

COUNTY DEMOCRACY CENTER,)

Plaintiffs)

Civil Action No.:

vs.

)
in her official capacity as Cobb County)
Director of Elections & Registration,)
TORI SILAS, JESSICA M. BROOKS,)
PAT GARTLAND, JENNIFER MOSBACHER,)
and STEVEN F. BRUNING, in their official)
capacities as members of the Cobb County Board)

NATURE OF THE CASE

1. Hundreds of Cobb County voters are on the brink of disenfranchisement due to the failure of the Cobb County Board of Elections & Registration (the “Cobb Board”) to issue absentee ballots in accordance with the law. These voters, as well as a non-profit organization committed to ensuring that eligible voters are able to participate in our democracy, have been harmed by the failure of Defendants to meet their obligations to protect the fundamental right to vote.

2. Absent relief, these voters will likely not be able to participate in the November 8, 2022 general election despite properly registering to vote, requesting their absentee ballot by the absentee ballot request deadline, and often contacting the Cobb Board multiple times on their own to find out about the status of their absentee ballot request.

3. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). As the U.S. Supreme Court recognized in *Wesberry*, the right to vote and to have that vote counted is a fundamental constitutional right for all United States citizens.

4. Article II, Section 1, Paragraph II of the Georgia Constitution protects the right of Georgians to vote by providing that “[e]vem \$ u# o# wh(/

bedrock of our democracy.” *Favorito v. Handel*, 285 Ga. 795, 796 (2009) (quoting *Wexler v. Anderson*, 2007 WL 1367682 (11/13/07)).

8. Plaintiffs and Cobb Board agree: Cobb County “let [Plaintiffs] down” with this “critical error.” Email from Janine Eveler to Cobb County Board of Elections & Registration Members, ,ovmbers

12. This Court has jurisdiction to issue a writ of mandamus under O.C.G.A. § 9-6-20
et seq.

13. Venue in this Court is proper under O.C.G.A. § 9-10-30 because at least one of the
defendants against whom substantial relief is prayed resides in Cobb County.

B. Defendants

19. Defendant Cobb County Board of Elections & Registration is the entity charged with overseeing the conduct of Cobb County elections and implementing election laws and regulations. This includes managing the process for absentee by mail voting. O.C.G.A. § 21-2-381.

20. Defendant Janine Eveler is the Cobb County Director of Elections & Registration and is sued in her official capacity. Defendant Eveler is responsible for the day-to-day operations of running elections in Cobb County, to the extent such power does not conflict with the power of Georgia's Secretary of State.

21. Defendants Steven Bruning, Tori Silas, Jessica Brooks, Pat Gartland, and Jennifer Mosbacher are the Members of the Cobb Board who reside in Cobb County and are sued in their power

24. Defendants William S. Duffey, Jr., Sara Tindall Ghazal, Matthew Mashburn, Edward Lindsey, and Janice W. Johnston are members of the State Election Board and are named as Defendants in their official capacities. The members of the State Election Board are responsible for “promulgat[ing] rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections.” O.C.G.A. § 21-2-31(1).

FACTUAL ALLEGATIONS

25. Georgia voters are eligible to request absentee ballots between 78 and 11 days before an election, without providing a reason to vote absentee. O.C.G.A. § 21-2-381(a)(1)(A).

26. In the 2022 midterm elections, approximately 279,000 Georgia voters requested absentee ballots, and about 76% of those were returned by November 5, 2022. Mark Niesse, *Over 1,000 absentee ballots never mailed to Cobb County voters*, The Atlanta Journal-Constitution (Nov. 5, 2022), <https://www.ajc.com/politics/georgia-election-2022-over-1k-absentee-ballots-never-sent-in-cobb/6C5SQEUUJ5FIPLLDKIOGMEB6QY/> (Exhibit F).

27. In the 2022 midterm elections, approximately 30,000 Cobb County voters requested absentee ballots, with about 69% returned as of November 5, 2022. *Id.*

28. Among the voters who requested an absentee ballot were Plaintiff Cook, who requested an absentee ballot on October 10, 2022; Plaintiff Parker who requested an absentee ballot on October 19, 2022 (after initially requesting a ballot on August 30, 2022, which was not reflected in her online voter portal); Plaintiff Wolfe who requested an absentee ballot on October 12, 2022; Plaintiff Walton who requested an absentee ballot on October 13, 2022; and Affiant Jane Doe who requested a ballot on October 20, 2022.

48. The proposed class satisfies the requirements of O.C.G.A. § 9-11-23(a). The proposed class is sufficiently numerous because it contains at least 750 Georgia voters, upon information and belief based on various media reporting the statements of Cobb County elections officials, including certain Defendants. The allegations of the proposed class have common questions of law or fact. Individual Plaintiffs' claims are typical of the claims of the proposed class. They will fairly and adequately protect the interests of the proposed class.

