

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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REPUBLICAN NATIONAL)
COMMITTEE and GEORGIA)
REPUBLICAN PARTY, INC.,)
)
Plaintiffs,)
)
vs.)
)
THOMAS MAHONEY III,)
MARIANNE HEIMES, TRISH)
BROWN, JAMES HALL, and)
GLYNDA JONES in their official)
capacities as members of the)
Chatham County Board of Elections;)
SHERRI ALLEN, AARON V.)
JOHNSON, MICHAEL HEEKIN,)
TERESA K. CRAWFORD, and)
JULIE ADAMS in their official)
capacities as members of the Fulton)
County Registration and Elections)
Board; VASU ABHIRAMAN,)
NANCY JESTER, ANTHONY)
LEWIS, SUSAN MOTTER, and)
KARLI SWIFT in their official)
capacities as members of the DeKalb)
County Board of Registration and)
Elections; STEVEN F. BRUNING,)
TORI SILAS, STACY EFRAT,)
DEBBIE FISCHER, and JENNIFER)
MOSBACHER in their official)
capacities as members of the Cobb)
County Board of Registration and)
Elections; ALICE O'LENICK,)
WANDY TAYLOR, LORETTA)
MIRANDOLA, DAVID HANCOCK,)
and ANTHONY RODRIGUEZ, in)
their official capacities as members)
of the Gwinnett County Board of)
Registrations and Elections, DANNY)
HOPE, DOROTHY FOSTER HALL,)
CAROL WESLEY, PAT PULLAR,)
and DOMINIQUE GRANT in their)
Official capacities as members of the)
Clayton County Board of)
Registrations and Elections,)
HUNAID QADIR, ADAM SHIRLEY,)

CASE NO. 4:24-CV-248

1 ROCKY RAFFLE, PATRICIA TILL,)
 and WILLA FAMBROUGH in their)
 2 Official capacities as members of the)
 Clarke County Board of)
 3 Registrations and Elections,)
)
 4 Defendants.)

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TRANSCRIPT OF TELEPHONIC MOTION HEARING
BEFORE THE HONORABLE R. STAN BAKER
 United States Courthouse
 Savannah, GA
 November 5, 2024

COURT REPORTER: Kelly A. McKee, CCR, RMR, CCP, RDR
 United States Court Reporter
 Savannah, GA 31412
 912-650-4065

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 produced by computer-aided transcription.)

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THE COURT: Good afternoon, everyone. This is Judge Baker. Mrs. Hammock, would you open court.

THE CLERK: Oh, yes, oh, yes. The United States District Court for the Southern District of Georgia is now in session. Chief Judge R. Stan Baker is presiding. All those having business before the Court shall draw nigh and you shall be heard. God save the United States and This Honorable Court.

THE COURT: Thank you. Ms. Hammock, would you please call our case.

THE CLERK: Yes, sir. We have Case Number 4:24-CV-248, *Republican National Committee and others vs. Thomas Mahoney, III, in his official capacity as members of the Chatham County Board of Elections and others.*

THE COURT: Thank you. And I'll have everyone announce -- or, Mrs. Hammock, if you've got a roster, could you announce for us who is here for each party, and rather than going through each named defendant, you can simply state for the Chatham County defendant, for example.

THE CLERK: Yes, sir. On behalf of the plaintiffs, we have Alex Kaufman and Dwight Feemster.

On behalf of the Chatham County Board of Elections and Board of Registrars defendants, Ben Perkins and Wes Rahn.

On behalf of the Fulton County Registrations and

1 Elections Board defendants, Lauren Warner and Kaye Burwell.

2 On behalf of the DeKalb County Board of Registrations
3 and Elections defendants, Brent Herrin and Ben Klehr.

4 On behalf of the Cobb County Board of Registrations and
5 Elections defendants, we have Daniel White and Wade Herring.

6 On behalf of the Gwinnett County Board of Registrations
7 and Elections defendants, we have Ryan Germany, Mark Johnson and
8 Amber Carter.

9 On behalf of the Clay County Board of Registrations and
10 Elections defendants, we have Ali Sabzevari.

11 On behalf of the Athens-Clarke County Board of
12 Registrations and Elections defendants, we have John Hawkins and
13 Judd Drake.

14 And on behalf of the intervenor defendants, we have Jeff
15 Harris and Felicia Ellsworth.

16 THE COURT: Thank you, Mrs. Hammock.

17 Counsel, just to go over the same ground rules that we
18 went over yesterday, since we're having this hearing
19 telephonically, only one attorney should speak on behalf of each
20 of the parties.

21 If you request a leave from that rule for any reason,
22 for example, you've got a witness that one attorney wants to
23 handle, let me know that.

24 Additionally, when you begin to speak, if you will, just
25 be certain for the court reporter that you identify who you are.

1 Also, make certain that we do our best not to talk over
2 one another and over our witnesses. Be certain that questions
3 are fully asked and fully answered before we move on.

4 Obviously, the Court's standing order applies to this
5 proceeding. Specifically, my order is that no one shall record,
6 reproduce, broadcast, disseminate or do anything to capture or
7 distribute this hearing. We're having this hearing
8 telephonically for everyone's convenience, and I certainly would
9 hope that no one would take advantage of that.

10 That also applies for the public access telephone line.
11 That's a listen-only line, not a record line. So anyone who's
12 listening to the hearing on that line, by all means, you can
13 take notes and report on it, if you would like to do that, but
14 you cannot record the audio or broadcast the audio or do
15 anything to capture or disseminate the audio.

16 Okay. With those housekeeping matters out of the way,
17 the case before us, as Mrs. Hammock previewed, is 4:24-CV-248.
18 The case comes before the Court for the plaintiffs' motion for a
19 temporary restraining order and preliminary injunction. That
20 was filed at Doc. 2 in the case, docketed in the case on
21 yesterday, though it was filed late Sunday. So it was received
22 Sunday.

23 I had a status conference on this motion yesterday. All
24 parties were able to get in their briefing before 9:00 today. I
25 appreciate all of the effort that the attorneys made to get some

1 substantial briefing to the Court, and everyone agreed that we
2 could have a hearing today at noon on this issue.

3 So that's what we're here for. I also previewed during
4 that call that if you intend to call any witnesses during this
5 hearing, those witnesses need to be in the same room as the
6 attorney who's going to be examining them. They'll, of course,
7 be placed under oath, and we'll hear testimony from them.

8 Additionally, you all have provided some potential
9 exhibits to the Court. What we'll do when you're offering those
10 exhibits is you need to refer to where they are on the docket,
11 so, for example, Doc. 15 includes about 34 exhibits that are
12 attached to it. Actually, that's the summons. Excuse me. My
13 mistake. There are some filings on the docket that include some
14 exhibits. You can refer to those exhibits, if they have a
15 docket number. If they don't, we need to find a way to be
16 certain that you're identifying properly the exhibit, that it's
17 been provided to the parties and that we're all literally on the
18 same page when you're talking with a witness or talking to the
19 Court about that exhibit. All right.

20 Okay. Well, it's the plaintiffs' motion. I don't need
21 to hear any opening statements because I've gotten your briefs.
22 I'll turn to the plaintiffs first to present any evidence that
23 they want to present in support of their motion. Mr. Kaufman?

24 MR. KAUFMAN: Thank you, Your Honor.

25 THE COURT: One more housekeeping matter. I'm sorry to

1 interrupt, Mr. Kaufman.

2 If you are not speaking on the call, mute your
3 microphone, please. So all those who are not speaking, mute
4 your microphone, please. All right. Go ahead, Mr. Kaufman.

5 MR. KAUFMAN: Thank you, Your Honor. We'd like -- I
6 guess maybe also on a housekeeping matter, it looks like
7 multiple parties, including ourselves, filed affidavits last
8 night. Will the Court consider those in the record or should we
9 have those witnesses also testify? I would proffer they are
10 going to testify, at least on our witnesses, consistent with
11 their affidavits.

12 THE COURT: I have no problem with the affidavits
13 generally being considered on a preliminary injunction, and the
14 Eleventh Circuit is pretty clear that at the preliminary
15 injunction hearing I can consider affidavits. If there are
16 anything in those specific affidavits that any party objects to,
17 I'll hear from them at this time.

18 So the plaintiffs' position, I take it, is that all
19 affidavits that have been filed on the docket may be considered
20 by the Court in determining whether to grant the relief
21 requested in the preliminary injunction. Is that correct,
22 Mr. Kaufman?

23 MR. KAUFMAN: Yes, Your Honor.

24 THE COURT: All right. Does any defendant have any
25 objection to any of the affidavits being considered by the

1 Court? I'm not asking if you agree with what's in the
2 affidavit, but do you have any objection to the Court
3 considering any of the affidavits? If so, please speak up at
4 this time.

5 MR. PERKINS: Your Honor, this is Ben Perkins on behalf
6 of the Chatham County defendants. With regard to the
7 declaration of Mr. Hooper, there are allegations in there that
8 he does not state whether or not he has personal knowledge of
9 the allegations pertinent to Chatham County, and I've got
10 concerns about that and the inability to cross-examine him on
11 that issue.

12 THE COURT: All right. Well, I'll note that the Courts
13 are pretty much in accord that when considering in a preliminary
14 injunction the Court may consider hearsay. Now, whether to
15 grant relief often depends on the weight given to evidence, and
16 obviously if something is hearsay, it's not given the same
17 weight as if it's personal knowledge.

18 So I'm going to overrule the objection that I take it to
19 be hearsay as to that affidavit, but I understand you've made it
20 for the record, Mr. Perkins.

21 Other than a similar objection to any of the other
22 affidavits, does anyone have any other objections or any other
23 reason for the Court not to consider any of the affidavits that
24 have been filed in the case?

25 MS. WARNER: Your Honor, this is Lauren Warner on behalf

1 of Fulton County. I just want to lodge an objection that these
2 declarations from the plaintiff, Docket Number 45, were filed
3 fairly late this morning, well past the 9 a.m. deadline. I
4 received them at 10:42 a.m. is when the transaction registered.
5 So to the extent that they were filed late and we were left
6 scrambling trying to respond to these allegations, I want to put
7 that objection on the record.

8 THE COURT: Noted. I'll still consider the affidavit,
9 but to the extent that you make a good showing at any point
10 during this hearing that anything in that affidavit caused you
11 undue surprise or unfair prejudice, that's something the Court
12 will consider when judging what weight to give the affidavit.
13 Okay?

14 MS. WARNER: Thank you.

15 THE COURT: Moving down the line. That's Chatham and
16 Fulton have announced. How about DeKalb County?

17 MR. HERRIN: Other than the previous objections that
18 have been stated, Your Honor, we don't have any further
19 objection, no.

20 THE COURT: Thank you. And Cobb County?

21 MR. WHITE: We join in those same objections, Your
22 Honor.

23 THE COURT: And Gwinnett County?

24 MR. GERMANY: The same, Your Honor, for Gwinnett County.

25 THE COURT: And Clayton County?

1 MR. SABZEVARI: The same, Your Honor.

2 THE COURT: And Clarke County?

3 MR. HAWKINS: We join the same objections, Your Honor.

4 THE COURT: And the Democratic National Committee and
5 others?

6 MS. ELLSWORTH: Your Honor, in addition to joining the
7 prior objections, we also object to the affidavits of Ms. Adams
8 and Ms. Gay to the extent that they don't relate to the relief
9 sought by the plaintiffs in this case. They relate to
10 monitoring or watching return of absentee ballots, which is not
11 a part of the prayer for relief in this case. So we object on
12 that basis in addition to joining the prior objections.

