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

GEORGIA STATE CONFERENCE OF THE NAACP, as an organization, et al.,

Plaintiffs,

- v. -

STATE OF GEORGIA, et al.,

Defendants.

Civil Action
Case No. 1:17-cv-01397-TCB

PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Hearing date: May 4, 2017
Time: 2:00 PM
Courtroom: 2106, Atlanta

In their Brief in Opposition, Defendants do not dispute that the NVRA, by its terms, requires that registration for any election for federal office—expressly including a runoff election—must remain open until 30 days before the date of the election. Remarkably, Defendants claim that the NVRA does not apply at all here, because the registration deadline in the Georgia Constitution for a runoff election is not a "time, place or manner" provision that can be supplanted by federal law. Georgia's position is directly contrary to the Supreme Court's holding in *Arizona v. Inter Tribal Council of Arizona*, 133 S. Ct. 2247 (2013) ("*ITCA*"), which stands unequivocally for the proposition that Congress has the final authority under

the Elections Clause to set procedural requirements for registering to vote in federal elections.

Defendants' position would swallow the NVRA whole. Indeed, taking Georgia's position to its logical extreme, a state could legislate that any federal election, runoff or not, could avoid federal registration deadline requirements, simply by calling compliance with a registration procedure a "qualification." This is not and cannot be the law. When Congress determines "how" a federal election is to be run, the states must comply.

Defendants also complain that the administrative burden of re-opening the voter registration rolls is so great that the Court should deny the preliminary relief Plaintiffs seek. This claim is not only greatly exaggerated, but also largely of Defendants' own making. Defendants have been on notice since March 31 that they were in violation of the NVRA, but took no steps to alleviate the problem. To the contrary, Defendants failed to enforce their own rule to continue to process registration applications after the original deadline for registration had passed, thereby contributing to the backlog they now complain will be burdensome to cure.

In any event, there is no reason that Defendants could not update the State's electronic poll book; there is ample time to do so, and Defendants

successfully made two similar remedial changes immediately before the November 2016 election without incident. Moreover, Defendants neglect to inform the Court that it is *routine* in the conduct of Georgia elections for election officials to be provided with a supplemental voter list, which includes, for example, the names of voters who registered by the deadline but whose names were not processed in time to be included in the principal voter roll. There is no reason that Defendants cannot add the additional eligible voters who have registered since the original March 20 deadline to a supplemental voter list provided to each precinct.

Rather than a reason to deny the injunction, the size of the backlog—by Defendants' own calculations, potentially in the thousands—is a primary reason to grant the injunction. The minor administrative inconvenience Defendants cite pales in comparison to the loss of the right to vote of the magnitude suggested by Defendants' numbers. The right to vote and to choose your representative in Congress is one of our most fundamental rights, and the alleged administrative burdens that Defendants cite provide

no basis for disenfranchising thousands of eligible voters from exercising that right.[1]

I. ARGUMENT

A. The NVRA controls the setting of deadlines for voter registration for federal elections.

The Elections Clause gives Congress the power to regulate the "Times, Places and Manner" of holding elections for federal office, and Congress in the NVRA has exercised the power to regulate the "Times" of federal elections by requiring that they be held no more than 30 days after voter registration is closed. As Justice Scalia emphasized for the Court in *ITCA*, this power to regulate the conduct of federal elections is "comprehensive," and gives Congress "authority to provide a complete code for congressional elections." *Id.* at 2253 (quoting *Smiley v. Holm*, 285 U.S.

---

[1] In a footnote, Defendants claim the State is not a proper defendant because it has Eleventh Amendment immunity, even in an action to enforce Plaintiffs' federal rights under the NVRA. Defendants' Brief in Opposition ("Opp.") at 2 n.1. They are wrong. *See United States v. Louisiana*, 196 F. Supp. 3d 612, 657 (M.D. La. 2016) ("[O]nce Congress enacted the NVRA pursuant to its authority under the Elections Clause, the Eleventh Amendment could no longer immunize a state from any liability.") (collecting cases). However, as Defendants acknowledge, there is no reason for the Court to address the issue at this time, since Defendants concede that this action is properly brought against Secretary of State Kemp, Georgia's "chief election official." *See* 52 U.S.C. § 20510(b).

355, 366 (1932)); *see also Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1195 (10th Cir. 2014). The analysis required of the Court in this case is therefore simple and straightforward. *See Gonzalez v. Arizona*, 677 F.3d 383, 394 (9th Cir. 2012) (providing a framework for determining whether the NVRA supersedes a state law).

Defendants attempt to avoid the mandates of the NVRA by conflating voter qualifications with registration requirements. There is no dispute that the States retain the power to set substantive voter qualifications under the Elections Clause. Opp. at 4 (citing *Kobach*, 772 F.3d at 1195). But voter qualifications are broad, categorical definitions of who is and is not permitted to vote, such as age, citizenship, or residency. *See, e.g.*, *ITCA*, 133 S. Ct. at 2257–59, 2258 n.8 (discussing citizenship qualifications, and states' power—before the Twenty-Sixth Amendment—to require voters be at least 21 years old); *Dunn v. Blumstein*, 405 U.S. 330, 337 n.7 (1972) (recognizing that states may require voters to be residents).

Voter registration, by contrast, is the procedure by which individuals apply for and gain membership in the group of persons who may cast a valid ballot in a given election. *See Kobach*, 772 F.3d at 1195 (distinguishing between procedural requirements for registration and substantive voter

qualifications). As the Supreme Court recognized in *ITCA*, voter registration is a question of "*how* federal elections are held." 133 S. Ct. at 2257. A registration deadline to vote in federal elections fits easily within "the mechanics of congressional elections." *See Foster v. Love*, 522 U.S. 67, 69 (1997).

The Georgia scheme challenged here is not a substantive "qualification" to vote. The state laws at issue do not specify what qualification voters must possess, such as their age or whether they are a United States citizen, but instead focus on whether they complied with a procedural requirement—*i.e.*, the date they applied to register to vote. The timing of when one registers, much like the requirement of documentary proof of citizenship when registering to vote at issue in *ITCA*, has nothing to do with the substance of whether one is qualified to vote.

The qualifications for a Georgia voter are set out in Section 21-2-216 of the Georgia Code, entitled "elector's qualifications": she must be a citizen, be at least 18 years old, not be under sentence for a felony conviction, etc. In contrast, the provisions cited by Defendants relating to runoff elections are inherently procedural. For example, Section 21-2-501(a)(10), explicitly provides that "[o]nly the electors who were duly

registered to vote" in the first round may vote in the runoff. *Id*. (emphasis added). Section 21-2-501 thus prohibits persons who are qualified to vote from voting solely because of non-compliance with the State's procedural registration requirements—*not* based on failure to satisfy the substantive qualifications set out in Section 21-2-216.

