

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

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

Plaintiffs,

v.

THE STATE OF GEORGIA,

Defendant.

Civil Action No. \_\_\_\_\_

EMERGENCY RELIEF REQUESTED

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
THEIR EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER  
AND/OR INTERLOCUTORY INJUNCTION**

**I. INTRODUCTION**

The December 6, 2022 runoff election for one of Georgia's seats in the U.S. Senate is rapidly approaching. This year, election officials will have just four weeks to certify the results of the November general election and prepare for the runoff to ensure that Georgians can begin advance voting "as soon as possible." O.C.G.A. § 21-2-385(d)(1)(B). This significantly shortened period leaves very little time for early voting, which Georgia law requires counties to provide. Yet, without any legal basis, the Secretary of State is attempting to restrict the early-voting window even further.

For the upcoming runoff, O.C.G.A. § 21-2-385(d)(1)(B) requires counties to commence "a period of advance voting" as "soon as possible," but in any event "no later than the second Monday immediately prior to such runoff," which is November 28. The Secretary of State has nonetheless taken the unsupportable position that, despite the law's command that counties begin offering advance voting "as soon as possible," *id.*, counties are barred from opening the polls on the

Saturday after Thanksgiving. The purported basis for this directive is the second sentence of § 21-2-385(d)(1), which states that (1) early voting must be conducted on the second and third Saturday before a *primary or general election*, and (2) when the second Saturday before the day of a *primary or general election* falls on a holiday or immediately after a holiday, counties must conduct mandatory advance voting on the third Saturday before Election Day. In other words, § 21-2-385(d)(1) guarantees early voting on specific weekend days for primary and general elections and imposes conditions on that mandate—none of which apply to runoffs.

Just last week, the State’s two highest election officers acknowledged publicly that counties may conduct early voting on November 26, the Saturday after Thanksgiving. Secretary of State Brad Raffensperger appeared on national television on November 9 and stated that he “anticipate[s] that some counties may likely have Saturday voting following Thanksgiving.”<sup>1</sup> That same day, his office’s Chief Operating Officer, Gabriel Sterling, appeared on a different national news network and explained that counties could open their polls to voters on the Saturday after Thanksgiving “if they so choose.”<sup>2</sup> Yet, just three days later, the Secretary reversed course, distributing a bulletin informing counties that they were *not* permitted to hold advance voting on November 26 (the “November 12 Bulletin”).

Because the November 12 Bulletin is premised on a plainly incorrect reading of the law, and because nothing in Georgia law stands in the way of counties holding advance voting on Saturday, November 26, Georgia is unlawfully restricting the already-precious number of early voting days to which voters will have access in the upcoming runoff. With just three weeks

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

<sup>2</sup> *Tr.: Control of Congress Still Uncertain, Key Races Too Close to Call*, CNN (Nov. 9, 2022, 1:00PM), <https://transcripts.cnn.com/show/se/date/2022-11-09/segment/15>.

remaining until the runoff, this unlawful restriction must be remedied immediately. Plaintiffs are thus entitled to emergency injunctive relief declaring that advance voting may occur on Saturday, November 26, and prohibiting Defendant from interfering with counties' attempts to do so.

## II. BACKGROUND

Georgia law requires that its members of Congress be elected by a majority of the vote. O.C.G.A. § 21-2-501(a)(1). If no candidate wins a majority of the vote, the two candidates who received the most votes in the general election must compete in a runoff. *Id.* That runoff “shall be held on the twenty-eighth day after the day of holding the preceding general or special primary or general or special election.” *Id.* § 21-2-501(a)(1).

On November 8, 2022, Georgia held an election for one of its seats in the U.S. Senate. The Democratic nominee in the race was incumbent Senator Raphael Warnock, and the Republican nominee was Herschel Walker. Senator Warnock and Mr. Walker were the top two finishers in the November 8 election for the U.S. Senate seat, with neither receiving a majority of the vote. As a result, those two candidates will now proceed to a December 6 runoff.

The day after the general election, Secretary Raffensperger stated in an appearance on national television that he anticipated that “some counties may likely have Saturday voting following Thanksgiving,” and that his office was working with counties to ensure that their “voters can make the best plans.”<sup>3</sup> A few minutes later, he asserted the same, noting that in addition to the mandated five days of advance voting, “plus most likely a Saturday,”<sup>4</sup> which, given that § 21-2-385(d)(1) prohibits advance voting on the Saturday before Election Day, could only be a reference to Saturday, November 26. Secretary of State’s Office Chief Operating Officer Gabriel Sterling similarly stated that day on CNN that “[t]here’s a very good possibility that we’ll probably have

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<sup>3</sup> CSPAN, *supra* note 1.

<sup>4</sup> *Id.* at 8:18–27.

voting on Saturday, November 26th, in many of the counties if they so choose and we're planning for that right now."<sup>5</sup>

Just three days later, the Secretary's Office quietly reversed course. On November 12, 2022, Blake Evans, the Director of the Elections Division of the Secretary of State's Office, issued an "official election bulletin" addressed to county election officials and county registrars. *See* Ex. 1 ("November 12 Bulletin"). The subject line of the November 12 Bulletin reads "Certification Target for General Election and Advance Voting for December 6th Runoff." *Id.* With respect to advance voting, the November 12 Bulletin states that "[p]ursuant to O.C.G.A. 21-2-385(d)(1)(B), Advance Voting for the December 6th general election runoff ***must begin as soon as possible prior to the runoff*** and no later than Monday, November 28th." *Id.* (emphasis added). However, the November 12 Bulletin also instructs:

Pursuant to O.C.G.A. 21-2-385(d)(1), ***Advance Voting cannot occur on Thursday, November 24th (Thanksgiving Day), Friday, November 25th (Observance of State Holiday 1), or Saturday, November 26th.*** Advanced Voting on Saturday, November 26th is prohibited by OCGA 21-2-385(d)(1), which states that if the second Saturday before the runoff follows a Thursday or Friday that is a state holiday, voting on that Saturday is not allowed.

*Id.* (emphases added). The remainder of the Bulletin discusses, in relevant part, two tasks that counties must perform prior to beginning advance voting. First, citing § 21-2-385(d)(3), it explained that counties must publish, "no later than seven days prior to beginning [advance] voting," the "dates, times, and locations" where advance voting will occur. Second, citing § 21-2-379.25(c), the Bulletin noted that at least three days prior to the beginning of advance voting, counties "must also commence Logic & Accuracy testing of equipment to be used in the runoff."

The November 12 Bulletin directly contradicts the statements made by Secretary Raffensperger and the Secretary's Office's Chief Operation Officer just three days prior, on

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<sup>5</sup> CNN, *supra* note 2.

November 9. This sharp, inexplicable, and unsupportable reversal threatens to severely harm Plaintiffs here—the Democratic Party of Georgia, DSCC, and Warnock for Georgia—organizations that are actively working to elect Senator Warnock in the upcoming December 6 runoff. Ex. 2 ¶¶ 3–8; Ex. 3 ¶¶ 3–8; Ex. 4 ¶¶ 3–8. They have collectively spent millions of dollars, and will continue to spend additional money, to achieve this goal. *Id.* They bring this suit on behalf of themselves as well as their members and constituents whose ability to participate in advance voting will be significantly curtailed if counties are prevented from opening polls on November 26.

