

**SUPREME COURT
STATE OF GEORGIA**

REPUBLICAN NATIONAL
COMMITTEE, et al.,

Appellant-Intervenors,

vs.

NAOMI AYOTA, et al.,

Appellees,

and

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

Appellee-Intervenors.

Trial Court Case No: 24GC08111

Supreme Court No.: S25M0319

**APPELLEE-INTERVENORS' OPPOSITION TO EMERGENCY
MOTION FOR SUPERSEDEAS**

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INTRODUCTION

The Cobb County Board of Elections and Registration (“Board”), which administers elections in Cobb County, admitted on October 31 that it violated state law by failing to timely issue absentee ballots to approximately 3,240 voters. That failure left registered voters who had done everything right facing the prospect of disenfranchisement. Absent relief, the affected voters—approximately one-third of whom are out of state—were at serious risk that their ballots would not be received in time to be counted.

The experienced trial court recognized the Board’s admitted violation as a severe burden on the right to vote (a burden imposed just five days before election day), and cured it with a limited injunction requiring the Board to immediately mail absentee ballots by overnight delivery to all affected voters. Recognizing that immediate mailing at this late juncture might not fully cure the legal violation for every affected voter, however, the court also directed the Board to accept ballots postmarked by election day and received by the Board by November 8, 2024—just three days after election day, and the same day absentee ballots from citizens and service members living overseas are due.

Four members of the Board and its director have accepted the trial court’s injunction as an appropriate remedy, opting not to appeal. Hearing Tr. at 32:7–23. They were even “pleased” with the injunction and “support the outcome.” *Id.* But one board member and the Republican National Committee

and the Georgia Republican Party (collectively “RNC”), which were allowed to intervene, now find fault where the majority of the actual election administrators themselves do not. And they ask this Court to take the extraordinary step of staying the trial court’s injunction—which would risk even greater confusion, for voters and elections officials alike, on the eve of the election.

This Court should reject the motion and allow this reasonable remedy for an admitted violation of Georgia’s election laws to remain in place pending appeal. The RNC’s arguments that the Board’s violation does not burden the right to vote are baseless. Voters who made a plan to vote absentee but did not receive the absentee ballot to which they were entitled will assuredly face a burden in exercising their fundamental right to vote. Numerous courts have recognized as much. The RNC, by contrast, faces no cognizable harm from an injunction that simply allows ballots from eligible and registered Georgians to be counted.

The equities, moreover, tip decidedly in the voters’ favor. This Court has made clear that it will not “allow the violation of [a] provision” of an election statute “to disenfranchise otherwise qualified voters” when the violation results from an election “officer’s blunder.” *Malone v. Tison*, 248 Ga. 209, 213–14 (1981). The RNC’s only response is to assert that the mail-receipt deadline is statutory. But that does not preclude equitable relief for a statutory

violation. Indeed, not less than a week ago, the RNC itself successfully urged a Pennsylvania court in Bucks County to override a materially identical statutory deadline due to an alleged violation of state law to obtain a three-day extension, as the court ordered here. It should not be heard to complain about a similar request here.

Finally, the trial court properly granted relief to *all* affected voters. In arguing otherwise, the RNC disregards this Court's precedent holding that voters may vindicate public rights on behalf of all those affected by an election official's error. *See Sons of Confederate Veterans v. Henry Cty. Bd. of Comm'rs*, 315 Ga. 39, 54 (2022).

On top of all that, only the denial of a stay can preserve the status quo. A stay will prevent the affected voters from timely receiving and casting their ballots, but the denial of a stay will not prejudice any party's rights. The trial court has already ordered that ballots received after Election Day be segregated. Ord. at 7. The result is that even if the trial court erred and even if these ballots would change the outcome of a race, the judiciary can still review that dispute after the election, either via this appeal or as part of an election contest.

The Democratic National Committee ("DNC") and the Democratic Party of Georgia ("DPG") therefore respectfully request that the Court deny the RNC's supersedeas motion.

BACKGROUND

In Georgia, voters may apply for absentee ballots until 11 days before an election. O.C.G.A. § 21-2-381(a)(1)(A). In the case of the November 2024 election, that date was October 25, 2024. And by statute, election administrators must issue absentee ballots “*immediately* upon determining the[] eligibility” of the elector, and in no event later than “three days after receiving a timely application” during the early voting period. O.C.G.A. § 21-2-384(a)(2) (emphasis added). Despite these statutory commands, the Board admitted on the afternoon of October 31—the penultimate day of early voting in Georgia and just five days before election day—that it was “unprepared” to meet the demand for absentee ballots and that “the deadline for mailing the ballots had passed” before it issued requested ballots to approximately 3,240 voters who requested them. *See* Ord. at 2 & n.2; *see also* Cobb Bd. of Elections & Reg., *Cobb Elections Express Shipping Thousands of Outstanding Absentee Ballots* (Oct. 31, 2024), attached as Ex. A.

This failure will severely burden those thousands of Georgia voters. Under normal circumstances, absentee ballots must be returned before the polls close on election day. O.C.G.A. § 21-2-386(a)(1)(A). The late-issued absentee ballots thus leave qualified voters who planned to vote absentee with little time to complete and return their ballots. Ord. at 4. And it creates an unnecessary risk that delays with the mail will disenfranchise voters who

requested an absentee ballot on time. The risk of total disenfranchisement is “the very definition of a severe burden on the right to vote.” *Id.* at 4.¹

To remedy the Board’s statutory violation, three individual Cobb County voters brought this action for a preliminary injunction, seeking an extension of the return deadline for absentee ballots. The DNC and DPG intervened to protect their, their candidates’, and their members’ interest in ensuring that the Board’s violation did not disenfranchise any voter. Hearing Tr. at 7:19–8:5; Ord. at 2 n.1. The Board’s director and four of its five members were represented by the Board’s counsel. Hearing Tr. at 15:10–12. One member appeared through personal counsel. *Id.* at 11:23–25. No one contested that the Board’s failure violated Georgia law. The jointly represented four members and the director made clear they hoped to find a “reasonable solution” to the error. *Id.* at 23:17–21.