There is no question that the NVRA, by its plain language, applies to runoff elections, 52 U.S.C. § 20502(1) (adopting the definition of "election" in 52 U.S.C. § 30101(1), which includes a "runoff election"), and prohibits states from closing their registration books more than 30 days before a federal runoff. *Id.* § 20507(a). Defendants' argument that it can evade the requirements of the NVRA by the simple expedient of labeling its voter registration requirement a "qualification" for voting would effectively read the word "runoff" out of the statute, and would mean that the NVRA would never apply to a federal runoff election. Indeed, taking the State's argument to its logical conclusion, the State could always avoid the NVRA's requirements by simply claiming that compliance with its voting procedures is a "qualification" for voting. There is no principle limiting the State's argument to runoff elections or to the 30-day requirement of Section 8.

The requirements of federal law cannot so easily be evaded. The courts have routinely held that state laws or administrative decisions affecting voter eligibility are subject to Section 8 of the NVRA. *See, e.g., A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 706 (6th Cir. 2016) (Section 8 of the NVRA provides "an exhaustive list" of the circumstances permitting removal of voters from the registration rolls); *U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 381–82, 384 (6th Cir. 2008) (Michigan voter verification program is subject to Section 8 of the NVRA, and adding that "[r]eceipt of the original voter ID card is not a requirement for eligibility"); *Bell v. Marinko*, 367 F.3d 588, 591 (6th Cir. 2004) (Subsections 8(a)(3), 8(a)(4), and 8(d) of the NVRA "set[ ] limits on the removal of registrants from the voter registration rolls").

Finally, the State implies that the NVRA as applied to Georgia runoff elections is unconstitutional and beyond the power of Congress. Opp. at 4–6. This argument must be rejected. Congress' power to regulate the conduct of federal elections under the Elections Clause is broad, *ITCA*, 133 S. Ct. at 2253, and the constitutionality of the NVRA and its preemption of inconsistent state procedures has been repeatedly upheld. *Id.* at 2256–57;

Kobach, 772 F.3d at 1198–99; *see also Fish v. Kobach*, 840 F.3d 710, 748–50 (10th Cir. 2016).

B. Absent an injunction, Plaintiffs will be irreparably injured, and any administrative burden Defendants may incur is far outweighed by the impact of disenfranchising thousands of eligible voters.

Plaintiffs clearly meet the well-recognized test for issuance of a preliminary injunction. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). There is no question that the right to vote is fundamental. *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1375–76 (N.D. Ga. 2005); *see also United States v. Georgia*, 952 F. Supp. 2d 1318, 1332–33 (N.D. Ga. 2013), judgment vacated and appeal dismissed for mootness, 778 F.3d 1202 (11th Cir. 2015). Courts have thus repeatedly found that "denying an individual the right to vote works a serious, irreparable injury." *Common Cause/Georgia*, 406 F. Supp. 2d at 1375–76; *see also Obama for America v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("When constitutional rights are threatened or impaired, irreparable injury is presumed.") (internal citations omitted). In the present case, Cobb County Director of Elections Janine Eveler reports that there are now 17,000 unprocessed registration applications pending in the County, and an additional 600 being filed every day. Eveler Decl., ECF No. 20-3, ¶ 10. Even if some percentage of these

applications fall outside the Sixth Congressional District, a failure to enjoin Defendants' current practice will undoubtedly result in many thousands of voters being disenfranchised.

Defendants argue that this palpable irreparable injury is outweighed by the administrative burdens that preliminary relief would impose upon the State. Opp. at 7–9. But the courts have repeatedly rejected this argument in similar contexts, and have found that assuring citizens of the right to vote "outweighs the cost and the inconvenience" that election officials might incur. *United States v. Georgia*, 952 F. Supp. 2d at 1332–33; *see also Common Cause/Georgia*, 406 F. Supp. 2d at 1375–76; *Georgia Coalition for the Peoples' Agenda, Inc. v. Deal*, No. 4:16-cv-269-WTM-GRS, 2016 WL 6039239, at *2 (S.D. Ga. Oct. 14, 2016). The same is true here.

Defendants argue that preliminary relief would require the State to make changes to the State's electronic voter registration and elections database that would be difficult to implement prior to the runoff. Opp. at 7–8. But, although it is not mentioned in the State's declarations, the State has already corrected similar problems before in the weeks leading up to prior elections, and there is no reason it could not be done now. The Secretary of State successfully made at least two large "hot fixes" to the

electronic registration system shortly before the November 2016 election. *See* Declaration of Helen Butler, dated May 2, 2017 ("Butler Decl.," submitted with this reply brief as Exhibit 7),¶¶ 35–41. Moreover, the electronic poll book submission deadline is more than two weeks *after* the May 22 deadline for voter registration mandated by the NVRA, leaving ample time for the State to update the electronic poll book after registration would be closed. *See* Butler Decl. ¶ 26.

Further, granting the relief sought by Plaintiffs would not require any "hot fix" at all. It is routine in the conduct of Georgia elections for election officials to be provided with a supplemental voter list, which includes the names of voters who are properly registered but who for one reason or another are not included in the electronic poll book, including voters who registered by the deadline but whose names were not processed in time to be included in the principal voter roll. *See* Butler Decl. ¶¶ 26–29, 31–34. There is no reason that Defendants cannot add the additional eligible voters who have registered since the original March 20 deadline to a paper supplemental voter list provided to each precinct—a method of ensuring that each voter has the right to vote in the runoff election without requiring any "fix" to the electronic poll book at all.

Defendants also argue that they would need to hire temporary workers to process the "significant backlog of voter registration applications" prior to the start of advance voting. Opp. at 8. However, this is a problem of the Defendants' own making. As detailed in the Butler Declaration—and nowhere disclosed in Defendants' papers—in approximately March 2016, Secretary of State Kemp *terminated* the "90 day black-out period" policy previously in effect, pursuant to which county registrars had deferred the processing of voter registration applications during the 90 days between the close of voter registration for a primary or general election until the completion of runoffs for that election. *See* Butler Decl. ¶¶ 13–23. As a result, Director of Elections Harvey issued two Official Election Bulletins ("OEBs") urging county registrars not to delay the processing of new voter registration applications and to process them on a continuing basis, without delay. *See* Butler Decl. ¶¶ 16–19. In this light, Ms. Eveler's admission that the Cobb County registrar's office stopped processing applications, *see* Eveler Decl. ¶ 10, indicates that the County was violating State policy, and Defendants were not enforcing it.