### III. ARGUMENT

Plaintiffs are entitled to a temporary restraining order because “(1) there is a substantial threat [they] will suffer irreparable injury if the injunction is not granted”; (2) that injury “outweighs the threatened harm that the injunction may do to” Defendant; (3) “there is a substantial likelihood that [Plaintiffs] will prevail on the merits” and (4) relief “will not disserve the public interest.” *Grossi Consulting, LLC v. Sterling Currency Grp., LLC*, 290 Ga. 386, 388 (2012) (internal quotations omitted). They are similarly entitled to an interlocutory injunction, for which the court considers the same factors. *See SRB Inv. Serv., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 5 (2011) (listing same factors when considering interlocutory injunction).

Because all the factors weigh heavily in favor of relief, and time is of the essence, the Court should immediately declare that O.C.G.A. § 21-2-385(d)(1) does not prohibit counties from conducting in-person advance voting on November 26 and enjoining Defendant and its agents from instructing counties otherwise or interfering with counties’ attempts to provide advance voting on that date. *See* O.C.G.A. §§ 9-4-2, 9-4-3, 9-11-65 (providing the Court authority to provide declaratory and injunctive relief under such circumstances).

**A. Plaintiffs are likely to succeed on the merits.**

Plaintiffs are likely to succeed on the merits of their claims because O.C.G.A. § 21-2-385(d)(1) plainly permits counties to start early voting for the runoff as soon as possible, including on the Saturday after Thanksgiving, and Defendant’s attempt to prevent counties from doing so—as demonstrated by the Secretary’s November 12 Bulletin—is unlawful.

Georgia law mandates that “advance voting . . . shall commence . . . [a]s 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.” O.C.G.A. § 21-2-385(d)(1)(B) (emphasis added). Counties are therefore free to hold advance voting days for runoffs as soon as practicable after a general election, but in no event later than the second Monday prior to the runoff. Nothing in that text precludes a county from exercising its discretion to allow advance voting on the Saturday following Thanksgiving, which will oftentimes be the second Saturday prior to a runoff election under § 21-2-385(d)(1)(B). The Secretary apparently agreed with this clear reading of the statutory text until quite recently, acknowledging on television mere days ago that “some counties may likely have Saturday voting following Thanksgiving,” offering many Georgia voters five mandated days of advance voting “plus most likely a Saturday” in many counties.<sup>6</sup> Gabe Sterling, Raffensperger’s Chief Operating Officer, echoed this same understanding of Georgia law. *See supra* Section II.

The Secretary’s office has now reversed course and, pointing to the second sentence of § 21-2-385(d)(1)(B), insists that counties are *prohibited* from permitting advance voting on the second Saturday prior to the December 6 runoff. Ex. 1. But the Secretary’s newfound interpretation runs headlong into the statutory text, which expressly applies only to primary or general elections,

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<sup>6</sup> *See supra* nn. 1, 2.

and not runoffs. The sentence reads in full:

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.

O.C.G.A. § 21-2-385(d)(1)(B) (emphases added).

As the emphasized portions of the language provided above make clear, § 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*. That distinction is not an accident. In the very same statutory provision, the General Assembly made distinctions among three categories of elections: (1) a primary election (referred to as a "primary"); (2) a general election (referred to as an "election," *see id.* § 21-2-2(5) (defining "election" as a "general or special election and not . . . a primary or special primary")); and (3) a runoff, *id.* § 21-2-385(d)(1)(B)). Section 21-2-385(d)(1) creates distinct rules for these different categories of elections and refers to them *expressly* when doing so. For example, advance voting must begin the "fourth Monday immediately prior" to a primary or general election; for runoffs, however, advance voting must instead begin as "soon as possible . . . but no later than the second Monday" prior to the election.

Section 21-2-385(d)(1)'s express delineation between different kinds of elections, and the different rules that apply to them, makes "clear that the legislature knew how to specify" rules that applied to runoffs when it so desired. *Avila v. State*, 333 Ga. App. 66, 70 (2015). Yet, unlike at

other points in the statute, the Legislature chose to refer *specifically* to a “primary or election”—but *not* to a “runoff”—when drafting the sentence the Secretary’s office relies upon to ban voting on Saturday, November 26. The Secretary’s interpretation in the November 12 Bulletin improperly reads into that sentence the word “runoff.” Indeed, the use of the term elsewhere in the same statute shows that its decision not to do so in the relevant sentence of § 21-2-385(d)(1) must be respected as “a matter of considered choice.” *Citibank (S.D.), N.A. v. Graham*, 315 Ga. App. 120, 122 (2012); *see also Allen v. Wright*, 282 Ga. 9, 13–14 (2007) (“Georgia law provides that the express mention of one thing in an Act or statute implies the exclusion of all other things.” (quoting *Abdulkadir v. State*, 279 Ga. 122, 123 (2005))).

Section 21-2-385(d)(1)’s statutory history only further confirms that the Secretary’s interpretation is wrong. When the General Assembly in 2016 first added the provision regarding advance voting on the Saturday after a holiday, it named all three categories of elections, stating that the provision applied during a “primary, election, ***or runoff***.” 2016 Ga. Laws Act 347 § 4 (emphasis added). Just one year later, the legislature updated the provision, deliberately deleting the words “or runoff,” leaving only “primary or election.” 2017 Ga. Laws Act 250 § 18.

The November 12 Bulletin’s position is further undercut by its refusal to follow its own interpretation of § 21-2-385(d)(1) through to its natural conclusion. If the second sentence of § 21-2-385(d)(1)(B) applies to runoffs—despite only referring to “a primary or election”—then it would mandate that all counties in Georgia “***shall*** . . . conduct [in-person advance voting] on the second and third Saturdays” prior to the December 6 runoff, subject to the holiday exception. Put another way, if the sentence’s *prohibition* on advance voting on a second Saturday after a holiday applies to runoffs, so too must its *command* that advance voting be held on the second and third Saturday in the first place. The Secretary’s reading applies an exception to required Saturday voting found



in the second clause of the sentence but ignores the first clause that mandates Saturday voting to begin with. That is nonsensical and not how statutes are read in Georgia. *See, e.g., West v. City of Albany*, 300 Ga. 743, 745 (2017) (noting “courts do not construe one subsection of a statute in isolation from another” but instead must “consider the entire scheme of the statute” to “give sensible and intelligent effect to all of its provisions”) (citation omitted).

In sum, Plaintiffs are ultimately likely to succeed on their claims for declaratory and injunctive relief because Defendant’s newfound interpretation of the law is unsupported by the Legislature’s chosen text. Instead, § 21-2-385(d)(1) compels counties to move as soon as practicable to provide advance voting in runoffs and places no limitation on doing so in providing such advance voting on the second Saturday prior to a runoff.