At the conclusion of the hearing, the trial court entered an interlocutory injunction. Holding that the failure to issue absentee ballots to electors who requested them burdened the fundamental right to vote, *id.* at 38:23–39:6, the court ordered the Board to (1) mail absentee ballots to affected voters by overnight mail with an overnight return envelope; (2) extend the receipt deadline for ballots to three days after the election (November 8), the same

¹ The U.S. Postal Service’s ongoing delays in delivering mail are well known to metro Atlanta residents.

deadline that applies to uniformed and overseas voters; (3) accept absentee ballots from affected voters that are postmarked by 7 p.m. on election day; (4) give notice to affected voters by all practicable means; (5) make a public announcement of court's injunction; and (6) provide the parties a list of affected voters. Ord. at 6–8.

The jointly represented Board director and four members took responsibility for the Board's negligence and did not "object to this order" as an appropriate remedy for it. Hearing Tr. at 32:7–9. They noted that they were "pleased" the trial court entered the order and that they "support[ed] the outcome" that "would help these voters get their ballots and help their vote to count." Hearing Tr. at 31:17–21, 32:13–20. But one board member and the RNC, however, ask this Court for an emergency stay, which would leave voters without an adequate remedy for the Board's admitted violation of the statutory deadline to issue ballots.

STANDARD OF REVIEW

The issuance of a stay pending appeal, or supersedeas, is an "extraordinary remedy." *Garcia-Mir v. Meese*, 781 F.2d 1450, 1455 (11th Cir. 1986). Such relief is extraordinary because it constitutes "an intrusion into the ordinary processes of administration and judicial review[.]" *Nken v. Holder*, 556 U.S. 418, 427 (2009). A stay or supersedeas is thus "not a matter of right, even if irreparable injury might otherwise result." *Id.* at 433. "[T]he

party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Id.* at 433–34.²

The four factors courts consider in evaluating a stay request are “the likelihood that the appellant will prevail on the merits of his appeal, the extent to which the applicant will suffer irreparable harm in the absence of a stay or injunction, the extent to which a stay or injunction would harm the other parties with an interest in the proceedings, and the public interest.” *Green Bull Ga. Partners LLC v. Register*, 301 Ga. 473, 473 (2017).

ARGUMENT

I. The RNC is unlikely to succeed on the merits.

The RNC will not succeed on appeal because the trial court acted within its discretion to remedy an admitted violation of Georgia election law—a violation with severe consequences for the “fundamental” right to vote. *Favorito v. Handel*, 285 Ga. 795, 796 (2009).

The Board had a statutory duty to issue absentee ballots “*immediately* upon determining the[] eligibility” of an applicant, and in any event “within three [business] days after receiving a timely application for an absentee

² Georgia courts may “look to the decisions of the federal courts” on whether to grant a stay pending appeal because O.C.G.A. § 9-11-62(c), which empowers courts to grant a stay pending appeal, “is modeled after Federal Rule of Civil Procedure 62(d),” which features nearly identical language. *Green Bull Ga. Partners LLC v. Register*, 301 Ga. 472, 473 n.3 (2017).

ballot” during the early voting period. O.C.G.A. § 21-2-384(a)(2) (emphasis added); *see also* Ga. Comp. R. & Reg. 183-1-14-.11. This required the Board to send ballots to the 985 voters who applied on the absentee-ballot deadline, October 25, no later than October 30 (three business days later). For the more than 2,000 voters who submitted applications before October 25, the Board had a duty to send ballots even earlier. The Board admits it failed to meet the deadline by at least two days for 985 voters, and by even more for thousands of others. Had the trial court not acted, those voters would still have had to ensure their ballots were returned before the polls closed on election day. O.C.G.A. § 21-2-386(a)(1)(A).

This undisputed violation severely burdens the right to vote of Cobb County voters who did nothing wrong. “Where an officer conducting the election makes an error, since the voter has no power over the officer, the officer’s blunder will not disfranchise the voter.” *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999). Numerous courts have for that reason awarded injunctive relief when elections officials issue absentee ballots after a statutory deadline. *See, e.g., United States v. Alabama*, 857 F. Supp. 2d 1236, 1240 (M.D. Ala. 2012) (extending the military/overseas ballot-receipt deadline when “47 ... counties failed to transmit the ballots by the January 28 deadline”); *Doe v. Walker*, 746 F. Supp. 2d 667, 679 (D. Md. 2010) (the “late mailing of paper absentee ballots to absent uniformed services and overseas voters” in violation

of UOCAVA “imposes a severe burden on absent uniformed services and overseas voters’ fundamental right to vote”).

The purpose of the deadline to issue absentee ballots is to ensure ballots reach voters with sufficient time to return them to be counted. Here, affected voters undoubtedly made a plan to vote absentee, as is their right, and requested ballots by the deadline to do so. If the trial court had not intervened, the Board’s delay would have required those voters to travel to cast their vote in person, or risk that their votes would not count if a late-issued ballot did not make it back by election day. And the burden is particularly heavy for the subset of the 3,240 voters for whom returning a ballot in person is difficult or impossible (because they are out of state voters, have a disability, etc.). The trial court acted well within its discretion to alleviate this burden and remedy the Board’s violation with a brief extension of the deadline to return absentee ballots for affected voters.