13 THE COURT: All right. Thank you. I overrule that
14 objection. I'll consider it, but I'll certainly hear from you
15 on whether they pertain to matters that are not relevant to the
16 claims asserted in the complaint. Okay. All right. It would
17 be different if I had a jury before me. I'd exclude them, but
18 given that I've got the Court and I understand where the claims
19 are going, I'll be able to decipher what's relevant and what's
20 not. Thank you, though.

21 Okay. So we've gotten through the affidavits. All that
22 have been filed will be considered by the Court in determining
23 whether to grant relief, with the caveats that have been lodged
24 by the parties and that the Court has considered.

25 Your next piece of evidence, Mr. Kaufman.

1 MR. KAUFMAN: I just want to clarify one thing. Docket
2 Entry 30 was -- when we filed it around midnight last night, we
3 had noticed that there were two exhibits that were not in order
4 and that was hence why we had to refile as Docket Entry 45 for
5 clarification of the record, just to address that.

6 I would like to call Mr. Justin Rice, who's the
7 executive director of the Georgia Republican Party.

8 THE COURT: You may. I'm getting a little feedback on
9 your line. I think it's from yours. I don't know if you can do
10 anything to help us with that. Some of this is just the product
11 of having 19 different participants. But the attorney who's
12 speaking right now is Mr. Kaufman.

13 MR. KAUFMAN: Yes, Your Honor.

14 THE COURT: And, Mr. Kaufman, I'll have you try to do
15 something on your end to deal with that static. Okay?

16 MR. KAUFMAN: I'm going to do the best I can.

17 THE COURT: Okay.

18 MR. KAUFMAN: Yes, sir. Is this better?

19 THE COURT: Not really, but go ahead. Who is your
20 witness again?

21 MR. KAUFMAN: My witness is Mr. Justin Rice, executive
22 director of the Georgia Republican Party.

23 THE COURT: All right. Thank you. Mrs. Hammock, would
24 you swear in the witness.

25 THE CLERK: Mr. Wright [sic], if you will, please raise

1 your right hand to be sworn. You do solemnly swear or affirm
2 that the testimony and evidence you give the Court in this case
3 shall be the truth, the whole truth and nothing but the truth,
4 so help you God?

5 THE WITNESS: I do.

6 JUSTIN RICE, being first duly sworn,
7 testified as follows:

8 BY MR. KAUFMAN:

9 Q. Mr. Rice, will you please state your full legal name.

10 THE COURT: Mr. Kaufman, let me do this for a second.
11 Everyone mute your microphones. Everyone mute at this time.

12 Okay. We still have static on this line. So what we're
13 going to do, as much of a pain as it's going to be when this
14 happens -- we learned this during COVID -- we need to reconnect
15 the call, because it's not any one user. It appears to be the
16 line. So everybody is going to dial -- we're going to be in
17 recess. Everybody disconnect and dial back in. Okay. We'll be
18 in recess.

19 (Proceedings stood in recess from 12:24 p.m. until 12:30 p.m.)

20 THE COURT: All right. We're back on the call, and it
21 seems like we've got a pretty clean line this time.

22 It's 4:24-CV-248, Republican National Committee and
23 others vs. Mahoney and others.

24 If you're not participating at this time, if you will,
25 please be certain to mute your microphone.

1 And I'll call upon Mr. Kaufman. You had a witness that
2 you were presenting. And be certain the witness is close to the
3 microphone on your phone, and Mrs. Hammock will swear in your
4 witness. Go ahead, Mrs. Hammock.

5 THE CLERK: And I believe it was Mr. Wright. If you
6 will, please raise your right hand to be sworn. You do solemnly
7 swear or affirm that the testimony and evidence you give the
8 Court in this case shall be the truth, the whole truth and
9 nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. And if you will, please state
12 your name for the record; spell your last name.

13 THE WITNESS: Justin Carty Rice, R-I-C-E.

14 THE CLERK: Thank you.

15 THE COURT: Your witness, Counsel.

16 MR. KAUFMAN: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. KAUFMAN:

19 Q. Mr. Rice, will you please state your job title.

20 A. Executive director of the Georgia Republican Party.

21 Q. And what duties and responsibilities do you have as the
22 executive director for the Georgia Republican Party?

23 A. I run the day-to-day operations of the state party, which
24 includes managing the budget, but also running our field
25 programs that benefits Republicans up and down the ballot.

1 Q. And is that throughout the entire state?

2 A. Yes, sir.

3 Q. And does that include DeKalb County?

4 A. Yes, sir.

5 Q. Fulton County?

6 A. Yes, sir.

7 Q. Cobb County?

8 A. Yes, sir.

9 Q. Gwinnett County?

10 A. Yes, sir.

11 Q. Chatham County?

12 A. Yes.

13 Q. Clayton County?

14 A. Yes.

15 Q. And Athens-Clarke County?

16 A. Yes.

17 Q. So is it your understanding that there are 159 counties in
18 the State of Georgia?

19 A. Yes.

20 Q. As part of your duties and responsibilities, are political
21 strategy and allocation of resources under your purview?

22 A. Yes.

23 Q. Do you know when the advance voting period ended in
24 Georgia?

25 A. Yes.

1 Q. When is that?

2 A. November 1st.

3 Q. So Friday? Last Friday?

4 A. Yes.

5 Q. Okay. And today is obviously Election Day; correct?

6 A. Correct.

7 Q. Are you familiar -- those counties that we listed off by
8 name, is it okay if I call them defendant counties for the
9 purposes of this conversation?

10 A. Yes.

11 Q. Are you familiar if defendant counties allowed for receipt
12 of absentee by mail ballots to be -- or absentee ballots, paper
13 ballots, to be delivered to their registrar offices or annex
14 offices this past weekend, either on Saturday, Sunday or even
15 yesterday, Monday?

16 A. Yes, I'm aware of that.

17 Q. Okay. How did you become aware of that?

18 A. We found out late Friday night that they would be
19 allowing -- well, I heard that Fulton County would be allowing
20 ballots to be turned in over the weekend.

21 Q. And after you heard about Fulton County's decision, did
22 you investigate if other counties had made that decision as
23 well?

24 A. Yes.

25 Q. And that included these defendant counties?

1 A. Yes.

2 Q. And from a political perspective, are defendant counties
3 considered primarily Republican or Democrat or neutral counties
4 in your analysis?

5 A. The data would show that they are Democrat counties as
6 Democrats have historically won them.

7 Q. And prior to Friday evening and learning of Fulton
8 County's decision, were there plans in place for the Georgia
9 Republican Party to address -- to handle voting operations over
10 the course of the weekend?

11 A. We had no plans ready for the weekend.

12 Q. Okay. And so no plans. Would that include not having
13 poll watchers or observers available?

14 A. Correct.

15 Q. Were you -- so you did have plans as to these specific
16 counties to observe voter activity; correct?

17 A. Correct.

18 Q. But did the party have -- the party -- I'll use the
19 generic -- Georgia Republican Party, but you also work in tandem
20 with the Republican National Committee --

21 THE COURT: Counsel, I'm going to interrupt you. Please
22 don't use the generic term republican party. As the pleadings
23 have shown to date, there's a number of different entities that
24 would use that moniker, and we need to be clear about which
25 party we're talking about.

1 MR. KAUFMAN: Yes, Your Honor. I'll try to clarify the
2 record.

3 BY MR. KAUFMAN:

4 Q. As the executive director of the Georgia Republican Party,
5 do you coordinate election activities with the Republican
6 National Committee?

7 A. Yes.

8 Q. As -- now, did the Georgia Republican Party have preset
9 arrangements on election activities and get-out-to-vote
10 activities, et cetera, plans for the weekend that did not
11 include having poll observers and poll watchers in place?

12 A. Yeah. We did not have -- we had plans, but not plans for
13 having poll watchers and observers at these locations.

14 Q. Okay. And what were those plans?

15 A. Our plans were to push voters to vote on Election Day.

16 Q. And as a result of defendant counties' decisions, were
17 those plans altered and affected at the state GOP level?

18 A. They were.

19 Q. How so?

20 A. We had to switch our resources to get people to Fulton
21 County and the other defendant counties so that we can start
22 pushing our voters to turn in their absentee ballots, called
23 absentee ballot chasing.

24 Q. And did that cost the party -- you said resources. What
25 kind of resources did that cost the Georgia Republican Party?

1 A. Time, money, having volunteers and staffers drive to these
2 locations.

3 Q. Okay. Had you been aware that the defendant counties had
4 plans to open its offices to receive ballots over the course of
5 the weekend and yesterday, what, if anything, would have -- do
6 you know the Georgia Republican Party would have done
7 differently?

8 A. No. We would have -- we had several folks from out of
9 state looking to volunteer in Georgia, and had we known that we
10 would be able to do absentee ballot chase activities in these
11 counties, we would have had these folks come to these counties
12 to help us with that. Instead, we sent them to different
13 counties, and so we misused our resources because of this.

14 Q. And is it your belief that the Georgia Republican Party
15 has been harmed in its election activities as a result of
16 defendant counties' actions?

17 A. Yes.

18 Q. What do you base that on?

19 A. The fact that we had to change our plans last minute, the
20 fact that we could have reallocated certain resources that were
21 -- were no longer able to move. Anyone running a campaign knows
22 that absentee ballot chasing is an important part of elections.

23 Q. Had you been aware of -- with prior notice that defendant
24 counties were going to operate in this manner or extend absentee
25 voting, would you have approached other counties that are more

1 favorable to Republican voters differently?

2 A. Absolutely. We would have pushed for other counties to
3 also allow ballots be chased.

4 Q. Do you have an estimate of how many ballots were dropped
5 off at the counties over the course of this past Saturday,
6 Sunday or Monday? When I say -- not by mail, but by hand
7 delivery.

8 MS. ELLSWORTH: Your Honor, I'm going to object on the
9 grounds of personal knowledge. This is Felicia Ellsworth for
10 the intervenor defendant.

11 THE WITNESS: Roughly 2,000 maybe.

12 BY MR. KAUFMAN:

13 Q. Collective, throughout all those counties?

14 A. Yes.

15 THE COURT: I'm sorry. I overrule the objection. When
16 an objection is made, you gotta wait on me to rule on it before
17 you answer. Okay. And since we're all having to chime in and
18 chime out and the court reporter is doing the best she can to
19 keep track of what everybody is saying, let's allow that to
20 happen. And that's the same for everybody. When an objection
21 is lodged, the witness needs to stand down from answering and
22 further questioning until I rule on it. Okay.

23 The objection is overruled. I can consider the hearsay.
24 You can obviously prod on cross-examination the basis for his
25 knowledge.

1 Go ahead. You may please reanswer the question.

2 BY MR. KAUFMAN:

3 Q. Do you know approximately how many ballots were hand
4 delivered over the course of this past weekend and Monday with
5 the -- at the defendant counties?

6 A. It was about 2,000.

7 Q. And how did you -- you mentioned how you heard about
8 Fulton. How did you find out about the other defendant counties
9 deciding or having their registration offices or additional
10 registration annex offices open?

11 A. In most cases we found out via Twitter or other
12 stakeholders in the area who reached out to us and told us.

13 Q. So you didn't hear it on any public newscast?

14 A. No.

15 Q. And you didn't see it posted well in advance of the close
16 of voter registration in the county organ?

17 A. No.

18 Q. And you didn't see it posted on any county websites?

19 A. No.

20 MR. KAUFMAN: Your Honor, I have no further questions of
21 Mr. Rice at this time.

22 THE COURT: Thank you. We'll do cross-examination at
23 this time, first from the Chatham County Board of Elections.
24 Any cross-examination?