**B. Plaintiffs will suffer irreparable injury absent the relief requested.**

Plaintiffs and their members and constituents will suffer immediate and irreparable harm absent a temporary restraining order and/or interlocutory injunction. Absent immediate relief from this Court, Georgia counties will be unlawfully barred from providing advance voting on all days permitted by Georgia law—including Saturday, November 26—which will in turn irreparably harm Plaintiffs, their members and constituents, and their preferred runoff candidate. As Secretary Raffensperger himself anticipated on November 9, some counties will likely provide advance voting on Saturday, November 26 if they are permitted to do so. *See supra* Section II. Plaintiffs’ members and constituents are likely to avail themselves of this added advance-voting day because there is scant time for Georgians to vote in advance of the December 6, 2022 runoff election. Having told Georgians that their counties may allow them to vote on the Saturday after Thanksgiving, the Secretary may not now strip away that option in contravention of Georgia law.

The Secretary’s attempt to restrict Georgians’ ability to participate in advance voting will irreparably harm Plaintiffs’ members and constituents, as “[c]ourts routinely deem restrictions on

fundamental voting rights irreparable injury.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *see also Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (“A restriction on the fundamental right to vote [] constitutes irreparable injury.”). Plaintiffs’ members and constituents will lose a clear legal right to vote during the full period of advance voting to which they are entitled, which in turn impedes Plaintiffs’ efforts to increase turnout for the runoff and elect the candidate of their choice. *See Ga. Coal. for the People’s Agenda v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018) (finding unlawful obstacles to organization’s voter-mobilization efforts would cause it to “suffer irreparable injury”). Accordingly, only an immediate order declaring that counties may conduct advance voting on November 26 and an injunction preventing Defendant from limiting counties’ ability to do so will prevent irreparable injury.

**C. The threatened irreparable harm to Plaintiffs far outweighs any harm Defendant might suffer by being forced to comply with Georgia law.**

In marked contrast to the irreparable denial of early voting opportunities that Plaintiffs’ members and constituents will face without court intervention, injunctive relief will cause no harm to Defendant whatsoever. The State has no legitimate interest in preventing qualified voters from availing themselves of a voting opportunity allowed under Georgia law and provided by their respective counties pursuant to § 21-2-385(d)(1)’s command that counties must begin advance voting for the runoff “as soon as possible.” The relief Plaintiffs seek will not even impose an administrative burden on Defendant, who will merely have to refrain from unlawfully blocking the efforts of local election officials seeking to provide an additional day of advance voting. Any actual burden of conducting advance voting on November 26 would thus be borne by individual counties that choose to open the polls on that day. And even these burdens provide no counterweight to the harm that Plaintiffs and their members and constituents will face in the absence of relief.

**D. The equities and public interest heavily favor immediate relief.**

The relief that Plaintiffs seek is squarely in the public interest. It will ensure that Georgia voters are not denied access to advance voting where counties would otherwise provide it. *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964) (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society.”); *Burdick v. Takushi*, 504 U.S. 428, 433 (“It is beyond cavil that voting is of the most fundamental significance under our constitutional structure.”) (internal quotation marks and citation omitted). On the other hand, barring voters from voting in-person on November 26 due to the vagaries of the holiday calendar—and over the wishes of local officials who had planned to provide such voting opportunities in accordance with Georgia law—will subvert the most fundamental public policy of our political system.

**IV. CONCLUSION**

The Court should grant a temporary restraining order and/or interlocutory injunction declaring that O.C.G.A. § 21-2-385(d)(1) does not prohibit counties from conducting advance voting on November 26 and enjoining 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 should further be enjoined from interfering in any effort by the counties to provide advance voting on Saturday, November 26 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 advance voting in its jurisdiction at least seven days prior to November 26.

Respectfully submitted on this 14th day of November, 2022.

**KREVOLIN & HORTS, LLC**

/s/ Adam M. Sparks

Joyce Gist Lewis

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*\* Pro Hac Vice application forthcoming  
Counsel for Plaintiff*

# Exhibit 1



## OFFICIAL ELECTION BULLETIN

November 12, 2022

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**TO: County Election Officials and County Registrars**

**FROM: Blake Evans, Elections Division Director**

**RE: Certification Target for General Election and Advance Voting for December 6<sup>th</sup> Runoff.**

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The Secretary of State's Office is targeting Monday, November 21<sup>st</sup> for state certification of the November 8<sup>th</sup> General Election. While this target date is subject to change if delays come up during the statutorily required audit or if issues arise during normal pre-certification processes, I am sharing it with you to assist with preparation for the December 6<sup>th</sup> Runoff.

Pursuant to O.C.G.A. 21-2-385(d)(1)(B), Advance Voting for the December 6<sup>th</sup> general election runoff must begin as soon as possible prior to the runoff and no later than Monday, November 28<sup>th</sup>.

Advance Voting must be held Monday, November 28<sup>th</sup> through Friday, December 2<sup>nd</sup> from 9:00 a.m. to 5:00 p.m., with the option of extending those hours by beginning at 7:00 a.m. and ending no later than 7:00 p.m. Advance Voting may be held on Sunday, November 27<sup>th</sup>. Advance Voting may also be held prior to Thanksgiving if you are able to complete all required preparations and notifications by then.

Pursuant to OCGA 21-2-385(d)(1), Advance Voting cannot occur on Thursday, November 24<sup>th</sup> (Thanksgiving Day), Friday, November 25<sup>th</sup> (Observance of State Holiday 1), or Saturday, November 26<sup>th</sup>. Advanced Voting on Saturday, November 26<sup>th</sup> is prohibited by OCGA 21-2-385(d)(1), which states that if the second Saturday before the runoff follows a Thursday or Friday that is a state holiday, voting on that Saturday is not allowed.

In determining when it is possible for you to begin Advance Voting for the runoff, remember that dates, times, and locations for Advance Voting must be published no later than seven days prior to beginning early voting on your county election's website (or, if you don't have a website, in a paper of general circulation and in a prominent location in the county). OCGA 21-2-385(d)(3). SEB Regulations also require that you "shall endeavor not to remove or alter any advance voting locations after they are published, unless there are emergency or unforeseen circumstances that make such a change necessary." SEB Rule 183-1-14-.02(2).

On or before the third day prior to beginning Advance Voting, you must also commence Logic & Accuracy testing of equipment to be used in the runoff. OCGA 21-2-379.25(c), SEB Rule 183-1-12-.08(1)(b). Public notice of the date, time, and location of L&A testing must be published on your website and in a paper of general circulation five days prior to the commencement of L&A testing. OCGA 21-2-379.25(c), SEB Rule 183-1-12-.08(1)(c).

# Exhibit 2

**IN THE SUPERIOR COURT FOR THE COUNTY OF COBB  
STATE OF GEORGIA**

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

*Plaintiffs,*

v.

THE STATE OF GEORGIA,

*Defendant.*

Civil Action

Case No. \_\_\_\_\_

**AFFIDAVIT OF REBECCA DEHART**

**STATE OF GEORGIA**

**COUNTY OF Fulton**

Personally appeared before me, the undersigned officer duly authorized by law to administer oaths, Rebecca DeHart, who after being duly sworn, stated on oath her personal knowledge as follows:

1. I am over the age of 21. I have personal knowledge of all the facts to which I attest in this declaration, and I affirm that they are true to the best of my knowledge.
2. I am Interim Executive Director for the Democratic Party of Georgia, Inc. (“DPG”).
3. DPG is a state political committee dedicated to electing candidates of the Democratic Party to state and federal office throughout the State of Georgia. DPG has members and constituents across Georgia, including many eligible voters who regularly support and vote for candidates affiliated with the Democratic Party. DPG has a vested interest in ensuring that its



members and supporters can avail themselves of all lawful voting opportunities provided by state and federal law, including those for the forthcoming December 6 runoff.