49. The proposed class also satisfies the requirements of O.C.G.A. § 9-11-23(b)(1)-(3). The prosecution of separate actions by individual members of the proposed class would create a risk of inconsistent adjudications with respect to individual members of the proposed class. County Defendants have acted or refused to act on grounds generally applicable to the class by not mailing absentee ballots to all Georgia voters who requested them and did not receive them in a timely manner, which justifies class-wide injunctive relief. There is also a predominance of legal or factual questions common to the members of the proposed class such that a class action is the superior mechanism for the fair and efficient adjudication of their claims.

CAUSES OF ACTION

Count I

Declaratory and Injunctive Relief

Under O.C.G.A. § 9-4-1 et seq. for Violation of O.C.G.A. § 21-2-381

50. Plaintiffs reallege and incorporate by reference the allegations contained in ained l/Ui .bommr

failure to timely mail absentee ballots is a violation of state law and, as it is mere days away from election day, constitutes a severe burden on Individual Plaintiffs’ fundamental right to vote.

Count II

Declaratory and Injunctive Relief Under O.C.G.A. § 9-4-1 et seq. for Violation of the Fundamental Right to Vote Under Article I, Section 1, Paragraph II, and Article II, Section 1 of the Georgia Constitution

60. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

61. The Constitution of the State of Georgia protects the fundamental right to vote. Article II, Section 1, Paragraph II of the Georgia Constitution provides: “Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people.” Ga. Const. art. II, § 1, ¶ II.

62. Article I, Section 1, Paragraph II of the Georgia Constitution provides: “Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.” Ga. Const. art. I, § 1, ¶ II.

63. Individual Plaintiffs are eligible voters under Georgia law who each timely requested an absentee ballot, and those requests were later listed as processed by the Cobb Board. Based on County Defendants’ representations that those applications were processed, and based on County Defendants’ obligations under state law to mail absentee ballots to Individual Plaintiffs, Individual Plaintiffs reasonably relied on those representations and reasonably expected to receive their absentee ballots, as required under state law.

64. Individual Plaintiffs did not learn about County Defendants’ errors until November 5, 2022—three days before election day and the deadline to deliver absentee ballots.

65. Individual Plaintiffs are unable to vote in person, especially on such short notice.

66. Absent relief, Individual Plaintiffs—through no fault of their own—will be unable to vote in the November 2022 elections. Thus, County Defendants’ admitted failure to mail absentee ballots—in violation of state law, and mere days away from election day—constitutes a severe burden on Plaintiffs’ fundamental right to vote.

Count III

*Writ of Mandamus Against Defendants
Under O.C.G.A. § 9-6-20*

67. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs.

68. In the alternative to the requested declaratory and injunctive relief, Plaintiffs request a writ of mandamus under O.C.G.A. § 9-6-20.

69. Georgia law provides that “[a]ll official duties shall be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform, . . . the writ of mandamus may issue to compel a due performance” of an official duty. O.C.G.A.

72. O.C.G.A. § 21-2-270 requires that County Defendants, as county superintendents of elections, “inspect systematically and thoroughly the conduct of primaries and elections in the several precincts of his or her county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.”

73. County Defendants, however, have failed to faithfully perform their duties in their administration of Georgia’s election code and its related regulations.

74. As a result of County Defendants’ failures, Individual Plaintiffs will likely be prevented from voting in the November 2022 elections, absent judicial intervention to issue either declarative and injunctive relief or, in the alternative, a writ of mandamus.

75. If this Court does not issue declaratory and injunctive relief, Individual Plaintiffs have “no other specific legal remedy” for County Defendants’ failures to perform their public duties, other than to request that a writ of mandamus be issued. O.C.G.A. § 9-6-20.

76. Plaintiffs do not seek damages, and a damages remedy would be inadequate to remedy the harm of being disenfranchised.

77. Rather, Plaintiffs simply seek to compel Defendants to do what they are obligated to do under Georgia’s election code: timely mail and count their absentee ballots.

78. Accordingly, in the alternative to the requested declaratory and injunctive relief, Plaintiffs request that this Court issue a writ of mandamus compelling Defendants to comply with their public legal duties to mail absentee ballots.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs submit this prayer for relief and seek the following:

A. That this Court issue a judgment declaring that Defendants have violated O.C.G.A. § 21-2-381 and Article II, Section 1, Paragraph II and Article I, Section 1, Paragraph II of the Georgia State Constitution;

B. That this Court enter an injunction requiring, effective immediately:

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

C. In the alternative, that this Court issue a Mandamus Nisi as soon as practicable, directing:

Dated: November 6, 2022

Respectfully submitted,

/s/ Rahul Garabadu

Rahul Garabadu (Ga. Bar No. 553777)
Caitlin May (Ga. Bar No. 602081)
Cory Isaacson (Ga. Bar No. 983797)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
Tel: 770-303-8111
rgarabadu@acluga.org
cmay@acluga.org
cisaacson@acluga.org

Sophia Lin Lakin*
Jonathan Topaz*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212-519-7836
slakin@aclu.org
jtopaz@aclu.org

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

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

Angela Liu*
DECHERT LLP
35 West Wacker Drive, Suite 3400

