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IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

KAYLA CROWELL, KAREN SCOTT, )  
ET AL., )  
Plaintiffs, )  
vs. )  
COBB COUNTY BOARD OF ELECTIONS )  
AND REGISTRATION, ET AL. )  
Defendants. )  
GEORGIA REPUBLICAN PARTY, INC., )  
ET AL., )  
Intervenors )

CIVIL ACTION  
FILE NO. 22-1-7734-65

EMERGENCY MOTION AND MOTION TO INTERVENE AS DEFENDANTS

DECEMBER 2, 2022

COBB COUNTY COURTHOUSE

MARIETTA, GEORGIA

HONORABLE KELLIE S. HILL, PRESIDING

APPEARANCES:

For the Plaintiffs: RAHUL GARABADU, Attorney at Law  
PICHAYA POY WINICHAKUL, Attorney at Law

For the Defendants: DANIEL WHITE, Attorney at Law

For Intervenors: BRENT HERRIN, Attorney at Law

RHONDA EUBANKS, CCR, RPR  
OFFICIAL COURT REPORTER  
70 HAYNES STREET  
MARIETTA, GEORGIA 30090  
770-528-1832

1 THE COURT: Good afternoon, ladies and gentlemen.  
2 You may be seated. All right. We're here to deal with  
3 plaintiffs' motion for interlocutory injunction and  
4 temporary restraining order. Before we get started, let  
5 me ask you if you all want to participate in the takedown.  
6 Mr. White?

7 MR. WHITE: Yes, Your Honor.

8 THE COURT: Mr. Garabadu?

9 MR. GARABADU: Excuse me. What was the question?

10 THE COURT: If you all plan to participate in the  
11 takedown of this hearing?

12 MR. GARABADU: Yes, Your Honor.

13 THE COURT: And Mr. Herrin, would you want to?

14 MR. HERRIN: We will. Thank you.

15 THE COURT: Before we get started on plaintiff's  
16 emergency motion, I do have a motion to intervene as  
17 defendants. And that was filed by Mr. Warburton. And I  
18 believe here on his behalf is Mr. Herrin.

19 MR. HERRIN: Yes, Your Honor. It was filed maybe  
20 half an hour ago. I got notice of this hearing right at  
21 about 12:30. So I'm happy to be here. We did file a  
22 motion to intervene. We think we have a right to -- that  
23 the Court should allow us to intervene. The National  
24 Senatorial Campaign Committee, the Georgia Republican  
25 Party, and the National Republican Party are the parties

1 which I represent and which filed the motion.

2 We think that we should be intervening as of right.  
3 We have a candidate on the ballot that is affected by the  
4 proceedings here today. We have invested tons of money in  
5 this contest. And I think the case law that's been cited  
6 in the briefs that we filed with you a few minutes ago  
7 clearly allow for that. So we would ask the Court to  
8 grant us the right to intervene. And if not as of right,  
9 then as permissive intervention under the statute. And  
10 I'm here to answer any questions for the Court, if the  
11 Court has any.

12 THE COURT: Thank you, Mr. Herrin. Let me ask if  
13 either side would like to be heard in response to the  
14 motion to intervene as defendants from the Georgia  
15 Republican Party, the National Republican Senatorial  
16 Committee, and the Republican National Committee.

17 MR. WHITE: Your Honor, Daniel White on behalf of the  
18 Cobb County Board of Elections. We don't object. We  
19 haven't seen the motion. But we just, as a matter of  
20 course, agree. We don't object to their intervening in  
21 this case.

22 THE COURT: Mr. Garabadu?

23 MR. GARABADU: Your Honor, we have not seen the  
24 motion for intervention at this time. We object because  
25 we believe that we've sued the proper party here, and the

1 interested party is the Cobb County Board of Elections.  
2 And we will stand on that objection.

3 THE COURT: All right. Did you want to respond to  
4 the objection, Mr. Herrin?

5 MR. HERRIN: Other than to say, again, what we filed  
6 in our pleadings, there is tons of case law on this that  
7 political parties have a right to intervene in disputes  
8 such as this. And we would stand on our pleadings.

9 STAFF ATTORNEY FUDGER: Judge, I'm printing out  
10 additional copies of the motion.

11 THE COURT: I was just going to say, I'm happy to  
12 share my copy if either side wants one. And primarily,  
13 Mr. Herrin, I believe the basis is that your client wants  
14 to make sure that Georgia election laws are applied  
15 fairly?

16 MR. HERRIN: That's correct, Your Honor.

17 THE COURT: Then I'm going to allow you all an  
18 opportunity to look at the motion and put anything else  
19 that you may want to put on the record before I rule. And  
20 I don't have any proposed orders. Do you have one?

21 MR. HERRIN: We can get you a proposed order, Your  
22 Honor.

23 THE COURT: If you all will let me know when you've  
24 had a chance to review it and if you would like to be  
25 heard further.

1 MR. GARABADU: Your Honor, the plaintiffs have had a  
2 chance to look at the order.

3 THE COURT: Okay. And you will just stand by your  
4 previous objection?

5 MR. GARABADU: Yes, Your Honor. And we will mention  
6 that, again, we believe that we've sued the proper  
7 defendant in this case. The county has admitted to some  
8 delays already, and we are trying to address that. And,  
9 finally, Your Honor, the proposed intervenors have no  
10 interest in preventing lawfully-registered voters from  
11 voting in this case. And, therefore, we stand on our  
12 objections.

13 THE COURT: Okay. Mr. White?

14 MR. WHITE: Your Honor, I have had a chance to review  
15 it, and we don't really have a position. I think our  
16 position is we don't object to the intervention.

17 THE COURT: All right. Mr. Herrin, if you will get  
18 me a proposed order, I will allow the parties to  
19 intervene.

20 MR. HERRIN: We have requested that a proposed order  
21 be sent directly to chambers, Your Honor.

22 THE COURT: I will sign that upon receipt.

23 MR. HERRIN: Thank you.

24 THE COURT: Okay. Mr. Garabadu, I believe this is  
25 your motion. I will hear from you.

1           MR. GARABADU: Yes, Your Honor. Good afternoon. We  
2 are back here in your courtroom today just a couple of  
3 weeks after we were last here on a similar issue that we  
4 faced a few weeks ago. And that is that we have  
5 plaintiffs in this case, our clients, who properly  
6 requested an absentee ballot; and because of new delays,  
7 have not received one as of yesterday.

8           Before we came into court today, Your Honor, we were  
9 in the midst of discussions with the defendant about a  
10 potential consent order. We were having those  
11 discussions, you know, up until we started here at 1:30.  
12 And we are willing to continue to work with the defendant  
13 on a potential remedy here that would affect our  
14 plaintiffs and ensure that they would be able to  
15 participate in this runoff election.

16           So we are happy to go back to the negotiating table.  
17 And we just wanted to raise that to you as quickly as  
18 possible because time is of the essence here. So we don't  
19 want to take up too much of your time if we're getting  
20 close to a consent agreement with the defendant.