The RNC responds largely with misdirection. Nowhere in its analysis of the merits is there even an acknowledgement that the Board failed in its statutory duty. The RNC even claims that “the right to vote is not at stake.” Mot. at 6 (quotation omitted). That is assuredly wrong. As just explained, the Board’s error imposes an additional burden on voters (for many an insurmountable one) in order to be able to cast a ballot that will be counted. Moreover, unlike in the cases the RNC cites—including *Mays v. LaRose*, 951

F.3d 775 (6th Cir. 2020) and *Organization for Black Struggle v. Ashcroft*, 978 F.3d 603 (8th Cir. 2020)—this case does not involve a burden stemming from a properly passed statute or regulation, or officials’ lawful action pursuant to such a law. Rather, this is about election officials disenfranchising qualified voters by *failing* to comply with the law. The RNC’s argument thus fails because it misses a key “distinction between the errors of officers conducting elections and errors of the voters themselves.” *Malone v. Tison*, 248 Ga. 209, 213 (1981).

The RNC no doubt elides this distinction because Georgia law does not leave voters without a remedy for the errors of officers. To the contrary, this Court has held that:

an elector will *not* be deprived of his right to vote merely because of the negligent failure of the registrar to enter his name or address on the registry list, or because he was registered by a third person with whom the registrar had left his books, or because of the failure to the registrar to post a list of the electors, or because the registration was made at a place other than that named by the registrar in his notice.

Malone, 248 Ga. at 214 (emphasis added). In *Malone*, registrars violated a statute requiring public notice that they would conduct voter registrations at certain sites. *Id.* at 212–13. This Court declined in the strongest terms to disenfranchise those voters because of that violation, explaining that “the remedy of disenfranchisement of voters registered in violation of the statute is

so severe as to be unpalatable where the good faith of the registrars is not disputed.” *Id.* at 214. Precisely the same is true here.

The RNC is therefore unlikely to succeed on the merits. The RNC first argues that there is no constitutional right to vote by mail. Mot. at 6. That misses the point. Georgia law gives voters a right to vote by absentee ballot. See O.C.G.A. § 21-2-384(a)(2). “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012). The failure to timely mail absentee ballots abridges the fundamental right to vote because it denies affected voters a right that the law extended to others. And that violation affected all 3,240 Cobb voters who timely requested absentee ballots.

The RNC next contends that Georgia offers *other* ways to vote. Mot. at 6. That is no answer. To be sure, when confronted with a challenge to state regulations that burden voting, courts can assess the magnitude of the burden by considering other “avenues” that “remain open to any and all voters.” *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1281 (11th Cir. 2020). But again, this is not a challenge to a state voting regulation. The burden here results from the government’s *failure* to follow the law, not its enforcement of it.

The Court should therefore train its focus not on other available ways to vote, but on the severe burden imposed by (1) the State offering the right to

vote absentee and (2) the Board then taking it away on the eve of the election by failing to follow state law. That burden should not be brushed aside because other options to vote mean the burden will not always be insurmountable. That is especially so because, for many affected voters, such as out-of-state voters and disabled voters, the alternatives the RNC identifies may be no alternative at all. An out-of-state voter who cannot return to vote in person or a voter who cannot physically go to the polls could be totally disenfranchised by the Board's failure. The trial court's injunction ensures that absentee voting is available for voters facing these obstacles.

Third, the RNC argues that the Board cured its violation by sending absentee ballots by overnight delivery. Four members of the Board disagree. They felt the injunction "would help these voters get their ballots and help their vote to count." Hearing Tr. At 31:19–20. That is because, even with overnight mail, some voters might receive absentee ballots without enough time to ensure the Board would receive the return ballot by election day. The injunction protects against that risk by ensuring that voters who vote and mail their ballot by election day will have their vote count.

Nor does the injunction result in disparate treatment between the affected voters and others. *See* Mot. at 7 (citing *Bush v. Gore*, 531 U.S. 98, 104 (2000) (per curiam)). To the contrary, *not* providing a remedy for the Board's violation would create such disparate treatment. Every other voter in Georgia

had a right to apply for an absentee ballot by October 25 and have the local election administrator issue it by October 30 at the latest. The injunction thus puts the affected voters on equal footing with all other Georgia voters, by ensuring that they have the same time and opportunity to cast an absentee ballot afforded others.

The RNC's claim that the Board's failure to meet the statutory deadline does "not implicate the right to vote at all" is simply untenable. Mot. at 6. Georgia law allows voters to cast an absentee ballot and the affected voters took the steps necessary to cast such a ballot, yet faced disenfranchisement because the Board violated the law. Further, on October 30, just one day before the Board admitted its failure to comply with the law, the RNC and the Republican Party of Pennsylvania sued the Bucks County, Pennsylvania Election Board because that board refused to give mail-in ballots to voters who were already standing in line to request a mail-in ballot when the deadline to do so lapsed. *See Donald J. Trump for President, Inc. v. Bucks Cty. Bd. of Elections*, Case No. 2024-06880, Emergency Petition for a Special and Preliminary Injunction (Pa. Ct. Common Pleas) (Oct. 30 2024), attached as Ex. B. The RNC advocated for a deadline extension in that case, and the court granted the extension on the ground that election officials had violated Pennsylvania law and burdened the right to vote in doing so. *Id.* at 14. The RNC offers no reason for a different result here.

