

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

COALITION FOR GOOD
GOVERNANCE, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of State;
et al.,

Defendants.

CIVIL ACTION

FILE NO. 1:20-CV-01677-TCB

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING ORDER
AND OTHER EMERGENCY INJUNCTIVE RELIEF**

State Defendants submit this response to Plaintiffs' Motion for Temporary Restraining Order and Other Emergency Injunctive Relief [Doc. 27] ("TRO Motion"). As a threshold issue, for all of the reasons already articulated in State Defendants' Brief in Support of Motion to Dismiss [Doc. 31-1], Plaintiffs' Complaint [Doc. 1] should be dismissed without any need to consider the TRO Motion. Further, based on the same arguments advanced in State Defendants' Response in Opposition to the Motion for Preliminary Injunction [Doc. 33], which State Defendants incorporate by reference, the TRO Motion should be denied. *See Gwinnett Cty. NAACP v. Gwinnett Cty.*

Bd. of Registration & Elections, 1:20-CV-00912-SDG, 2020 WL 1031897, at *5 (N.D. Ga. Mar. 3, 2020) (the standard for obtaining a TRO is identical to that for obtaining a preliminary injunction).

The bases for Plaintiffs' TRO Motion is that absentee ballots for the June 9, 2020 primary election contain the original date of the primary election, May 19, 2020. [Doc. 27 at 2]. The TRO Motion fails to identify a single voter that has been injured as a result of the absentee ballots having the original primary election date on them. Moreover, the injury alleged by Plaintiffs in the TRO Motion (voter confusion) will not be redressed by the relief Plaintiffs' seek in the TRO Motion—to move the June 9 primary election to June 30, add an insert into absentee ballot packets explaining the change in the date of the primary election, to send a letter to voters who have already received absentee ballots explaining the change in the election date, a statewide press release explaining the change in the election date, to order county superintendents to count absentee ballots received after the primary election, and order county superintendents to issue absentee ballots and secrecy envelopes at polling locations on election day. [Doc. 27 at 6-7]. Notably, the relief requested by Plaintiffs does not include printing absentee ballots with the June 9, 2020 primary date on them.

The Secretary of State's Office has taken a variety of steps to ensure

that voters know about the change in the date of the primary election to June 9, 2020, including televised public service announcements, press releases, and providing information to voters on the Secretary of State's website.¹ [Barnes Decl. at ¶ 6]. When the Secretary of State announced on April 9, 2020 that the 2020 primary election would be moved from May 19, 2020 to June 9, 2020, the absentee ballots had already been built, proofed by county elections officials, approved, and sent to the vendor for printing. [*Id.* at ¶ 3]. Further, in anticipation of the May 19, 2020 election, prior to the primary election being moved to June 9, 2020, absentee ballots had already been sent to military and overseas voters in accordance with the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). [*Id.* at ¶ 4].

To reprint absentee ballots would have required the Secretary's staff and vendors to reconfigure and alter all 159 completed databases statewide. [*Id.* at ¶ 5]. This would have also required new print files to be generated and submitted to the vendors, which would cause delay getting the ballots printed and mailed to voters, and increase the possibility of inadvertent mistakes. [*Id.*]

Plaintiffs have submitted a number of affidavits from voters claiming

¹ Declaration of Michael Barnes is attached hereto as Exhibit 1.

their absentee ballot requests have not been processed. [Doc. 36]. For the individuals who submitted declarations and stated that they sent in their absentee ballot request but had not yet received their absentee ballot, some declarants have had their absentee ballot requests processed.² [Harvey Decl. at ¶¶ 9-17]. At this time, most of the declarants whose absentee ballot requests have not been processed reside in Fulton County. [Harvey Decl. at ¶¶ 13-16]. However, the Secretary's office has been informed that Fulton County anticipates that it will have processed the absentee ballot applications in its backlog within days. [Harvey Decl. at ¶¶ 3-5]. Finally, in regard to the security sleeve, the Secretary provided revised instructions addressing the privacy sleeve for printing to include in absentee ballot packets on May 7, 2020. [Harvey Decl. at ¶ 18]. Due to timing, ballot packets that were received by voters on May 11, 2020 would not have likely been packaged by the vender prior to May 7, 2020 and, therefore, would not have contained the revised instructions. [*Id.* at ¶ 19].

The TRO Motion is yet another attempt by Plaintiffs to achieve their policy preferences. The relief Plaintiffs seek will not address their concern with the May 19, 2020 date on the absentee ballots. Instead, it will likely

² Declaration of Chris Harvey is attached as Exhibit 2.

lead to greater possibility of voter confusion, as voters would receive more instructions and letters in the mail about voting absentee in the June 9, 2020 primary election, and it would create delays in getting absentee ballots mailed to voters, as new inserts would have to be added to the absentee ballot packet which would disturb the printing vendors current processes. Plaintiffs have failed to meet their burden for a temporary restraining order or other preliminary relief under Rules 65(a) and 65(b) of the Federal Rules of Civil Procedure, and as such, the TRO Motion should be denied.

Respectfully submitted this 13th day of May 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), I certify that DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND OTHER EMERGENCY INJUNCTIVE RELIEF has been prepared in Century Schoolbook 13-point font, approved by the Court in Local Rule 5.1(C).

/s/ Vincent Russo

Vincent R. Russo

Georgia Bar No. 242628

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
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CIVIL ACTION

FILE NO. 1:20-CV-01677-TCB

DECLARATION OF MICHAEL BARNES

Pursuant to 28 U.S.C. § 1746, I, MICHAEL BARNES, make the following declaration:

1.