21           THE COURT: All right. I do know the last time we  
22 were here what you all agreed to is to allow the period  
23 for receiving those absentee ballots to be extended to the  
24 time that the military absentee ballots are received,  
25 which would -- I guess at this time -- be December --

1 MR. GARABADU: It would be December 9th, Your Honor.

2 THE COURT: 9th?

3 MR. GARABADU: Yes. Three business days.

4 THE COURT: All right. And then if they don't  
5 receive the ballots, they could use the Federal Write-In?

6 MR. GARABADU: That's what we're -- we're still in  
7 ongoing discussions with the defendant about what that  
8 would look like. So I don't want to represent the  
9 defendants' position on that. That's still something  
10 we're negotiating. But we were having fruitful  
11 conversations up until 1:30. So we wanted to alert the  
12 Court to that and let you know that we're happy to go back  
13 to the negotiating table in the interest of efficiency and  
14 expediency, if that's what the Court's preference is.

15 THE COURT: So do you all think you all would benefit  
16 from the Court taking a brief break to allow you all to  
17 continue doing that?

18 MR. WHITE: Your Honor, I would request maybe like  
19 two or three minutes. The petitioners have their facts  
20 sort of on the record in the public domain. And I would  
21 just note that we're getting lots of questions about sort  
22 of Cobb's position and do we agree with what they are  
23 saying. We don't fully agree with the facts they are  
24 setting forth, but we are agreeing to try to work toward a  
25 resolution. So if I could just briefly --

1           THE COURT: Absolutely. I'm going to give you an  
2 opportunity to be heard. After I heard from Mr. Garabadu,  
3 I thought you all just needed another minute or two and  
4 you'd have an agreement. But, yes, you will have an  
5 opportunity to be heard on the record in open court. And  
6 then if we need to take a break, I will certainly allow  
7 you all to do that. And that will give Mr. Herrin an  
8 opportunity to get his order signed.

9           All right. Let me hear from Mr. White.

10          MR. GARABADU: Yes.

11          MR. WHITE: Your Honor, thank you so much. Again,  
12 Daniel White for the Cobb County Board of Elections.  
13 Because this was filed late last night, I wanted -- and  
14 admittedly, the Cobb County Board of Elections has been  
15 both gathering facts on this and also trying to negotiate  
16 with the petitioners to try to come up with a solution.  
17 Because of that, we have not really filed a responsive  
18 pleading and thought we could just address it in court.

19           There are a lot of questions both from the public and  
20 press and from other parties about the county's position  
21 on this. So I just wanted to briefly state the county,  
22 you know, just sort of our brief summary of where we are  
23 on all the allegations in the complaint.

24           There have been concerns expressed about, in  
25 particular, a certain number of ballots that were issued



1 before Thanksgiving. So they have an issue date of the  
2 23rd or before and then -- or on the 23rd, and they  
3 weren't necessarily mailed until after Thanksgiving. And  
4 if we had a full evidentiary hearing, we could walk the  
5 Court through the process of accepting and issuing mail-in  
6 ballots. But suffice it to say, just because a ballot is  
7 entered into the system on the 23rd doesn't necessarily  
8 mean it goes out in the mail that day.

9 In this case, some of the ballots were caught by the  
10 Thanksgiving break, which is a two-day holiday where mail  
11 is not being picked up, and then the weekend. So there  
12 was certainly a batch of ballots that I think Ms. Eveler,  
13 the director of elections, addressed some of that timing  
14 issue in some of the news articles that have been out  
15 there.

16 But I just need everyone to sort of understand the  
17 compressed timeframe where the state does not even certify  
18 the results of the general until the 21st. So ballots are  
19 not issued -- even though you can apply for a ballot a  
20 week or two ahead of that, under the current state law  
21 ballots are not issued until after the race is certified  
22 by the state. So we're talking about two to three days  
23 worth of ballots that were starting to go out in the mail  
24 before the Thanksgiving break hit.

25 So there has been a lot of misunderstanding out in

1 the public of well, I applied on the 14th, and I didn't  
2 get my ballot until -- we understand your frustration.  
3 And Cobb County and every election official in this state  
4 is undoubtedly frustrated by these same deadlines that the  
5 new law has imposed. But that's just the reality.

6 And this is not like November when Cobb County was  
7 coming into court saying oops, we made a mistake and we've  
8 got to fix it. This is just the operation of thousands of  
9 people requesting absentee ballots and having a very short  
10 turnaround window. Does Cobb County and its staff want --  
11 would they have wanted those ballots to all go out, as  
12 many as possible, before Thanksgiving break? Absolutely.  
13 Did they get them out as quickly as we could with the  
14 staff and resources we have? Yes.

15 We understand the concern that people have about  
16 applying early as they could. But we also want to point  
17 out just the very real time constraints that all of the  
18 counties are in right now in the state of Georgia. So we  
19 want to be able to come to an agreement. We were trying  
20 to work with plaintiffs to sort of narrow the scope  
21 because it's not easy to identify class like in November  
22 when we were able to come in and say these are the people  
23 who were affected on these two days when these two batches  
24 of absentee ballots weren't uploaded. We addressed that.  
25 The Court was gracious enough to allow us to come here and

1 work out a consent order, and we got those ballots out  
2 before election day.

3 But in this case, we just wanted to -- since we don't  
4 have any pleadings on the record at this point -- to stand  
5 up here and say this is not like November. This is one  
6 where the ballots were being processed and maybe not as  
7 fast as we would like. But we are not conceding that any  
8 law was violated, you know, at this point. But we do  
9 understand the concerns that some people, under the  
10 framework set up by the new state law, may have requested  
11 their ballot very early but might not have gotten it  
12 until, you know, a good amount after Thanksgiving given  
13 the deadlines and the way the mail system works right now  
14 with the holidays falling in between.

15 So we're trying to come to a narrow consent order if  
16 we can. But we just wanted to be able to get up and sort  
17 of put that position on the record. And then if we can --  
18 and I think, honestly, Your Honor, now that we have an  
19 intervenor, it's probably going to need to be a consent  
20 agreement between all three groups because they are going  
21 to have a say in any final outcome.

22 So I wanted to make that position known on the  
23 record. I think it's helpful for the public to know the  
24 constraints that election workers are working under right  
25 now. And it helps explain to some of the voters why they

1 feel like they may be seeing a delay between when they  
2 request and when they receive their ballot.

3 THE COURT: Let me ask you, Mr. White, while I  
4 understand that you are not saying that this is the same  
5 situation as before, is your position now that ballots may  
6 not have gone out as quickly as you like, but everyone's  
7 ballot has now been sent? Or --

8 MR. WHITE: Yes, Your Honor.

9 THE COURT: -- are there still ballots that need to  
10 go out?

11 MR. WHITE: There are no ballots that were  
12 requested -- and I can talk to my Board, who's been  
13 communicating to staff even more than I have. To my  
14 knowledge -- and just for the Court to note, until the  
15 time of advance in-person voting starts, there is a -- you  
16 process ballots as the law says as the Board determines --  
17 or the superintendent or registrar determines eligibility,  
18 then they will send them out. There is no three-day  
19 deadline or anything like that. Once advance in-person  
20 voting started, which for Cobb was on the 26th, or  
21 Saturday after Thanksgiving, then there is a three-day  
22 turnaround from receiving the applications to sending it  
23 out.