II. The RNC has not established likely irreparable harm if a stay is denied.

The RNC alleges that a stay is necessary to avoid an “inaccurate [final] vote tally.” Mot. at 7 (quotation omitted). That is simply incorrect. The trial court ordered the Board to segregate all ballots received after election day. Ord. at 7. There will be no irreparable harm absent a stay because the Court can review these ballots via this appeal or an election contest. Tellingly, the RNC does not even acknowledge this feature of the trial court’s injunction. Because these ballots remain segregated, this Court’s merits review can address any risk that “the final vote tally,” Mot. at 7, is inaccurate. The RNC (and its candidates) face no prospect of irreparable harm. By contrast, if the Court stays the injunction, then the affected voters may lose their right to vote entirely. There is no need to risk disenfranchisement when the RNC can pursue their appeal in the regular course.

III. The equities and the public interest each favor denying a stay.

In discussing the balance of harms, the RNC fails to account for the irreparable injury the affected voters will face if, through no fault of their own, they cannot cast a ballot that will be counted. That failure is striking because under this Court’s precedent, the irreparable injury of disenfranchisement was “the most important” factor for the trial court to consider when it entered an injunction. *W. Sky Fin., LLC v. State ex rel. Olens*, 300 Ga. 340, 354 (2016).

That is because “[t]he right to vote is fundamental, forming the bedrock of our democracy.” *Favorito*, 285 Ga. at 796. The violation of voters’ fundamental right “unquestionably constitutes irreparable injury.” *Great Am. Dream, Inc. v. DeKalb County*, 290 Ga. 749, 752 (2012).

As for the supposed countervailing interest in the enforcement of the statutory deadline to return absentee ballots, rigid enforcement of that deadline is neither required nor warranted where election officials’ violation of another—equally clear—statutory deadline threatens the fundamental right to vote. Put simply, the government cannot violate one deadline and then ignore the harm their actions caused on the ground that another deadline exists. The trial court’s order rightly prevents that—consistent with this Court’s precedent making clear that the Court will not “allow the violation of [a] provision” of an election statute to lead to the “disenfranchisement of otherwise qualified voters” when the violation results from an election “officer’s blunder.” *Malone*, 248 Ga. at 213–14.

Equally infirm is the RNC’s claim that the injunction will “disrupt” the ongoing election. Mot. at 9. Notably, no one actually subject to the injunction (the Board’s members and director) suggested below that they could not carry out the trial court’s order. Only one member sought relief from this Court. The other four board members and the director “do not oppose the order that was entered in the trial court.” Not. of Appearance of Daniel W. White at 2. Indeed,

in the trial court, those four board members and the director made clear that they “support the outcome” of a preliminary injunction. Hearing Tr. at 32:13–14.

There is every reason to believe that the individuals tasked with administering the election can implement the injunction, and none to believe the RNC’s argument. That is undoubtedly because the “disruption” claim is not credible: the trial court extended the deadline to the “same receipt deadline for Uniformed and Overseas Voters (“UOCAVA”) ballots (on or before 5:00 P.M. on November 8, 2024).” Ord. at 7. The injunction thus does not allow ballots to arrive any later than is already permitted under Federal and Georgia law.

The cases the RNC cites do not support their position. In *O’Kelley v. Cox*, 278 Ga. 572 (2004), this Court declined to enjoin the Secretary of State from putting an allegedly unconstitutional amendment on the ballot. *Id.* at 572. But that amendment had been proposed in March 2004, months before the November election, and—vitaly—opponents of the amendment had a right to post-passage judicial review. *Id.* at 572, 574. By contrast, the Board’s violation here came just days before the election, and there will be no remedy if the affected voters are disenfranchised as a result.

As for the RNC’s cited federal cases, they all turn on the so-called *Purcell* principle, i.e., the principle that “lower *federal* courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v.*

Democratic Nat'l Comm., 589 U.S. 423, 424 (2020) (per curiam) (emphasis added) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). This Court has never adopted the *Purcell* principle for Georgia courts. And nothing in the *Purcell* principle “implicate[s] the authority of *state courts* to apply *their own constitutions* to election regulations.” *Democratic Nat'l Comm. v. Wisconsin State Leg.*, 141 S.Ct. 28 (mem.) (2020) (Roberts, C.J., concurring) (emphases added).

On top of that, the RNC’s federal cases all involved challenges to longstanding statutes, not to last-minute violations of law by election administrators. *See Merrill v. Milligan*, 142 S. Ct. 879 (mem.) (2022) (staying redistricting order against plan that “employs the same basic districting framework that the State has maintained for several decades”); *Carson v. Simon*, 978 F.3d 1051, 1054 (8th Cir. 2020) (reviewing “Minnesota Election Law”); *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (“The challenged rules are not new.”). These cases are no comparison at all to the failure of an election official to carry out a statutory duty.

IV. The trial court properly granted relief to all affected voters.

The RNC alternatively asks the Court to narrow the injunction to the three named Plaintiffs. That request ignores two basic precepts of Georgia law that authorize relief for all affected voters.

First, as political parties, the DNC and DPG each have standing to seek relief for the injury to the Democratic candidates for office they represent, an injury that can be cured only if the trial court’s injunction applies to all affected voters. Like the RNC’s candidates, the DNC’s and DPG’s candidates “have a cognizable interest in ensuring that the final vote tally accurately reflects the legally valid votes cast. An inaccurate vote tally is a concrete and particularized injury to candidates.” Mot. for Supersedeas at 7. For the DNC and DPG, that includes an interest in ensuring that election officials’ legal violations do not prevent voters from casting ballots—including *all* voters affected by the Board’s errors here.