My name is Michael Barnes. I am over the age of 21 years, and I am under no legal disability which would prevent me from giving this declaration. If called to testify, I would testify under oath to these facts.

2.

I currently am the Director of the Center for Election Systems in the Office of Secretary of State Brad Raffensperger. I have held that position

since January 2018. From 2010 to December 31, 2017, I was Director of the Center for Election Systems at Kennesaw State University (“KSU”), which was an outside contractor with the Office of the Secretary of State. From my time at the Center for Election Systems, both at KSU and currently, I have acquired firsthand knowledge of Georgia’s voting system and ballot building process.

3.

On April 9, 2020, the Secretary of State announced that the 2020 primary election, which was scheduled for May 19, 2020, was being moved to June 9, 2020. Prior to that announcement, the Secretary of State’s office, in coordination with its vendors and county election officials, already had the ballots for the primary election proofed by the county elections officials, approved by the county elections officials, built in the ballot-building database, and sent to the vendor for printing.

4.

Additionally, prior to the primary election being moved to June 9, 2020, absentee ballots had already been sent to military and overseas voters in accordance with the federal Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) in compliance with the statutory UOCAVA deadlines for the primary election when it was expected to be held on May 19, 2020.

5.

Because ballots had already gone out for the primary election when it was scheduled for May 19, 2020, we would have had to reconfigure and alter all 159 completed databases statewide to revise the date of the election on the ballot, which would also require new print files to be generated and submitted to the vendors, cause delay getting the ballots printed and to voters, and the opportunity for inadvertent mistakes to occur.

6.

The Secretary of State has taken a variety of steps to ensure voters know about the change in the date of the primary election to June 9, 2020 and to alleviate the need for voters to request an absentee ballot request form. The Secretary previously announced the unprecedented step of mailing every voter on Georgia's active voter roll a personalized absentee ballot request form. Additionally, on May 6, 2020, absentee ballot applications to voters' mailing addresses if that address differed from their residential address and the voter had not already requested an absentee ballot. Further, the Secretary of State's office has televised public service announcements about absentee voting and information on its website so that voters are aware of the change in the date of the primary election to June 9, 2020.

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

Executed this 13th day of May, 2020.



MICHAEL BARNES

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
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Defendants.

CIVIL ACTION

FILE NO. 1:20-CV-01677-TCB

DECLARATION OF CHRIS HARVEY

Pursuant to 28 U.S.C. § 1746, I, CHRIS HARVEY, make the following
declaration:

1.

My name is Chris Harvey. I am over the age of 21 years, and I am
under no legal disability which would prevent me from giving this
declaration. If called to testify, I would testify under oath to these facts.

2.

I currently am the Director of Elections for the State of Georgia. I have
held that position since July 2015. From August 2007 to July 2015, I was the

Chief Investigator and Deputy Inspector General for the Secretary of State's office, investigating, among other things, potential violations of state election law. For more than a decade, I have acquired firsthand knowledge of Georgia's election processes at both the state and county level.

Fulton County Absentee Ballot Processing Status

3.

According to Ralph Jones, Registration Manager for the Fulton County Board of Elections and Registration, as of May 12, 2020, Fulton County has received approximately 104,000 absentee ballot applications. Of those, 90,729 have been processed.

4.

I understand that Mr. Jones anticipates it will take just a few more days to catch up, at which point it will be able to process daily applications as received.

5.

In addition, Mr. Jones estimates that the County has received approximately 20,000 absentee ballot applications by email. He anticipates these to be fully processed by Friday, May 15.

Fulton County Poll Worker Status

6.

Thus far, approximately 1,300 poll workers are committed for Election Day in Fulton County precincts. A typical allotment of poll workers is approximately 1,000.

7.

There are currently 250 poll workers assigned to tabulate ballots.

8.

The County is leasing space at the World Congress Center for the tabulation process.

Plaintiffs' Declarants

9.

My staff has reviewed the records our office has in ENET, the statewide voter registration database, for the individuals who submitted declarations and stated that they sent in their absentee ballot request but had not yet received their absentee ballot. (Doc. 36).

10.

Declarant Theresa Marie Stowe's absentee ballot application request was processed by Dekalb County on May 12.

11.

Declarant Terri McIntosh's absentee ballot application request was processed by DeKalb County on May 8. The ballot is scheduled to go to the United States Postal Service for mailing on May 14.

12.

Robert Bruce Raper's absentee ballot application request was processed by Dekalb County on May 13.

13.

Plaintiff Rhonda J. Martin's absentee ballot application request has not yet been processed by Fulton County.

14.

Declarant Scott Michael Jones's absentee ballot application request has not yet been processed by Dekalb County.

15.

Declarant Max Shapiro's absentee ballot application request has not yet been processed by Fulton County.

16.

Declarant Donna S. Aranson's absentee ballot application request has not yet been processed by Fulton County.

17.

Declarant Joseph Wagner's absentee ballot application request has not yet been processed by Fulton County.

Absentee Ballot Packet Instructions

18.


On May 7, the absentee ballot mail vendor began using the revised instructions addressing the privacy sleeve for inclusion in Ballot Packets.

19.

According to the mail vendor for the absentee ballots, ballot packets that were received by voters on May 11 would likely have been packaged by the vendor prior to May 7 and, therefore, would not have contained the revised instructions.

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

Executed this 13th day of May, 2020.


CHRIS HARVEY