24 We are taking the position that the ballots -- once  
25 advance in-person started on the 26th, you know, any of

1 the backlog of ballots that were still waiting from before  
2 Thanksgiving were sent out by Monday or Tuesday. So there  
3 is no -- as far as we're concerned, there has been no  
4 violation of any statutory deadline that we can find.  
5 And, again, we're still working with staff to make sure.  
6 But as far as we know, ballots since that time have been  
7 processed on schedule and have gone. Everybody who has  
8 requested them in a timely manner, the ballots are being  
9 sent out. So there is no need to go overnight ballots  
10 that we know of, unless we identify specific errors in  
11 addresses or things like that. I can talk to my Board  
12 members who are in there every day with them and see if  
13 they have any more information I need to add to that.

14 But this is not like the last time where there was a  
15 large number of ballots that hadn't gone out and they were  
16 just delayed. And because there may be out-of-state  
17 people in particular who might be affected by getting the  
18 ballots in the mail, we are willing to work toward some  
19 sort of limited scope of relief for a class of voters  
20 affected by the new deadline.

21 THE COURT: So the holdup would have been those folks  
22 who applied before the Thanksgiving break?

23 MR. WHITE: Yes.

24 THE COURT: And anyone who applied after  
25 Thanksgiving -- because I believe you were accepting

1 applications for absentee ballots up until this past  
2 Monday, was it?

3 MR. WHITE: The 28th, I believe, was the last day.

4 THE COURT: So anyone after Thanksgiving up until  
5 Monday, what is your position as to the state of those  
6 ballots?

7 MR. WHITE: Without having a full Board meeting and  
8 staffing, our position is the people that waited until  
9 after Thanksgiving to request a ballot, they've been  
10 processed at the normal rate. And I don't think that any  
11 action that Cobb has taken has disenfranchised any voter.  
12 Like it's just people waiting a little late in the process  
13 to request a ballot and taking the chance that it's going  
14 to get to them in time for them to send it back. But I  
15 don't have any evidence, you know, from staff or from my  
16 Board saying that any ballots that came in after  
17 Thanksgiving are not being processed timely.

18 THE COURT: Okay. Mr. Garabadu, anything else?

19 MR. GARABADU: Yes, Your Honor. May I respond  
20 briefly?

21 THE COURT: You may.

22 MR. GARABADU: Your Honor, I just want to step back  
23 briefly and kind of lay out what the circumstances are as  
24 the plaintiffs see them. Cobb County, like every county  
25 Board of Elections across the state, has an obligation to

1 mail out absentee ballots to voters as soon as possible  
2 after receiving an application for the runoff election.  
3 That's pursuant to 21-2-384(a). Now that obligation to  
4 send out ballots as soon as possible, it becomes even  
5 stricter during the advance voting period that began in  
6 Georgia on November 22nd.

7 Now, during that advance voting period, Cobb County  
8 was required to mail absentee ballots out within three  
9 business days of receiving a timely application. And  
10 there is at least one occasion that we know of that, you  
11 know, one of our clients has verified through a  
12 declaration where that didn't happen. So one of our  
13 plaintiffs, Ms. Crowell, requested an absentee ballot on  
14 November 14th. She did that by email. So Cobb County had  
15 it on November 14th.

16 Based on that, she should have been mailed an  
17 absentee ballot on November 22nd at the latest. That was  
18 the day that the advance voting period began in the state  
19 of Georgia and that three-day rule kicks in. So since she  
20 had applied by the 14th, it had been more than three  
21 business days by the 22nd when advance voting began. So  
22 it should have gone out on the 22nd. And the other  
23 plaintiff in our case, Plaintiff Scott, is in a similar  
24 situation.

25 Mr. White referred to the 11/23 issue date problem.

1 On Wednesday afternoon we heard that the defendants -- the  
2 defendants told the press that absentee voters who had an  
3 issue date of November 23rd were only actually sent out  
4 absentee ballots on November 28th. Unfortunately, that  
5 story has shifted a little bit. Last night, close to the  
6 time of our filing, there was another statement that was  
7 given to the press by the defendants that said that some  
8 of those voters in that 11/23 issue date, they might have  
9 actually been sent a ballot on the 29th too. So not just  
10 the 28th, but potentially the 29th, this past Tuesday.

11 The problem with this is that for voters like our  
12 plaintiffs, their applications have been sitting with Cobb  
13 County for a long time before that. And under that  
14 three-day obligation, you know, we're now into what was  
15 supposed to be sent out on November 22nd potentially not  
16 having been sent out until November 28th or November 29th.  
17 And because of that, we are seeing stories of folks who  
18 have not gotten their absentee ballots.

19 And this is not just unique to our plaintiffs. And  
20 the reason we know that is because of some of the data  
21 that we provided to the Court in our filing. That data  
22 that was sourced from the Secretary of State's office  
23 shows that Cobb County is lagging behind the state in  
24 terms of the absentee ballot return rate. So the  
25 percentage of ballots that have actually been returned to



1 Cobb County and received by the county.

2 As of 2:00 a.m. this morning, Cobb County had an  
3 absentee ballot return rate of 28 percent, whereas the  
4 state as a whole had a return rate of about 50 percent.  
5 So you can see that Cobb County is lagging behind. And  
6 similarly situated counties have a return rate that's also  
7 ahead of Cobb County, which we've noted in our filings.

8 So that indicated to us that this delay that -- you  
9 know, we've been talking about the 11/23 delay. But we're  
10 concerned that that delay is more systematic than just  
11 November 23rd, and that's resulting in voters not being  
12 able to receive their ballots with enough time to get it  
13 back before the December 6th receipt deadline.

14 And the other, you know, wrinkle in this is that  
15 according to the defendants and statements made to the  
16 press on Wednesday -- the article that we had submitted as  
17 an exhibit -- that issue date, we can't just take that  
18 issue date for granted because sometimes what happens is  
19 that issue date does not indicate when the ballot was  
20 actually mailed. There could be a lag in terms of, you  
21 know, from what I understand if the issue date -- if it's  
22 marked past 5:00 p.m., it might actually be mailed the  
23 next business day. So we have concerns about the  
24 reporting mechanism being used here and the potential  
25 violation of state law in that respect.

1           So these are some of the issues that we're seeing.  
2           And we agree with Mr. White that this is a little bit more  
3           of a difficult issue just because we're not able to say  
4           with any granularity which issue date is having problems.  
5           We have an affidavit that we attached to our pleadings of  
6           someone who did ultimately receive their absentee ballot  
7           yesterday but requested a ballot -- who had an issue date  
8           of 11/22. So if he received his ballot on December 1st,  
9           that's a nine-day period that's happened in between that  
10          potentially shows that there is a delay with other issue  
11          dates as well.

12          And so these are the kind of the scope of the  
13          problems that we're seeing. And like last time we're  
14          seeing these problems build a little bit in scope and a  
15          little bit of an uncertainty as to where these issues are  
16          happening. So one of the conversations that we are  
17          having -- that we were having with the defendants before  
18          this is trying to figure out a way where we can narrow the  
19          scope of the issue to make sure that folks will be able to  
20          receive their ballots on time with enough time to get it  
21          returned back.

22          Because for many folks that we represent, our  
23          plaintiffs, they don't really have an option to vote in  
24          person either today or on election day on Tuesday. So  
25          that's why it's very important that we come to either, you

1 know, an agreement or figure out a remedy to help ensure  
2 that these voters have a say in this runoff election.