25 MR. PERKINS: Yes, Your Honor. Briefly. This is Ben

1 Perkins.

2 CROSS-EXAMINATION

3 BY MR. PERKINS:

4 Q. Mr. Rice, are you aware that Chatham County issued a press
5 release on November the 1st regarding its intention to receive
6 absentee ballots by hand delivery on November 2nd and
7 thereafter?

8 A. No.

9 Q. Okay. But you agree with me, sir, that if such notice was
10 provided, then you would have had -- your -- I'm sorry -- you,
11 the Georgia Republican Party, would have had the opportunity to
12 direct your resources in plenty of time for the following day;
13 correct?

14 MR. KAUFMAN: Objection. Calls for speculation.

15 THE COURT: Overruled, particularly given the
16 information he gave on direct.

17 THE WITNESS: Not timely under the circumstances.

18 BY MR. PERKINS:

19 Q. Well, why not?

20 A. So I've been doing this for a long time. It takes a while
21 to get your volunteers ready to do things. We were scrambling
22 to try and find observers, to find volunteers who were able to
23 go absentee ballot chase. It can take, you know, days, weeks,
24 to recruit these staffers, or volunteers rather.

25 Q. And, Mr. Rice, regarding the receipt of absentee ballots,

1 you recognize that state law specifically authorizes county
2 boards to receive absentee ballots prior to the closing of the
3 polls on the day of the election. Is that right?

4 MR. KAUFMAN: Your Honor, I'm going to object. It calls
5 for a legal conclusion. Also --

6 THE COURT: Overruled, because you asked him on direct
7 about the time period for early voting. So you opened this
8 door. Overruled.

9 THE WITNESS: Yes.

10 BY MR. PERKINS:

11 Q. So you recognize that county boards of elections and
12 county registrars are authorized by statute to receive absentee
13 ballots by hand delivery prior to the closing of the polls on
14 the day of the election. Correct?

15 A. I'm not sure. I don't know.

16 Q. Why are you equivocating now, because you answered yes to
17 the prior question.

18 A. I don't -- sorry. Can you repeat the question?

19 Q. Certainly. I asked you, do you agree with me that county
20 boards of elections and registrations are authorized by state
21 law to receive hand-delivered absentee ballots prior to the
22 closing of the polls on the day of the election?

23 A. Yes. Sorry.

24 MR. PERKINS: Thank you, sir. That's all I have.

25 THE COURT: All right. We'll hear cross-examination at

1 this time from Fulton County, if any.

2 MS. WARNER: Thank you, Your Honor. Lauren Warner.
3 Just a few questions.

4 CROSS-EXAMINATION

5 BY MS. WARNER:

6 Q. Mr. Rice, are you aware of any prior lawsuits or
7 challenges brought by the Georgia Republican Party about the
8 deadlines to accept hand-delivered absentee ballots in Fulton
9 County before the current challenge that we're here on today?

10 A. No.

11 Q. Are you aware, Mr. Rice, that Fulton County accepted
12 absentee ballots via hand delivery in 2022?

13 A. During what time period?

14 Q. During the time period through the close of the polls on
15 Election Day.

16 A. Yes.

17 Q. And one of the statements you made on direct when
18 questioned by Mr. Kaufman, I believe you said you would have
19 had -- had you known about this in advance, you would have had
20 Republican counties to also collect hand-delivered absentee
21 ballots during the November 2nd to the 4th time period. Is that
22 right?

23 A. We would have encouraged all counties to do this, to give
24 everyone the same advantage.

25 Q. And do you know whether there were any counties other than

1 the counties listed as defendants in this lawsuit who also
2 accepted hand-delivered absentee ballots between November 2nd
3 and November 4th?

4 A. No.

5 MS. WARNER: I don't have any further questions, Your
6 Honor.

7 THE COURT: Okay. Cross-examination by DeKalb County.

8 MR. HERRIN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. HERRIN:

11 Q. Good afternoon, Mr. Rice. Just a couple of questions.
12 How many elections have you worked in Georgia?

13 A. I've worked two other previous elections, the 2020 run-
14 offs and the 2022 runoffs.

15 Q. You said the 2020 runoff and the 2022 runoff?

16 A. Yeah. In a separate capacity. Not as executive director.

17 Q. Okay. And did you -- have you attended a DeKalb County
18 Board of Registration and Elections meeting before?

19 A. No.

20 Q. You did not attend the October 10th DeKalb County Board of
21 Registration and Elections meeting. Correct?

22 A. No.

23 Q. Is it a part of your job to monitor someone -- strike
24 that. Is it a part of your job or someone on your staff to
25 monitor board of registration and election websites?

1 A. No. We don't have that capacity.

2 Q. So you don't monitor what boards of elections are doing?

3 A. There's 159 counties. It would just take way too much
4 time.

5 Q. Do you ever monitor what the DeKalb County Board of
6 Elections and Registration does by monitoring their website?

7 A. No.

8 Q. You were asked a question by the Fulton County attorney,
9 and I'm just going to ask the same thing related to DeKalb
10 County. Are you aware that DeKalb County has always accepted
11 hand marked absentee ballots up until 7 p.m. on Election Day in
12 every election?

13 A. Yes.

14 Q. Is that a yes or a no?

15 A. That's a yes.

16 MR. HERRIN: I have no further questions, Your Honor.

17 THE COURT: Thank you. At this time we'll have
18 cross-examination by the Cobb County defendants.

19 MR. WHITE: Thank you, Your Honor. Daniel White here
20 for Cobb County.

21 CROSS-EXAMINATION

22 BY MR. WHITE:

23 Q. Mr. Rice, I believe you said you looked at the different
24 counties' websites to discover the information. Did you look at
25 Cobb County's election website?

1 A. I don't recall saying that I looked at the websites.

2 Q. Well, where did you look?

3 A. I was -- you're talking about how did I find out about the
4 counties staying open, the board of elections staying open for
5 the weekend? Is that what you're asking about?

6 Q. Yes.

7 A. So I learned via Twitter, via stakeholders. Not via the
8 websites.

9 Q. So you have -- are you aware that on the Cobb Board of
10 Elections website on August 19th there was a post that said that
11 the Cobb County election offices will be accepting ballots on
12 November 2nd, 3rd and 4th?

13 A. I'm not aware of that.

14 Q. And did you review any legal notices in any newspapers?

15 A. No.

16 Q. Okay. So are you aware that there was a notice published
17 or at least -- published October 11th in the Marietta Daily
18 Journal regarding the processing of absentee ballots on November
19 2nd and 4th in the Cobb County election offices?

20 A. No.

21 Q. So it's not your testimony that there was no notice from
22 Cobb County, is it?

23 A. Not to my knowledge.

24 Q. It's just you didn't know about it. Correct?

25 A. Correct. Right.

1 MR. WHITE: That's all we have.

2 THE COURT: All right. I'll allow Gwinnett County at
3 this time cross-examination.

4 MR. GERMANY: Thank you, Your Honor. This is Ryan
5 Germany. I represent Gwinnett County.

6 CROSS-EXAMINATION

7 BY MR. GERMANY:

8 Q. Mr. Rice, you testified that you are executive director of
9 the Georgia Republican Party. Is that correct?

10 A. Yes.

11 Q. As part of your duties, you said you oversee an absentee
12 ballot chase program. Correct?

13 A. Yes.

14 Q. And an absentee ballot chase program is basically trying
15 to get voters to return their absentee ballots. Is that
16 correct?

17 A. Correct.

18 Q. Do you have -- as part of your job duties, do you have
19 contact with local members of boards of elections, particularly
20 the members appointed by the local Republican parties?

21 A. I have their contact information. I have not personally
22 reached out to any local board of election members.

23 Q. Do you have any contact with local board of election
24 members just as part of your job?

25 A. No.

1 Q. How do you keep yourself apprised of what county election
2 boards are doing?

3 A. Mostly through the county chairs, the Republican Party
4 county chairs.

5 Q. Are you aware that on July 17th, 2024, the Gwinnett County
6 Board of Elections and Registration had a meeting where they
7 specifically authorized acceptance of absentee ballot --
8 absentee ballots at the elections office on November 2nd and
9 November 3rd?

10 A. I'm not aware.

11 Q. Do you know who David Hancock is?

12 A. I do not.

13 Q. Do you know that David Hancock is a Republican-appointed
14 member of the Gwinnett County local elections board?

15 A. I do not know that.

16 Q. Would you say that if you --

17 And, Alex, I'm referring to what's on the docket -- the
18 minutes of this are on the docket as Document 28, if you want to
19 show the witness that exhibit.

20 And, let's see. You let me know when you have it in front
21 of you.

22 MR. KAUFMAN: Is it Exhibit A?

23 MR. GERMANY: Yes.

24 THE COURT: To be clear, it's Doc. 28-1, Official
25 Meeting Minutes, Doc. 28-1 filed 11/4/2024. Go ahead.

1 MR. GERMANY: Thank you, Your Honor.

2 BY MR. GERMANY:

3 Q. Yes, it's Document 28-1, which are meeting minutes from
4 the Gwinnett County Board of Elections and Registration. Do you
5 keep apprised of meetings of local boards of elections as part
6 of your absentee ballot chase program or any other of your
7 duties?

8 A. No.

9 Q. Does anybody on the staff of the Georgia Republican Party
10 keep themselves apprised of local election board meetings?

11 A. No.

12 Q. Do you see at the top of Document 28-1 where it says
13 Wednesday, July 17th, 2024, 6 p.m.?

14 A. Yes.

15 Q. If you had knowledge in July of 2024 that Gwinnett County
16 was going to accept absentee ballots at their Atlanta location
17 on November 2nd and 3rd, would that be sufficient time for you
18 to prepare for your absentee ballot chase program?

19 A. Yes.

20 MR. GERMANY: No further questions, Your Honor.

21 THE COURT: Thank you. We'll move down the line to the
22 Clayton County Board of Elections for your cross-examination.

23 MR. GERMANY: Your Honor, this is Ryan Germany. I'm
24 sorry. I would like to move to admit Document 28-1.

25 THE COURT: Any objection?

1 MR. KAUFMAN: I mean, assuming the proffer from
2 Mr. Germany that this is an actual government official meeting
3 record, we have no objection.

4 THE COURT: Doc. 28-1 is admitted as that Defendant's
5 Exhibit 1 to this hearing without objection and will be
6 considered. 28-1 is admitted as Gwinnett County Defendant
7 Exhibit 1 to this hearing.

8 All right. So we'll now move on to the -- Clayton
9 County, I believe, is next up.

10 MR. SABZEVARI: This is Ali Sabzevari for the Clayton
11 County Board of Elections and Registration. We do not have any
12 questions for the witness.

13 THE COURT: Thank you. Clarke County Board of
14 Registrations and Elections.

15 MR. HAWKINS: A few, Your Honor, if I may.

16 CROSS-EXAMINATION

17 BY MR. HAWKINS:

18 Q. Mr. Rice, my name is John Hawkins --

19 THE COURT: Sorry. Announce who is speaking, please.

20 MR. HAWKINS: John Hawkins.

21 THE COURT: Go ahead.

22 BY MR. HAWKINS:

23 Q. Mr. Rice, again, my name is John Hawkins. I'm a deputy
24 chief attorney with the Athens-Clarke County Attorney's Office.
25 Were you physically present in Athens-Clarke County on either

1 Saturday or Sunday -- excuse me -- this past Saturday or Sunday?

2 A. No, sir.

3 Q. Were you aware that the Athens-Clarke County elections
4 office was closed this past Saturday and Sunday?

5 A. No.

6 Q. Were you aware that the Athens-Clarke County elections
7 office was not accepting personal delivery ballots this past
8 Saturday and Sunday?

9 A. No.

10 Q. Did you attempt to check the Athens-Clarke County Board of
11 Elections website to see whether the Athens-Clarke County
12 elections office would be open either this past Saturday or
13 Sunday?