As the State acknowledges, Cobb County's failure to process registration applications in the normal course has resulted in a backlog of

upwards of 17,000 unprocessed applications. Eveler Decl. ¶ 10. Defendants' claims of administrative burdens should an injunction issue must be weighed against the impact on thousands, if not tens of thousands of voters, should the injunction not issue. The burden of hiring a few extra workers to process these applications now, or training election workers, or performing a "hot fix" on the registration system, does not outweigh the disenfranchisement of thousands of voters whose applications should have been processed all along.

Also, as the Butler Declaration makes clear, pre-election training is common and could be accomplished relatively easily by providing updates to poll workers in the form of written bulletins and verbal instructions. See Butler Decl. ¶ 25; *see Common Cause/Georgia*, 406 F. Supp. 2d at 1375–76 (granting injunction despite Defendants' claims that a preliminary injunction would likely "result in confusion for voters, poll workers, and elections officials," and that local elections officials "lack sufficient time to conduct training for poll workers and to educate the public"). Again, the need for training does not outweigh the irreparable harm to voters.

Defendants also raise the hypothetical possibility that granting the relief sought by Plaintiffs—and bringing the State into compliance with the

NVRA—could lead to situations where elections officials might be compelled to administer federal and state runoff elections on the same day, with different eligibility requirements. Opp. at 8. First, this concern has no relevance to the federal runoff scheduled for June 20, when there is no state race taking place. Second, the courts have required such administrative burdens in the past where two separate ballots are necessary to protect the right to vote. *See Idaho Republican Party v. Ysursa*, 765 F. Supp. 2d 1266, 1276 (D. Idaho 2011) (where court found that rights of voters outweighed administrative burdens and costs associated with two separate ballots). Third, Georgia itself has used multiple ballots in past elections, most recently in the April 18, 2017 special election. *See* Butler Decl. ¶ 44. And if this is a genuine concern, the State could enact legislation to adopt the NVRA-compliant registration deadlines for use in both federal and state elections. In any event, this issue need not be addressed in the context of this motion for preliminary relief.

Finally, Defendants argue that the Court "should give consideration to the proximity of the election, and the potential for any voter confusion." Opp. at 7 (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006)). The *Purcell* case, of course, merely requires the Court to consider the timing among all

the circumstances of the case, and does not establish any per se rule against granting preliminary injunctive relief shortly before an election. *Feldman v. Arizona Sec'y of State's Office*, 843 F.3d 366, 367–68 (9th Cir. 2016).

Several factors militate strongly in favor of granting the injunction here. First, Defendants were placed on notice on March 31 of the NVRA violation, and had ample time to take steps to cure the problem. Second, inexplicably, at least one county board of elections failed to follow State policy and process registration applications received after the original registration deadline, creating a backlog that should otherwise not exist—and Defendants not only failed to enforce that policy but are now relying on its deliberate disregard. Third, as discussed above, there is ample time before the election to implement the relief that Plaintiffs seek, and no reason to believe that there will be any voter confusion. Indeed, allowing people to vote who registered up to 30 days before a federal election is the expected norm. And, as set forth above, it is the supreme law of the land.

III. CONCLUSION

Plaintiffs respectfully request that the Court enter an order granting their motion for a temporary restraining order and preliminary injunction, and such further relief as it deems just and proper.

Dated: May 2, 2017

Respectfully submitted,

s/ Bryan L. Sells
Bryan L. Sells
Georgia Bar No. 635562
The Law Office of Bryan Sells, LLC
PO Box 5493
Atlanta, Georgia 31107
Tel: (404) 480-4212
Email: bryan@bryansellslaw.com

Ira M. Feinberg *(pro hac vice motion pending)*
New York Bar No. 1403849
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Tel: (212) 918-3509
Email: ira.feinberg@hoganlovells.com

Jonathan Abram *(pro hac vice motion pending)*
District of Columbia Bar No. 389896
Paul M. Wiley *(pro hac vice motion pending)*
Virginia Bar No. 89673
Emily Goldman (*pro hac vice motion pending*)
District of Columbia Bar No. 1032032
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004
Tel: (202) 637-5600
Email: jonathan.abram@hoganlovells.com
Email: paul.wiley@hoganlovells.com
Email: Emily.goldman@hoganlovells.com

Ezra D. Rosenberg *(pro hac vice motion pending)*
New Jersey Bar No. 012671974
Julie Houk *(pro hac vice motion pending)*
California Bar No. 114968
John Powers *(pro hac vice motion pending)*
District of Columbia Bar No. 1024831
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, D.C. 20005
Tel: (202) 662-8600
Email: erosenberg@lawyerscommittee.org
Email: jhouk@lawyerscommittee.org
Email: jpowers@lawyerscommittee.org

Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE

I hereby certify that the forgoing **PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** was prepared in 14-point Times New Roman in compliance with Local Rules 5.1(C) and 7.1(D).

This 2nd day of May, 2017.

By: */s/ Bryan L. Sells*
Bryan L. Sells
Georgia Bar No. 635562
The Law Office of Bryan L. Sells, LLC
Post Office Box 5493
Atlanta, Georgia 31107-0493
Phone: (404) 480-4212
bryan@bryansellslaw.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Cristina Correia, Esq.: ccorreia@law.ga.gov
Josiah B. Heidt: jheidt@law.ga.gov

This 2nd day of May, 2017.

By: */s/ Bryan L. Sells*

Bryan L. Sells
Georgia Bar No. 635562
The Law Office of Bryan L. Sells, LLC
Post Office Box 5493
Atlanta, Georgia 31107-0493
Phone: (404) 480-4212
bryan@bryansellslaw.com

EXHIBIT 7

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

GEORGIA STATE CONFERENCE OF THE NAACP, as an organization; GEORGIA COALITION FOR THE PEOPLES' AGENDA, INC., as an organization; PROGEORGIA STATE TABLE, INC., as an organization; THIRD SECTOR DEVELOPMENT, INC., as an organization; and ASIAN AMERICANS ADVANCING JUSTICE-ATLANTA, INC., as an organization; JILL BOYD MYERS, an individual,

Plaintiffs,

v.

STATE OF GEORGIA and BRIAN P. KEMP, in his official capacity as Secretary of State for the State of Georgia,

Defendants.

Civil Action
Case No. 1:17-cv-01397-TCB

REPLY DECLARATION OF HELEN BUTLER IN SUPPORT OF PLAINTIFS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Hearing date: May 4, 2017
Time: 2:00 p.m.
Courtroom No.: 2106, Atlanta

EXHIBIT 7

DECLARATION

Pursuant to 28 U.S.C. § 1746, I, Helen Butler, declare as follows:

1. I am the Executive Director of the Georgia Coalition for the People's Agenda ("GCPA"). The GCPA is a Plaintiff in this action.

