



Greg G. Allen, Clerk
Forsyth County, Georgia

IN THE SUPERIOR COURT OF FORSYTH COUNTY
STATE OF GEORGIA

DEMOCRATIC PARTY OF GEORGIA, and
LIZ BARRETT,

Plaintiffs,

v.

FORSYTH COUNTY BOARD OF
ELECTIONS AND REGISTRATION, and
MANDI B. SMITH, in her official capacity as
Elections Director of the Forsyth County Board
of Elections and Registration,

Defendants.

Civil Action No. _____

Judge _____

IMMEDIATE HEARING REQUESTED

**PLAINTIFFS' EMERGENCY VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

The Democratic Party of Georgia (“DPG”) and Liz Barrett (“Elector Plaintiff”) (collectively, “Plaintiffs”) file this emergency complaint against the Forsyth County Board of Elections and Registration (the “Board of Elections”) and Forsyth County Elections Director Mandi B. Smith (“Smith,” and, together with the Board of Elections, “Defendants”) seeking enforcement of Elector Inspection Law, O.C.G.A § 21-2-72, which requires the *immediate* public inspection of any and all election related public records, including but not limited to, “registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in official custody, except the contents of voting machines,” as well as under the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.* (the “Open Records Act”).

INTRODUCTION

1. Plaintiffs bring this action to compel Defendants to *immediately* provide requested public election records related to provisional ballots cast on election day in Forsyth County in the

ongoing general election (the “Requested Public Election Records”). Plaintiffs seek these records so that the DPG may notify and assist eligible, registered Georgia voters, including the DPG’s members and constituents, of the need to cure any deficiencies in their ballots before the **November 6, 2020 cure deadline** to ensure that these voters’ ballots are counted.

2. On November 4, 2020, Plaintiff DPG sent a public records request to the County, asking to be provided immediate access to the Requested Public Election Records pursuant to the Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, and alerting the County that someone would be contacting them and seeking records pursuant to the Elector Inspection Law, O.C.G.A. § 21-2-72. DPG explained that it would need the requested records immediately, given the short cure period for provisional ballots.

3. On that same day, Plaintiff DPG also had an individual elector contact the County and requested the same provisional ballot records pursuant to O.C.G.A. § 21-2-72.

4. On November 5, 2020, Elector Plaintiff went to Defendants’ office and requested the records in person, pursuant to O.C.G.A. § 21-2-72, but they were not provided with the records.

5. Under Georgia law, an elector who is a resident of a county is entitled to the immediate inspection of any and all election related public records in that county including but not limited to: “registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in official custody, except the contents of voting machines.” O.C.G.A § 21-2-72.

6. Georgia law further and separately requires that an agency must respond to a records request within three business days.

7. DPG and Elector Plaintiff now seek an emergency interlocutory and permanent injunction to prevent irreparable harm to themselves, as well as to DPG’s members, and thousands

of Georgia voters who have attempted to vote absentee or provisional ballot in this election, but whose ballots will be rejected if they are not cured. An interlocutory and permanent injunction supports the important public interests of enforcing open government laws and preventing disenfranchisement.

PARTIES, JURISDICTION, AND VENUE

8. Plaintiff DPG is a State committee, as defined by 52 U.S.C. § 30101(15) and a Georgia political party, as defined by O.C.G.A. § 21-2-23(25). DPG is dedicated to electing Democratic Party candidates to public office throughout Georgia, including to the offices of the President of the United States and the United States Senate. To advance its mission, DPG is also dedicated to ensuring that all ballots cast for Democratic Party candidates are counted. DPG has thousands of members and constituents who vote by absentee ballot, as well as many members who upon information and belief were required to vote a provisional ballot in the 2020 General Election, and it is dedicated to helping them ensure their mail and provisional ballots are counted and they are fully enfranchised.

9. If DPG is not provided immediate access to the Requested Public Election Records, it will be unable to assist these eligible voters, including its members and constituents, in making sure that their ballots count in the November 2020 General Election. Without the ability to carry out this crucial aspect of its organizational mission, DPG's mission will be harmed, and many of its members will be disenfranchised.