14 A. No.

15 MR. HAWKINS: Nothing further right now, Your Honor.

16 THE COURT: Okay. On behalf of the DNC, the Democratic
17 National Committee and the other intervenor defendants. Any
18 cross-examination?

19 MS. ELLSWORTH: Yes. Thank you, Your Honor. Just a
20 few. Felicia Ellsworth for the intervenor defendants.

21 CROSS-EXAMINATION

22 BY MS. ELLSWORTH:

23 Q. Mr. Rice, you are familiar that the Georgia Republican
24 Party joined a lawsuit filed against Fulton County that was
25 filed on November 1st, 2024; correct?

1 A. Yes.

2 Q. Did you sign a verification in connection with that
3 verified emergency petition for a restraining order?

4 A. I did not sign anything.

5 Q. You're aware that a Fulton County judge heard -- had a
6 hearing on November 2nd, 2024, on the Georgia Republican Party's
7 complaint?

8 A. Yes.

9 Q. Did you participate in or observe that hearing?

10 A. I observed part of it.

11 Q. Did you observe the portion of the hearing where Judge
12 Farmer of the Fulton County Superior Court denied the Georgia
13 Republican Party's requested relief?

14 A. I did not actually see that part. I'm aware of it.

15 Q. Are you aware that Judge Farmer of the Fulton County
16 Superior Court denied the Georgia Republican Party's requested
17 relief?

18 A. Yes.

19 Q. In your role as the executive director, is it one of your
20 responsibilities to be familiar with the 159 counties in the
21 State of Georgia?

22 A. Yes.

23 Q. And are you familiar in particular with Walton County?

24 A. Not very familiar with it outside of knowing the name of
25 it.

1 Q. You testified on direct examination in response to
2 questions from Mr. Kaufman that the nine defendant counties have
3 historically been won by Democratic candidates. Do I have that
4 correct?

5 A. Yes.

6 Q. Are you aware that Walton County has historically been --
7 or elected Republican candidates or been won by Republican
8 candidates?

9 A. I don't have the data in front of me. So at this moment,
10 no, I'm not aware of that.

11 Q. You said you were involved in the 2020 and 2022 runoff
12 elections. Is that correct?

13 A. Yes.

14 Q. Are you aware that in 2020, the 2020 runoff election, the
15 Walton County voted overwhelmingly Republican?

16 A. Again, I don't know -- I don't know the turnout results or
17 the election results in every county, without the data in front
18 of me.

19 Q. Are you aware that Walton County on November 2nd and
20 November 3rd, 2024, allowed for the in-person return of absentee
21 ballots?

22 A. I was not aware of that.

23 Q. You are aware that Walton County is not named as a
24 defendant in this case. Correct?

25 A. I am aware of that.

1 MS. ELLSWORTH: And, Mr. Kaufman, I just want to refer
2 the witness to one document, which is going to be Document 25-1
3 at Page 54. It's the verified complaint of the Georgia
4 Republican Party against Fulton County. If you'd let me know
5 when the witness has that.

6 MR. KAUFMAN: Okay. Gotta reload PACER. One second.

7 THE COURT: I'm sorry. To be clear -- this is Judge
8 Baker. Are you referring the witness to the verified complaint
9 in this lawsuit or the verified complaint into what I will call
10 the prior Fulton County lawsuit?

11 MS. ELLSWORTH: Thank you, Your Honor. The latter. To
12 the verified complaint in the Fulton County lawsuit.

13 THE COURT: Okay. Go ahead.

14 BY MS. ELLSWORTH:

15 Q. Mr. Rice, do you have that in front of you?

16 A. Not at the moment.

17 MR. KAUFMAN: We're still loading it. It's not the best
18 connection.

19 MS. ELLSWORTH: No worries. Thank you.

20 MR. KAUFMAN: It's Docket Entry 25; correct?

21 MS. ELLSWORTH: 25-1. And it starts at Page 54 of that
22 document.

23 MR. KAUFMAN: Okay. We're with you.

24 BY MS. ELLSWORTH:

25 Q. Mr. Rice, do you see the verified emergency petition for

1 injunctive relief, declaratory judgment and complaint filed on
2 behalf of the Georgia Republican Party in front of you?

3 A. It's loading right now.

4 Q. Let me know when you can see it.

5 A. Okay. I can see it.

6 Q. This is a complaint that the Georgia Republican Party
7 filed on Friday, November 1st; correct?

8 A. Yes.

9 MS. ELLSWORTH: Your Honor, I want to just admit this as
10 Defendant's Exhibit 2. It's, again, it's Document 25-1 and it's
11 Pages 54 to 60 of that docket.

12 THE COURT: Any objection?

13 MR. KAUFMAN: No, Your Honor.

14 THE COURT: That'll actually be these Defendants'
15 Exhibit 1. The other exhibit was as to a different defendant.
16 So it will be these Defendants' Exhibit 1.

17 MS. ELLSWORTH: Thank you, Your Honor.

18 BY MS. ELLSWORTH:

19 Q. Mr. Rice, other than the nine counties that have been
20 named in this lawsuit, you're not aware of whether any of the
21 other 150 counties in the State of Georgia were accepting
22 in-person return of absentee ballots on November 2nd, 3rd or
23 4th, 2024. Is that correct?

24 A. That is correct.

25 Q. You don't know one way or the other?

1 A. Correct.

2 MS. ELLSWORTH: Thank you. No further questions.

3 THE COURT: All right. Thank you. May this witness be
4 excused?

5 MR. KAUFMAN: I have a couple of -- Your Honor, may I
6 redirect briefly?

7 THE COURT: Mr. Kaufman, just announce when you speak.
8 You may redirect, briefly.

9 MR. KAUFMAN: Yes, Your Honor. I apologize.

10 REDIRECT EXAMINATION

11 BY MR. KAUFMAN:

12 Q. Mr. Rice, are you aware, if, for example, in Chatham
13 County on this past Saturday if observers were able to be
14 present to observe the return of these absentee ballots?

15 A. I'm not aware.

16 Q. You're not aware one way or the other?

17 A. No.

18 Q. Are you aware if in the other counties observers were
19 allowed to be present?

20 A. I do know we had --

21 MS. WARNER: Objection, Your Honor. This is Lauren
22 Warner. I want to lodge an objection to testimony about
23 observers. This falls outside the prayer for relief, which did
24 not seek any relief from this Court related to use of observers
25 at polling places at all.

1 THE COURT: Overruled, as it may go to injury and it may
2 go to standing. So I'll overrule the objection and allow you to
3 answer. But I'm going to keep a short leash on it, Counsel. Go
4 ahead.

5 MS. ELLSWORTH: And, Your Honor, I'm going to object as
6 beyond the scope of cross-examination.

7 THE COURT: Understood. Keep going. Overruled.

8 THE WITNESS: I am aware that we had issues in Fulton
9 County where at all four locations our volunteers were turned
10 away and told -- and I am aware of an email that was sent out
11 directing the board of elections employees not to allow our poll
12 observers in.

13 BY MR. KAUFMAN:

14 Q. And are you aware that -- I'm sorry -- this past Saturday
15 and Sunday, is that before or after the deadline to apply for a
16 poll watcher credential?

17 A. That was after the deadline.

18 Q. And the registration centers, for example, in Fulton
19 County, do you know if those were actually considered polling
20 locations previously in this election?

21 A. I am not aware of that.

22 MR. KAUFMAN: I have no further questions for you,
23 Mr. Rice.

24 THE COURT: All right. This witness is excused. I've
25 invoked the rule of sequestration. Don't discuss your

1 testimony.

2 Your next witness, Counsel. Mr. Kaufman, your next
3 witness.

4 MR. KAUFMAN: I actually believe my co-counsel in
5 Savannah has the witness present.

6 THE COURT: Okay.

7 MR. KAUFMAN: And, Your Honor, just for clarification,
8 you've invoked the rule as to Mr. Rice, so do I need to have him
9 leave the room?

10 THE COURT: I don't think anybody is going to recall
11 him. So he can -- he does not need to leave the room. Nobody
12 has got paper on him. Nobody plans to call him. I just don't
13 want him discussing his testimony with anyone.

14 I did not invoke the rule before the hearing. Nobody
15 asked for it to be invoked. So it may be that your co-counsel
16 in Savannah and other witnesses were able to hear that witness's
17 testimony. If that's the case, I find it to be harmless error
18 at this point. But if there are any other witnesses who are
19 there with their attorneys or others who intend to testify, they
20 need to be out of the room and not able to listen to this
21 hearing until their testimony is completed. Okay.

22 So I believe you were going to turn it over to
23 Mr. Feemster for a witness in Savannah. Is that correct?

24 MR. KAUFMAN: Yes, Your Honor.

25 THE COURT: All right. I'll permit it given that you've

1 got individuals in different places.

2 Mr. Kaufman, at this time mute your microphone.

3 Mr. Feemster, tell us who your witness is.

4 MR. FEEMSTER: Your Honor, my witness is Sheryl Gay.

5 THE COURT: Okay. Mrs. Hammock, please swear in the
6 witness.

7 THE CLERK: Ms. Gay, if you will, please raise your
8 right hand to be sworn. You do solemnly swear or affirm that
9 the testimony and evidence you give the Court in this case shall
10 be the truth, the whole truth and nothing but the truth, so help
11 you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. If you will, please state your
14 name for the record, spell your first and your last name.

15 THE WITNESS: Okay. It's Sheryl Gay. It's spelled
16 S-H-E-R-Y-L. Last name Gay, G-A-Y.

17 THE CLERK: Thank you.

18 THE COURT: All right. Your witness, Counsel. Go
19 ahead, Mr. Feemster.

20 MR. FEEMSTER: Thank you, Your Honor.

21 SHERYL GAY, being first duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. FEEMSTER:

25 Q. Ms. Gay, are you a resident of Chatham County?

1 A. Yes, I am.

2 Q. All right. Are you involved with the Chatham County
3 Republican Party?

4 A. Yes.

5 Q. And what is your position with the Chatham County
6 Republican Party?

7 A. I'm secretary of the Chatham County GOP.

8 Q. All right. Have you been involved in the campaign and --
9 during this election season?

10 A. I have, yes.

11 Q. And what have been your duties in regard to that?

12 A. Typical campaign duties of putting out signs, calling
13 voters, encouraging people to vote, helping set up poll watchers
14 and just -- I'm sorry.

15 Q. Go ahead.

16 A. Just typical campaign activities.

17 Q. So what's involved in setting up or recruiting poll
18 watchers?

19 A. So we have to find people who are interested in doing it,
20 and then they have to do a training in the state -- the
21 trainings are conducted by the state --

22 THE COURT: Mr. Feemster, I'm going to interrupt at this
23 point. We've gotten defendants object a good bit about the
24 issue of poll watchers and that this lawsuit did not mention,
25 did not state a claim based on lack of access of poll watchers.

1 I'll give you some short leash, like I gave Mr. Kaufman, but I
2 want to get to the actual claims in the case and not about poll
3 watchers. Okay. I've allowed a little bit of leeway in this
4 area, but I'm not going to allow much more. Go ahead.

5 MR. FEEMSTER: All right, sir. That's --

6 BY MR. FEEMSTER:

7 Q. Ms. Gay, was there anything else that you wanted to answer
8 in regard to this question or that you would answer in regard to
9 the question I just asked you?

10 A. About the poll watching? No.

11 Q. Okay. Let's move on. So how did you become aware, if at
12 all, that the Chatham County Board of Registrars or the Board of
13 Elections was going to be accepting absentee ballots delivered
14 at some locations after the close of the polls on Friday?