2. I am submitting this declaration in reply to the Defendants' Response to Plaintiffs' Emergency Motion for a Temporary Restraining Order and Preliminary Injunction and the Declarations filed in support of that Response.

3. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.

4. In addition to my employment as the Executive Director of the GCPA, I have served since 2010 as a member of the Morgan County Board of Elections and Registration, which is located in Madison, Georgia.

5. As a result of my service on the Morgan County Board of Elections and Registration, I receive training provided by the Georgia Secretary of State's Office, including training that is given to county registrars, so that I will be in a position to assist in the operation of the registrar's office in the event of an emergency. Although I am a member of the Morgan County Board of Elections and Registration, I am not making this declaration in my

capacity as a Board member. I am supplying this information to provide the Court with additional facts concerning my background, experience and training relevant to the statements in this declaration.

6. As a result of my background, training and experience, I have become familiar with Georgia's electronic voter registration system known as eNet (or ENET). The eNet system serves as the centralized repository of all voter registration information across the State of Georgia. County registrars have the responsibility for processing voter registration applications and entering pertinent data about the applicants into the eNet system. County registrars are also responsible for entering address updates and other changes to a voter's registration status into the eNet system. The eNet system is also used to generate voter lists and poll books for use during elections.

7. As a result of my training, background and experience, I am also familiar with the provisions of the Georgia Election Code and the State Election Board's rules and unwritten practices and procedures that generally apply to the processing of voter registration applications, voter address updates, poll worker and poll manager training and procedures, Express and supplemental poll books or lists, absentee and in-person ballots, and how

voters are processed at polling places during early in-person absentee voting and on Election Day, among other things.

8. I am also familiar with Official Election Bulletins (OEBs) that are distributed to Georgia registrars through the Secretary of State's internal electronic message board, known as "Firefly."

9. The OEBs often contain important information about upcoming elections, and changes or updates in election-related laws, rules, and policies of interest to registrars and election board members.

10. During my tenure as Executive Director of the GCPA, I also have many years of experience in monitoring polling locations throughout the state during early in-person absentee voting and on Election Day, including in the counties comprising the Sixth Congressional District. During my poll monitoring activities, I sometimes provide assistance to voters who experience problems at the polls and notify election officials of problems that I observe or are reported to me.

11. The GCPA also works with other non-partisan and non-profit organizations in Georgia to advocate for improvements to Georgia's election systems and procedures, and I am often engaged in that advocacy work in my role as Executive Director of the GCPA.

12. I have reviewed the four declarations submitted by Defendants in response to Plaintiffs' Emergency Motion for a Temporary Restraining Order and Preliminary Injunction.

13. The declarations omit some important facts which militate against Defendants' contention that it would be too burdensome or difficult to implement the remedial relief sought by Plaintiffs in time for the Sixth Congressional District special runoff election on June 20, 2017.

14. For example, Janine Eveler ignores in her declaration (Doc. 20-3) that in approximately March 2016, Secretary of State Brian Kemp terminated the "90 day black-out period" policy, under which county registrars had been deferring the processing of voter registration applications during the 90 days between the close of voter registration for a primary or general election until the completion of runoffs for those elections.

15. Before its termination, this policy caused significant delays in the processing of voter registration applications, which prevented applicants from receiving timely notification of problems with their applications, so that they could correct those problems in time to vote in upcoming elections. The policy also prevented some applicants from receiving precinct cards identifying their polling locations in a timely manner; in some cases,

precinct cards were not mailed to voters until after November general elections.

16. On March 29, 2016, Director of Elections Chris Harvey issued an Official Election Bulletin (OEB) through the Firefly message board system, which informed county registrars about the termination of the "90 day black-out policy." A true and accurate copy of this OEB is attached and incorporated herein by reference as Exhibit 1.

17. In this OEB (Exhibit 1), Director Harvey stated, in pertinent part:

> "We expect all counties to continue to receive increasing numbers of new voter registration applications as we move closer to the May Primaries and November General Election. We anticipate high numbers of voter registration applications though both through the traditional paper voter registrations applications and online through O.L.V.R. [On-Line Voter Registration].
>
> "All counties can continue to enter voter registration applications during what would previously have been a "blackout period" that previously would have existed from the voter registration deadline (April 26, 2016) through the Primary run-off elections (July 26, 2016).
>
> **The buildup of applications that would accrue from a three month stoppage of processing could create a monumental problem for registrars to handle if they delayed all of that activity until August (with what will almost surely be a constantly rising tide of applications as we get closer to the deadline of October 11, 2016.)**
>
> "**Of similar concern is what the applicant might face if they encounter a problem with their application (such as failing to verify, or a need to verify citizenship, or supply missing information.) If a voter were to apply in May, but their application was not processed**

until August (or later), the voter would lose months of time possibly needed to formulate a response and/or gather and submit documents that would allow their voter registration application to be approved in a timely manner.

"ENET allows counties to add new voter registration applications at any time. Pursuant to O.C.G.A. § 21-2-224, such applications will still be subject to the April 26, 2016 registration deadline, and voters who applied to register to vote after the April 26, 2016 deadline will not be eligible to vote in the May 24, 2016 Elections.

"New voters added during the period between the day after the registration cut-off date and Election Day or until after any subsequent run-off date will be visible within all modules in ENET."

(Emphasis added).

18. Subsequently, on April 26, 2016, Director Harvey issued a second OEB through the internal Firefly message board to county registrars urging them to continue processing new voter registration applications without delay. A true and accurate copy of this OEB is attached and incorporated herein by reference as Exhibit 2.

19. In that OEB (Exhibit 2), Director Harvey stated, in pertinent part:

"Please do not delay processing any new voter registration applications and any subsequent follow up with regards to verifications, sending letters, etc.

The system allows counties **to add new voter registration applications at any time**. Pursuant to O.C.G.A. § 21-2-224, such applications will still be subject to the April 26, 2016 registration deadline.

> New voters added during the period between the day after the registration cut-off date and Election Day or until after any subsequent run-off date will be visible within all modules in eNet.
>
> THIS IS IMPORTANT. Because all new applicants (including those who register after the registration deadline) will appear in Enet, it is imperative that the following step is taken during Absentee/Advance Voting:
>
> **Your staff must double check the registration date of all voters before allowing a voter to cast a ballot during the absentee/advance voting period."**

(Emphasis in the original).