10. Liz Barrett is a resident of and qualified elector in Forsyth County.

11. Defendant Forsyth County Board of Elections and Registration is an "agency" as defined by O.G.C.A. §§ 50-18-70 and 50-14-1. The county boards of elections have the powers and duties of the election superintendent relating to the conduct of primaries and general elections,

including the issuance of provisional ballots. O.C.G.A. § 21-2-40. Georgia law delegates significant responsibilities to election superintendents. *See generally* O.C.G.A. § 21-2-70. Moreover, as a “superintendent” under O.C.G.A. § 21-2-72, it is required to make the Requested Public Election Records available for immediate public inspection at any time during business hours. As such, the Board of Elections maintains and is the proper party to provide the requested provisional ballot lists.

12. Defendant Mandi B. Smith is the Elections Director for Forsyth County and is ultimately responsible for ensuring that the Board of Elections complies with its statutory obligations under the Open Records Act and O.C.G.A. § 21-2-72.

JURISDICTION AND VENUE

13. This action arises under the laws and constitutions of the State of Georgia and the United States, and this Court has jurisdiction over such actions.

14. This Court has jurisdiction to enforce compliance with the Open Records Act through legal and equitable means, O.G.C.A. § 50-18-73(a), and to award attorneys’ fees and expenses for violations of the Open Records Act, O.G.C.A. § 50-18-73(b).

15. Venue is proper under O.C.G.A. § 9-10-30, because the actions complained of occurred in part or in whole in this County.

16. Finally, this Court has specific *emergency* jurisdiction over enforcement of the Elector Inspection Law, O.C.G.A § 21-2-72, pursuant to O.C.G.A. § 21-2-412, which provides that

[a]t least one judge of the superior court of each judicial circuit shall be available in his or her circuit on the day of each primary or election from 7:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, until 10:00 P.M. eastern standard time or eastern daylight time, whichever is applicable, and so long thereafter as it may appear that the process of such court will be necessary to secure a free, fair, and correct computation and canvass of votes cast at such primary or

election. During such period the court shall issue process, if necessary, to enforce and secure compliance with the primary or election laws and shall decide such other matters pertaining to the primary or election as may be necessary to carry out the intent of this chapter.

O.C.G.A. § 21-2-412.

GENERAL ALLEGATIONS

A. Provisional voters are extremely vulnerable to having their ballots rejected for curable defects absent relief.

17. Voters are required to cast provisional ballots for various reasons. For example, any person who “presents himself or herself at a polling place, absentee polling place, or registration office in his or her county of residence in this state for the purpose of casting a ballot in a primary or election stating a good faith belief that he or she has timely registered to vote in such county of residence in such primary or election and the person's name does not appear on the list of registered electors, the person shall be entitled to cast a provisional ballot in his or her county of residence[.]”

O.C.G.A. § 21-2-418.

18. Provisional ballots are also provided to voters who appear at their polling place without an acceptable form of identification, O.C.G.A. § 21-2-417(a)-(c); *see also* Ga. Comp. R. & Regs. § 183-1-12-.18(5), or voters in federal elections who cast their ballots after the usual time by which polls close at a polling place that was remained open later pursuant to a court order, O.C.G.A. § 21-2-418(d); Ga. Comp. R. & Regs. § 183-1-12-.18(6).

19. On the day after Election Day, each county of registrars receives the documents from the polling place (i.e., voter certificates and registration cards) completed by each provisional voter. *See* O.C.G.A. § 21-2-419(b); Ga. Comp. R. & Regs. § 183-1-12-.18(11). The registrars must then immediately examine these documents and, based on a review of all available voter registration documentation (including the registration information the voter includes on the

documents), determine whether the person casting the provisional ballot was entitled to vote in the election.

20. While some provisional ballots are “self-curing,” to the extent that the voter need not take any additional steps, voters who were required to cast a provisional ballot based on an inability to present acceptable identification, for example, must cure their provisional ballot by providing acceptable identification by no later than November 6. *See* O.C.G.A. § 21-2-417(c); O.C.G.A. § 21-2-418(a)–(b).

21. DPG and Elector Plaintiff believe that thousands of provisional ballots have been or will be rejected in the 2020 General Election on the basis of curable defects.

B. DPG properly requested immediate access to the Requested Public Election Records to help voters cure their provisional ballots and make sure their votes count.

22. DPG has many members and constituents who are required to cast a provisional ballot for various reasons. To ensure all eligible Georgians’ votes are counted, and to help its members and constituents ensure that their votes count, DPG contacts voters whose mail or provisional ballots have been rejected by Board of Elections officials. DPG then informs the voters of the deficiency and tells them how to “cure” their ballots to make sure they are counted.

