

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

DEMOCRATIC PARTY OF GEORGIA,)
INC., DSCC, and WARNOCK FOR)
GEORGIA)

PLAINTIFFS,)

VS.)

STATE OF GEORGIA)

RESPONDENTS.)

CIVIL ACTION FILE NO.
2022CV372734

ORDER GRANTING DECLARATORY
AND INJUNCTIVE RELIEF

Before the Court is the Plaintiffs' Petition For Declaratory and Injunctive Relief, filed November 14, 2022. On that same day, the Plaintiffs' filed an Emergency Motion for Expedited Hearing (hereinafter "motion"). The Court held a hearing on November 18, 2022, during which all parties were represented by counsel.

Having considered the moving papers, arguments of counsel, and references to legal authority, the Court hereby **GRANTS** the Petition For Declaratory and Injunctive Relief and issues an injunction declaring that O.C.G.A. §21-2-385(d)(1) does not specifically prohibit counties from conducting advanced voting on Saturday, November 26, 2022, for a runoff election.

Based on the Court's ruling, counties may provide advance voting on Saturday, November 26, 2022. Further, Defendant is hereby enjoined from interfering in efforts by counties to provide for advance voting on Saturday, November 26, 2022, due to any failure by the board of registrars to comply with the requirement in O.C.G.A. §21-2-385(d)(3) to publish the date, time, and

locations of the availability of advanced voting in those jurisdictions at least seven (7) days before November 26, 2022.

I. Background

The specific and contested language of the statute listed is as follows:

(d)(1) There shall be a period of advance voting that shall commence:

(A) On the fourth Monday immediately prior to each primary or election; and

(B) As soon as possible prior to a runoff from any general primary or election but no later than the second Monday immediately prior to such runoff

and shall end on the Friday immediately prior to each primary, election, or runoff. Voting shall be conducted beginning at 9:00 A.M. and ending at 5:00 P.M. on weekdays, other than observed state holidays, during such period and shall be conducted on the second and third Saturdays during the hours of 9:00 A.M. through 5:00 P.M. and, if the registrar or absentee ballot clerk so chooses, the second Sunday, the third Sunday, or both the second and third Sundays prior to a primary or election during hours determined by the registrar or absentee ballot clerk, but no longer than 7:00 A.M. through 7:00 P.M.; **provided, however, that, if such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary or election beginning at 9:00 A.M. and ending at 5:00 P.M.** Except as otherwise provided in this paragraph, the registrars may extend the hours for voting to permit advance voting from 7:00 A.M. until 7:00 P.M. and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option; provided, however, that voting shall occur only on the days specified

in this paragraph and counties and municipalities shall not be authorized to conduct advance voting on any other days.

O.C.G.A. §21-2-385(d)(1) [Emphasis Added].

This is an issue of apparent first impression for Georgia courts. Specifically, the issue centers around whether O.C.G.A. §21-2-385(d)(1) prohibits counties from conducting in-person advance voting for a runoff election on Saturday, November 26, 2022, based upon an interpretation of this statute that the bar to Saturday advance voting occurring immediately after a state or legal holiday applies to runoff elections.

The other interpretation of the same statute advances a position that Georgia law mandates that advance voting shall commence as soon as possible prior to a runoff from any general primary or election. The proponents of advance voting for Saturday, November 26, 2022, argue that O.C.G.A. §21-2-385(d)(1)'s exception for advance voting on Saturdays falling on or after a holiday applies only to primary and general elections, not runoffs. The proponents of this position further advance their argument by contending that O.C.G.A. §21-2-385(d)(1) creates distinct rules for different categories of elections and refers to them expressly when doing so. They conclude that O.C.G.A. §21-2-385(d)(1)'s absence of a reference to runoff elections is the prevailing interpretation. The Court agrees in this instance.

O.C.G.A. §21-2-385(d)(1) was adopted in 2011 and has a limited statutory history. When the Legislature¹ first added the provision regarding advance voting on Saturday after a holiday, it named all three (3) categories of elections, specifically primary elections, (general) elections, and

¹ In this order, "Legislature" refers to the General Assembly comprised of the State House of Representatives and Senate.

runoff elections. See, 2016 Ga. Laws Act 347 §4.² The Legislature updated this provision one year later and deleted the words “or runoff,” while leaving only “primary or election.” See, 2017 Ga. Laws Act 250 §18.³

Within the context of these two very different interpretations of the same statutory language, the Court recognizes that there is an absence of settled law on this specific issue. The Court also acknowledges that the initial interpretation by certain state actors contemplated the potential for voting on the Saturday following Thanksgiving⁴. Although these statements predate the litigation, they lend insight for purposes of the creation of a public expectation regarding the right to vote on the Saturday after Thanksgiving and may implicate legal estoppel issues.