15 A. Saturday morning one of our board members texted us and
16 asked were we aware of this. She had seen something in a news
17 article. That was my first knowledge of it.

18 Q. Okay. So what did you do in response to that?

19 A. So at that time I didn't really do anything, but we did
20 have a few people go and observe from the parking lot, but they
21 just sat in their cars. They didn't get out or interact in any
22 way. And then midday, probably around lunchtime -- I don't
23 remember the exact time -- I got a call from Kendall Haley
24 asking if I would go over and walk in and ask to observe and
25 video as I did so.

1 Q. So what happened?

2 A. So I went in, I held my camera up. It was overtly
3 videoing, and I asked the woman could I observe them receiving
4 the ballots. And she told me no, and she was very upset that I
5 was filming. And there was like a little entryway, so I wasn't
6 really in the board of registrars. She went into the board of
7 registrars office, and she came back and she told me I had to
8 leave. So I did. And we walked out, and there was a police
9 officer outside, and she went up to him and told him she wanted
10 to file a report against me for filming her.

11 Q. How did that -- what was the result of that conversation
12 involving the police officer?

13 A. So he started taking a report, and he got my personal
14 information. He asked the woman, which I still don't know her
15 name, for her personal information. She refused to give it.
16 She didn't want me to know her name. And anytime I tried to
17 answer the officer's question, she would talk over me. At one
18 point he finally asked her to please let me finish speaking
19 because he had to hear my version of what had happened.

20 Q. Okay. At the end of that did the officer have any
21 directions for the staff member?

22 A. So the staff member and the officer, Officer Sanders, went
23 back inside the board of registrars. I waited outside. They
24 were in there 10, 15 minutes. And he came back out, and he was
25 alone, without the staff member, and I walked over, and I asked

1 him, I said, where do I get a copy of the report? And he said
2 that they had decided that they were not going to file a report
3 and that if I wanted to come in and observe at that time, I
4 could. It was about 2:15 or 2:30 at that point in time.

5 Q. Okay. What did you do?

6 A. So I declined to go in, but another person that was out
7 there, she went in to observe.

8 Q. Who was that individual?

9 A. Amy Ellis.

10 MR. PERKINS: Your Honor, this is Ben Perkins on behalf
11 of the Chatham County defendants. I object to this line of
12 questioning on relevance grounds. It's similar to the
13 objections you've heard before. This line of questioning does
14 not appear to relate at all to the relief that's being sought.

15 THE COURT: I'm going to overrule. I'm not going to
16 strike what's been said to this point, but let's wrap it up,
17 Mr. Feemster.

18 MR. FEEMSTER: That's it, Your Honor. That's all I've
19 got for this witness.

20 THE COURT: Thank you. Cross-examination? First from
21 Chatham County.

22 MR. PERKINS: Thank you, Your Honor. Ben Perkins.

23 CROSS-EXAMINATION

24 BY MR. PERKINS:

25 Q. Ms. Gay, your testimony was that because you were using a

1 video camera, that you were stopped on the day in question; is
2 that right?

3 A. That was one of her complaints. She also said that I
4 couldn't observe.

5 Q. Okay. And then you were -- and then let me ask you this.
6 Are you familiar with the confidentiality protections that
7 prohibit poll watchers and observers from using photographs or
8 other recording devices in certain areas of election facilities?

9 A. Yes, I am.

10 Q. And then you're also familiar that absentee ballots
11 contain confidential information such as dates of birth,
12 driver's license numbers and/or Social Security numbers on them?

13 A. Yes.

14 Q. Okay. Thank you. And at the end of your interaction you
15 were allowed to observe the Chatham County Board of Registrars'
16 receipt of hand-delivered completed absentee ballots. Is that
17 correct?

18 A. They told me I could come in, but I did not go in. The
19 other woman did. Yes.

20 MR. PERKINS: All right. Thank you. I have no further
21 questions.

22 THE COURT: Thank you, Counsel. Is there any other
23 cross-examination by any other defendants as to this witness?

24 All right. With no announcement, Mr. Kaufman, your next
25 witness.

1 MR. KAUFMAN: Your Honor, I don't believe we have any
2 other live witnesses.

3 THE COURT: All right. Very good. I'll hear from
4 Chatham County at this time with any other witnesses.

5 MR. PERKINS: Thank you, Your Honor. I'll be calling
6 Colin McRae. We're just bringing him back into the room.

7 THE COURT: Very good.

8 MR. PERKINS: All right, Your Honor. He has returned.

9 THE COURT: Mrs. Hammock, please swear in the witness.

10 THE CLERK: Mr. McRae, if you will, please raise your
11 right hand to be sworn. You do solemnly swear or affirm that
12 the testimony and evidence you give the Court in this case shall
13 be the truth, the whole truth and nothing but the truth, so help
14 you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. And, if you will, please state
17 your name for the record; spell your last name for us.

18 THE WITNESS: Sure. Colin, C-O-L-I-N. McRae,
19 M-C-R-A-E.

20 THE CLERK: Thank you.

21 COLIN McRAE, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. PERKINS:

25 Q. Mr. McRae, would you please introduce yourself for the

1 Court.

2 A. Sure. This is Colin McRae. I am the current chairperson
3 of the Chatham County Board of Registrars.

4 Q. What is the role of the Chatham County Board of
5 Registrars?

6 A. We have several responsibilities, the main ones being
7 maintaining an accurate and up-to-date roll of current
8 registered voters; and, in addition, we administer both the
9 absentee balloting and the early in-person voting, also known as
10 advance voting.

11 Q. Please tell us the difference between absentee and in-
12 person advance voting.

13 A. Sure. So advance voting is where you cast your vote in
14 person at a traditional-style voting machine, same ones you
15 would see on Election Day itself. And, of course, absentee
16 balloting is a paper ballot that is filled out by hand and
17 submitted either in person or by mail or at an absentee drop-off
18 box.

19 Q. And when was the last day of in-person advance voting in
20 Chatham County?

21 A. Per the statute, our last day of advance in-person voting
22 was on Friday, November 1.

23 Q. Did the -- you mentioned drop boxes a moment ago. Did the
24 Board of Registrars have drop boxes for the receipt of absentee
25 ballots?

1 A. Yes, we did. Due to recent changes in the law, we were
2 limited to three absentee drop-off boxes this election cycle.
3 Those were all closed with no further ballots received after
4 Friday, November 1.

5 Q. And is that also pursuant to the law?

6 A. Yes. That's following the restrictions of the Georgia
7 Election Code.

8 Q. Does the Board of Registrars receive absentee ballots that
9 are delivered to the Board of Registrars by U.S. Mail?

10 A. Yes. We've continued to receive those by mail through
11 today, the Election Day. They have to be physically received by
12 our office no later than close of business on Election Day,
13 which would be today.

14 Q. Let's talk about hand delivery, hand-delivered absentee
15 ballots. If an absentee ballot is received today on Election
16 Day at 5 p.m., what happens to that ballot?

17 A. So that ballot, if it's delivered in person to our office,
18 it is logged. It is then processed, and it is included in those
19 ballots that are to be tallied after the end of the Election
20 Day.

21 Q. And then what about an absentee ballot that is physically
22 received by the Board of Registrars after the close of the polls
23 on Election Day? What happens to those ballots?

24 A. Yeah. Unfortunately, those that come in after the 7 p.m.
25 cutoff on Election Day, those are set aside. Those are not sent

1 for processing and tallying, and they are sequestered after the
2 conclusion of Election Day, and eventually they are destroyed.

3 Q. We're here today about the Board of Registrars' receipt of
4 hand-delivered completed absentee ballots from November the 2nd
5 through November the 5th. Could you please tell the Court about
6 that process as it relates to Chatham County?

7 A. Sure. You know, consistent with -- and I should say I've
8 been doing this for -- this is my -- I've been doing this for 20
9 years. Consistent with the decades of our prior practice, we
10 accept hand-delivered absentee ballots at our main office up
11 through the close of business on Election Day, and that's done
12 pursuant to our powers under the election code. And we accept
13 those absentee ballots that are brought in either by the elector
14 him or herself or by those family members or household members
15 who are authorized by statute to deliver them.

16 Q. And were election monitors allowed to observe the Board of
17 Registrars' receipt of hand-delivered completed absentee ballots
18 on November the 2nd?

19 A. Yes. They were. We have a transparent policy. We were
20 permitting any observers, whether they be poll watchers or
21 members of the public, to, you know, provided they abided by the
22 regulations and statutes of the Georgia Election Code, they were
23 welcome and permitted to observe those activities on this past
24 Saturday, November 2nd.

25 Q. What regulations and statutes under the election code

1 could trigger somebody from not being allowed to engage in such
2 activities?

3 A. The main one that we go by is a state statute, O.C.G.A.
4 21-2-408, and in particular what our staff members are looking
5 out for is to make sure that the provision of that statute that
6 prohibits using photographic or, you know, videographic
7 electronic monitoring, that that one is not violated since that
8 is expressly spelled out in the statute as being prohibited.

9 MR. PERKINS: Thank you, Mr. McRae. I don't have
10 anything further for you at this time.

11 THE COURT: Cross-examination, Mr. Kaufman?

12 MR. KAUFMAN: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. KAUFMAN:

15 Q. Mr. McRae, you just mentioned O.C.G.A. 21-2-408. You
16 would agree with me that that statute is for poll watchers;
17 correct?

18 A. If you have a copy of it -- I do believe it does apply to
19 poll watchers. You are correct.

20 Q. But the registrar office is not a polling location, is it,
21 in Chatham County?

22 A. Well, if the operative term we're talking about, which was
23 on November 2nd, there would have been no polling going on
24 there. However, there was the processing of confidential
25 ballots with significant personal identifying information on

1 them, which my understanding is the purpose behind having that
2 statute prohibiting the recording of those activities.

3 Q. Well, isn't it true that the registration office in
4 Chatham County is a public building?

5 A. Of course.

6 Q. Okay. And isn't it true that you closed that building at
7 3 p.m. on Saturday?

8 A. We closed the building to acceptance of hand-delivered
9 absentee ballots at 3 p.m., yes.

10 Q. Okay. But isn't it also true that you did not allow
11 observers until around 2:30 p.m. on Saturday?

12 A. That is not my understanding, no. If somebody had shown
13 up and wished to observe what was going on, they would have been
14 welcome to do so. And, in fact, in years past we have had
15 people come to our office on the Saturdays during early voting,
16 advance voting, that is, and they can observe as needed. We've
17 had people come. In 2022 we had at least one person come on the
18 Saturday before Election Day, because that person, a member of
19 the public, decided that he wished to see if there were -- you
20 know, how the processing of absentee ballots was going. So
21 that's been our policy, and that was our policy on Saturday,
22 November 2nd.

23 Q. So it's your testimony that on Saturday, November 2nd, any
24 observer was welcome in the Chatham County Registrar Office to
25 observe the receipt of absentee ballots being hand delivered to

1 your clerks. Is that clear [sic]?

2 A. Anybody who was complying with the law and was not
3 interfering with the process was welcome to observe the process
4 at our main office.

5 Q. And do you have an understanding if some observers were,
6 in your view, not complying with 21-2-408 and were removed?

7 A. We didn't remove anybody.

8 Q. Did you ask anyone to leave on Saturday?

9 A. Well, I personally didn't. My understanding is that there
10 was one individual who came -- came to our office and had an
11 interaction with a resource officer from the Savannah Police
12 Department who was present, and if there was any request that
13 that individual depart the premises, that would have been done
14 by a police officer.