23. Specifically, volunteers from DPG call voters, clearly identify themselves, ask if the voter already knows about the deficiency, and then provide information on steps the voter can take to cure the deficiency. In some instances, volunteers also go door-to-door, dropping off necessary cure affidavits and information on how to cure directly to voters. Volunteers work carefully to provide accurate information to voters about how they can cure their ballots. Absent this assistance, many voters never learn that they can cure their ballots, or how to do so successfully. This is particularly true of voters who are new to absentee voting or voting in general,

as they are more likely to inadvertently make curable errors as they are learning to navigate the voting process.

24. Accordingly, on November 4, 2020, the day after Election Day, DPG sent a public records request to the County, asking to be provided immediate access to the Requested Public Election Records pursuant to the Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, and alerting the County that someone would be contacting them and seeking records pursuant to the Elector Inspection Law, O.C.G.A. § 21-2-72. DPG explained that it would need the requested records immediately, given the short cure period for provisional ballots.

25. On that same day, Elector Plaintiff also contacted the County and requested the same provisional ballot records pursuant to O.C.G.A. § 21-2-72.

26. On November 5, 2020, Elector Plaintiff went to Defendants' office and requested the records in person, pursuant to O.C.G.A. § 21-2-72, but they were not provided with the records.

27. On information and belief, the Board of Elections lacks sufficient resources to timely notify electors whose ballots have been rejected of the actions necessary to cure their ballots. Providing this information to DPG (or Elector Plaintiff who will provide it to DPG) increases the chances that voters will receive this information in time to cure their ballots as DPG can also make multiple attempts to contact voters.

28. DPG properly made its request for immediate access to the Requested Public Election Records on the afternoon of November 4. A copy of that request is attached hereto as Exhibit A.

29. Defendants failed to timely respond to the request or to provide immediate access to such records as required by the Elector Inspection Law, O.C.G.A. § 21-2-72.

30. If DPG does not receive the records **today**, it will be unable to carry out its organizational mission of helping thousands of eligible Georgia voters—including its own members and constituents—cure their ballots so that their votes count. The ballot data will lose almost all practical value if not obtained with enough time to contact eligible Georgia voters.

31. Moreover, many eligible, registered voters—including DPG’s members and constituents—will be disenfranchised because their ballots will not be cured.

32. Likewise, Elector Plaintiff will be deprived of their statutory right to immediate inspection of these documents.

COUNT I
Violation of the Elector Inspection Law, O.C.G.A § 21-2-72

33. Plaintiffs hereby incorporates all prior paragraphs as if fully stated herein.

34. Under the Elector Inspection Law, O.C.G.A § 21-2-72, Defendants are required to provide for the *immediate* public inspection of any and all election related public records, including but not limited to, “registration statements, nomination petitions, affidavits, certificates, tally papers, returns, accounts, contracts, reports, and other documents in official custody, except the contents of voting machines.”

35. DPG gave Defendants notice that a request pursuant to § 21-2-72 would be made on November 4, 2020.

36. Elector Plaintiff contacted Defendants on that same day and made a request pursuant to § 21-2-72.

37. On November 5, 2020, after not receiving the requested records, Elector Plaintiff went to Defendants’ office and requested the provisional ballot records in person.

38. Elector Plaintiff was denied their right to immediately review the records.

39. Defendants have refused to follow this statutory obligation by withholding such information.

COUNT II
Violation of the Open Records Act

40. DPG hereby incorporates all prior paragraphs as if fully stated herein.

41. Through the Open Records Act, the Georgia General Assembly has declared that “the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions.” O.G.C.A. § 50-18-70.

42. The Georgia General Assembly has further declared “that there is a strong presumption that public records should be made available for public inspection without delay.” *Id.*

43. Relatedly, Georgia law specifically makes clear that elections officials must make records related to elections public; failure to do so is a misdemeanor. O.C.G.A. § 21-2-585.

44. The Open Records Act requires government agencies, including the Defendant Board of Elections, to provide “all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request.” O.C.G.A. § 50-18-71(b)(1)(A). “In those instances where some, but not all, of the responsive records are available within three business days, an agency shall make available within that period those records that can be located and produced.” *Id.* If the agency cannot produce records within three business days of receipt of the request, “the agency shall, within such time period, provide the requester with a description of such records and a timeline for when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable.” *Id.*

45. The Defendants have violated the Open Records Act by failing to produce any documents or provide a timeline for production within the statutory time period. That is, given the nature of the records and the reason that DPG needs them, Defendants have failed to produce them in a “reasonable” amount of time, which would necessarily be before the end of the cure period on November 6, 2020.