20. On April 26, 2016, the Atlanta Journal Constitution also ran an article discussing Secretary Kemp's termination of the "90 day black-out period." In that article, Secretary Kemp was quoted as follows:

> "Because of my office's work implementing e-government solutions to make elections more efficient, we were able to eliminate voter registration black-out periods," Secretary of State Brian Kemp said of his decision to end the ban. "I am glad that the Lawyers' Committee and the NAACP can agree with me that this improvement benefits Georgia's voters."

21. A true and correct copy of the aforementioned Atlanta Journal Constitution article is attached and incorporated herein by reference as Exhibit 3.

22. Ms. Eveler admits in her declaration (Doc. 20-3, ¶ 10), that the Cobb County registrar's office stopped processing **all voter registration**

applications received after March 20, 2017 for reasons of administrative convenience. The Cobb Country registrar's office apparently took this action in violation of State policy, in light of the Secretary of State's termination of the "90 day black-out" period and Director Harvey's March 29 and April 26, 2016 OEB's urging registrars not to delay the processing of new voter registration applications after the close of registration.

23. Ms. Eveler further admits in her declaration (Doc. 20-3, ¶ 10), that her office now has a backlog of **more than 17,000 unprocessed voter registration applications, and that the backlog has grown by approximately 600 more applications every day.** Since her office has not processed any of these applications, Ms. Eveler cannot state in her declaration how many of these applications are from Georgians residing in the Sixth Congressional District, although it seems likely, given the timing of when the applications were received, that many thousands of them were submitted by applicants in the Sixth Congressional District.

24. Ms. Eveler also states in her declaration that she would have to hire temporary workers in order to process the backlog of registration applications by the beginning of advance voting on May 30, 2017 for the Sixth Congressional District special runoff election. (Doc. 20-3, ¶ 12).

However, Ms. Eveler provides no reason why such temporary workers could not be hired and trained immediately to accomplish this task.

25. Although Ms. Eveler also contends that it would be burdensome to train poll workers if the registration deadline were extended for this election (Doc. 20-3, ¶ 14-16), such training could be accomplished relatively easily by providing updates in the form of written bulletins and verbal instructions about the change. In fact, it is not uncommon in Georgia elections for supplemental training to be given to poll workers and managers in written and verbal form due to issues that arise close in time to an election, including when candidates drop out of a contest at the last minute or pass away, when polling locations change at the last minute because of an unanticipated problem, and for other reasons. This would not necessitate having to amend already printed materials.

26. Ms. Eveler also contends that an extension of the deadline could make it difficult to include all new applicants in an Electronic Poll book because the deadline to provide this information to the vendor is currently June 8, 2017. (Doc. 20-3, ¶ 9). However, Ms. Eveler ignores that not only is the current Electronic Poll book submission deadline sixteen days after the proposed NVRA-compliant May 22, 2017 registration deadline, but Georgia

registrars routinely use supplemental paper poll books (also referred to as supplemental lists) when voters cannot be added in time to the electronic Express Poll books ahead of an election.

27. In fact, supplemental poll books or lists are generally used in most elections in Georgia because pre-registered 17.5 year-olds often reach the age of majority and become eligible to participate in an election after the deadline for the county registrars to transmit the voter list to the Electronic Poll book vendor.

28. The use of supplemental poll books or lists has also occurred on other occasions when registration deadlines are not altered, for example, when there have been delays in the processing of registration forms that prevented the inclusion of all registered voters in Electronic Poll books for a particular election.

29. Thus, even if the extension of the voter registration deadline here would prevent Ms. Eveler's office from providing lists of the new registrants to the vendor in time to include them in the Express Poll books by June 8, 2017, they could nevertheless be added to supplemental paper poll books or lists that are routinely used in Georgia elections. Moreover, Ms. Eveler's

office could also seek an extension of the deadline to submit the registration lists to the vendor for inclusion in the Electronic Poll books.

30. Director Harvey also contends in his declaration (Doc. 20-1, ¶ 6-9) that a "hot fix" to the state's electronic registration system, known as eNet, would be required to implement an extension of the voter registration deadline for the Sixth Congressional District special runoff election, and that such a "hot fix" is rarely undertaken because of administrative burden and concerns about risks to the integrity of the system.

31. However, Director Harvey ignores the fact that no "hot fix" to eNet would be required for his office to generate a supplemental poll book or list containing all of the Sixth Congressional District voters who registered to vote between March 20 and May 22, 2017.

32. Once a supplemental poll book or list of these voters is generated, it could be provided to the poll workers to use at the polling locations for the runoff election.

33. Generally, when voters on a supplemental poll book or list arrive at the polling locations, poll workers confirm they are on the supplemental list and then enter the voters' data into the Electronic Poll book so that they can generate a voter access card that the voters use to cast a ballot on the DRE

voting machine. An instructional video posted on the Georgia Secretary of State's website describes in detail how poll workers are trained to process voters whose names are on the supplemental list because their names could not be added in time to make it onto the Express Poll book. That video can be found as this link: https://fast.wistia.net/embed/iframe/81y7u1xlrx?popover=true. [Last checked May 1, 2017].

34. In the event that a poll worker is unable to transfer the voter's information into the Electronic Poll book for any reason, the voter would still be given the opportunity to cast a provisional ballot that will count as a vote when the county registrar confirms that the voter registered on or before the NVRA compliant deadline of May 22, 2017.

35. Similarly, county registrars would be able to use the supplemental list or the eNet system itself to process absentee ballot requests that are received from Sixth Congressional District voters who registered between March 20 and May 22, 2017.

36. Moreover, even if Director Harvey is correct that a "hot fix" to the eNet system would be required in the event that the registration deadline was extended to May 22, 2017, he ignores that the Secretary of State made at

least two major "hot fixes" to the eNet system on short notice prior to the 2016 November general election, as a result of pre-election legal challenges brought by the GCPA and other organizations.

37. One of those "hot fixes" involved the extension of the voter registration deadline for Chatham County residents that was ordered by the court in *Georgia Coalition for the Peoples' Agenda, et al. v. Deal, et al.*, ___F. Supp. 3d___, 2016 WL 6039239 (S.D. Ga. October 14, 2016). In that case, the GCPA, along with other Plaintiff organizations, sought an extension of the voter registration deadline because Hurricane Matthew had resulted in the evacuation of Chatham County residents and caused the closure of the County registrar's office in the days leading up to and including the final registration date of October 11, 2016.

38. The court in *GCPA v. Deal* ordered the extension of the registration deadline, even though the defendants also argued there that they would face similar administrative burdens as a result of the extension. 2016 WL 6039239, at *1-2.