4. DPG accomplishes its mission by, among other things, expending substantial resources on educating and assisting voters in navigating the voting process, including by advising them on all possible methods and opportunities of voting, including in-person advance voting.

5. DPG consistently makes advance voting a central part of its electoral strategy, and DPG believes that supporters of Democratic candidates are likely to use that method of voting, as they have done in the past. DPG encourages voters to avail themselves of advance voting opportunities, which allows the party's field staff to organize more efficient and effective turnout campaigns leading up to and on Election Day. Encouraging and assisting these voters to vote in advance, and ensuring that their votes are actually counted, is therefore central to DPG's mission.

6. In preparation for the November election, DPG has spent significant resources to persuade and mobilize voters and to elect Democratic candidates, including incumbent U.S. Senator Raphael Warnock. DPG is continuing to spend significant resources to encourage voters to re-elect Senator Warnock in advance of the December 6 runoff.

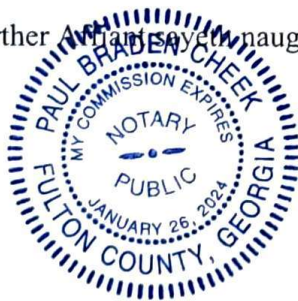
7. If the Secretary of State's errant interpretation of state law, contained in his office's November 12 Official Election Bulletin, is permitted to stand, counties across Georgia will be unlawfully barred from permitting in-person, advance voting on Saturday, November 26—the second Saturday prior to the runoff. As a result, supporters of Democratic candidate Raphael Warnock and any other Democratic runoff candidates will be illegally deprived of an opportunity to cast their ballot on a day on which advance voting is lawfully permitted under

Georgia law. This will in turn require DPG to divert and spend additional resources to educate voters about available voting methods and opportunities, particularly given that Secretary of State Raffensperger and his Chief Operating Officer, Gabriel Sterling, both announced on national television that some counties intended to conduct advance voting on Saturday, November 26. The Secretary of State's office sudden reversal on the availability of Saturday advance voting is likely to create voter confusion that DPG will have to spend resources to address.

8. Because Democratic voters in Georgia rely on in-person advance voting—particularly on weekends—permitting the state to unlawfully bar counties from offering advance voting on a day it is legally allowed will impair DPG's ability to achieve its goal of electing the Democratic candidate in Georgia to the U.S. Senate in the forthcoming December runoff.

\* \* \*

Further advised and sworn to, this 14 day of November, 2022.



Rebecca DeHart  
Interim Executive Director of DPG

Sworn to and subscribed before  
me this 14<sup>th</sup> day of November, 2022.

Notary Public

# Exhibit 3

**IN THE SUPERIOR COURT FOR THE COUNTY OF FULTON  
STATE OF GEORGIA**

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

*Plaintiffs,*

v.

THE STATE OF GEORGIA,

*Defendant.*

Civil Action

Case No. \_\_\_\_\_

**AFFIDAVIT OF LAUREN BRAINERD**

**WASHINGTON, DISTRICT OF COLUMBIA**

Personally appeared before me, the undersigned officer duly authorized by law to administer oaths, Lauren Brainerd, who after being duly sworn, stated on oath her personal knowledge as follows:

1. I am over the age of 21. I have personal knowledge of all the facts to which I attest in this affidavit, and I affirm that they are true to the best of my knowledge.

2. I am National Coordinated Campaigns Director for DSCC, also known as the Democratic Senatorial Campaign Committee.

3. DSCC is the national senatorial committee of the Democratic Party. Its mission is to elect candidates of the Democratic Party across the country to the U.S. Senate. Thus, DSCC has a vested interest in ensuring that supporters of Democratic Senate candidates, including in Georgia, are able to avail themselves of all lawful voting days under state and federal law.

4. DSCC accomplishes its mission by, among other things, expending substantial resources on educating and assisting voters in navigating the voting process, including by advising them on all possible methods and opportunities of voting, including in-person advance voting.

5. In fact, DSCC has made in-person advance voting a central part of its Georgia strategy in the 2022 election, as DSCC believes that supporters of Democratic candidates are likely to use that method of voting, as they have in the past. DSCC's field staff encourage voters to avail themselves of advance voting opportunities, which allows DSCC field staff to organize more efficient and effective turnout campaigns leading up to and on Election Day. Encouraging and assisting these voters to vote in advance, and ensuring that their votes are actually counted, is therefore central to DSCC's mission.

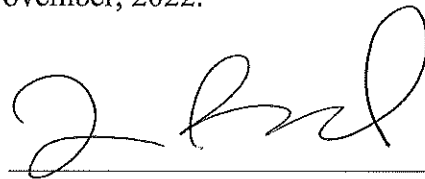
6. In preparation for the November election, DSCC has spent millions of dollars on efforts to persuade and mobilize voters and to re-elect Democratic candidate Raphael Warnock for the U.S. Senate from Georgia. DSCC continues to spend significant resources to encourage voters to re-elect Senator Warnock in advance of the December 6 runoff.

7. If the Secretary of State's errant interpretation of state law, contained in his office's November 12 Official Election Bulletin, is permitted to stand, counties across Georgia will be unlawfully barred from permitting in-person, advance voting on Saturday, November 26—the second Saturday prior to the runoff. As a result, supporters of Democratic candidate Raphael Warnock will be illegally deprived of an opportunity to cast their ballot on a day on which advance voting is lawfully permitted under Georgia law. This will in turn require DSCC to divert and spend additional resources to educate voters about alternative available voting methods and opportunities, particularly given that Secretary of State Raffensperger and his Chief Operating Officer, Gabriel Sterling, both announced on national television that some counties intended to conduct advance voting on Saturday, November 26. The Secretary of State's office sudden reversal on the availability of Saturday advance voting is likely to create confusion that DSCC will have to spend resources to address.

8. Because Democratic voters in Georgia often rely on in-person advance voting—particularly on weekends—permitting the State to unlawfully bar counties from offering advance voting on a day in which it is legally allowed will impair DSCC’s ability to achieve its goal of electing the Democratic candidate in Georgia to the U.S. Senate in the forthcoming December runoff.

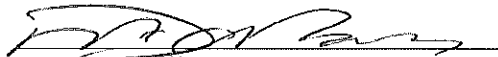
\* \* \*

Further Affiant sayeth naught, this 14 day of November, 2022.

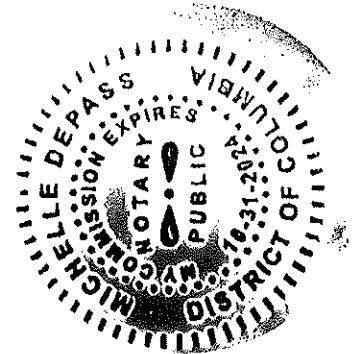


Lauren Brainerd  
National Coordinated Campaigns Director  
for DSCC

Sworn to and subscribed before  
me this 14 day of November, 2022.