15 Q. Okay. And do you know how many absentee ballots were hand
16 delivered this past Saturday?

17 A. Yes.

18 Q. How many?

19 A. 52.

20 Q. 52. And do you know if those 52 absentee ballots have
21 been sequestered per our request letter and litigation --

22 A. Yes, I know.

23 Q. And have they been?

24 A. Yes, they have.

25 Q. Okay. You mentioned a fair amount of the Georgia Code.

1 Are you familiar with O.C.G.A. 21-2-215, the main office of the
2 Board of Registrars?

3 A. Is there a specific section of it you'd like me to comment
4 on?

5 Q. Sure. Are you familiar with 21-2-215(c)?

6 A. C as in Charlie?

7 Q. C as in Charlie.

8 A. Okay.

9 Q. And isn't it true it reads that the main office of the
10 Board of Registrars in each county shall remain open for
11 business during regular office hours on each business day except
12 Saturday?

13 A. Yes. I also see the second sentence that it shall open
14 "at such designated times other than the normal business hours
15 as shall reasonably be necessary to facilitate registration and
16 at such other hours as will suit the convenience of the public."
17 We were certainly -- we were looking out for the convenience of
18 the public by offering to accept hand-delivered ballots on
19 Saturday, and that's one of the primary reasons that we decided
20 to be open on Saturday.

21 Q. Right. But it was to facilitate registration; correct?

22 A. No. No. Registration had been closed by that time,
23 Mr. Kaufman.

24 Q. I'm sorry. What did you say?

25 A. I said registration for the -- to be eligible to vote in

1 the November election had closed. That was not one of the
2 purposes. It was one of the -- the additional clause there,
3 "and at such other hours as will suit the convenience of the
4 public." We were suiting the convenience of the public by
5 assisting with the acceptance of those ballots.

6 I'd also point out that that first sentence that you had
7 me comment on, it says it shall remain open for business hours
8 except Saturday. There's no prohibition there in that language
9 saying that we shall not be open on Saturday. There is just the
10 mandatory language saying we shall be open during the week.

11 Q. And you would agree with me that the last day to receive
12 absentee ballots in a drop box is November 1st; correct?

13 A. Absolutely.

14 Q. Okay. And then for a ballot to be received by a
15 registrar, that registrar has to have special training; correct?

16 A. Say that one more time. I'm sorry. I missed --

17 Q. Well, I mean, in order for a registrar to physically
18 accept an absentee ballot by hand -- I'm not talking about by
19 mail -- that there's such a thing as an absentee ballot clerk.
20 Right?

21 A. Yes, but you're confusing two concepts. Our absentee
22 ballot clerk is the individual member of staff who is
23 particularly deputized to oversee the processing of those
24 ballots. The other members of our staff do receive training on
25 the proper means and method of accepting absentee ballots by

1 hand delivery.

2 Q. And what are those methods?

3 A. The methods of training? The methods of testing?

4 THE COURT: All right, Counsel. Hold on one second.
5 I'm going to get in the middle here. We are not going to go
6 down -- that was not part of the complaint as to whether people
7 are properly trained in the receipt and processing of absentee
8 ballots. So where are you going with this, Mr. Kaufman?

9 MR. KAUFMAN: Where I'm going is because the -- we've
10 contended in the verified complaint and with the exhibits that
11 they were not observed or permitted to observe the receipt of
12 these, along with the fact that we've also alleged that this is
13 basically absentee voting that's been extended past the November
14 1st deadline, that we have no idea if these people have followed
15 the proper receipt procedure for these absentee ballots, and
16 that's part of the reasons for our prayer for relief through
17 sequestration.

18 THE COURT: All right. Well, a preliminary injunction
19 hearing is not a fishing expedition. Okay. I'm going to allow
20 you a little bit more questions, because I'll allow you to ask
21 Mr. McRae a bit more, but you need to stick with the gravamen of
22 your complaint and not try to go on a fishing expedition to come
23 up with other meat to put on the buns. Okay? All right.

24 MR. KAUFMAN: Yes, Your Honor.

25 THE COURT: So I'm not going to strike your testimony.

1 I'm going to let you continue to ask your questions, but as I
2 said earlier, I want to stick to the issues that have been
3 raised, not other issues. Okay. So go ahead.

4 MR. KAUFMAN: Yes, sir.

5 BY MR. KAUFMAN:

6 Q. Mr. McRae, did you -- who made the decision to open on
7 Saturday, November 2nd?

8 A. Who made the -- that was a decision that was made
9 probably -- did you say when or who? I'm sorry.

10 Q. I said who.

11 A. Who. I consulted with our executive director, Sabrina
12 German, and we discussed that as an operational matter and
13 decided that it was in the best interest and within -- within
14 the rights under the Georgia Election Code to open those hours
15 on Saturday.

16 Q. And did you consult with the other -- any of the other
17 defendant counties to make that decision as well?

18 A. No, I did not.

19 Q. And then when was this decision made?

20 A. I can't give you an exact time. Sometime Friday
21 afternoon.

22 Q. Friday afternoon meaning November 1st. Correct?

23 A. That's correct.

24 MR. KAUFMAN: I have no further questions, Your Honor.

25 THE COURT: Thank you. May this witness be excused from

1 the rule of sequestration or does anybody else have any
2 questions of him?

3 All right. Hearing no other questions, Mr. McRae, I've
4 invoked the rule of sequestration, so don't discuss your
5 testimony with anyone. Since you've been released, you may
6 listen in. Okay.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: All right. Any other witnesses for the
9 Chatham County defendants?

10 MR. PERKINS: No, sir, Your Honor.

11 THE COURT: Any witnesses for the Fulton County
12 defendants?

13 MS. WARNER: No live witnesses, Your Honor. I do have
14 some evidence to tender or point out to Your Honor that's
15 attached to the pleadings that include sworn testimony, but I
16 don't have any live witnesses today. So I can do that later, if
17 you're going to give us time later, or I'm happy to do it now.

18 THE COURT: If you'd like to introduce any exhibits, go
19 ahead and do that at this time.

20 MS. WARNER: Thank you, Your Honor. We'd like to
21 introduce Document 40-1, which is the declaration of Nadine
22 Williams. It includes the statement that the votes -- excuse
23 me -- the absentee ballots collected on November 2, 3rd and 4th
24 have been sequestered, which I believe Your Honor asked me to
25 follow up on from yesterday. And it also includes the number of

1 absentee ballots collected at each of the four locations that
2 were open over the weekend. I also want to point the Court --

3 THE COURT: Thank you. Any objection to 40-1?

4 MR. KAUFMAN: None, Your Honor, for -- this is Alex
5 Kaufman.

6 THE COURT: 40-1 is Fulton County Defendant's Exhibit 1
7 to this hearing, admitted without objection. All right. Keep
8 going.

9 MS. WARNER: Thank you, Your Honor. I also want to
10 point the Court to Document 29-1, which I don't believe has been
11 entered yet. It was attached as a supplement to Intervenor
12 Defendant DNC's response last night. It is the transcript, the
13 written transcript of the hearing before Judge Farmer.
14 Ms. Williams testified under oath at that hearing about certain
15 processes that are relevant to what Your Honor is considering
16 today. So I also wanted to tender that testimony.

17 THE COURT: Any objection to Doc. 29-1 being Fulton
18 County Defendant's Exhibit Number 2?

19 MR. KAUFMAN: Your Honor, the only objection is really
20 the caveat of relevance. We don't contend this is the same
21 causes of action, nor sought of relief, and it's also not the
22 same parties. But subject to that, they're obviously in-court
23 statements, and so we don't object.

24 THE COURT: Okay. That objection will be overruled. I
25 understand your relevance grounds, but I'll let the parties

1 argue that motion, or that issue, but that exhibit is introduced
2 over those objections.

3 All right. Anything else from the Fulton County
4 defendants?

5 MS. WARNER: Your Honor, I did want to make a proffer
6 that I would like to have leave to submit a declaration after
7 today's hearing based on some testimony that came from Mr. Rice
8 concerning an email exhibit that is in the record at Document
9 45, Page 10. It's an email from Kathryn Glenn.

10 Mr. Rice testified that he was aware of an email from
11 Kathryn Glenn, who is a Fulton County employee, telling a team
12 that there could not be poll watchers present in the building on
13 Saturday, November 2nd. I was trying to get this in the 45
14 minutes before the hearing, but wasn't able to. But I did speak
15 with Ms. Glenn and will go after her as soon as I get out of
16 here to get a signed declaration on this point.

17 That email was sent in error, and about 30 minutes after
18 it was sent the instructions in it were corrected and
19 individuals were allowed to observe on November 2nd. So that
20 email in and of itself was not a direction that remained in
21 place for longer than 30 minutes on November 2nd. And, again,
22 it was sent in error. So I will submit something from Ms. Glenn
23 to address the record.

24 THE COURT: I'll reserve ruling on that request. We'll
25 just see if the issue that's been given is germane to the

1 ultimate decision I need to make here at the preliminary
2 injunction stage. But so I'll just reserve ruling on that at
3 this time. Okay.

4 MS. WARNER: Thank you, Your Honor.

5 THE COURT: Is that all the exhibits from Fulton County?

6 MS. WARNER: Other than the documents that I
7 cross-referenced from other parties' responses. I don't want to
8 step on any of them by doing that early, but I do have a couple
9 of them that are identified in our response, which is Document
10 Number 40.

11 THE COURT: Thank you. And I'll certainly go to the
12 other defendants and see what they have to add. Obviously I'm
13 going to give all sides time for oral argument. So to the
14 extent that you want to refer to those documents and they
15 haven't been admitted but they're part of the record, you can
16 refer to those during your argument. Thank you.

17 MS. WARNER: Thank you.

18 THE COURT: And, of course, what's good for the goose is
19 good for the gander. All the other parties can do that as well.

20 All right. Turning to the DeKalb County defendants, any
21 witnesses from DeKalb County?

22 MR. HERRIN: Your Honor, we have no witnesses, but just
23 I want to clarify, I would like the declaration of Keisha Smith,
24 which can be found at Document Number 34-1, to be admitted and
25 to be considered by the Court for purposes --

1 THE COURT: Any objection to Doc. 34-1?

2 MR. KAUFMAN: No, Your Honor. This is Alex Kaufman.

3 THE COURT: And that's the affidavit declaration of
4 Keisha Smith that's on the docket. That's admitted without
5 objection. Anything else from DeKalb County?

6 MR. HERRIN: We have nothing further, Your Honor.

7 THE COURT: All right. So we'll turn to Cobb County.
8 Any witnesses from Cobb County defendants?

9 MR. WHITE: No witnesses, Your Honor.

10 THE COURT: Do you have any exhibits?

11 MR. WHITE: Yes, Your Honor. We filed a declaration
12 from Tate Fall. Ms. Fall is the director of elections for Cobb
13 County; and that's Document Number 39 on the Court's docket, and
14 it's in support of our response in opposition, and it just sets
15 forward some basic facts about the hours that they were open
16 this past weekend and what happened to the ballots that were
17 received.

18 THE COURT: Thank you. Any objection to the Court's
19 consideration of Doc. 39?

20 MR. KAUFMAN: No, Your Honor. Alex Kaufman for
21 plaintiffs.

22 THE COURT: Thank you, Mr. Kaufman. So that is
23 introduced without objection as Exhibit 1 of that defendant.
24 Okay. Thank you.

25 So now I believe we're to Gwinnett County. Any

1 witnesses from Gwinnett County?

2 MR. GERMANY: This is Ryan Germany for Gwinnett County.
3 Nothing further from Gwinnett, Your Honor.

4 THE COURT: Any exhibits?

5 MR. GERMANY: None other than the one we already
6 admitted.

7 THE COURT: Very good. From Clayton County, any
8 witnesses from Clayton County?

9 MR. SABZEVARI: This is Ali Sabzevari for Clayton. No
10 witnesses, Your Honor, and no evidence to be presented.

11 THE COURT: Thank you. And from the Athens-Clarke
12 County defendants. Any witnesses or evidence?

13 MR. HAWKINS: Your Honor, John Hawkins. No witnesses.
14 We would like to tender Doc. 26-1, which is the declaration of
15 Charlotte Sosebee, who is the director of elections and
16 registration in Athens-Clarke County.