II. Analysis

The Court finds that Plaintiffs meet the injunctive relief factors, which further support the need for emergency relief. Grossi Consulting, LLC v. Sterling Currency Grp., LLC, 290 Ga. 386, 388, 722 S.E.2d 44, 46 (2012) (explaining that, in ruling on a motion for temporary restraining

² “and provided, further, that, if such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary, election, or runoff.”

³ and provided, further, that, if such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary, or election.

⁴ Ga. Sec’y of the State News Conf. On Election Results, CSPAN at 5:08-5:25 (November 9, 2022), <https://www.c-span.org/video/?524156-1/Georgia-secretary-state-brad-raffensperger-update-senate-runoff-election>.

Tr.: Control of Congress Still Uncertain, Key Races Too Close to Call, CNN (November 9, 2022, 1:00 PM), <https://transcripts.cnn.com/show/se/date/2022-11-09/segment/15>.

order, courts consider whether: “(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest”) (internal quotations omitted). Based upon the pronouncement that Georgia counties will be barred from providing advance voting on Saturday, November 26, 2022. The Court finds that the absence of the Saturday vote will irreparably harm the Plaintiffs, their members, and constituents, and their preferred runoff candidate.

Georgia law specifically requires counties to commence a period of advance voting for runoff elections as soon as possible after a general or primary election. Georgia law equally mandates a period of advance voting. The issue, in this case, revolves around the interpretation of O.C.G.A. §21-2-385(d)(1) and whether the prohibitions on Saturday early voting applies to runoff elections.

The rules of statutory construction are established guidelines that assist the Court in breaking down the intent of the Legislature to analyze a law put under scrutiny. An almost perfect recitation of the general rules of statutory construction can be found in Johnson v. State, 308 Ga. 141 (2020):

As we have explained before, “[w]hen we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant.” *Deal v. Coleman*, 294 Ga. 170, 172 (1) (a), 751 S.E.2d 337 (2013) (citation and punctuation omitted). “To that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language

would.” Id. at 172-173 (1) (a), 751 S.E.2d 337 (citations and punctuation omitted). “The common and customary usages of the words are important, but so is their context.” *Zaldivar v. Prickett*, 297 Ga. 589, 591 (1), 774 S.E.2d 688 (2015) (citation and punctuation omitted). “For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background *145 of the statutory provision in question.” *May v. State*, 295 Ga. 388, 391-392, 761 S.E.2d 38 (2014) (citations omitted).

It is under this lens that the Court must examine this statute. First, immediately after O.C.G.A. §21-2-385(d)(1)(B) the code states, “and shall end on the Friday immediately prior to each primary, election, or runoff.” The use of “primary, election, or runoff” creates a list of items for consideration to be informed by O.C.G.A. §21-2-385(d)(1)(A) and (B). Looking at this provision, the Court views this as a list of three (3) different terms with separate definitions and meanings. This further shows that it was within the contemplation of the Legislature to include the term “runoff” in this statute as a unique event.

Next the Court must look at the specific portion of O.C.G.A. §21-2-385(d)(1) that is under review:

provided, however, that, if such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary or election beginning at 9:00 A.M. and ending at 5:00 P.M.

Here the Court clearly sees the restriction on voting that could potentially preclude Saturday, November 26, 2022, from being a valid day for voting. It is clearly the second Saturday preceding

the runoff election to be held on December 6, 2022. Further, it is immediately preceded by a legal holiday on Thursday (Thanksgiving). The only factor remaining to determine is if this restriction applies to runoff elections and this Court finds that it does not. The reason for this conclusion can be found in the last two lines of the sentence above, “but shall be held on the third Saturday prior to such primary or election.” It was previously established that it was within the contemplation of the Legislature that primary, election, and runoff were distinct terms representing separate ideas, and yet here, the Legislature chooses to only use the words primary or election, thus excluding runoff from its inclusion.

Had the Legislature been so inclined, they could have easily included runoff to continue this pattern of a three-category list but they chose not to. In this instance it is obvious that they **chose** not to because it was previously included in the text of the statute but was later removed. 2016 Ga. Laws Act 347 §4 has the pertinent section of O.C.G.A. §21-2-385(d)(1) drafted to read, “such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary, election, or runoff” which is identical in form of language to the preceding list a few lines above.