Notary Public



# Exhibit 4

IN THE SUPERIOR COURT FOR THE COUNTY OF COBB  
STATE OF GEORGIA

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

*Plaintiffs,*

v.

THE STATE OF GEORGIA,

*Defendant.*

Civil Action

Case No. \_\_\_\_\_

AFFIDAVIT OF QUENTIN FULKS

STATE OF GEORGIA

COUNTY OF Cobb

Personally appeared before me, the undersigned officer duly authorized by law to administer oaths, Quentin Fulks, who after being duly sworn, stated on oath his personal knowledge as follows:

1. I am over the age of 21. I have personal knowledge of all the facts to which I attest in this affidavit, and I affirm that they are true to the best of my knowledge.
2. I am the Campaign Manager for Warnock for Georgia.
3. Warnock for Georgia is the principal campaign committee for Senator Raphael Warnock, an incumbent U.S. Senator from Georgia who is seeking reelection in the December 6 runoff. Its central mission is re-electing Senator Warnock to the U.S. Senate. Warnock for Georgia has a vested interest in ensuring that supporters of Senator Warnock can avail themselves of all lawful voting opportunities under state and federal law.



4. As part of its campaign to reelect Senator Warnock, Warnock for Georgia encourages Democratic voters and supporters of Senator Warnock to avail themselves of all possible methods and opportunities to vote, including in-person advance voting. In anticipation of the December 6 runoff, Warnock for Georgia continues to expend substantial resources on educating and assisting its supporters in navigating the voting process, including on the availability of in-person advance voting.

5. Warnock for Georgia has made advance voting a central part of its electoral strategy, including for both the November general election and the forthcoming December 6 runoff, because it believes that Senator Warnock's supporters are likely to use that method of voting as they have in the past. This allows the party's field staff to organize more efficient and effective turnout campaigns leading up to and on Election Day. Encouraging and assisting these voters to vote in advance, and ensuring that their votes are actually counted, is therefore central to Warnock for Georgia's mission.

6. In preparation for the November election, and now for the forthcoming December 6 runoff, Warnock for Georgia has spent significant resources to persuade and mobilize voters and to re-elect Senator Warnock.

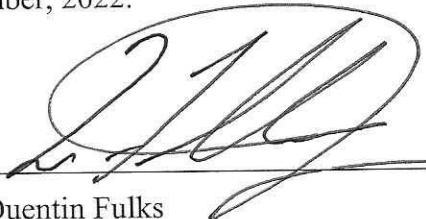
7. If the Secretary of State's errant interpretation of state law, contained in his office's November 12 Official Election Bulletin, is permitted to stand, counties across Georgia will be unlawfully barred from permitting in-person, advance voting on Saturday, November 26—the second Saturday prior to the runoff. As a result, supporters of Senator Warnock will be illegally deprived of an opportunity to cast their ballot on a day on which advance voting is lawfully permitted under Georgia law. This will in turn require Warnock for Georgia to divert and spend additional resources to educate voters about available voting methods and opportunities,

particularly given that Secretary of State Raffensperger and his Chief Operating Officer, Gabriel Sterling, both announced on national television that some counties intended to conduct advance voting on Saturday, November 26. The Secretary of State's office sudden reversal on the availability of Saturday advance voting is likely to create voter confusion that Warnock for Georgia will have to spend resources to address.

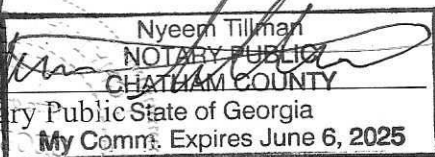
8. Because Democratic voters in Georgia often rely on in-person advance voting—particularly on weekends—permitting the State to unlawfully bar counties from offering advance voting a day it is legally allowed will impair Warnock for Georgia's ability to achieve its goal of re-electing Senator Warnock in the forthcoming December runoff.

\* \* \*

Further Affiant sayeth naught, this 14th day of November, 2022.

  
Quentin Fulks  
Campaign Manager for Warnock for Georgia

Sworn to and subscribed before  
me this 14th day of November, 2022.

  
Nyeem Tillman  
NOTARY PUBLIC  
CHATHAM COUNTY  
Notary Public State of Georgia  
My Comm. Expires June 6, 2025

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

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

Plaintiffs,

v.

THE STATE OF GEORGIA,

Defendant.

Civil Action No. \_\_\_\_\_

EMERGENCY RELIEF REQUESTED

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Democratic Party of Georgia, Inc. (“DPG”), DSCC, and Warnock for Georgia allege as follows:

**PRELIMINARY STATEMENT**

1. This is an emergency action for declaratory and injunctive relief to vindicate the right to vote in the upcoming December 6, 2022 runoff election for one of Georgia’s seats in the U.S. Senate. Georgia law requires counties to commence “a period of advance voting” for the runoff as “soon as possible” but in any event “no later than the second Monday immediately prior to such runoff.” O.C.G.A. § 21-2-385(d)(1)(B). In other words, while counties must begin allowing voters to participate in advance voting no later than November 28, 2022, they are required to start earlier if they can.

2. Despite the law’s command that counties begin offering advance voting “as soon as possible,” *id.*, Secretary of State Brad Raffensperger has taken the unsupportable position that counties are barred from opening the polls on Saturday, November 26. The Secretary’s purported legal rationale for this restriction is the second sentence of § 21-2-385(d)(1), which states that

(1) early voting must be conducted on the second and third Saturday before a *primary or general election*; and (2) when the second Saturday before the day of a *primary or general election* falls on a holiday or immediately after a holiday, counties must conduct mandatory advance voting on the third Saturday before Election Day. In other words, § 21-2-385(d)(1) guarantees early voting on specific weekend days for primary and general elections and imposes conditions on that mandate, neither of which apply to runoffs.

3. Just last week, the State’s two highest election officers acknowledged publicly that counties may conduct early voting on November 26, the Saturday after Thanksgiving. Secretary Raffensperger appeared on national television on November 9 and stated that he “anticipate[s] that some counties may likely have Saturday voting following Thanksgiving.”<sup>1</sup> That same day, his office’s Chief Operating Officer, Gabriel Sterling, appeared on a different national news network and explained that counties could open their polls to voters on the Saturday after Thanksgiving “if they so choose.”<sup>2</sup> Yet, just three days later, the Secretary reversed course, distributing a bulletin informing counties that they were *not* permitted to hold advance voting on November 26.

4. The Secretary’s interpretation misreads § 21-2-385(d)(1) and cherry-picks provisions that have no application to runoffs. Section 21-2-385(d)(1)’s restrictions on Saturday voting are inextricably linked with its mandate that counties must offer early voting on the second and third Saturday before each primary or election—and those rules do not apply to runoffs, which involve a significantly more compressed advance-voting period. The Secretary’s insistence that counties may not hold advance voting on November 26 therefore has no support in the law and

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

<sup>2</sup> *Tr.: Control of Congress Still Uncertain, Key Races Too Close to Call*, CNN (Nov. 9, 2022, 1:00PM), <https://transcripts.cnn.com/show/se/date/2022-11-09/segment/15>

conflicts with § 21-2-385(d)(1)(B)'s requirement that counties begin advance voting for the December 6 runoff as soon as possible.