17 THE COURT: Any objection to Ms. Sosebee's affidavit, or
18 declaration rather?

19 MR. KAUFMAN: No, Your Honor. Alex Kaufman.

20 THE COURT: All right. That declaration will be Exhibit
21 1 to this hearing for Clarke County.

22 Okay. And, lastly, the intervenor defendants is what I
23 keep calling them, just to denote the procedural history of the
24 case, but the Democratic National Committee and others, any
25 witnesses?

1 MS. ELLSWORTH: No witnesses, Your Honor, and no
2 exhibits other than the one that we previously admitted.

3 THE COURT: All right. Very good. The evidence is
4 closed.

5 I'm going to hear oral argument from everyone. I want
6 to put a time limit on it.

7 Mr. Kaufman, how much time do you need?

8 MR. KAUFMAN: Probably about 20 minutes, 15, 20 minutes,
9 max.

10 THE COURT: Okay. I'll give you 20 minutes max. I'll
11 give each of the other parties, those being the defendants, 10
12 minutes max. While I know that's giving one party more than the
13 other parties, it's uniform in the sense that defendants
14 collectively will have a lot more time, and having read your
15 briefs, you're going to echo some of the arguments of the
16 preceding parties. Obviously, time is of the essence here, so I
17 think that's fair.

18 What we're going to do is take a brief recess. I've
19 read your briefs. I've read everything that's been filed in
20 this case. So there's no need to restate for the Court
21 everything that you've said in your oral argument. That being
22 said, I want to give you all leeway to make your points, and
23 particularly in commenting on anything that has been received
24 during this hearing.

25 So what we're going to do to take a recess is everybody

1 just mute your microphones, or your telephones rather. Since we
2 have a clean signal now, I'd hate for everybody to dial back in.

3 It's going to be a 15-minute recess. By my watch it's
4 1:40 right now. We'll go back on the record at 1:55. We'll be
5 in recess for the next 15 minutes.

6 (Proceedings stood in recess from 1:40 p.m. until 1:55 p.m.)

7 THE COURT: All right. We're back in order.
8 4:24-CV-248. Let me make certain that everybody has joined us.
9 First, for the plaintiff, Mr. Kaufman, are you with us?

10 MR. KAUFMAN: Yes, Your Honor.

11 THE COURT: And for Chatham County, counsel present?

12 MR. PERKINS: Yes, Your Honor. Ben Perkins for the
13 Chatham County defendants.

14 THE COURT: And for Fulton County?

15 MS. WARNER: Yes, Your Honor. Lauren Warner.

16 THE COURT: And for DeKalb County?

17 MR. HERRIN: Yes, Your Honor. Brent Herrin for DeKalb.

18 THE COURT: And for Cobb County?

19 MR. WHITE: Yes, Your Honor. Daniel White for Cobb
20 County.

21 THE COURT: And for Gwinnett County?

22 MR. GERMANY: Yes, Your Honor. Ryan Germany for
23 Gwinnett.

24 THE COURT: And for Clayton County?

25 MR. SABZEVARI: Yes, Your Honor. Ali Sabzevari for

1 Clayton County.

2 THE COURT: And for Clarke County?

3 MR. HAWKINS: Yes, Your Honor. John Hawkins for
4 Athens-Clarke County.

5 THE COURT: And for the Democratic National Committee.

6 MS. ELLSWORTH: Yes, Your Honor. Felicia Ellsworth for
7 the DNC and Democratic Party of Georgia.

8 THE COURT: All right. We're all back.

9 Mr. Kaufman, the floor is yours. You have 20 minutes.

10 MR. KAUFMAN: Yes, Your Honor. Thank you. I want to
11 start on a -- on a high level. We're only asking for
12 sequestration and the recordkeeping at this stage. We're not
13 trying to get any ballots thrown out or invalidated or anything
14 of that sort. And, in fact, our request seems to be maintaining
15 the status quo as these ballots are already sequestered. But
16 any decision --

17 THE COURT: Let me interrupt. Counsel, let me stop you
18 there. Two questions for you. I believe we heard that as to
19 some defendants the ballots have not been sequestered. Would
20 you agree that your request for relief to those defendants is
21 unripe? Would you agree with that, that if all you're
22 requesting is sequestration, would you agree as to those that
23 have already mixed them up, I can't grant any relief? Would you
24 agree with that?

25 MR. KAUFMAN: Yes, Your Honor. To the extent that those

1 that did not abide by our demand and litigation hold and have
2 mixed them, then there's probably nothing we can do if they've
3 been in the general public, other than the second request, which
4 was the demand to maintain those records, to the extent these
5 absentee ballot clerks have recorded it.

6 THE COURT: Okay. And my second question would be, so
7 what good would it do to sequester the ballots if you're not
8 asking this Court to invalidate those ballots? And I've looked
9 at your prayer for relief, and you have asked the Court to
10 determine that these individuals -- counties -- these seven
11 counties violated state law and violated the Constitution in
12 their violation of state law. So what would they then do? Just
13 keep them separate and never count them? I mean, I don't
14 understand where we're headed here.

15 MR. KAUFMAN: Well, the answer is we haven't received
16 any discovery or any additional information. For one, it may
17 not make a difference, depending on the outcome, if one of the
18 presidential candidates, for example, or even state or local --
19 you know, local or congressional races are not even that close,
20 it may not matter. But we won't even know that at this
21 juncture, which is why this immediate relief of the
22 sequestration at least allows everyone to then make further
23 determinations based upon the evidence. So that's why this is
24 the minimal request right now at this preliminary injunction
25 hearing.

1 THE COURT: Okay. Keep going.

2 MR. KAUFMAN: Okay. And so second is I'd like to
3 address the Court -- it's not binding precedent, but I think
4 it's a very good place for the Court to look at, which is in the
5 Western District of Pennsylvania. That court has addressed
6 nearly every one of the counterarguments that the collective
7 defendants have raised here.

8 In *Pierce vs. Allegheny County Board of Elections*, which
9 is found at 324 F. Supp. 2d 684 -- it's a 2003 case -- the
10 federal court granted the preliminary injunction under very
11 similar circumstances, holding that the Republican candidates
12 have standing to challenge the Allegheny Board of Elections from
13 accepting third-party delivery of absentee ballots, which is one
14 of the aspects that we know has happened, because we have not
15 just individuals delivering it on behalf of themselves, but
16 others, and that's partly why those records are required; and
17 also -- so that's standing. Also, in *Bush v. Gore*, it applied
18 to ballot delivery, not just vote counting, which is really what
19 the aspect of our case is. It's not about the counting of the
20 votes; it's how they were delivered. And we contend that it
21 violated the state statute both on early voting as well as on
22 the delivery and notice provisions to have it delivered at a
23 registration office.

24 THE COURT: Okay. So let me stop you there. Your claim
25 here is that the state statute has been violated. And my

1 understanding of your claim from reading your complaint is that
2 you contend these counties, and all counties, could not have
3 received any absentee ballots in person after the closing of the
4 advance voting on Friday. Is that still your claim?

5 MR. KAUFMAN: That is the primary position. The
6 secondary position is even if -- they couldn't receive it
7 certainly in a drop box. They can receive it by mail, which we
8 know. There's exceptions for UOCAVA, of course, and then the
9 last aspect is to the extent they were going to open up the
10 registrar office at different hours, that required under
11 21-2-215(e) that they had to have made this announcement at
12 least three days prior and under the statute says to the first
13 day for registration. Here --

14 THE COURT: Let me go to your primary argument. The
15 primary argument is that they could not receive ballots in
16 person after the -- absentee ballots after the close of advance
17 voting. So I want to go to the text. Sorry. That's where we
18 always should begin is with the text.

19 So the text of O.C.G.A. 21-2-385 tells a voter that at
20 any time after receiving an absentee ballot, but before the day
21 of the primary or election, they can fill that ballot out. So
22 according to that statute -- just walk with me through the
23 statutes, if you would. According to that statute, if I'm an
24 absentee voter, I can fill it out all the way through yesterday.
25 Can't fill it out today, but I could fill it out through

1 yesterday. Is that correct?

2 MR. KAUFMAN: Through -- yes.

3 THE COURT: The day before the primary -- okay. So I
4 can fill it out --

5 MR. KAUFMAN: Or election.

6 THE COURT: -- yesterday. Right? All right. So is
7 your argument that I could fill it out yesterday, but then I
8 just couldn't deliver it?

9 MR. KAUFMAN: Well, it's admittedly -- 21-2-385(a), I
10 believe, conflicts with 21-2-385(d)(1) where it says the period
11 of --

12 THE COURT: Whoa, whoa, whoa. (d)(1) -- and I'm sorry
13 to cut you off, but I want to be sure we're clear. I'm talking
14 about absentee ballots. Now, (d)(1) is there shall be a period
15 of advance voting that shall commence. Correct? That's (d)(1);
16 correct?

17 MR. KAUFMAN: Yes, Your Honor.

18 THE COURT: So would you agree with me that absentee
19 voting and advance voting are two different things?

20 MR. KAUFMAN: That's really one of the difficult
21 questions to answer, Your Honor.

22 THE COURT: I mean, just because it cuts against your
23 client doesn't make it difficult. The legislature has set out
24 two different subsections. One, advance voting; and one,
25 absentee ballots; correct?

1 MR. KAUFMAN: Correct. But --

2 THE COURT: But didn't I hear your in-person witness
3 testify that it's his understanding of the law that these
4 counties can accept in-person ballots all the way through --
5 absentee ballots all the way through today? Isn't that what he
6 testified to?

7 MR. KAUFMAN: Yes, Your Honor, provided that they
8 fulfill other obligations.

9 THE COURT: Oh, of course. And I know we're not going
10 there. Obviously we're not telling the counties that they'd
11 have to disregard the other obligations of the statute. But I'm
12 just trying -- and I'm truly trying to understand your argument
13 here. I'm not trying to berate you. I'm trying to understand
14 how, given what the Georgia General Assembly has said and what
15 your own witness testified to today, can you argue that you
16 cannot deliver an absentee ballot in person once the advance
17 voting period ends. Help me with that.

18 MR. KAUFMAN: I think under two provisions. And so one
19 is, of course, if the county fulfills the obligations of proper
20 notice with the three days' advance, at least, in the
21 publication of when their offices will be open if there are
22 different hours, and then two --

23 THE COURT: Okay. So you would say -- so you would
24 agree that for those counties who did publish it -- we've heard
25 from two today at least -- one who had a publication in the

1 newspaper and the other who adopted resolution, that you have no
2 argument as to them? Is that what I'm hearing you say?

3 MR. KAUFMAN: Well, I -- I -- I -- I believe that if
4 they fulfilled those obligations, you now are in a conflict
5 between the 385 and 3 -- of (a) and (d) that I believe that by
6 practice it would be accepted, certainly by mail; and in 385(a)
7 there is a provision that says hand delivery.

8 THE COURT: Okay. It does. Let me talk with you about
9 another statute, because I want to stick with you on what you
10 just called your primary argument, and it's really the only
11 argument I see in the briefing before today, that being what you
12 just said, that -- previously -- that once advance voting ended,
13 there could be no receipt in person of absentee ballots. So
14 O.C.G.A. 21-2-386(a) (1) (A), if I'm an election official, I'm
15 going to look at that statute to tell me what I'm supposed to do
16 when I get an absentee ballot. Would you agree with me there?