3 THE COURT: All right. Mr. Herrin, I signed your  
4 order.

5 MR. HERRIN: Thank you, Your Honor. Just a couple of  
6 things. Since we've heard from the attorney for the  
7 Elections Board, it doesn't appear that there is anybody  
8 that didn't get sent a ballot by the statutory deadline  
9 that's required --

10 THE COURT: I'm sorry. Start over.

11 MR. HERRIN: I'm sorry. It appears from what the  
12 attorney for the Election Board has said, that there is no  
13 one that didn't have a ballot sent by the statutory  
14 deadline when it was requested. The certification in this  
15 election occurred on Monday, September 21st by the  
16 Secretary of State. So sending a ballot prior to that  
17 wouldn't be appropriate.

18 And even if you look through the affidavits that are  
19 attached to the motion, all of the affidavits indicate  
20 that they -- ballots were mailed within three days, three  
21 business days of receipt of the application. So I just  
22 don't know that there is any evidence necessarily to  
23 support the plaintiffs' relief.

24 And not only that, the relief they are really asking  
25 is that for all people that apply for a ballot, that you

1 extend this deadline and not for a narrower class of  
2 people that we might be able to knock down. So we're  
3 happy to participate in negotiations on a proposed order.  
4 But as the facts sit here today, I'm just not sure the  
5 plaintiffs have put forward sufficient evidence for the  
6 Court to grant any relief.

7 MR. WHITE: I know this is their motion. Could I  
8 just -- I'd like to just inform the Court where the  
9 misunderstanding is coming on the deadlines here. This is  
10 a dense area of law, and I just thought it might be  
11 helpful for the Court to understand where the three-day  
12 deadline comes in.

13 And if you will -- Mr. Garabadu, I think they are  
14 taking the position on behalf of his clients that the  
15 advance voting period, which is where the three-day rule  
16 kicks in, is the 22nd, which is quite literally the first  
17 possible day a runoff early voting could start because the  
18 day before is when they certified the winners. So he's  
19 saying that's when the early advance period starts.

20 But the statute references that the three-day rule --  
21 and this is O.C.G.A. 21-2-384 in Subsection (a) (2).  
22 During the period for advance voting set forth in  
23 21-2-385, the Board of Registrars or absentee ballot clerk  
24 shall make such determinations and mail or issue absentee  
25 ballots -- it goes on to say that's where the three-day --

1 within three days. So they are saying during the advance  
2 voting period in 385, which is the next section, that you  
3 shall mail. That's when the three-day rule kicks in.

4 But what the issue is if you go then read  
5 21-2-385(d) (1), it says there should be a period of  
6 advance voting that shall commence -- and in (d) (1) (B) it  
7 says as soon as possible prior to a runoff. So that's the  
8 date that we're hearing from the plaintiffs.

9 The defendants are taking the position, if you read  
10 the rest of that section, it says as soon as possible  
11 prior to a runoff from any general primary or election but  
12 no later than the second Monday immediately prior to such  
13 runoff.

14 So that really leaves it up to each county to set  
15 their own advance voting period. And that's why you --  
16 and it's been allowed. Certain counties allowed Saturday  
17 voting, some didn't. Some allowed Sunday, some didn't.  
18 But you can't start any later than this past Monday.  
19 That's the latest you can go. The earliest, in theory,  
20 you could go is Tuesday before Thanksgiving. I'm not  
21 aware of any county that started advance voting the  
22 Tuesday or Wednesday before -- there may have been a  
23 handful that tried to get some in on Wednesday, but there  
24 was no advance voting going on.

25 So the county's position is that the advance voting

1 period allowed by the statute and set by our Board began  
2 on the Saturday after Thanksgiving. That's when the  
3 three-day rule kicked in in Cobb. The plaintiffs, I  
4 believe, are taking the position that because it says as  
5 early as possible, that advance in-person, that starts the  
6 three-day deadline on the 22nd -- which, in essence, is  
7 the entire period of the runoff because that's the first  
8 day after the certification. So I wanted to highlight  
9 that for the Court is where the, probably where the main  
10 interpretation of law and issues come in here.

11 THE COURT: Okay, thank you.

12 MR. GARABADU: Your Honor, may I respond to that?

13 THE COURT: You may.

14 MR. GARABADU: Your Honor, on the point of when the  
15 advance voting period begins, the state law that Mr. White  
16 referenced, 384(a)(2), states that during the period for  
17 advanced voting set forth in Code Section 21-2-385. It  
18 starts with that.

19 So in the state of Georgia, early voting was allowed  
20 and did, in fact, happen as soon as November 22nd, 2022.  
21 It didn't happen in Cobb County, but that's when advance  
22 voting began in the state. Douglas County had early  
23 voting on November 22nd, 2022, and thousands of folks cast  
24 their ballot.

25 The statute does not say that it's limited to what

1 the county decides, you know, when they will decide to  
2 begin early voting in that county. It's limited to the  
3 period of advance voting in general. So our position is  
4 that that clock starts running on November 22nd is when  
5 that three-day rule kicks into play.

6 And that makes sense, you know, from a legislative  
7 standpoint. The reason that this rule exists is because  
8 as you get closer to the election, it's more important to  
9 have a stricter timeline on when these absentee ballots  
10 are being issued. That there needs to be a stricter clock  
11 on it.

12 So whether or not Cobb County chose to exercise the  
13 option of having voting on November 22nd or not doesn't  
14 really matter. And, in fact, in our papers we cited in  
15 OEB, which noted that advance voting could start before  
16 Thanksgiving. And so that period of advance voting ran  
17 starting November 22nd through today.

18 The second point I want to mention, I just want to  
19 make sure that the record is clear about the dates that  
20 our plaintiffs submitted an absentee ballot request and  
21 when they were actually issued. Although, as I noted  
22 before, there are some difficulties with the issue dates  
23 as represented by the defendants.

24 But Plaintiff Crowell applied by email for an  
25 absentee ballot on November 16th, 2022. And this is all

1 in the affidavits that we filed. That was received by the  
2 county on November 18th. And then that ballot had an  
3 issue date of November 23rd, which is that problem date  
4 that we've been talking about.

5 Plaintiff Scott, the application was received by the  
6 county on November 22nd. The absentee ballot issue date  
7 was November 23rd, which again was that problem date.

8 But according to the defendants, both of these  
9 plaintiffs would not have their ballots mailed until at  
10 least the 28th or the 29th as of the latest reporting that  
11 we've seen. So I just wanted to make sure that we were  
12 clear about those dates and when the plaintiffs applied  
13 for an absentee ballot and when they were actually issued  
14 and mailed and make sure that was clear on the record.

15 Thank you, Your Honor.

16 THE COURT: Okay. Thank you.

17 So why don't we take a few minutes -- did you want to  
18 be heard?

19 MR. HERRIN: I don't have anything else, Your Honor.  
20 Thank you.

21 THE COURT: We'll take a few minutes to break. I  
22 will allow you all an opportunity to chat. I will read  
23 over what has been given to the Court. And we will come  
24 back and, say, 20 minutes. So come back at 2:30. All  
25 right. We're adjourned until 2:30.



1 (Whereupon a recess was taken.)

2 THE COURT: All right. Counsel, where are we?

3 MR. GARABADU: Your Honor, two out of the three  
4 parties here have reached a tentative agreement, you know,  
5 broad strokes. We haven't put it in writing yet. But I  
6 think that the plaintiffs and the defendants here have  
7 come to a framework that we think we can both get behind.