Second, under Georgia’s voter-standing doctrine, “people with a meaningful stake in their community are injured when their local governments violate the legal duty to follow the law.” *Sons of Confederate Veterans*, 315 Ga. at 54. “[T]he violation of that legal duty constitutes an injury that [Georgia] case law has recognized as conferring standing to those stakeholders, even if the plaintiff at issue suffered no individualized injury.” *Id.* at 67. And “community stakeholders” with standing include “citizens, residents, voters, and taxpayers.” *Id.* at 61. Voters thus “may be injured when elections are not administered according to the law.” *Id.* at 60. In such cases, “voters may have standing to vindicate public rights.” *Id.* at 61. And when, as here, a voter brings a case that “concerns a public right, as opposed to a private one, the

outcome of a suit against a local government ... may well bind nonparties who share that interest.” *Id.* at 66 n.23. So, for example, voters have a “common interest in having the public offices in their community held by legally qualified persons,” and a suit to enforce that “public concern” will bind nonparties. *Lilly v. Heard*, 295 Ga. 399, 405 (2014).

Under this precedent, the Plaintiffs and the DNC and DPG each have voter standing that entitled the trial court to grant relief to all affected voters. Plaintiffs are Cobb County voters, and the DNC and DPG have members who are Cobb County voters.³ That puts each among the “community stakeholders” entitled to sue for relief. The Board violated its legal duty to issue absentee ballots in accordance with the Election Code. This lawsuit to remedy that violation seeks to vindicate a public right to the Board’s adherence to the election code. The resolution of that lawsuit thus binds nonparties, *see Lilly*, 295 Ga. at 405, and the trial court did not err in granting relief to other voters affected by the violation. *See Sons of Confederate Veterans*, 315 Ga. at 60–61, 66 n.23.

³ Under the doctrine of associational standing, the DNC and DPG may assert the rights of its members who “would otherwise have standing to sue in their own right” because “the interests [they] seek[] to protect”—the right to vote—“are germane to the organization’s purpose” and “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Atlanta Taxicab Co. Owners Ass’n v. City of Atlanta*, 281 Ga. 342, 344 (2006).

CONCLUSION

The RNC's "extraordinary" request for an emergency stay pending appeal should be denied.

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

Respectfully submitted this 4th day of November, 2024.

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CERTIFICATE OF SERVICE

I certify that on November 4, 2024, I caused a copy of the within and foregoing **APPELLEE-INTERVENORS' OPPOSITION TO EMERGENCY MOTION FOR SUPERSEDEAS** to be served by U.S. mail addressed as follows and provided a courtesy copy by email to all counsel of record:

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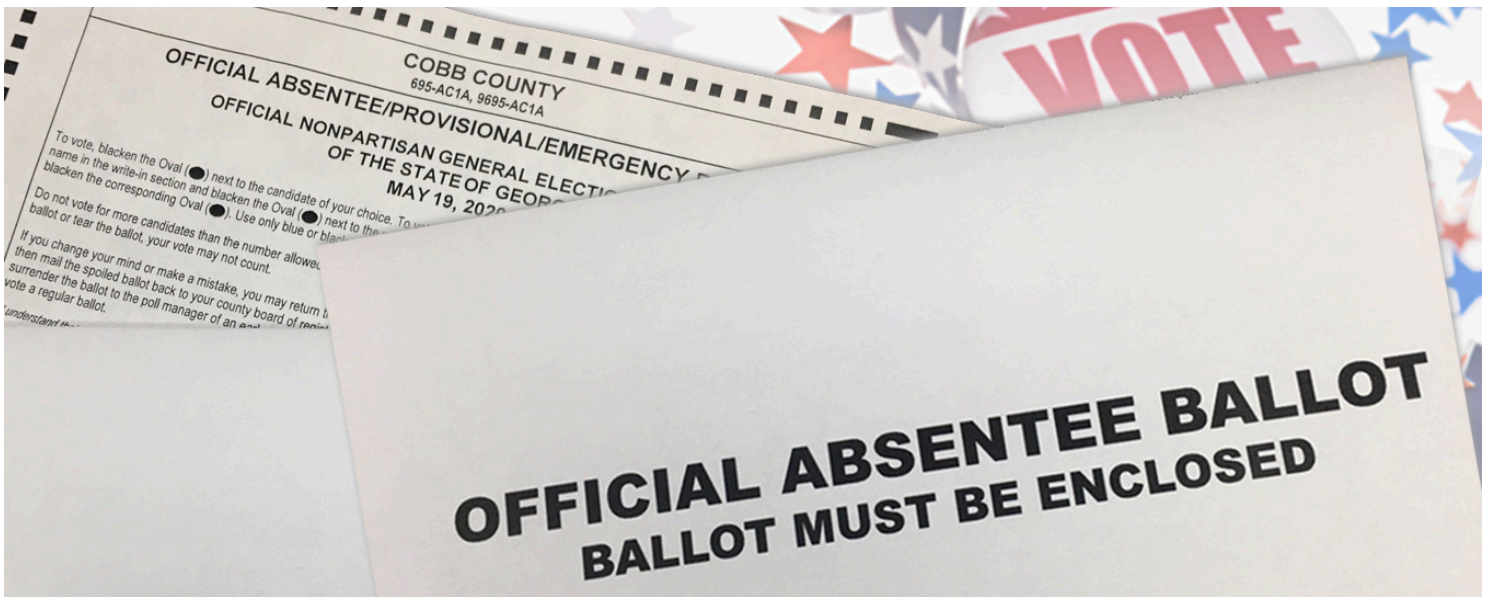
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/s/ Manoj S. "Sachin" Varghese
Manoj S. "Sachin" Varghese

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October 31, 2024

Following a surge of last-minute absentee ballot applications, Cobb Elections is collaborating with postal and delivery companies to expedite sending ballots to voters and ensure their timely return.