5. Plaintiffs respectfully ask the Court to immediately declare that § 21-2-385(d)(1) does not preclude counties from holding advance voting on November 26, and to enjoin Defendant from taking any action to prevent or interfere with counties holding advance voting on that date.

### **JURISDICTION AND VENUE**

6. This Court has power to exercise original jurisdiction over this action, declare the rights of the parties in this action, and enjoin Defendant from engaging in unlawful conduct. O.C.G.A. §§ 9-4-2, 9-4-3, 9-11-65, 15-6-8.

7. Venue is proper in this Court under Ga. Const. of 1983, Art. VI, Sec. II, Para. III and O.C.G.A. § 9-10-30.

### **PARTIES**

8. Plaintiff DPG is a state committee of the Democratic Party in Georgia, as defined by 52 U.S.C. § 30101(15), dedicated to electing candidates of the Democratic Party to public office throughout the State of Georgia. DPG has members and constituents from across Georgia, including many eligible voters who regularly support and vote for candidates affiliated with the Democratic Party. DPG brings these claims on their behalf, as well as in its own right.

9. Plaintiff DSCC is the Democratic Party's national senatorial committee, as defined by 52 U.S.C. § 30101(14). Its mission is to elect candidates of the Democratic Party across the country, including in Georgia, to the U.S. Senate. DSCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in Georgia, and mobilizing and supporting voters. In 2022, DSCC has and will continue to make millions of dollars in expenditures and contributions to persuade, educate, and mobilize voters to support U.S. Senate

candidates who affiliate with the Democratic Party. For the 2022 election for U.S. Senate in Georgia, DSCC has worked (and will continue to work) to elect the Democratic candidate Senator Raphael Warnock and has made (and will continue to make) substantial contributions and expenditures to support Senator Warnock in his candidacy.

10. Plaintiff Warnock for Georgia is the principal campaign committee for Reverend Raphael Warnock, an incumbent U.S. Senator for Georgia who is seeking reelection in the December 6 runoff.

11. Defendant State of Georgia is sued under Article I, Section 2, Paragraph V(b)(2) of the Georgia Constitution. Defendant, through its agents, oversees the administration of elections. This includes promulgating rules governing the conduct of elections; issuing official guidance; and tabulating, canvassing, and certifying votes. *Id.* at art. II. It performs these acts through two agents: the Secretary of State, *id.* at art. V, § 3, ¶ 1, and the State Election Board. O.C.G.A. § 21-2-31. Members of the State Election Board (SEB) are responsible for “promulgat[ing] the rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections.” *Id.* § 21-2-31(1). They also investigate “irregularities” in the administration of elections generally, *id.* § 21-2-31(5), and can suspend local election officials and replace them with officials of the SEB’s choosing. *Id.* § 21-2-33.2. In light of this power, members of the SEB have the ability to coerce county elections officials to take certain actions (or refrain from taking certain actions) under the threat of replacing those local officials with SEB-chosen individuals.

## FACTS

### I. Defendant is prohibiting counties from allowing voters to cast in-person ballots on Saturday, November 26 for the forthcoming runoff election.

12. Georgia law requires that its members of Congress be elected by a majority of the vote. O.C.G.A. § 21-2-501(a)(1). If no candidate wins a majority of the vote, a runoff election is held between the two candidates who received the most votes in the general election. *Id.*

13. On November 8, 2022, Georgia held an election for one of its seats in the U.S. Senate. The Democratic nominee was incumbent Senator Raphael Warnock, and the Republican nominee was Herschel Walker.

14. Senator Warnock and Mr. Walker were the top two finishers in the November 8 election for the U.S. Senate seat, with neither receiving a majority of the vote. As a result, those two candidates will proceed to a runoff.

15. Georgia law provides that a run-off election “shall be held on the twenty-eighth day after the day of holding the preceding general or special primary or general or special election.” O.C.G.A. § 21-2-501(a)(1). Accordingly, the run-off election between Senator Warnock and Mr. Walker will occur on December 6, 2022.

16. O.C.G.A. § 21-2-385(d)(1) sets forth parameters by which counties must provide voters the opportunity to vote in person prior to Election Day:

(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. (Emphasis added.)

17. On November 9, 2022, Secretary Raffensperger stated in an appearance on national television that he “anticipate[s] that some counties may likely have Saturday voting following Thanksgiving.”<sup>3</sup> That same day, his office’s Chief Operating Officer, Mr. Sterling, appeared on a different national network and reiterated the Secretary’s statement, affirming that counties had the option to open their polls to voters on the Saturday after Thanksgiving.<sup>4</sup>

18. However, just three days later, the Secretary’s Office reversed course. On November 12, 2022, Blake Evans, the Director of the Elections Division of the Secretary of State’s Office, issued an “official election bulletin” addressed to county election officials and county registrars. The subject line of the November 12 Bulletin reads “Certification Target for General Election and Advance Voting for December 6th Runoff.” Exhibit 1 (“Nov. 12 Bulletin”).

19. With respect to advance voting, the November 12 Bulletin instructs that “[p]ursuant to O.C.G.A. 21-2-385(d)(1)(B), Advance Voting for the December 6th general election runoff must begin as soon as possible prior to the runoff and no later than Monday, November 28th.” *Id.*

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<sup>3</sup> CSPAN, *supra* note 1.

<sup>4</sup> CNN, *supra* note 2.



20. However, the November 12 Bulletin also instructs:

Pursuant to O.C.G.A. 21-2-385(d)(1), *Advance Voting cannot occur on Thursday, November 24th (Thanksgiving Day), Friday, November 25th (Observance of State Holiday 1), or Saturday, November 26th.* Advanced Voting on Saturday, November 26th is prohibited by OCGA 21-2- 385(d)(1), which states that if the second Saturday before the runoff follows a Thursday or Friday that is a state holiday, voting on that Saturday is not allowed. (Emphasis added.)

21. The remainder of the November 12 Bulletin discusses, in relevant part, two tasks that counties must perform prior to beginning advance voting. First, citing § 21-2-385(d)(3), it explained that counties must publish, “no later than seven days prior to beginning [advance] voting,” the “dates, times, and locations” where advance voting will occur. Second, citing § 21-2-379.25(c), the bulletin noted that at least three days prior to the beginning of advance voting, counties “must also commence Logic & Accuracy testing of equipment to be used in the runoff.”

## **II. Defendant’s instruction to counties that they may not allow voters to cast in-person ballots on Saturday, November 26 contradicts Georgia law.**

22. The November 12 Bulletin’s instruction to counties that they may not conduct advance voting on November 26 contradicts § 21-2-385(d)(1)’s plain language.

23. In drafting § 21-2-385(d)(1), the Legislature expressly distinguished between three different categories of elections: (1) a primary election (referred to as a “primary”); (2) a general election (referred to as an “election,” *see id.* § 21-2-2(5) (defining “election” as a “general or special election and not . . . a primary or special primary”)); and (3) a runoff, *id.* § 21-2-385(d)(1)(B).