8 The intervenors, I believe, are not on board, but I  
9 will let them explain their position before you.

10 But before we went through kind of the broad  
11 framework of that agreement for Your Honor, I would like  
12 the opportunity to, once more, state our legal position  
13 just so that the record is very clear before we tell you a  
14 little bit about what the proposed agreement looks like.  
15 So with Your Honor's permission, I would like to do that  
16 right now.

17 THE COURT: Absolutely.

18 MR. GARABADU: First of all, I would like to start  
19 off by saying that we understand that counties are in a  
20 tough position right now as to the compressed amount of  
21 time between the general election and a runoff election  
22 from nine to four weeks. And that means that elections  
23 administrators have to do a lot more tasks in between  
24 those elections cycle.

25 So we understand that administrators like the folks

1 at Cobb County are doing their best to make sure that all  
2 of these tasks that need to happen for an election are  
3 getting done. We understand it's a difficult position.  
4 But we want to make sure that voters don't pay the price  
5 of any missteps that might happen because of that  
6 compressed timeline. So I just wanted to say that at the  
7 outset.

8 I also wanted to talk a little bit about our position  
9 on the statutory violation. I know we've been over this  
10 once, but I think there was a little bit of back and forth  
11 earlier today about when exactly that statutory violation  
12 attaches and why we feel like that provides some sort of  
13 basis here for some relief.

14 Like I mentioned before, Cobb County and other  
15 counties have an obligation to mail absentee ballots to  
16 voters as soon as possible after receiving an absentee  
17 ballot application for a runoff election. And as I said  
18 before, that obligation becomes stricter, even stricter  
19 during the advance voting period. And we went over a  
20 little bit about whether or not advance voting begins on  
21 November 22nd or November 26th.

22 But we believe that, you know, looking at the text of  
23 the statute it says the duration of the advance voting  
24 period. And because voting in Georgia began on  
25 November 22nd, 2022, that is the relevant time period to

1 look at when that three-day rule comes into effect.

2 The other thing we know for a fact is that for at  
3 least the November 23rd issue date voters, that those  
4 absentee ballots were not mailed out within the three  
5 business days for at least some subset of voters in that  
6 category. And I mentioned our plaintiff, Plaintiff  
7 Crowell, who requested an absentee ballot on  
8 November 14th. I believe I got that date right the first  
9 time I said it, but I might have said November 16th later.  
10 I just want the record to reflect it is November 14th that  
11 she applied for an absentee ballot. She did that via  
12 email, so it was in Cobb County's inbox on November 14th.  
13 So based on that, she should have been sent out an  
14 absentee ballot on November 22nd at the very latest. That  
15 is the day that advance voting began and that the  
16 three-day rule kicked in.

17 So that is what we believe has resulted in a  
18 constitutional violation for at least some subset of  
19 voters. There are other voters with different issue dates  
20 that faced the same problem. And the problem here has  
21 been that based on the reports that we're hearing from  
22 voters, based on the data from the Secretary of State's  
23 Website we're seeing a lot of smoke in the building. So  
24 we know that there is a problem, and we haven't -- what we  
25 have been trying to do over the last day or so is try to

1 narrow the scope of the problem. So if you think of it as  
2 a house, we're trying to find the room where the fire is  
3 right now. And I think thanks to today's conversations,  
4 we've been able to at least isolate the problem a little  
5 bit more. So we're -- so part of our agreement is kinda  
6 making sure that we get the right parts of the house when  
7 we're looking for that fire.

8 So that brings us to the remedy that we have come to  
9 a tentative agreement on with the defendants. We've been  
10 working over the last couple of hours with Cobb County to  
11 narrow the scope of what the delays are -- where the  
12 violative delays are happening. And we're working with  
13 Cobb right now to find a solution that is administrable,  
14 that is reasonable. And we're working to make sure that  
15 it is something that Cobb County can feasibly do in the  
16 limited amount of time that we have right now.

17 So in terms of what we have agreed with broad  
18 strokes, again, is the class of voters that we are looking  
19 at is anyone who requested -- whose absentee ballot  
20 application was received by November 26th. That's when  
21 advance voting started specifically in Cobb County.

22 For that class of voters, we have come to a tentative  
23 agreement that the deadline for the receipt of their  
24 absentee ballot would be extended to the UOCAVA deadline,  
25 which would be December 9th, 2022. They would -- that

1 class of voters would also have the option to vote via the  
2 Federal Write-In Absentee Ballot if they have not received  
3 their absentee ballot in time. And as Your Honor is  
4 familiar, the Federal Write-In Absentee Ballot is an  
5 option that would allow the voter to access, essentially,  
6 a form online which would allow them to select their  
7 candidate by writing in their candidate's name on the  
8 ballot and sending that in by themselves in case they did  
9 not get their absentee ballot in time.

10 And finally, the last piece of the tentative  
11 agreement that we've come to with the defendants is a  
12 public announcement via their Website that informs voters  
13 that this was an option that was available for that class  
14 of voters, that specific class of voters whose absentee  
15 ballot application was received by November 26th.

16 You know, we worked really hard to make sure that we  
17 are coming to an agreement that's feasible. You know, the  
18 last time we were here, we understand that there were  
19 burdens on the county in terms of having to stuff ballots  
20 into envelopes on short notice and providing individual  
21 notice. So we've come to a compromise that we think will  
22 help ensure that this remedy is available for folks who  
23 might be affected by this delay and one that we hope is  
24 feasible and even more of an undue burden on the county in  
25 these last few days that we have.

1           So I will stop right there, and I will turn it over  
2 to Mr. White to make sure that I haven't misrepresented  
3 anything in this tentative agreement. But that's where  
4 the plaintiffs are right now.

5           THE COURT: Let me just ask a question to make sure  
6 I'm clear.

7           MR. GARABADU: Yes.

8           THE COURT: When you say those whose applications had  
9 been received by 11/26, they're all requested  
10 electronically?

11          MR. GARABADU: Well, absentee ballot applications can  
12 be a paper application. It just needs to be -- and what  
13 we were trying to figure out is what would be a class of  
14 voters that would be identifiable by the defendants. So  
15 as I understand it, Cobb County would be able to isolate  
16 the folks who have -- who, you know, they essentially  
17 notated that their absentee ballot is received on this  
18 date. So anyone up through 11/26, whether they applied  
19 online or through a paper application, that they would be  
20 part of this class.

21          THE COURT: And the absolute last deadline would have  
22 been the 28th?

23          MR. GARABADU: That's right.

24          THE COURT: So anyone who applied the 27th or 28th  
25 would not be included?

1 MR. GARABADU: That's right.

2 THE COURT: My concern is the individuals from 27th  
3 and 28th, if those ballots had not gone out or have not  
4 gone out in enough time for them to receive the ballots  
5 and return them in a timely fashion to meet the deadline,  
6 how are they to exercise their rights? And I just want to  
7 make sure that you all have contemplated that. Because if  
8 they requested them on the 26th and they were received on  
9 the 26th but the application didn't go out until the 30th,  
10 I don't know that that allows sufficient time for it to be  
11 received --

12 MR. GARABADU: Yeah. That's -- I will let Mr. White.

13 MR. WHITE: Your Honor, I just would appreciate --

14 THE COURT: I'm going to let you be heard. I just  
15 want you all to understand what I would like to have  
16 addressed. Yes?

17 MR. WHITE: I apologize, Your Honor.

18 THE COURT: That's okay.

19 MR. WHITE: So the reason the 27th and 28th were sort  
20 of excluded is because that's the regular class of voters  
21 who wait until -- if you wait until the deadline, which is  
22 allowed by law, and the law says we have three days to  
23 turn it around, then Cobb seems to be -- from what we've  
24 seen here, we're getting those turned around in the  
25 three-day window. That's the risk you take as a voter.

1 In other words, that's not Cobb County or the mail  
2 necessarily, it's the franchisee. It's that you waited  
3 and requested and hope your ballot is going to be there.  
4 So those are the people we expect if you wait that late in  
5 the process to have your ballot sent, that you may not get  
6 it and you may not get a chance to vote.

7 But we felt like people that submitted before the  
8 start of advance in-person voting, particularly those who  
9 were affected by the intervening holiday and then the way  
10 the mail runs in between then, it seemed like a fair  
11 compromise to say these people submitted early enough.

12 And just so you know, a voter can go check their -- I  
13 think it's on the My Voter Page. But you can go see when  
14 your ballot application was marked as received. So a  
15 voter can go on and look and see my application was marked  
16 as received on the 18th, but my ballot didn't go out until  
17 this day or hasn't gone out. So it's easy both for voters  
18 and for the parties to identify and say on the Georgia's  
19 eNet System it's marked as being received on this date.  
20 And then that voter can say I don't have mine yet, I have  
21 the opportunity to send in, you know, a ballot. It still  
22 needs to be mailed on or before voting day, but then they  
23 have those three extra days under the UOCAVA rule to get  
24 it in.

25 So that was our balance of striking -- you know, we



1 don't want to just -- you know, the people who waited  
2 until the end, they need to be treated sort of like the  
3 voters in every other part of the state. But to the  
4 extent they are alleging in Cobb County where there's a  
5 particular lag, we don't necessarily know the reasons for  
6 that. They say their data shows there was a lag in Cobb  
7 County. We're saying the compromise is that the people  
8 who got their application submitted before the 26th should  
9 have those extra three days if their ballot, for some  
10 reason, still hasn't gotten to them.

11 THE COURT: So you're stating in your place that  
12 individuals who applied the 27th and 28th, those  
13 applications have gone out within that three-day period.  
14 They've all gone out by yesterday?

15 MR. WHITE: So, Your Honor, there are, in every  
16 election and including today, voters who contact us, and  
17 the staff will go search and see if there is some reason  
18 that we didn't get it. Was it in the wrong stack. So I  
19 would not submit to the Court that a hundred percent of  
20 ballots. There are, I would say, probably today in the  
21 dozens of ballots that are being sent out today -- we  
22 don't know the specific dates for all of those -- some of  
23 those could have been on the 27th or some could have been  
24 earlier.

25 But in every election, there are voters who, up to

1 this last period, are saying I didn't get my ballot. The  
2 staff is continuing to work and identify those. So I  
3 can't stand in court and say -- what I can say is I don't  
4 feel that there is a systemic issue on the 27th. Those  
5 voters that went through the normal process should have  
6 been in effect by then, as far as we can tell. So there  
7 is still -- anything that was sent out on Monday or  
8 Tuesday, people are getting Wednesday, Thursday, Friday.  
9 So it's hard to know if there is an issue because we're  
10 just getting those back. So we can't stand here in court  
11 and say we know it's happened to all those ballots that  
12 went on the 27th and 28th because we're just now getting  
13 them back. But we felt like that's the normal risk that  
14 voters run to wait until the deadline.

15 THE COURT: That's why I brought this up. Because I  
16 think we don't know yet whether or not there is an issue  
17 with the requests that were made on the 27th and 28th.  
18 And to exclude them if we find out that, in fact, those  
19 ballots didn't go out, these are individuals who would not  
20 have been able to exercise that right to absentee vote.

21 So if you're able to state, yes, they went out in the  
22 three-day period, then I agree with you they ran the risk  
23 of either receiving or not receiving their ballot in  
24 enough time to return it. But if the ballots didn't go  
25 out, then I think those individuals have had -- have not

1 had the opportunity to exercise that right. And I just  
2 want to make sure that no party is excluded.

3 MR. WHITE: Again, I'm not able to stand in court and  
4 say definitively every ballot request that came in on the  
5 27th and 28th has gone out, but that's not any different  
6 than any other election. What I was pointing out to the  
7 Court is the last time basically any election we have a  
8 runoff cycle, the ballots that go out toward the end of  
9 the absentee ballot deadline, there is always the risk  
10 that not everybody is getting caught. But we are not  
11 aware there were any problems with ballots that were  
12 issued on the 27th but didn't go in the mail for two or  
13 three days later.

14 Like there is no systemic -- the big issue, the  
15 reason there is big glaring problem here is that on the  
16 23rd, the day before Thanksgiving, was probably one of our  
17 largest runs of ballots. So when those got held up -- and  
18 those were from the people that applied from November 14th  
19 or early on all the way up. You know, there were a range  
20 of dates of application receive dates. And then those all  
21 kind of lag. That's very apparent. We are aware of  
22 individualized ballots requested that have come in and  
23 people are saying I still don't have mine, but we don't  
24 have any obvious -- those are just anecdotal. Those are  
25 not systemic as far as we can tell.

1           THE COURT: All right. Let me let Mr. White have an  
2 opportunity to be heard.

3           MR. WHITE: Your Honor, I thank you so much. And I  
4 think the parties appreciate the Court's patience, both  
5 your accommodating us and hearing us so quickly and your  
6 patience while we try to work something out.

7           And because we are trying to keep things clear on the  
8 record, the first thing I want to start with is that Cobb  
9 County Board of Elections and Registration is committed to  
10 making sure every voter in Cobb County has the opportunity  
11 to vote in the method that they choose. That is the  
12 number one goal, you know, is to provide the opportunity  
13 for our citizens to vote absentee, early and in person and  
14 on voting day. And my client is committed to making sure  
15 everyone can cast their ballot in the method choose and in  
16 a timely manner.

17           And in that spirit, we came into court saying we  
18 don't see anything, you know, glaring like in November  
19 where we came to court saying we made a mistake, there  
20 were two batches that weren't uploaded. This is a  
21 confluence of deadlines and the new statute and holidays  
22 all meeting, causing what looks to be like a delay in the  
23 mailing out of some of the ballots.

24           But for purposes of going back to when the three-day  
25 rule kicks in, I have to go back and point out, just to

1 keep it clear on the record, the statute in 21-2-384 is  
2 what Mr. Garabadu has cited in saying that the three-day  
3 rule applies during the period for advance voting set  
4 forth in 21-2-385. So that's when we're saying that  
5 ballots received after that -- during that period, they  
6 have to be processed within the three days. So what we're  
7 pointing to is the next section in 385(d) that says that  
8 advance voting period shall be either as soon as possible  
9 prior to a runoff from any general primary or election but  
10 not -- I want to make sure. It doesn't say "either"  
11 there. I'm saying this for the Court's purpose.