As of Wednesday, more than 3,000 absentee ballots requested by last Friday's deadline had not been mailed. Elections workers will send most of them via USPS Express Mail or UPS Overnight Delivery by Friday morning. These ballots will include prepaid express return envelopes to ensure voters can return them by Tuesday's deadline.

“We want to maintain voter trust by being transparent about the situation,” said Board of Elections Chairwoman Tori Silas. “We are taking every possible step to get these ballots to the voters who requested them. Unfortunately, we were unprepared for the surge in requests and lacked the necessary equipment to process the ballots quickly.”

Voters who have not received their ballots can still vote in person on Friday, the final day of Advance Voting, or at their polling place on Election Day, Nov. 5. More than 1,000 absentee ballots are being sent out of state, and Elections officials are working with UPS to expedite their delivery.

Cobb Elections had contracted with a state-approved vendor to print and ship absentee ballots.

“After our vendor’s final run on Friday, we needed to utilize our in-house equipment for the final shipment of ballots, but the equipment was not working properly,” said Elections Director Tate Fall. “By the time we got the equipment online, the deadline for mailing the ballots had passed, prompting us to work with the US Postal Service and UPS to take extraordinary measures. Our team has been working around the clock to get the ballots out.”

Absentee ballot requests had been averaging around 440 per day, but in the last week, that number surged to 750 per day, with 985 requests submitted on Friday's deadline.

Cobb Elections will extend the hours for absentee ballot returns at the Elections Headquarters this weekend. Voters can return their ballots to 995 Roswell Street, Marietta, from 8 a.m. to 8 p.m. Saturday, 10 a.m. to 8 p.m. Sunday, and 8 a.m. to 8 p.m. Monday.

Anyone with questions about their absentee ballot request can contact the Cobb Elections Department at 770-528-2581.

Press Contact Info

For more info: 770-528-2581

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IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY,
PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT CIVIL DIVISION
2024 INC., ET AL.,

Plaintiffs,

No. 2024-06880

v.

BUCKS COUNTY BOARD OF
ELECTION, ET AL.,

Defendants.

RULE TO SHOW CAUSE

AND NOW, this _____ day of _____, 2024, upon consideration of the foregoing **Emergency** Petition for a Special and Permanent Injunction, it is hereby **ORDERED** that defendants show cause before this Court on the ____ day of 2024, at _____ in Courtroom _____, or as soon thereafter as counsel can be heard why a Special and Preliminary Injunction providing the relief sought in the accompanying Petition should not be entered; and

IT IS FURTHER ORDERED that respondents/defendants and anyone acting on their behalf are enjoined and precluded from refusing, prohibiting, or denying any registered and qualified elector from requesting, receiving, voting, and submitting a mailed-in or absentee ballot until further order of the Court.

BY THE COURT:

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY,
PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT CIVIL DIVISION
2024 INC., ET AL.,

Plaintiffs,

No. 2024-06880

v.

BUCKS COUNTY BOARD OF
ELECTION, ET. AL.,

Defendants.

ORDER FOR SPECIAL AND PRELIMINARY INJUNCTION

AND NOW, this _____ day of _____ 2024, upon consideration of the
Petition for an Emergency Special and Preliminary Injunction of Plaintiffs, Verified
Complaint, and Supporting Memorandum of Law and after a hearing held on
_____, the Court it is hereby **ORDERED AND DECREED** as follows:

- a) Defendants actions in turning away voters who sought to apply for a
mail-in ballot and receive one in person before the deadline of 5:00 p.m.
on October 29, 2024 violated the Pennsylvania Election Code,
- b) Defendants shall permit any persons who wishes to apply for, receive,
vote, and return a mail-in ballot to appear at the Elections Bureau office
and do so during normal business hours before the close of business on
October 30, 2024.

BY THE COURT:

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY,
PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT CIVIL DIVISION
2004 INC., ET AL.,

Plaintiffs,

No. 2024-06880

v.

BUCKS COUNTY BOARD OF
ELECTION, ET AL.,

Defendants.

**EMERGENCY PETITION FOR A
SPECIAL AND PRELIMINARY INJUNCTION**

Under Pennsylvania Rule of Civil Procedure 1531(a), this Court is empowered to issue a special injunction without a hearing to prevent immediate and irreparable harm. This is a textbook case of a matter requiring a special injunction. Plaintiffs bring this emergency petition for a special and preliminary injunction to prevent widespread disenfranchisement and immediate irreparable harm to the statutory right to vote on-demand.

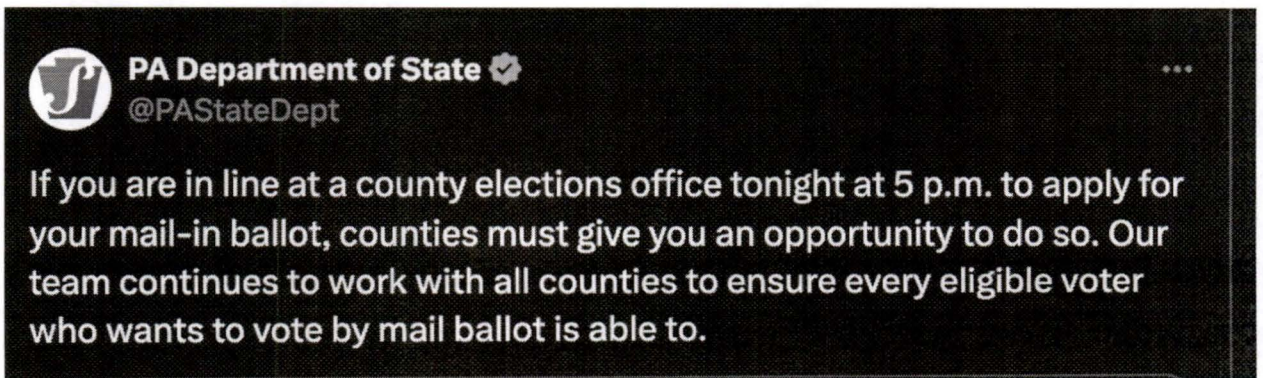
In Pennsylvania, any qualified elector is permitted to request and cast a mail-in ballot without having to provide a reason for doing so. See 25 P.S. §§ 3150.11-3150.17. Qualified electors can go in person to their local election office and request, receive, vote, and submit a mail-in ballot (the “On Demand Mail-in-Ballot Voting”). Pennsylvania Department of State, On-Demand Mail Ballot Voting, <https://www.pa.gov/en/agencies/vote/voter-support/mail-in-and-absentee-ballot/mail>

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[ballot-before-election-day.html](#). (“If you are a registered Pennsylvania voter, you have the convenient option of applying for a mail ballot in person at their county elections office, then completing the ballot while there. In one visit, voters can apply for and submit their mail ballot.”)

The deadline for voters to apply for an absentee ballot or a mail-in ballot is “five o’clock P.M. [on] the first Tuesday prior to the day of any primary or election.” 25 P.S. §§ 3146.2a(a)3150.12a(a). For purposes of the upcoming November 5, 2024, General Election, the last day to apply for a mail-in-ballot was 5:00 p.m. on October 29, 2024. (the “Application Date”). On October 29, 2024, the Secretary of the Commonwealth informed voters on October 29, 2024, of their right to travel to their county election bureau and request and receive a mail-in ballot. PA Department of State (@PAStateDept), X (Oct. 29, 2024, 1:26 P.M.) <https://x.com/PAStateDept/status/1851314765533970938>. Secretary Schmidt expressly advised voters that those who were in line by 5:00 p.m. on October 29, 2024, should be permitted to apply for and receive a mail-in ballot, yet this is not what happened in Bucks County.



Id.

Despite this clear statutory right and pronouncement from the Secretary of the Commonwealth, Defendants denied an untold number of qualified electors the ability to their statutorily guaranteed right to On Demand Mail-In Voting. Indeed, the Defendants **ordered** persons who were waiting to apply for, receive and vote a mail-in ballot removed from the premises, without allowing Ms. Sinclair and others the opportunity to even submit her application. See Declarations voters, attached hereto as Exhibit A; Linda Stein, *Bucks County Early Voters Turned Away; Fitzpatrick Demands Action*, Delaware Valley Journal, (October 29, 2024) <https://delawarevalleyjournal.com/fitzpatrick-republican-legislators-send-stern-letter-to-bucks-co-commissioners/>; Mike Catalini, *A clumsy early voting option has backed up election offices in Pennsylvania and frustrated voters*, Associated Press, (October 29, 2024), <https://apnews.com/article/pennsylvania-early-voting-problems-bucks-county-bdc20bfb2c82e29d8698c1a22feb0eae>.¹ In doing so the Defendants acted in derogation of its obligations under the Election Code to process mail in ballot applications and in direct contravention of the statement of the October 29, 2024, statement of the Secretary of the Commonwealth. **Worse, Defendants had security officials to remove voters who had been in line prior to 5:00 p.m., some of whom had been standing in line for hours only to be turned away.** Colin Rugg (@CollinRugg), X (October 29, 2024, 6:41 p.m.) <https://x.com/CollinRugg/status/1851393891632607574>

¹ Under Rule 1531(a), “in determining whether a preliminary or special injunction should be granted and whether notice or hearing should be required, the court may act on the averments of the pleadings or petition and may consider affidavits of third persons or any other proof which the court may require.”

Immediate action by this Court is needed to prevent immediate and irreparable harm to plaintiffs and to prevent widespread disenfranchisement.

1. Petitioners incorporate their verified complaint by reference.

2. A special and preliminary injunction is necessary to prevent the defendants from violating the Election Code and denying qualified electors the right to On-Demand Mail-in Voting.

3. A special and preliminary injunction is further necessary to protect the rights of qualified who, through no fault of their own, went to an election office during posted operating hours by 5:00 p.m., Tuesday, October 29, 2024, to exercise their right to On-Demand Mail-in Voting and were told they could not exercise that right and were turned away.

4. The five elements for the issuance of a preliminary injunction are (1) the injunction is necessary to prevent immediate and irreparable harm, which cannot be compensated by damages; (2) greater injury would result by refusing it than by granting it; (3) an injunction will restore the parties to the status quo as it existed immediately before the alleged wrongful conduct; (4) the alleged wrong is manifest, and the injunction is reasonably suited to abate it; and (5) the plaintiff's right to relief is clear. *Kierski v. Twp. of Robinson*, 810 A.2d 196, 198 (Pa.Cmwlth. 2002).

