

IN THE SUPREME COURT OF GEORGIA

Case No. S25M0319

REPUBLICAN NATIONAL COMMITTEE, et al.

Appellants,

v.

NAOMI AYOTA, et al.

Appellees.

**BRIEF OF RESPONDENTS TATE FALL,
STEVEN F. BRUNING, STACY EFRAT,
JENNIFER MOSBACHER, and TORI SILAS
IN OPPOSITION TO APPELLANTS'
EMERGENCY MOTION FOR SUPERSEDEAS**

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Preliminary Statement

The Cobb County Board of Elections and Registration (“Cobb BOER”), as the election superintendent for Cobb County, is charged with administering elections in Cobb, and is specifically “empowered with all the powers and duties relating to the registration of voters and absentee balloting procedures...” Ga. L. 1985, p. 4653. Cobb BOER takes that responsibility very seriously, so when over 3000 absentee ballots were delayed in being mailed out due to problems with its printing equipment, it undertook extraordinary efforts to send those ballots to voters as soon as possible by express delivery with return postage included.

Most of those ballots had already been mailed by the time Appellees filed suit in Cobb County Superior Court, naming all five board members and the elections director, in their individual capacities, as defendants. During an emergency hearing on Friday, four of the Board’s five members,¹ Tori Silas, Steven F. Bruning, Stacy Efrat, and Jennifer Mosbacher, along with Elections Director, Tate Fall,

¹ The plaintiffs in the case below named the members of the Cobb Board of Elections and Registration, along with Elections Director Fall, in their individual capacities, not their official capacities. Counsel is generally engaged to represent the Cobb County Board of Elections and Registration. However, in this case counsel represents only the four members identified above, along with Director Tate Fall. Board member Debbie Fisher chose to retain her own counsel and is not represented by Haynie, Litchfield & White in this matter.

(“Respondents”) stipulated to the relevant facts in the complaint and did not oppose the additional relief sought. Specifically, Respondents told the Court that they did not object to Appellees’ request for an injunction permitting Cobb BOER to accept and count valid absentee ballots from the Affected Voters, so long as they are postmarked by the close of polls on Election Day and received by November 8, 2024, the same deadline set for the receipt of Uniformed and Overseas Voters (“UOCAVA”) ballots and for the cure of provisional ballots.

Appellants, Republican National Convention (“RNC”) and the Republican Party of Georgia (“Ga. GOP”), were permitted to intervene on Friday with no opposition from Appellees or Cobb BOER.² Appellants were the only party to object to the entry of the requested injunctive relief at the hearing, and the Superior Court considered and denied their motion to stay the injunction pending appeal.

Respondents’ primary mission is to ensure that “elections may be honestly, efficiently, and uniformly conducted.” O.C.G.A. § 21-2-70(8). Respondents’ primary obligation in this matter, as with all of their duties, is to follow the law. To the extent that a delay in sending ballots caused them to be mailed after the statutory

² The Democratic National Committee and Democratic Party of Georgia were also permitted to intervene below.

deadline, due to not fault of the Affected Voters, Respondents feel that the relief requested was appropriate.

In terms of balancing the equities and the public interest, Respondents note that entering a stay of this order on the eve of Election Day would only increase confusion among the Affected Voters now that all of the absentee ballots have been sent and those voters have been informed that they may return their ballot as long as it is postmarked before 7:00 p.m. on Election Day. Likewise, Respondents would have to take additional steps to inform the Affected Voters that a stay has been entered and their ballots may not be counted, all while Respondents are conducting an election and canvassing the votes during the remainder of this week.

If the purpose of granting an emergency supersedeas is to preserve the status quo pending the appeal, that is not necessary here, as the trial court's order directs Cobb BOER to segregate the ballots received after the close of polls on November 5, 2024. Respondents believe that the best course of action would be to leave the trial court's injunction in place and, if necessary, allow the parties to address the issue after Election Day. For these reasons, Respondents ask the Court to deny Appellants' motion for supersedeas and to allow the trial court's injunction to stay in place.

Respectfully submitted this 4th day of November, 2024.

HAYNIE, LITCHFIELD & WHITE, PC

/s/ Daniel W. White

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RULE 20 CERTIFICATION

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

/s/ Daniel W. White

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CERTIFICATE OF SERVICE

I certify that there is a prior agreement with counsel below to allow documents in a PDF format sent via e-mail to suffice for service under Supreme Court Rule 14, and have served it upon the following counsel on November 4, 2024:

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