12 The range of dates for advance in-person voting is as  
13 soon as possible prior to a runoff from any general  
14 election, which opposing counsel has pointed out would be  
15 the day after certification, that Tuesday, but no later  
16 than the second Monday immediately prior to such runoff.

17 And I understand the concern that plaintiffs' side is  
18 saying. Well, then voters in different counties could be  
19 treated differently during that period based on when the  
20 county chooses advance voting to start. Well, Your Honor,  
21 that's true of advance voting too. Voters that live in a  
22 rural county may not have gotten the chance to vote on the  
23 same day Douglas County voted or the same day Cobb County  
24 started early voting. And that's okay. And that's been  
25 tested in courts. And the courts say it's okay for

1 counties to set different deadlines and -- excuse me,  
2 different advance voting periods.

3 And to the extent for -- only for the runoff period,  
4 to the extent they left that option there for the counties  
5 to decide, Cobb County, to its credit, before the Court  
6 even overturned or interpreted the law as allowing  
7 Saturday voting, our Board was proactive and said we would  
8 like to start voting on Saturday if the Court -- they knew  
9 there was a lawsuit pending. That we would like to start  
10 early voting on that Saturday.

11 So our Board decided that advance in-person voting  
12 should start on Saturday the 26th. That's allowed by  
13 statute. That is the advance in-person voting period  
14 that's referred to where the three-day rule kicks in. And  
15 it can differ by county. And that may not seem -- people  
16 may not think that that -- it seems intuitive, but that's  
17 just like different periods for advance voting that are  
18 allowed in different counties, that also applies for --  
19 our position is that that also applies to when the rule  
20 for the three-day turnaround kicks in is when that  
21 county's period of advance voting starts.

22 So we just want that on the record. But I also want  
23 to say we come in -- before even getting into that, in the  
24 spirit of we want every voter to be able to have their  
25 absentee ballot received. And to the extent we can come

1 in and agree with the plaintiffs that any voter whose  
2 absentee ballot application was received by November 26th,  
3 we think that's a fair solution to allow them the three  
4 extra days under the UOCAVA deadline for their ballots to  
5 be received. They still -- we will make it clear that  
6 those voters would need to have their ballots postmarked  
7 by election day. And that they would have the  
8 opportunity, if they don't have their actual ballot, to  
9 send them as a Federal Write-In Absentee Ballot, the FWAB.  
10 And we will distribute that information. And we have  
11 agreed to that.

12 I know the intervenors may -- I don't want to state  
13 their position. I don't know that we are going to get  
14 them to come onboard with that. But we thought that two  
15 out of the three parties should at least come to the Court  
16 and say this is what we feel like is a fair agreement to  
17 resolve this dispute.

18 THE COURT: Okay. So you're saying postmarked by  
19 election day, which is the 6th, and received by the 9th?

20 MR. WHITE: Yes, Your Honor.

21 THE COURT: Okay. Mr. Herrin?

22 MR. HERRIN: Thank you, Your Honor. Again, Brent  
23 Herrin on behalf of the National Republican Senatorial  
24 Committee, National Republican Committee, and the Georgia  
25 Republican Party --

1 THE COURT: Remember, Ms. Eubanks is taking this  
2 down.

3 MR. HERRIN: Sorry, sorry. I know I'm a fast talker  
4 sometimes.

5 Yes, Your Honor, on behalf of our clients, we would  
6 just point out, again, I think similar to what Mr. White  
7 has said, if you look at the statutes about when absentee  
8 ballots are to be sent out and even if we take the most  
9 generous reading of that in which counsel for the  
10 plaintiffs said that would begin on November 22nd, based  
11 on the affidavits that are supporting this motion, none of  
12 those affidavits show any ballots were sent more than  
13 three days after, other than one. And that was sent the  
14 day after Thanksgiving, which under O.C.G.A. 1-3-1(D) (3)  
15 you wouldn't count Thanksgiving. So it's still within the  
16 three-day period under that statute. All of the ballots  
17 that they put forward in their affidavits were all sent  
18 within the three-day period.

19 So with that being the case, there just isn't  
20 evidence before the Court to issue an order for a class.  
21 And there really isn't any basis for even the folks that  
22 are in the affidavits to show that there has been any  
23 election law violations. And while the Board of Elections  
24 has agreed with the plaintiffs on some sort of relief, the  
25 Board of Elections can't just rewrite Georgia election



1 law. That is a job for the general assembly to do. And  
2 the general assembly has made those determinations what  
3 election law will be and what those deadlines would be.

4 So we would just ask that the motion be denied. But  
5 if the Court is inclined to grant the motion, we would ask  
6 that at least at a minimum the order would require a  
7 postmark by election day, which is the 6th -- which I  
8 understand the Board of Elections had asked, but when  
9 plaintiffs' counsel was up here, that wasn't a part of  
10 what he put forward.

11 And I would also ask that the Court, as a part of its  
12 order, would order that these ballots be segregated and  
13 handled differently than other ballots so we know how many  
14 ballots are going to be subject to this order, which we  
15 don't know today. So we would just ask that to the extent  
16 the Court is inclined to grant relief that, again, we  
17 would have a postmark by election day and a part of the  
18 order that would say you treat these ballots separately in  
19 the sense that we know that that batch of ballots, how  
20 many ballots are we talking about. Because we don't know  
21 that sitting here today.

22 So with that, again, you know, we would ask that the  
23 motion be denied because there is no factual basis for it.  
24 But if the Court is inclined to grant it, then at least  
25 those two points that I made would be part of the order.

1 Unless the Court has any other questions, I don't have  
2 anything else for the Court.

3 THE COURT: All right. Thank you.

4 I would like to hear from plaintiffs and defendants  
5 as to the first point made by Mr. Herrin, which is there  
6 has been no evidence presented that any of these ballots  
7 were mailed outside of the three-day period. And then  
8 secondly, how would we segregate these particular ballots.  
9 I don't know if it's possible or not. But I would like to  
10 hear about that.

11 MR. GARABADU: Yes, Your Honor. I can take the first  
12 point. I will let Mr. White handle the second because it  
13 might be more of an administration issue. And, Your  
14 Honor, remind me what your first question was.

15 THE COURT: No evidence that any of the ballots were  
16 sent outside the three-day period.

17 MR. GARABADU: Yes, Your Honor. And I want to be  
18 very clear about the statute and how it's being  
19 interpreted. According to the law, O.C.G.A.  
20 21-2-384(a) (2), it says during the period of advance  
21 voting set forth in Code Section 21-2-385, the Board of  
22 Registrars or absentee ballot clerk shall make such  
23 determinations and mail or issue absentee ballots.

24 And the fact that it says "mail" is very important to  
25 the argument that we're making here because the issue date

1 that is listed that Cobb County is keeping track of  
2 doesn't actually always correspond to the mail date. And  
3 we've heard that in the statements made to the press. And  
4 that three-day rule applies to ensure that a ballot is  
5 actually mailed out within three days. So it doesn't  
6 matter what the issue date says. If a ballot is not  
7 mailed out within those three days, that's the operative  
8 condition here.

9 So if we're looking at the mail dates, if we're  
10 looking at the applications received, our plaintiffs'  
11 cases do show that there was a violation because, you  
12 know, for example -- and I can go through it again, even  
13 though I know I've gone through it a couple of times. But  
14 it's important enough of a point to make again.