A year later, however, the code section was amended via 2017 Ga. Laws Act 250 §18, which specifically eliminated “or runoff” from within the text of that restrictive provision and it has remained removed from all future revisions. “Where a statute is amended to delete a word, it is presumed that the Legislature made the change to effect some purpose, and desired to make a change in the existing law.” Fredrick v. State, 181 Ga. App. 600 (1987). This Court interprets the change the Legislature intended to effect by the removal of “or runoff” as it not be affected by the second Saturday restrictive voting language contained within O.C.G.A. §21-2-385(d)(1).

In their moving papers and during oral argument the State put forward the idea that “runoff” being excluded from within O.C.G.A. §21-2-385(d)(1) simply refers to a continuation of either a primary, or (general) election and was therefore superfluous language and was removed for this reason. The Court disagrees with this position for two distinct reasons. First, as stated above, the Court is required to give meaning to the plain language of the statute. In this instance, there must be a reason that the Legislature used “primary, election, or runoff” previously and then changed it. This is further supported by the inclusion of “primary, election, or runoff” twice in O.C.G.A. §21-2-385(b), once in O.C.G.A. §21-2-385(d)(1), and once in O.C.G.A. §21-2-385(e). Had the inclusion of “runoff” simply been superfluous language, as suggested by the State, it would have been removed from all appearances in O.C.G.A. §21-2-385 and not just that one part in O.C.G.A. §21-2-385(d)(1).

The second reason that the Court disagrees with this position is because a runoff election is not merely a continuation of a primary or (general) election but is in fact it’s own distinct event. In order to even have a runoff take place, a primary or (general) election results must be ratified, bringing to conclusion that vote. Then, should no party reach the Constitutionally required 50% plus one, a runoff election must be held. This shows that there are distinct elements required to initiate a runoff election.

Finally, the State asserts that the reading and interpretation of the Plaintiff would actually preclude any Saturday voting due to the final line of O.C.G.A. §21-2-385(d)(1):

Except as otherwise provided in this paragraph, the registrars may extend the hours for voting to permit advance voting from 7:00 A.M. until 7:00 P.M. and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option; **provided, however, that voting shall occur only on the days specified in this paragraph and**

counties and municipalities shall not be authorized to conduct advance voting on any other days.

O.C.G.A. §21-2-385(d)(1) [Emphasis Added].

This Court, however, disagrees with this interpretation due to the language of O.C.G.A. §21-2-385(d)(2) requiring that “As soon as possible prior to a runoff from any general primary or election but no later than the second Monday immediately prior to such runoff.” The length of time that a runoff election actually takes place is shortened compared to a primary or (general) election by its very nature. The runoff election cannot be called or scheduled before the previous election results are ratified and there must be a final date for the election prior to the date the candidate must take office. This necessitates a short window for a runoff election to take place. For the advance voting to take place “as soon as possible” Saturday voting should be considered an essential component.

III. Conclusion

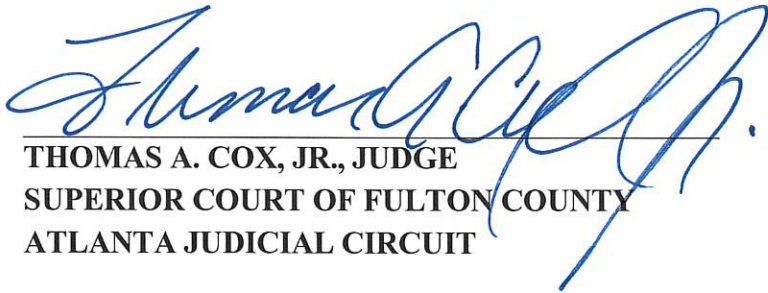
Based upon the foregoing, the Court finds that Plaintiffs and their members and constituents will suffer immediate and irreparable harm absent Declaratory and/or Injunctive relief, based upon the pronouncement that Georgia counties will be barred from providing advanced voting on Saturday, November 26, 2022. The Court finds that the absence of the Saturday vote will irreparably harm the Plaintiffs, their members, and constituents, and their preferred runoff candidate.

The Court hereby **GRANTS** the Petition For Declaratory and Injunctive Relief and issues an injunction declaring that O.C.G.A. §21-2-385(d)(1) does not explicitly prohibit counties from conducting advance voting on Saturday, November 26, 2022, and further enjoins Defendant and

its agents from interfering in counties' efforts to do so or preventing any votes cast on that day from being counted or included in the certified election results.

Defendant and its agents are further enjoined from interfering in any effort by Georgia counties to provide advance voting on Saturday, November 26, 2022, due to any failure by the board of registrars to comply with the requirement in O.C.G.A. §21-2-385(d)(3) to publish the date, time, and locations of the availability of advanced voting in their jurisdiction at least 7 days prior to November 26, 2022.

SO ORDERED this 18th day of November 2022.



THOMAS A. COX, JR., JUDGE
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT