email to the county’s elections board Friday that election workers didn’t upload ballot information to a mailing machine, and ballots were never created nor sent on two days last month. There were 842 ballots that were supposed to be mailed Oct. 13 and 194 ballots on Oct. 22.

Article continues below



By Northside Hospital Careers

ADVERTISER CONTENT

Try these quick fall recipes if you're short on time

“I am so sorry that this office let these voters down,” Eveler wrote. “Many of the absentee staff have been averaging 80 or more hours per week and they are exhausted. Still, that is no excuse for such a critical error.”

Explore [AJC vote tracker: How many Georgians have voted early?](#)

Elections staff couldn't produce an audit log or a list showing that those ballots had been created, packed or verified, Eveler wrote. She said a new supervisor likely didn't reference or update procedures.

ADVERTISING



Of the 1,036 voters who weren't sent ballots, about 250 of them instead voted in-person during early voting, according to state election data.

Voters who receive their ballots before Election Day can return them at seven county libraries on Saturday and Monday as part of the county's "last call" absentee ballot return program. Ballots can also be returned at the main county elections office in Marietta before polls close on Tuesday.

Advertisement



Ballot drop boxes are [no longer available](#) because they closed at the end of early voting Friday, a requirement of the state's [voting law](#) passed last year.

The American Civil Liberties Union of Georgia called for officials to accept absentee ballots until the ballot return deadline for military and overseas voters on Nov. 14. All other voters must get their ballots in by Tuesday.

Madison Cook, a Cobb resident and student at Mississippi State University who applied for an absentee ballot, said in a statement to the ACLU, "There are many students like me who can't come home to vote in person.

"I would drive more than 500 miles round trip to vote, but my car is in the shop. Despite my best efforts, it looks like I will be unable to cast a vote in this election."

Across Georgia, about 279,000 voters requested absentee ballots and 76% of them have been returned. In Cobb, 69% of 30,000 absentee ballots requested have been returned.

About the Author



Mark Niese



Mark Niese covers voting rights and elections for The Atlanta Journal-Constitution. He also reports on the Georgia House of Representatives and government. He has been a reporter at the AJC since 2013 following a decade at The Associated Press in Atlanta, Honolulu and Montgomery, Ala.

Editors' Picks

Exhibit G



Tweet

**Mark Niese**

@markniese



Heads-up for Cobb County voters: Some absentee ballots sent on Oct. 13 appear to be lost in the mail, according to county election officials. Absentee ballots can be reissued, but with little time before Election Day, voters are encouraged to vote in-person if they can.

9:20 AM · 11/3/22 · [TweetDeck](#)

7 Retweets 4 Likes



Tweet your reply



Exhibit H

https://www.mdjonline.com/elections/cobb-elections-chief-quells-concerns-about-mailed-absentee-ballots/article_797984aa-5b93-11ed-a453-c736ba27c890.html

Cobb elections chief quells concerns about mailed absentee ballots

By Hunter Riggall hriggall@mdjonline.com

Nov 3, 2022



Cobb Elections Director Janine Eveler speaks at the Cobb main elections office on Monday, Oct. 17.

Hunter Riggall hriggall@mdjonline.com

Cobb Elections Director Janine Eveler Thursday cleared up concerns about absentee ballots that had spread on social media.

The confusion arose when, in response to an Atlanta media query, Eveler mentioned that it seemed like several voters who complained about their absentee ballot not arriving in a timely fashion had been mailed their ballot on Oct. 13.

That led to reports circulating, including on the social media pages of Cobb's Democratic and Republican parties, that a large group of absentee ballots mailed out on Oct. 13 had been lost in the mail, which Eveler said is not the case.

She explained that her office always gets calls from voters who are concerned that they haven't received their ballot in the mail yet. Elections staff always respond, she said, by telling voters the date it was mailed out. Once the ballot leaves the office, it's in the hands of the postal service, and there is no tracking mechanism.

"It's completely anecdotal," Eveler told the MDJ. "As people (elections staff) are getting the calls, they were going 'Hey, this one's on the 13th too.' ... Maybe the number 13 sticks in their mind, I don't know."

Eveler said her comment to Atlanta media had been misinterpreted, and that she had not meant to imply a widespread issue with ballots that were mailed out on the 13th.

Eveler said there is no hard evidence that a significant number of absentee ballots have been lost.

Cobb elections reached out to the postal service, she said, to ensure they hadn't misplaced a batch of mail.

"And they can't see anything wrong ... they don't have any backlog of stuff going out," she said.

However, in every election, some absentee ballots will get lost in the mail, or arrive later than the voter would prefer, she said.

“It’s just a normal kind of thing. They unfortunately get lost in the mail, they arrive later and then the voter has already voted in person. It does take a long time to get things through the mail,” Eveler said.

Voters who are concerned that they have not yet received an absentee ballot have other options. One is to vote in person — they will have to sign a form at the polling location to cancel their absentee ballot before doing so.

A second option is to fill out a form canceling the absentee and requesting a new one be sent in the mail. Voters can find the form at cobbcounty.org/elections/voting/absentee-voting.

The third option is to continue to wait for the ballot to arrive.

If a voter receives their ballot and wants to return it quickly, they can submit it in-person at the main elections office (995 Roswell Street), hand-deliver it to the poll manager at any early voting location, or deposit it at one of the county’s ballot drop boxes during voting hours. For more information, visit the Cobb elections site.