24. Specifically, § 21-2-385(d)(1) sets forth different dates for when advance voting may (or must) begin based on the type of election: For primary and general elections, advance voting must begin the “fourth Monday immediately prior to” the election; by contrast, for a runoff election, advance voting must begin as “soon as possible . . . but no later than the second Monday” before the election.

25. In the clause that follows, § 21-2-385(d)(1) continues expressly and distinctly referring to all three categories of elections under Georgia law, instructing that advance voting “shall end on the Friday immediately prior to each *primary, election, or runoff*.” (Emphasis added.)

26. The Legislature’s specific references to each of Georgia’s three categories of elections in these initial clauses of §§ 21-2-385(d)(1)(A) & (B) make “clear that the legislature knew how to specify” among different categories of elections when it so desired, including between the different advance voting rules for runoffs, as compared to general and primary elections. *Avila v. State*, 333 Ga. App. 66, 70 (2015). By the same token, by expressly and consistently identifying three distinct types of elections in § 21-2-385(d)(1), the Legislature also made clear that if an instruction in that provision names some but not all three election types, that instruction does not apply to the omitted election. *See Allen v. Wright*, 282 Ga. 9, 13–14 (2007) (“Georgia law provides that the express mention of one thing in an Act or statute implies the exclusion of all other things.” (quoting *Abdulkadir v. State*, 279 Ga. 122, 123 (2005))); *see also Citibank (S.D.), N.A. v. Graham*, 315 Ga. App. 120, 122 (2012) (explaining legislature’s intentional omission of a term it used elsewhere shows “legislature knew how” to include it when desired but decision not to do so was “a matter of considered choice”).

27. That is the case for the second sentence of § 21-2-385(d)(1), which reads in full:

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. (Emphases added.)

28. As the emphasized portions of the language provided above make clear, § 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*. If the legislature desired otherwise, it “knew how” to say so and its decision *not* to refer to runoffs—which it references elsewhere throughout the provision—should be respected as a “matter of considered choice.” *Graham*, 315 Ga. App. at 122.

29. Moreover, § 21-2-385(d)(1)'s statutory history confirms that the view expressed in the November 12 Bulletin is wrong. When the General Assembly in 2016 first added the provision regarding advance voting on the Saturday after a holiday, it named all three categories of elections, stating that the provision applied during a “primary, election, or runoff.” 2016 Ga. Laws Act 347 § 4 (emphasis added). Just one year later, the General Assembly updated the provision, deliberately deleting the words “or runoff,” leaving only “primary or election.” 2017 Ga. Laws Act 250 § 18.

30. What's more, prior to issuing the November 12 Bulletin, Secretary Raffensperger publicly acknowledged that counties may choose to conduct advance voting for a runoff on the Saturday immediately following a holiday. In a news conference on November 9, he stated “we do anticipate that some counties may likely have Saturday voting following Thanksgiving,” and, consistent with that expectation, his office was working with counties to ensure that their “voters can make the best plans.”<sup>5</sup> A few minutes later in the interview, he confirmed the point again, noting that counties would provide five days of mandated advance voting “plus most likely a Saturday,”<sup>6</sup> which, given that § 21-2-385(d)(1) prohibits advance voting the last Saturday before Election Day, could only be a reference to Saturday, November 26.

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<sup>5</sup> CSPAN, *supra* note 1.

<sup>6</sup> *Id.* at 8:18–27.

31. The same day Secretary Raffensperger made that public statement, the Chief Operating Officer of the Secretary of State’s Office, Gabriel Sterling, stated on CNN that “[t]here’s a very good possibility that we’ll probably have voting on Saturday, November 26th, in many of the counties if they so choose and we’re planning for that right now.”<sup>7</sup>

32. Yet, just three days after Georgia’s chief election official made these statements—broadcast nationwide to millions of viewers, including no doubt many voters across Georgia—his office issued the November 12 Bulletin, which reversed course by instructing counties that they may *not* hold advance voting on November 26.

33. The November 12 Bulletin’s interpretation of the statute is flawed on its own terms, but should further be discarded because it fails to follow the natural consequences of its own reading of the statute. If the second sentence of § 21-2-385(d)(1) does in fact apply to runoffs—despite its reference only to “a primary or election”—then it mandates that all counties in Georgia “*shall* . . . conduct [in-person advance voting] on the second and third Saturdays” prior to the December 6 runoff, subject to the exception cited in the November 12 Bulletin—that voting need not be held on a “second Saturday” if it “follows a public and legal holiday occurring on the Thursday or Friday” prior. O.C.G.A. § 21-2-385(d)(1). That would still, at minimum, require that every county in Georgia open their polls on November 19, the *third* Saturday prior to the runoff.<sup>8</sup>

34. Tellingly, neither the Secretary nor the November 12 Bulletin have instructed

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<sup>7</sup> CNN, *supra* note 2.

<sup>8</sup> Plaintiffs recognize the logistical burden of requiring each county across the state to hold advance voting on Saturday, November 19. That practical consideration reinforces Plaintiffs’ reading of the statute—that the language quoted above from § 21-2-385(d)(1) does not apply to runoff elections, including the prohibition on holding advance voting on the second Saturday before the runoff when it follows a Thursday or Friday holiday. *Cf. Najarian Cap., LLC v. Fed. Nat’l Mortg. Ass’n*, 354 Ga. App. 159, 162 (2020) (noting that “interpretation of a statute must conform with common sense and sound reasoning”), *cert. denied* (Mar. 1, 2021).

counties across Georgia that they must hold advance voting on that date, opting instead to cherry-pick portions of the provision and apply them selectively to runoffs. That is not how the statute operates: if the sentence's prohibition on holding advance voting on a Saturday after a holiday applies to runoffs, so too must its command that advance voting be held on the second and third Saturday in the first place. To read the statute otherwise is nonsensical.

**COUNT I**  
**Request for Declaratory Relief, O.C.G.A. § 9-4-2**

35. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint as if fully set forth herein.

36. As explained, O.C.G.A. § 21-2-385(d)(1)'s prohibition against advance voting on a Saturday immediately following a legal holiday applies only to primary and general elections, not runoffs.

37. Defendant, through its agent the Secretary, has issued guidance instructing counties that they may not hold advance voting on Saturday, November 26—the Saturday immediately following Thanksgiving—based on the incorrect view that § 21-2-385(d)(1) prohibits counties from doing so.

38. Upon information and belief, several counties within Georgia would hold in-person advance voting on Saturday, November 26 but for Defendant's issuance of the November 12 Bulletin. Thus, in issuing such guidance, the Defendant is unlawfully restricting the number of advance voting days counties may provide to voters for the 2022 senate runoff election. This restriction specifically harms Plaintiffs and their preferred candidate in the forthcoming runoff, as well as DPG's members, by eliminating a potential advance voting day that is likely to be used by voters who affiliate with the Democratic Party.

39. Plaintiffs' injuries are therefore traceable to Defendant's issuance of the November

12 Bulletin and the faulty interpretation of § 21-2-385(d)(1) therein, and will be redressed by declaratory or injunctive relief that nullifies the November 12 Bulletin or makes clear that it is not a correct interpretation of the law.