15 Plaintiff Crowell, who I mentioned earlier -- and let  
16 me just make sure I'm looking at the right dates.  
17 Plaintiff Crowell requested an absentee ballot on  
18 November 14th. She did that by email, so it was received  
19 by Cobb County on the 14th. Based on that but using  
20 November 22nd as the beginning of the advance voting  
21 period, that that absentee ballot application was sitting  
22 with Cobb County until the 22nd. So on the 22nd should  
23 have been the day when that ballot was mailed out to  
24 Plaintiff Crowell. And we know that wasn't the case  
25 because of what Defendant Eveler said to the press.

1           So that is the issue here. The issue date, you know,  
2 what it says doesn't really matter because the operative  
3 function here is when the ballot was mailed out. So I  
4 want to be very clear about that because that shows that  
5 there has been a violation here. It doesn't matter if the  
6 issue date is slightly earlier, it matters when the ballot  
7 was actually mailed out.

8           The second thing I want to point out very quickly is  
9 that we heard today that there might be some small subset  
10 of voters whose ballots are being sent out today. So that  
11 in and of itself shows that there must have been a  
12 violation of the three-day rule because the last day to  
13 request an absentee ballot was 11/28, this past Monday.  
14 So the statutory violation here we think is a little bit  
15 clearer than the intervenors have represented. So we  
16 think that's a basis for this consent order.

17           And then the last point that I will make is I believe  
18 the intervenor has asked if Your Honor would add that  
19 ballots must be postmarked by election day. And we agree  
20 with that, that these ballots need to be postmarked by  
21 December 6th at 7:00 p.m. so we don't have a  
22 constitutional issue.

23           MR. WHITE: Thank you, Your Honor. Those are both  
24 really good questions. And I think it will help  
25 highlight -- that first question is going to help

1 highlight where -- again, going back to the potential  
2 dispute here. It's really, the facts aren't necessarily  
3 disagreed upon. It's just that the parties don't  
4 necessarily agree when the three-day rule kicks in. And  
5 there is no case law for us to rely on.

6 The plaintiffs are taking the position that the  
7 three-day rule started on the 22nd and that the minute  
8 that hits, any applications received before that should  
9 have now, you know, variables sort of kicks in there and  
10 everything that was received before needs to go out there  
11 because they have been, in theory, had time to approve.

12 What we're saying is the three-day rule starts on the  
13 26th because of the language in 21-2-385, and that's why  
14 there was no violation. So to the extent there is a  
15 discrepancy, it's just in how that three-day rule applies.

16 So we thought, as a matter of compromise, because we  
17 don't have any clear guidance from any Court on this issue  
18 yet, is to say, you know, if we recognize there was some  
19 delay in getting these ballots out before Thanksgiving;  
20 and in order to resolve this issue and give these voters  
21 who applied early every opportunity -- you know, they  
22 applied in a timely fashion. And for whatever reason,  
23 whether it was the holidays or there was some lag in the  
24 Cobb County processing. We don't know that there is  
25 enough evidence for us to come in and concede to a

1 specific group of ballots being late, but we do want to  
2 cooperate with the plaintiffs and resolve this so that  
3 everybody gets an opportunity to return their ballot.

4 So the evidence that the violation really hinges on,  
5 you know, the interpretation of the law. So this is an  
6 attempt to resolve that dispute about how the law applies  
7 by giving that extra deadline to those people whose  
8 ballots -- upon plaintiffs' position came outside, fell  
9 outside that three-day rule and weren't sent out by then.  
10 So that's sort of our response on that first question.

11 The second question is it's actually not that hard to  
12 segregate the ballots. And we did that the last go round  
13 in November when the ballots came in late. I mean, if  
14 they don't come in by election day, they are put in --  
15 they are basically sequestered or held separately from the  
16 rest of the ballots that are counted on election night.

17 So that's one of the nice advantages of this  
18 compromise using the UOCAVA deadline, as we already have a  
19 process where we wait for those ballots to come in anyways  
20 from military voters and overseas voters. So we would  
21 keep those separate anyway and then run those as a batch  
22 at the end.

23 So that will give any dissatisfied parties a chance  
24 to get a ruling from an appellate court or another court  
25 if they want to. But that serves the benefit of having

1           them separate anyway so that we will have -- that is not a  
2           burden for Cobb.  It's actually what we would have done  
3           anyway.  So we're happy to stipulate to that.

4           THE COURT:  Let me ask you a quick question,  
5           Mr. White, as it relates to the segregated ballots.  It  
6           sounds to me that this class, the ballots from this class  
7           would be included with the ballots from, say, the  
8           military.  So the numbers would not just reflect those  
9           individuals from this class but would also reflect any  
10          ballots that were received from the military; correct?

11          MR. WHITE:  Yes.  Your Honor, we will have a list of  
12          people who were submitting through the UOCAVA process.  I  
13          believe they have a separate application they use.  So we  
14          would, even within that group, have two pots.

15          THE COURT:  Okay.

16          MR. WHITE:  I was pointing out we had the process in  
17          place already that provides that delay and that  
18          segregation.  But we will keep those two -- the people who  
19          applied through the regular UOCAVA.  And because we will  
20          be able to match any ballots that came in postmarked by  
21          the 7th[sic] but came in late, we will be able to match  
22          those up with voters who -- you know, we have the same  
23          information that they can see on their My Voter Page and  
24          eNet.  They can see they applied by the 26th and not  
25          through the UOCAVA process.  So we will put them in this.

1           And if for some reason I hear from my staff, from my  
2 client that that is not doable, I will let you know as  
3 soon as possible. But it's my understanding that's not  
4 hard of a lift.

5           THE COURT: All right.

6           MR. WHITE: Thank you, Judge.

7           THE COURT: Thank you.

8           Anything else from either side?

9           MR. HERRIN: No, Your Honor.

10          MR. GARABADU: No, Your Honor.

11          THE COURT: Well, I'm satisfied that what the parties  
12 have agreed to is acceptable. I want Mr. White to check  
13 with staff first to make sure that that segregation can be  
14 done. And then I would ask you all to add that language  
15 to any agreement that you come up with so that we can add  
16 the postmark by the December 6th date and have these  
17 ballots segregated from any other ballots.

18          MR. WHITE: Yes, Your Honor.

19          THE COURT: And if you all come up that, along with  
20 defining your class of voters and the public announcement  
21 that you all have agreed to, I will sign that order. All  
22 right?

23          How long -- are you all going to be able to get that  
24 together today?

25          MR. GARABADU: Yes, Your Honor.



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MR. WHITE: Yes.

THE COURT: Okay. I will just wait to receive it.  
All right. We're adjourned.

(Proceedings concluded.)

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C-E-R-T-I-F-I-C-A-T-E

STATE OF GEORGIA  
COUNTY OF COBB

I hereby certify that the within and foregoing proceedings taken down in machine shorthand by me on the date aforesaid is a true, correct, and complete transcript of the captioned case. The attached exhibits, if any, are copies of the exhibits provided by the Cobb County Superior Court Clerk's Office.

This 5th day of December, 2022.



*Rhonda L Eubanks*  
RHONDA L. EUBANKS, RPR, B-1362  
OFFICIAL COURT REPORTER  
SUPERIOR COURT OF COBB COUNTY