46. If Defendants do not produce responsive documents immediately, DPG, its candidates, and Georgia voters will suffer irreparable injury. Indeed, the Party will be unable to complete its mission of helping all Georgia voters, and particularly its members and constituents, cure their ballots, and many eligible, registered Georgia voters will not be informed of the need to cure their ballots. As a result, these voters will be disenfranchised. This threatened harm outweighs any threatened harm to the Defendants that would arise by requiring it to comply with its obligations under the Open Records Act, and particularly so given that providing this information entails little to no administrative burden.

47. This Court should enforce compliance with the Georgia Open Records Act by entering an interlocutory and final injunction under O.C.G.A. § 50-18-73(a) requiring Defendants to immediately produce all records responsive to the Records Request. This injunction will serve the important public interests in open government, public participation, and protecting the right to vote.

COUNT III
Attorneys’ Fees and Expenses

48. Plaintiffs hereby incorporates all prior paragraphs as if fully stated herein.

49. As detailed above, the Defendants have failed to provide responsive records or a timeline for doing so and has provided no reason for its failure.

50. By refusing to respond as required by the Open Records Act, the Defendants have left DPG with no way to obtain the requested records other than filing this lawsuit.

51. Defendants have acted “without substantial justification” in refusing to produce documents or otherwise respond to the Records Request. Accordingly, Defendants are liable for DPG’s “reasonable attorney’s fees and other litigation costs reasonably incurred” in this action. O.C.G.A. § 50-18-73(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court award the following relief:

1. Enter an interlocutory and permanent injunction requiring Defendants to immediately comply with Elector Inspection Law, O.C.G.A § 21-2-72, and also the Georgia Open Records Act, and immediately produce all documents responsive to the Records Request; and
2. Award DPG its reasonable attorneys’ fees, expenses, and other litigation costs incurred in bringing this action; and
3. Any other relief this Court deems just.

Respectfully submitted, this 5th day of November 2020.

KREVOLIN AND HORST, LLC

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EXHIBIT A

November 4, 2020

VIA EMAIL

County Board of Elections
Attn: Custodian of Records

Re: Request Pursuant to Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*

To Whom It May Concern:

Pursuant to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, on behalf of myself and the Democratic Party of Georgia, I request the following information, documents, and data in connection with the November 3, 2020 election:

1. Copies of any and all records regarding or relating to each voter who voted a provisional ballot, including but not limited to:
 - a) Full Name
 - b) The reason the provisional ballot was issued
 - c) State or county voter ID numbers, as applicable
 - d) Date of birth
 - e) Residential address (including street address, city, and zip code)
 - f) Phone number

I request that you produce all of the above records immediately. If you cannot produce the records immediately, I request that you make them available for inspection by an elector of your county at your office today, Wednesday, November 4, Pursuant to O.C.G.A. § 21-2-72. A representative will be sent to your office to inspect these records today.

We will accept copies produced on paper or in electronic format (*e.g.*, .txt, .csv, .xls). If documents, information, or data can be emailed, please email them to **ORR@georgiademocrat.org**. If the requested records are too voluminous to transmit by email but can be copied onto an electronic storage medium, please tell me immediately and I will provide you with blank storage media suitable for copying. If documents, information, or data cannot be emailed, please let me know either via email and I will send someone to your office to pick them up. Please provide me with documents in response to each request as soon as they are ready without waiting to complete your response to other requests.

This request does not seek any personal information not included in the publicly-disclosed state registration records. If you intend to deny this request in whole or part, please advise me in writing of the particular statutory exemption upon which you are relying or other basis for your denial, as required by O.C.G.A. § 50-18-71 and -72. Please produce all records you can provide, even if you conclude that you are unable to comply with certain parts of the request, as required by O.C.G.A. § 50-18-71.

I request that you begin producing these records or making them available for inspection before receipt of payment.

If you have any questions or concerns, please do not hesitate to email me at ORR@georgiademocrat.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alice C.C. Huling".

Alice C.C. Huling

ORR@georgiademocrat.org