39. A second major "hot fix" to the eNet system that I am familiar with in 2016 arose from another voting rights lawsuit filed by the GCPA and co-Plaintiff organizations. This suit challenged the Georgia Secretary of State's

"exact match" voter registration verification process, which had resulted in the cancellation of tens of thousands of voter registration applications since 2010. *See GA NAACP, et al., v. Kemp*, No. 2:16-cv-00219-WCO (N.D. Ga., filed Sept. 14, 2016).

40. The GCPA and the co-Plaintiff organizations filed a complaint and motion for a preliminary injunction on September 14, 2016, seeking relief prior to the November 8, 2016 general election.

41. On September 23, 2016, counsel for Defendant Kemp filed a letter with the Court indicating that the Defendant had implemented, and would be implementing, policy changes to address the relief sought by the Plaintiffs prior to the November 8, 2016 general election. A true and accurate copy of said letter is attached and incorporated herein by reference as Exhibit 4.

42. These changes ultimately restored tens of thousands of voter registration applicants to "pending" status on the eNet system, so that they could cure the verification issue by showing ID prior to or on Election Day and cast a regular ballot. These changes required major "hot fixes" to the eNet system that included restoring tens of thousands of previously cancelled applicants to "pending" status, and ended the automatic

cancellation of voter registration applications when applicants failed to remedy the verification issue after thirty days.

43. In addition, county registrars, poll workers and managers received updated written training so that they were aware of these changes and knew how to process "pending" applicants when they arrived at the polls, so that affected voters could cast regular ballots if they cured the verification issue by showing appropriate ID.

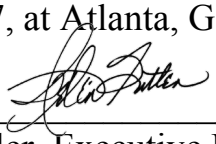
44. I have also reviewed the statements in the declarations of Michael Barnes (Doc. 20-2. ¶ 7-9), Chris Harvey (Doc. 20-1, ¶ 10), Janine Eveler (Doc. 20-3, ¶ 17-19) and Richard Barron (Doc. 20-4, ¶ 4-8) to the effect that having a different registration deadline for federal and state elections would require two ballots to be issued in some 2018 elections, and in future elections, and would create some administrative burdens.

45. Declarants ignore, however, that Georgians have been required to cast multiple ballots in past elections for a variety of reasons completely unrelated to this litigation. In fact, most recently, voters in Johns Creek, Georgia, which is located in Fulton County and in the Sixth Congressional District, were issued two ballots for the April 18, 2017 special elections – one ballot was for the Sixth Congressional District special election and one

ballot was for a Johns Creek municipal special elections. *See*, https://nextdoor.com/agency-post/ga/johns-creek/city-of-johns-creek/special-election-set-for-april-18-voters-can-expect-two-ballots-46802408/.

46. Declarants also ignore the fact that the Georgia legislature could pass legislation in its 2017-18 legislative session in advance of the 2018 elections to set uniform NVRA compliant registration deadlines for both federal and state elections. This would eliminate the need for two-ballot elections, which Declarants argue would be required in some elections held on the same day with two different registration deadlines, and would otherwise eliminate much, if not all, of the burden of having federal elections with an NVRA-compliant registration deadline.

47. I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of May 2017, at Atlanta, Georgia.



Helen Butler, Executive Director
Georgia Coalition for the People's Agenda

EXHIBIT 1

OFFICIAL ELECTION INFORMATION

March 29, 2016

TO: County Registrars and Combined Boards of Elections and Registration

FROM: Chris Harvey, Director of Elections

RE: Voter Registration Processing up to and Through April 26, 2016 Registration Deadline

Continuing Processing of Voter Registration Applications

We expect all counties to continue to receive increasing numbers of new voter registration applications as we move closer to the May Primaries and November General Election. We anticipate high numbers of voter registration applications though both through the traditional paper voter registrations applications and online through O.L.V.R.

All counties can continue to enter voter registration applications during what would previously have been a "blackout period" that previously would have existed from the voter registration deadline (April 26, 2016) through the Primary run-off elections (July 26, 2016).

The buildup of applications that would accrue from a three month stoppage of processing could create a monumental problem for registrars to handle if they delayed all of that activity until August (with what will almost surely be a constantly rising tide of applications as we get closer to the deadline of October 11, 2016.)

Of similar concern is what the applicant might face if they encounter a problem with their application (such as failing to verify, or a need to verify citizenship, or supply missing information.) If a voter were to apply in May, but their application was not processed until August (or later), the voter would lose months of time possibly needed to formulate a response and/or gather and submit documents that would allow their voter registration application to be approved in a timely manner.

ENET allows counties **to add new voter registration applications at any time**. Pursuant to O.C.G.A. § 21-2-224, such applications will still be subject to the April 26, 2016 registration deadline, and voters who applied to register to vote after the April 26, 2016 deadline will not be eligible to vote in the May 24, 2016 Elections.

New voters added during the period between the day after the registration cut-off date and Election Day or until after any subsequent run-off date will be visible within all modules in ENET.

List Maintenance Activities (O.C.G.A. § 21-2-234(i))

EXHIBIT 1

We are now within 90 days of an election with federal offices on the ballot.

Counties may continue to conduct specific voter list maintenance efforts to ensure that ineligible voters are removed from the electors list in a timely manner. County list maintenance should be conducted as frequently as is practicable to ensure that ineligible individuals do not remain on the electors list.

As you continue list maintenance processes leading up to the election, please keep in mind the limitations on list maintenance activities established under the National Voter Registration Act of 1993 (NVRA). Specifically, NVRA provides that any program to systematically remove the names of ineligible voters from the official list of electors must be completed no later than ninety (90) days prior to the date of a primary or general election for federal office. See 42 U.S.C. § 1973gg-6(c)(2)(A).

Removal of ineligible voters for the following reasons is not subject to the 90-day limitation:

1. at the request of the registrant;
2. the felony conviction or judicial determination of mental incompetency of the registrant;
3. the death of the registrant;
4. correction of registration records pursuant to Subchapter I-H ("National Voter Registration") of Chapter 20 ("Elective Franchise") of Title 42 ("The Public Health and Welfare") of NVRA; or
5. the verification process of determining the eligibility of a person applying to register to vote in accordance with any applicable court order and federal law. See 42 U.S.C. § 15483.

Registrars should continue with their list maintenance activities, as long as they fall into one of the above categories and/or do not otherwise violate the NVRA.

If you have any additional questions about these activities, please contact your Liaison.