5. Each of these five elements exists here.

6. First, plaintiffs will suffer immediate and irreparable harm because "the right to vote, in Pennsylvania, as vested in eligible, qualified voters, is a fundamental one." *Applewhite v. Com.*, 617 Pa. 563, 566, 54 A.3d 1, 3 (2012). Moreover, "a as the

unlawful action by the Election Board per se constitutes immediate and irreparable harm.” *Hempfield Sch. Dist. v. Election Bd. of Lancaster Cnty.*, 574 A.2d 1190, 1193 (Pa. Commw. Ct. 1990). *See also, Shaeffer v. City of Lancaster*, 754 A.2d 719, 723 (Pa. Commw. Ct. 2000) (“Statutory violations are sufficiently injurious to constitute irreparable harm.”)

7. Second, greater injury will result if the injunction is not entered than if it is granted.

8. Third, the injunction will maintain the status quo because it will assure that the defendants comply with the Election Code and will assure those who relied upon representations that if they were in line by 5:00 p.m. on Tuesday, October 29, 2024, they would be permitted to exercise their right to On-Demand Mailed-in Voting.

9. Fourth, the requested injunction is limited to abate the harm.

10. Upon information and belief other counties, including Philadelphia and Lehigh Counties, have extended the On-Demand Mailed-in Voting deadline.

11. Fifth, plaintiffs’ right to relief is clear.

PRAYER FOR RELIEF

Petitioners respectfully request that this Honorable Court grant them the following relief:

- a) Declare that the Bucks County’s actions in turning away voters who sought to apply for a mail-in ballot and receive one in person before the deadline of 5:00 p.m. on October 29, 2024 violated the Pennsylvania Election Code,

- b) Order the Bucks' County Board of Elections to permit any persons who wish to apply for and receive a mail-in ballot to appear at the Elections Bureau office and do so during normal business hours before the close of business on October 30, 2024.

Dated: October 30, 2024

Respectfully submitted,


/s/ Walter S. Zimolong

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Attorney for Friends of Dave McCormick and David McCormick

**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: October 30, 2024

Respectfully submitted,


/s/ Walter S. Zimolong

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Wayne, PA 19087
(215) 665-0842

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Walter S. Zimolong

Signature: Walter Zimolong

Name: Walter S. Zimolong

Attorney No. (if applicable): 89151

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DECLARATION

I, Terrence McDonald, am an adult individual of sound mind and aver as follows:

1. I am a registered and qualified elector residing in Bucks County, Pennsylvania.

2. On October 29th, 2024, at approximately 3 : 25 a.m./p.m., I arrived at the Lower Bucks Government Service Center/ Upper Bucks Government Service Center/ County Administration Building, to request, receive, vote, and submit a mailed-in ballot.

3. I was told by county officials I would not be able to request, receive, vote, and submit a mailed-in ballot and that I would have to return on a different day.

The facts above are true and correct to the best of my knowledge and belief are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)

Date: 10/29/24



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DECLARATION

I, Joseph Pontarelli, am an adult individual of sound mind and aver as follows:

1. I am a registered and qualified elector residing in Bucks County, Pennsylvania.
2. On October 29, 2024, at approximately 2:45 p.m., I arrived at the Upper Bucks Government Service Center to request, receive, vote, and submit a mailed-in ballot.
3. I was told by county officials I would not be able to request, receive, vote, and submit a mailed-in ballot and that I would have to return on a different day.

The facts above are true and correct to the best of my knowledge and belief are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)

Date: October 29, 2024

Joseph M Pontarelli

DECLARATION

I, William Kule, am an adult individual of sound mind and
aver as follows:

1. I am a registered and qualified elector residing in Bucks County,
Pennsylvania.

2. On October 29, 2024, at approximately 2:40 a.m./p.m., I
arrived at the Lower Bucks Government Service Center/ Upper Bucks Government
Service Center/ County Administration Building, to request, receive, vote, and submit a
mailed-in ballot.

3. I was told by county officials I would not be able to request, receive, vote,
and submit a mailed-in ballot and that I would have to return on a different day.

The facts above are true and correct to the best of my knowledge and belief are
made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to
authorities)

Date: 10/29/24

William Kule

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IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY,
PENNSYLVANIA

DONALD J. TRUMP FOR PRESIDENT CIVIL DIVISION
2024 INC., ET AL.,

Plaintiffs,

No. 2024-06880

v.

BUCKS COUNTY BOARD OF
ELECTION, ET. AL.,

Defendants.



Case #: 2024-06880-0004 13788030
Main (Public)
Code: 144 Judge:39
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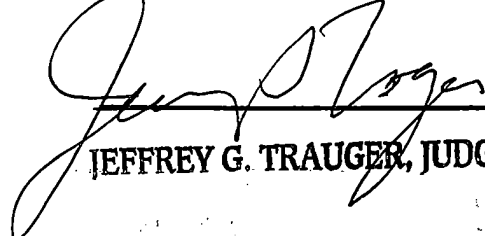
ORDER FOR SPECIAL AND PRELIMINARY INJUNCTION

AND NOW, this 30th day of October 2024, upon consideration of the Petition for an Emergency Special and Preliminary Injunction of Plaintiffs, Verified Complaint, and Supporting Memorandum of Law and after a hearing held on October 30, 2024, the Court it is hereby **ORDERED AND DECREED** as follows:

- a) Defendants actions in turning away voters who sought to apply for a mail-in ballot and receive one in person before the deadline of 5:00 p.m. on October 29, 2024 violated the Pennsylvania Election Code,
- b) Defendants shall permit any persons who wishes to apply for, receive, vote, and return a mail-in ballot to appear at the Elections Bureau office and do so during normal business hours before the close of business on

November 1, 2024.

BY THE COURT:


JEFFREY G. TRAUGER, JUDGE