Exhibit I

From: "Eveler, Janine" <Janine.Eveler@cobbcounty.org>

Date: November 4, 2022 at 8:55:27 PM EDT

To: "Gartland, Pat" <Pat.Gartland@cobbcounty.org>, "Bruning, Steve" <Steve.Bruning@cobbcounty.org>, "Brooks, Jessica" <Jessica.Brooks@cobbcounty.org>, "Mosbacher, Jennifer" <Jennifer.Mosbacher@cobbcounty.org>, "Gartland, Pat" <Pat.Gartland@cobbcounty.org>, "Silas, Tori" <Tori.Silas@cobbcounty.org>

Cc: "Hamilton, Erica" <Erica.Hamilton@cobbcounty.org>

Subject: Missing ballots

Board members,

After much research, I have concluded that some ballots were accepted but not mailed out. Staff's initial assurances seemed contrary to the returned ballot rates, so I asked them to show me conclusive proof that the ballots were actually printed and mailed. It has become clear that some were not. For the following dates, they could not produce an audit log from the mailing machine, nor any kind of checked list showing that ballots were created, packed or verified before going out to the mailroom.

For the 194 ballots accepted on 10/22, none of the ballots were mailed. The daily file was never uploaded to the mailing machine and ballots were not created. This morning we printed ballots and prepared UPS packets to overnight ballots to these impacted voters. minus the ones that have already been canceled. The voters who requested ballots be sent out of state were additionally sent a prepaid return UPS envelope.

For the 1,227 ballots accepted on 10/13, 385 ballots were prepared manually for Elderly and Disabled rollover voters and these were mailed out. The remaining 842 ballots were never mailed as far as I can determine. Again, our absentee supervisor failed to upload the daily file of accepted ballots into the mailing machine or to have staff manually stuff the envelopes. It appears that she did not employ any process to check outgoing ballots against the daily accepted reports to verify that all ballots were created. This was more difficult to determine what happened since some ballots were being returned and clearly were mailed. Therefore, our final determination came later this afternoon and I decided the best we could do is to overnight ballots to the 37 out-of-state mailing addresses, which we are preparing now and will get to UPS in the morning. Of the remaining voters, 179 cancelled their ballots prior to today and another 92 voted today. That leaves 534 voters who will hopefully be able to vote on election day. I am so sorry that this office let these voters down. The person responsible is sick about it. As you know, I lost the entire absentee leadership team at the end of last year. The former supervisor left some procedures, but it appears the new supervisor did not reference them or keep them updated when new methods, such as the mailing machine, were established. We didn't realize how overwhelmed she was and that such critical mistakes were being made. Many of the absentee staff have been averaging 80 or more hours per week and they are exhausted. Still, that is no excuse for such a critical error.

This is a tough report to make.

Janine Eveler

Director,

Cobb County Elections & Registration

770-528-2312

770-528-2519 Fax

678-315-0439 Cell

cobbelections.org

One small correction...

83 ballots will be overnighted tomorrow morning for out-of-state addresses, not 37. That leaves 488 that we hope can vote on Tuesday.

Janine Eveler
Director
Cobb County Elections

On Nov 4, 2022, at 8:56 PM, Eveler, Janine <Janine.Eveler@cobbcounty.org> wrote:

Board members,

After much research, I have concluded that some ballots were accepted but not mailed

Exhibit J

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

MADISON COOK, TESSA PARKER,)
MARGARET WOLFE, and)
LINDA WALTON, on behalf of themselves and)
all others similarly situated, and COBB)
COUNTY DEMOCRACY CENTER,)

Plaintiffs)

vs.)

Civil Action No.:

COBB COUNTY BOARD OF)
ELECTIONS & REGISTRATION,)
JANINE EVELER,)
in her official capacity as Cobb County)
Director of Elections & Registration,)
TORI SILAS, JESSICA M. BROOKS,)
PAT GARTLAND, JENNIFER MOSBACHER,)
and STEVEN F. BRUNING, in their official)
capacities as members of the Cobb County Board)
of Elections & Registration; BRAD)
RAFFENSPERGER, Secretary of State)
of Georgia, in his official capacity, GEORGIA)
STATE ELECTION BOARD, WILLIAM S.)
DUFFEY, JR., MATTHEW MASHBURN,)
SARA TINDALL GHAZAL, EDWARD)
LINDSEY, and JANICE W. JOHNSTON,)
Members of the Georgia State Election Board,)
in their official capacities,)

Defendants.)

AFFIDAVIT

1. My name is [REDACTED] am over the age of 18 and fully competent to sign this affidavit. Under penalty of perjury, I declare the following based upon my personal knowledge:
2. I have been registered to vote in Cobb County since October 11, 2016.
3. I am 27 years old. I have voted absentee by mail in every election I have participated in.
4. I choose to vote absentee by mail because I have had various temporary residences as a student and young professional, and because I like being able to do my research and vote at home without the pressure of in-person voting or waiting in lines.
5. During the 2022 election, my job prevents me from attending regular voting hours without disrupting my schedule.
6. I requested my absentee ballot on October 20, 2022. My request was listed as processed on October 22, 2022. Based on this representation, I believed that this was plenty of time to receive, complete, and return my absentee ballot for the November 8, 2022 election.
7. I checked my mailbox for my absentee ballot throughout the next few weeks, and contacted friends to help. I emailed the elections office and received a response on November 2, 2022.
8. In their response, "The Absentee Team" told me to contact the post office regarding my absentee ballot, or to cancel my ballot and vote in person.
9. On November 5, 2022, I learned for the first time that Cobb County had failed to send out many absentee ballots requested by voters.
10. On November 6, 2022, I received an email from Tori Silas stating that they had failed to send me a ballot due to a clerical error.
11. As of November 6, 2022, I have not received my absentee ballot.
12. Due to other responsibilities, I am unable to make the drive to Cobb County to vote in person on election day.
13. Despite my best efforts, I do not know if I will be able to vote in the 2022 election.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2022.



Charlotte Taylor