EXHIBIT 2

OFFICIAL ELECTION INFORMATION

April 26, 2016

TO: County Registrars

FROM: Chris Harvey, Director of Elections

RE: Voter Registration Deadline; Processing VR Applications after the VR Deadline

VR Applications

Pursuant to O.C.G.A. § 21-2-224, Tuesday, April 26, 2015 is the voter registration deadline for the May 24, 2016 Primary Elections. If mail-in VR Applications (Site Codes 2, 9 and 14), **do not** have a legible postmark, then the Secretary of State's date stamp should be used to determine if the voter should be added or updated for the May 24, 2016 elections. O.C.G.A. § 21-2-224(c) provides that the Secretary of State's date stamp on the application must be no later than Friday, April 29, 2016 for the individual to be eligible to vote in the May 24, 2016 Primary Elections (though if using the Secretary of State's postmark date, the date used for the individual's voter registration date should be the April 26, 2016 date.)

The voter registration date for applications from site codes 5, 6, 8, 10, 12 and 13 are based on the date written next to the voter's signature.

New Voter Registration Applications (IMPORTANT INFORMATION)

Please do not delay processing any new voter registration applications and any subsequent follow up with regards to verifications, sending letters, etc.

The system allows counties **to add new voter registration applications at any time**. Pursuant to O.C.G.A. § 21-2-224, such applications will still be subject to the April 26, 2016 registration deadline.

New voters added during the period between the day after the registration cut-off date and Election Day or until after any subsequent run-off date will be visible within all modules in eNet.

THIS IS IMPORTANT. Because all new applicants (including those who register after the registration deadline) will appear in Enet, it is imperative that the following step is taken during Absentee/Advance Voting:

Your staff must double check the registration date of all voters before allowing a voter to cast a ballot during the absentee/advance voting period.

EXHIBIT 2

Changes to Absentee Voter Information

Any absentee voter who is added or whose information is changed after the ExpressPoll extract data is sent to KSU on May 12, 2016 must be updated and synchronized on each of the individual ExpressPoll units. Please do not change any voter information in the voter maintenance screen for an absentee voter until after Election Day or until after any subsequent run-off date.

Changes to Voter Address Information Within the County

Counties ***should not*** enter within-county address changes to voter information postmarked during the period between the day after the registration cut-off date and Election Day. Therefore, voter registration applications for within-county address changes postmarked after April 26, 2016 should not be entered until credit for voting has been assigned.

County-to-County Transfers

1. For county-to-county transfers of voters ***before the registration cut-off date***, the process has not changed. Counties may transfer voters before a registration cut-off date for an election without issue.
2. Counties ***should not*** process county-to-county transfers postmarked after the registration cut-off date until after credit for voting has been applied. Therefore, voter registration applications for county-to-county transfers postmarked after April 26, 2016 should not be entered until the state has notified you that credit for voting has been applied. ***Failure to adhere to these guidelines may result in voters not appearing on the electors list or ExpressPoll when they should.***
3. Please be aware that the Secretary of State's My Voter Page (MVP) will show the voter's polling place for state & county elections as the most recent precinct entered into the VR system.

Changes to Voter Information Other Than Address Change

Counties may not enter changes to voter information after the registration cut-off date except to update voters who are providing additional information as required in O.C.G.A. 21-2-220(d).

Voter List Maintenance (O.C.G.A. § 21-2-228(a))

Counties must continue to conduct voter list maintenance efforts to ensure that ineligible voters are removed from the electors list in a timely manner. County list maintenance should be conducted as frequently as is practicable to ensure that ineligible individuals do not remain on the electors list. Keep in mind that if you remove a voter from the electors list after the ExpressPoll extract data is sent to KSU on May 12, 2016 you will need to go into each ExpressPoll unit and mark that voter with a "delete" status.

As you continue list maintenance processes leading up to the election, please keep in mind the limitations on list maintenance activities established under the National Voter Registration Act of 1993 (NVRA). Specifically, NVRA provides that any program to systematically remove the names of ineligible voters from the official list of electors must be completed no later than ninety

(90) days prior to the date of a primary or general election for federal office. See 42 U.S.C. § 1973gg-6(c)(2)(A).

Removal of ineligible voters for the following reasons is not subject to the 90-day limitation:

1. at the request of the registrant;
2. the felony conviction or judicial determination of mental incompetency of the registrant;
3. the death of the registrant;
4. correction of registration records pursuant to Subchapter I-H ("National Voter Registration") of Chapter 20 ("Elective Franchise") of Title 42 ("The Public Health and Welfare") of NVRA; or
5. the verification process of determining the eligibility of a person applying to register to vote in accordance with any applicable court order and federal law. See 42 U.S.C. § 15483.

Registrars should continue with their list maintenance activities, so long as they fall into one of the above categories.

If you have any additional questions, please contact your Liaison.

EXHIBIT 3

Georgia ends 90-day “black-out” period for voter registration

Kristina Torres - The Atlanta Journal-Constitution
Updated 10:05 a.m. Tuesday, April 26, 2016 Filed in Georgia Politics and Government

0

The Georgia Secretary of State’s Office for years did not process voter forms submitted in the 90 days after a registration deadline, a practice meant to ensure that ineligible voters did not cast a ballot in an election.

No more. The office is ending the practice immediately, saying the 90-day black-out period is no longer needed.

The policy began in an era when voters registered only on paper, and was a way to prevent accidental voting by anyone who missed the deadline. But in an age of electronic record-keeping, the office says its current online system will prevent accidental voting from happening.

Voter advocacy groups including The Lawyers’ Committee for Civil Rights Under Law and the Georgia NAACP cheered the decision, a rare show of support since the groups are often at odds with the office over voter registration issues.

“Because of my office’s work implementing e-government solutions to make elections more efficient, we were able to eliminate voter registration black-out periods,”

EXHIBIT 3

Secretary of State Brian Kemp said of his decision to end the ban. “I am glad that the Lawyers’ Committee and the NAACP can agree with me that this improvement benefits Georgia’s voters.”

Anyone who registers after a deadline still cannot vote in the next election. But allowing the forms to be processed in the interim gives voters more time to correct any problems or answer any questions local officials may have, the groups said, and gets voters ready for the election after that. This year, that could mean the November presidential election.

Today is the deadline to register for Georgia’s May 24 primary election, which features several key congressional and state legislative contests, along with local races.

EXHIBIT 4

GEORGIA DEPARTMENT OF LAW
40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

SAMUEL S. OLENS
ATTORNEY GENERAL

www.law.ga.gov
(404) 656-3300

Writer's Direct Dial:
404-656-7298
Fax 404-657-9932

September 23, 2016

Hon. William C. O'Kelley
Senior Judge, United States District Court
Northern District of Georgia
1942 Richard B. Russell Federal Building and United States Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303-3309

Re: *Georgia State Conf. of the NAACP, et al. v. Brian Kemp*
Civil Action No. 2:16-cv-00219-WCO

Dear Judge O'Kelley,

Pursuant to your request during the scheduling teleconference held on September 14, 2016, the State has reviewed the factual allegations made and requested relief sought in Plaintiffs' Emergency Motion for Preliminary Injunction ("Emergency Motion"), filed on September 14, 2016, to determine what issues could be narrowed or resolved prior to the scheduled hearing on Plaintiffs' Emergency Motion, set for Monday, September 26, 2016. As the Court is aware, neither

EXHIBIT 4

counsel for Secretary of State Brian Kemp nor the Court had time to review either the allegations made, the arguments raised, or the totality of the relief sought in the 500+ page complaint, brief, emergency motion that Plaintiffs filed earlier that morning prior to the Court's scheduling conference.