40. Defendant's actions have created a real and actual controversy between Plaintiffs and Defendant in that Plaintiffs and their members and constituents face an imminent risk of suffering irreparable injury during the advance voting period.

41. Plaintiffs are entitled to a declaration from this Court that Georgia law does not preclude counties from holding advance voting on Saturday, November 26, 2022, and neither Defendant nor its agents may take any action to prevent or impede counties' efforts to do so.

**COUNT II**  
**Request for Temporary Restraining Order and/or Interlocutory Injunctive Relief,**  
**O.C.G.A. §§ 9-4-3, 9-11-65**

42. Plaintiffs reallege and incorporate all prior paragraphs of this Complaint as if fully set forth herein.

43. Plaintiffs are entitled to a temporary restraining order and/or interlocutory injunctive relief under O.C.G.A. §§ 9-4-3 and 9-11-65 ordering Defendant and its agents to immediately refrain from taking any action to prevent counties from holding advance voting on Saturday, November 26, 2022, or to prevent any votes cast on that day from being counted or included in the certified election results, and accordingly enjoy a substantial likelihood that they will prevail on the merits of their claims at trial.

44. Absent injunctive relief, Plaintiffs and their members and constituents will suffer actual, immediate, and irreparable injury for which Plaintiffs have no adequate remedy at law.

45. Without temporary injunctive relief, Plaintiffs' members and constituents will be deprived of their right to vote during the advance voting period permitted by Georgia law. Immediate and effective relief is essential to protect against that irreparable harm.

46. The injury that would be inflicted upon Plaintiffs and their members and constituents by the denial of relief outweighs the injury that would be inflicted upon Defendant by granting relief.

47. Issuance of an injunction granting relief to Plaintiffs will not substantially harm Defendant. An injunction will properly restore the parties to their status as it existed prior to the wrongful conduct described herein.

48. The public interest weighs heavily in favor of entry of an injunction designed to protect the right to a full and fair election, including permitting counties to hold advance voting on all days they are permitted to do so under Georgia law.

#### **PRAYER FOR RELIEF**

Plaintiffs pray that this Court:

a. Issue an order declaring that O.C.G.A. § 21-2-385(d)(1) does not prohibit counties from conducting in-person advance voting on November 26;

b. Issue an order enjoining Defendant State of Georgia through any of its agents, including Secretary of State Brad Raffensperger, from instructing counties that they may not provide advance voting on Saturday, November 26, 2022, or from interfering in any effort by counties to provide advance voting on Saturday, November 26, 2022, or from taking any action to prevent votes cast during advance voting on November 26 from being counted and included in the certified election results;

c. Issue an order enjoining Defendant State of Georgia through any of its agents, including the State Elections Board, from taking any action against any county based on the county offering Saturday voting in advance of a general election runoff;

d. Issue an order enjoining Defendant State of Georgia through any of its agents,

including Secretary of State Brad Raffensperger and the State Elections Board, from interfering in any effort by the counties to provide advance voting on Saturday, November 26 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 advance voting in its jurisdiction at least seven days prior to November 26;

e. Grant such other and further relief as the Court deems necessary, appropriate, and equitable.



Respectfully submitted on this 14th day of November, 2022.

**KREVOLIN & HORST, LLC**

/s/ Adam M. Sparks

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*\* Pro Hac Vice application forthcoming  
Counsel for Plaintiffs*

# Exhibit 1



## OFFICIAL ELECTION BULLETIN

November 12, 2022

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**TO: County Election Officials and County Registrars**

**FROM: Blake Evans, Elections Division Director**

**RE: Certification Target for General Election and Advance Voting for December 6<sup>th</sup> Runoff.**

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The Secretary of State's Office is targeting Monday, November 21<sup>st</sup> for state certification of the November 8<sup>th</sup> General Election. While this target date is subject to change if delays come up during the statutorily required audit or if issues arise during normal pre-certification processes, I am sharing it with you to assist with preparation for the December 6<sup>th</sup> Runoff.

Pursuant to O.C.G.A. 21-2-385(d)(1)(B), Advance Voting for the December 6<sup>th</sup> general election runoff must begin as soon as possible prior to the runoff and no later than Monday, November 28<sup>th</sup>.

Advance Voting must be held Monday, November 28<sup>th</sup> through Friday, December 2<sup>nd</sup> from 9:00 a.m. to 5:00 p.m., with the option of extending those hours by beginning at 7:00 a.m. and ending no later than 7:00 p.m. Advance Voting may be held on Sunday, November 27<sup>th</sup>. Advance Voting may also be held prior to Thanksgiving if you are able to complete all required preparations and notifications by then.

Pursuant to OCGA 21-2-385(d)(1), Advance Voting cannot occur on Thursday, November 24<sup>th</sup> (Thanksgiving Day), Friday, November 25<sup>th</sup> (Observance of State Holiday 1), or Saturday, November 26<sup>th</sup>. Advanced Voting on Saturday, November 26<sup>th</sup> is prohibited by OCGA 21-2-385(d)(1), which states that if the second Saturday before the runoff follows a Thursday or Friday that is a state holiday, voting on that Saturday is not allowed.

In determining when it is possible for you to begin Advance Voting for the runoff, remember that dates, times, and locations for Advance Voting must be published no later than seven days prior to beginning early voting on your county election's website (or, if you don't have a website, in a paper of general circulation and in a prominent location in the county). OCGA 21-2-385(d)(3). SEB Regulations also require that you "shall endeavor not to remove or alter any advance voting locations after they are published, unless there are emergency or unforeseen circumstances that make such a change necessary." SEB Rule 183-1-14-.02(2).

On or before the third day prior to beginning Advance Voting, you must also commence Logic & Accuracy testing of equipment to be used in the runoff. OCGA 21-2-379.25(c), SEB Rule 183-1-12-.08(1)(b). Public notice of the date, time, and location of L&A testing must be published on your website and in a paper of general circulation five days prior to the commencement of L&A testing. OCGA 21-2-379.25(c), SEB Rule 183-1-12-.08(1)(c).

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

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

*Plaintiffs,*

v.

THE STATE OF GEORGIA,

*Defendant.*

Civil Action

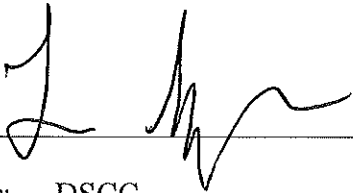
Case No. \_\_\_\_\_

**VERIFICATION**

Personally appeared before me, the undersigned officer, duly authorized by law to administer oaths, came Lauren Brainerd and who on oath, does depose and say that I have reviewed the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF with regard to the facts contained therein, and that the facts set forth therein are true where derived from my own knowledge or from documents that are maintained in the course of business and are believed to be true where derived from the knowledge of others or from documents that are maintained in the course of business.

[verified signature on following page]

This 14<sup>th</sup> day of November, 2022.



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For: DSCC  
By: Lili Snyder  
Its: Chief Operating Officer

Sworn to and subscribed before me

This 14<sup>th</sup> day of ~~October 2020~~ <sup>November</sup> 2022

SHERRY L. JONES  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires November 14, 2026  
Notary Public