Plaintiffs prayed for three specific items of injunctive relief in their Emergency Motion, namely that Secretary Kemp:

1) Discontinue the practice of moving applicants from pending to cancelled status when those voters mismatch on the HAVA required data match with the Social Security Administration ("SSA") or the Georgia Department of Drivers Services ("DDS") (the process collectively referred to as "HAVA Match") and fail to respond and cure the information mismatch within 40 days of written notification of that mismatch;

2) Permit applicants whose registration has been cancelled or otherwise not fully processed due to a data mismatch during the HAVA Match process to cast a regular ballot, during the November general election period; and

3) Maintain, preserve, and not destroy any and all records relating to the Georgia's HAVA Match program.

Following the scheduling conference with the Court, counsel and staff for Secretary Kemp began reviewing the allegations made and relief sought in Plaintiffs' Emergency Motion to determine what issues could be resolved prior to the scheduled hearing to reduce the issues potentially facing the Court at the September 26, 2016, hearing. In addition, counsel for Secretary Kemp has engaged in two meet and confer teleconferences with Plaintiffs' counsel, and a third meet and confer has been scheduled that will take place subsequent to the filing of this letter but prior to the scheduled start-time this afternoon for the teleconference with the Court requested by Plaintiffs.

At the start of the first meet and confer teleconference with Plaintiffs' counsel, counsel for Secretary Kemp informed Plaintiffs' counsel that the internal clocking process within the voter database that automatically moved an applicant who failed to match during the HAVA match process from pending to cancelled status if they failed to respond within forty days of written notification has been stopped. The State will not restart that clock without further instruction from the Court or pursuant to agreement with Plaintiffs. That is the entirety of the relief prayed for in item (a) in the Emergency Motion. *See Plaintiffs' Emergency Motion* at p.2.

In addition, at the start of the first meet and confer teleconference with Plaintiffs' counsel, counsel for Secretary Kemp informed Plaintiffs' counsel that the Secretary of State's office is attempting to update the voter registration system so that every applicant who was cancelled for not responding to a notice that there was a non-match with information on file at DDS or SSA from a period of January 1, 2015 to current is moved back into pending status so that they have another opportunity to resolve the issue. This update will allow those applicants to cast a regular (not provisional) ballot in the November election if they come to the polls

and show appropriate identification proving the applicant's identity. In other words, this update will allow all applicants who were cancelled for not responding to the earlier notice an opportunity to cast a regular ballot simply by coming to their polling place and showing identification that is already required by Georgia law. This update will also generate a new letter to all affected applicants informing them of the fact that they could still clear up the non-match issue and cast a regular ballot with appropriate identification. After discussing this solution with Plaintiff's counsel, the Secretary of State's office is attempting to apply the same solution to affected applicants dating back to October 1, 2014. Going back further in time makes the system updates more difficult as brining older data back into a dynamic database raises issues regarding database stability, particularly regarding districting voters.

Any previously-cancelled applicant moved to pending status as a result of the new policy implemented by Secretary Kemp who was previously cancelled due to a data mismatch during the HAVA Match process and who presents to county election officials either prior to or at the time of showing up to vote with the

identification proving identity otherwise required for voting in Georgia will be permitted to vote a regular ballot and the applicant's status will be changed to active in the system once credit for voting is applied. Any voter moved to pending status as a result of the new policy implemented by Secretary Kemp who was previously cancelled due to their records identifying them as a non-citizen would be permitted to vote a provisional ballot with the opportunity to prove their citizenship status and have their provisional ballot counted during the period of time following the election in which any provisional ballot voter has to prove their entitlement to vote. Any applicant who non-matched for citizenship who shows up to the polls with sufficient proof of citizenship status will be permitted to cast a regular ballot if a deputy registrar is available to verify their eligibility; such an applicant would have a status change to active once credit for voting is applied.

Given the delay by Plaintiffs in bringing this action, the scope of the relief sought, the proximity to the November General Election, and the fact that any applicant who falls outside of that lookback period will have failed to cure their registration mismatch after written notification as well as failed to re-register to vote or

otherwise cure their registration status through two federal general election cycles, Secretary Kemp believes that this policy change obviates the need for any emergency relief related to moving any additional applicants prior to this November's General Election. As counsel for Secretary Kemp stated to the court during the September 14, 2016, scheduling teleconference, this is an active database that: 1) supports the only statewide, accessible records of registration information for over 6 million Georgia voters; and 2) is being constantly accessed, updated, and utilized by Georgia election officials for the discharge of their prescribed duties during a critical period of time leading up to the November General Election. *Any* mass data update into a system that large is cause for concern, and one the size and scope that Secretary Kemp has undertaken on his own volition is an order of magnitude larger than any previously undertaken by Georgia election officials outside of a complete system transfer that was both months in the planning and preparation *and* undertaken during a non-federal election year during the summer when the demand on the system was at its lowest, not less than two months out from a federal presidential election when demand on the database is at its highest.

The third prayer for relief in Plaintiffs' Emergency Motion is that Secretary Kemp "maintain, preserve, and not destroy any and all records relating to the Georgia's HAVA Match program." Counsel for Secretary Kemp has provided a written litigation hold notice to Secretary Kemp and his staff which will preserve those records during the pendency of this litigation.

Given the steps that Secretary Kemp has already undertaken, including the implementation of a new process stopping the clock on moving pending applicants into cancelled status after no response to written notification of the failure of the applicant's data to match during the HAVA Match process and the implementation of a move of applicants in cancelled status to pending status if those applicants were placed in cancelled status during the lookback period, Secretary Kemp believes that there is no further basis for this Court to either conduct a hearing on Monday, September 26, 2016, or to enter any order granting the relief sought by Plaintiffs, as all relief, reasonable or otherwise, that could be granted to Plaintiffs

as a result of their Emergency Motion has already been undertaken by Secretary

Kemp.

Respectfully,

/s/ Russell D. Willard

Russell D. Willard
Senior Assistant Attorney General
Georgia Bar No. 760280

cc (by ECF delivery): Counsel for Plaintiffs