17 MR. KAUFMAN: Yes, Your Honor.

18 THE COURT: So (a) (1) (A) says that what I'm supposed to
19 do -- just assume I'm a hypothetical election official.
20 Hypothetical election official says, I got this ballot, today,
21 for example, I got it today, and it says, all official absentee
22 ballots received from absentee electors prior to the closing of
23 the polls on the day of the primary or election, except as
24 otherwise provided in the subsection -- so that's the time
25 period, prior to the closing of the polls on the day of the

1 primary or election, what I'm supposed to do with those is keep
2 them safely unopened, store them in a manner, and then I go down
3 to Subsection (B), if I'm a hypothetical election official, and
4 I'd say, okay, now it looks like this is how I'm supposed to
5 process them, et cetera. Then I get to (F) and I say, well,
6 what about late ballots, when I get a late one? And to me it
7 says, after the closing of the polls on the day of the election.
8 It's pretty clear; right?

9 MR. KAUFMAN: Yes, Your Honor.

10 THE COURT: It says what's late; right?

11 MR. KAUFMAN: That would be late, yes.

12 THE COURT: Okay. So yesterday wasn't late; right?

13 MR. KAUFMAN: It wouldn't be late in my view, certainly
14 by mail, and it couldn't be used by --

15 THE COURT: Point to me the statute -- I'm sorry. I'm a
16 bit of a textualist, so it's hard for me to get away from the
17 text. Okay. I get into the text. I apologize.

18 So tell me where in the statute you see a difference
19 between the period for delivering an absentee ballot by mail or
20 in person, because I don't see it. So I'd like to know where
21 you see it.

22 MR. KAUFMAN: Well, the answer is the three days that
23 they didn't give the notice that they were going to be --

24 THE COURT: I'm sorry. You're getting to your second
25 argument, and I'm sorry, I'm a stickler for this. I want to

1 stick to the first argument, and I want you to stick to my
2 question.

3 Where in the statute -- if you don't see it, that's
4 fine; just tell me you don't see it. Where in the statute do
5 you see a difference?

6 MR. KAUFMAN: I -- I don't see a difference by mail.
7 The only difference is the drop box period, because that does
8 end on --

9 THE COURT: Right.

10 MR. KAUFMAN: -- the Friday. So then the question --

11 THE COURT: Right. We're not dealing with drop boxes
12 here; right? We're not dealing with drop boxes --

13 MR. KAUFMAN: I agree.

14 THE COURT: Okay.

15 MR. KAUFMAN: But that's the distinction of delivery.
16 So now we're talking as to whether or not is it an early vote
17 by -- if it's hand delivered versus stuck in a box. That's
18 really the distinction. And, frankly, it's a difficult
19 distinction, except when you look at O.C.G.A. 21-2-380, which
20 is, going to your other point, was you're either -- all voting
21 is either absentee, whether it's absentee in person or absentee
22 by mail or you're a day-of voter. That's the only distinction
23 that the Court -- that the Code makes, which is sort of what I
24 was trying to get at is that it's a little incongruent as far
25 as -- as far as how that is determined, because it's clear that

1 absentee voting ended on the 1st.

2 THE COURT: Where is that clear? I see where advance
3 voting ended on the 1st, and I can understand an argument that
4 someone would make to me that would be advance voting is a
5 category of absentee voting. In fact, the Georgia Supreme Court
6 has said just that. But I haven't seen anything that says that
7 absentee voting is a category of advance voting. Do you have
8 any cases or statutes that do say that?

9 MR. KAUFMAN: Not off -- not offhand, Your Honor.

10 THE COURT: Well, now would be the time.

11 MR. KAUFMAN: Just either you're an absentee elector or
12 you're a day-of elector under 380.

13 THE COURT: Okay. Keep going.

14 MR. KAUFMAN: And that's where you end up under the same
15 analysis of 380.1, the appointment of the absentee ballot clerk,
16 who has all these responsibilities for logging how they handle
17 absentee ballots. So -- but -- and, also, I want to address --
18 we've seen a bunch of the responses arguing Purcell. I don't
19 believe Purcell doctrine applies because we're only seeking
20 sequestration, not a prospective injunction at this stage, so I
21 don't think you fall under the Purcell document. But I did want
22 to go back to the Georgia Code where --

23 THE COURT: Go right ahead.

24 MR. KAUFMAN: -- we provided -- provide the period of
25 advance voting, which states, as we just discussed, on the

1 Friday immediately prior to each election. That's 21-2-385.
2 And then we've sort of gotten into this discussion before about
3 advance voting shall occur only on the days up until Friday,
4 which is pursuant to O.C.G.A. 21-2-385(d)(1)(B), and it says --
5 if we continue, it says, "counties and municipalities shall not
6 be authorized to conduct advance voting on any other days."

7 And so that's sort of where we're really having to
8 define this idea of absentee voting, advance voting, absentee by
9 hand delivery versus drop box by mail, which I think the Code
10 is -- as I said, there's certainly things on all three of those
11 aspects, but they're not necessarily congruent and probably
12 something legislature needs to point out.

13 Here, the DNC, for example, points out that "the board
14 of registrars may establish additional registrar's offices or
15 places of registration for the purpose of receiving absentee
16 ballots," and that's under O.C.G.A. 21-2-382(a), and this is
17 going to sort of the second argument where that provision
18 applies that "any other provisions in this chapter to the
19 contrary notwithstanding." But this case has nothing to do with
20 location and has everything to do with timing. And other than
21 Fulton County that have these additional locations, I believe
22 all the other counties at issue were only talking about their
23 main registration office. But that provision does not extend
24 the timing rules about when boards can receive them at the
25 additional offices, except for the fact that those counties, to

1 the extent they do change their hours, they do need to give
2 three days' notice by putting it in the county organ, and that's
3 three days prior to the beginning of registration. Here they
4 don't even do that but prior to the last day of registration,
5 which was October 7th, which was pursuant to O.C.G.A.
6 21-2-224(a).

7 And so all these counties that have said, oh, even
8 though I've complied, they haven't really complied with giving
9 the proper notice. And now we talk -- we've talked -- we agree,
10 it sounds like, that drop boxes aren't at issue and mail is not
11 at issue. But I want to talk about more why we're in federal
12 court, which is really the Equal Protection Clause here. We've
13 seen in the pleadings that the Democratic -- DNC has argued that
14 *Bush v. Gore* applies only to ballot counting, but the Equal
15 Protection applies to the right to vote and as well as the
16 manner of its exercise, which is also from the *Bush* case at 531
17 U.S. at 104.

18 The DNC relied on the Oregon Supreme Court case, but the
19 federal cases have applied the *Bush v. Gore* to election
20 procedures outside of ballot counting. We've spoken about our
21 Western District of Pennsylvania cases that I had previously
22 cited --

23 THE COURT: So I've got some questions for you, and I
24 appreciate it. I'm going to give you more time. You can slow
25 down a little bit. I'm going to give you more time, because I

1 took up a lot of your time with statutory interpretation. I'm
2 prone to do that.

3 MR. KAUFMAN: Yes, Your Honor.

4 THE COURT: But I'm going to give you more time, because
5 I do want to talk to you some questions about the uniformity
6 argument in *Bush v. Gore*.

7 So how many counties -- since we're talking about
8 uniformity, we gotta do a calculus, right? These seven
9 counties, what are they doing, what are the other counties
10 doing, et cetera. So I'll start with an easy question. How
11 many counties are there in Georgia?

12 MR. KAUFMAN: 159.

13 THE COURT: There you go. Eighth grade in Georgia,
14 anyone pretty much exactly can tell you that one.

15 MR. KAUFMAN: (Indiscernible).

16 THE COURT: Exactly. And kudos to your eighth grade
17 history teacher.

18 All right. 159. How many of those counties have been
19 accepting ballots after Friday when the polls closed, to your
20 understanding? Your argument is, hey, these seven counties are
21 accepting ballots after the polls closed, the others aren't.
22 How many of the others are not? How many are accepting ballots
23 today, yesterday, Sunday, Saturday? Do you know?

24 MR. KAUFMAN: Yes. I just want to give one
25 clarification. They're all collecting ballots by mail.

1 THE COURT: All of them are collecting by mail. Thank
2 you. That's a very good clarification. How many of them are
3 accepting absentee ballots in person? Today?

4 MR. KAUFMAN: I believe -- I don't know that number, but
5 I --

6 THE COURT: I mean today.

7 MR. KAUFMAN: Only about nine or ten were taking it over
8 the weekend.

9 THE COURT: What about today?

10 MR. KAUFMAN: I don't know that number, Your Honor. If
11 I did, I'd tell you. I just don't know.

12 THE COURT: Okay. All right. What about yesterday?

13 MR. KAUFMAN: I believe very -- taking them by hand
14 delivery again? I don't know that answer. Yeah.

15 THE COURT: Okay. There's no record evidence of that;
16 right?

17 MR. KAUFMAN: No. I don't believe there's any record --
18 any evidence in the record one side or the other.

19 THE COURT: Okay.

20 MR. KAUFMAN: Now, on the weekend I can tell you --

21 THE COURT: Of the 159, how many were taking them on
22 Sunday?

23 MR. KAUFMAN: I believe very few, probably five or six.

24 THE COURT: Okay. How many on Saturday?

25 MR. KAUFMAN: I believe --

1 THE COURT: Where in the record would I find that,
2 Saturday or Sunday?

3 MR. KAUFMAN: Well, you would find that in our
4 complaint, at least the ones that we've filed. I believe
5 Chatham only took it on Saturday.

6 THE COURT: The difficulty I have with your complaint is
7 your complaint says all the defendants were accepting these over
8 the weekend, and I've heard testimony from Athens-Clarke County
9 today that they weren't accepting them. And also in your
10 complaint itself, there's a contradiction because it says
11 Clayton County was not accepting them. So I can't really go to
12 the complaint. So what other record evidence do I have?

13 MR. KAUFMAN: Actually, most of the defendants'
14 affidavits tell you exactly what they -- they were doing it --

15 THE COURT: Okay.

16 MR. KAUFMAN: -- in the record.

17 THE COURT: And I got it as to the defendants. What
18 about the ones -- because, you know, uniformity means not
19 uniformity amongst the defendants, but uniformity amongst the
20 state. Correct?

21 MR. KAUFMAN: Correct. And that's our --

22 THE COURT: Where in the record can I go to find out
23 what was going on outside of these counties in the state? Is
24 there anything in the record that you've created that would help
25 me answer that question?

1 MR. KAUFMAN: Outside of these counties in the state --
2 are you -- I just want to make sure I understood your question,
3 Your Honor.

4 THE COURT: Certainly. And I'm sorry if it was
5 inartful.

6 Of the 159 counties in Georgia, where in the record can
7 I go to determine how many or what counties were accepting
8 ballots, absentee ballots in person on Saturday, Sunday, Monday
9 or Tuesday? As to any of those days, is there anywhere I could
10 go in the record to get a count of that?

11 MR. KAUFMAN: Sure. Outside of our complaint and the
12 defendants' affidavits, I don't believe we've produced any other
13 record in that short period of time.

14 THE COURT: Okay. So why sue --

15 MR. KAUFMAN: I'm not sure where a record is kept even
16 by --

17 THE COURT: My next question on that point is why sue
18 these seven counties? I mean, why sue these seven instead of,
19 you know, kind of going around and finding out -- I mean, we
20 heard Walton County might be accepting them, you know, some
21 others. Why sue these seven?

22 MR. KAUFMAN: Well, we sued those seven because they
23 make up the vast majority of the population in the state, and
24 these were the ones that we found out about under this very
25 short time period. And so that's part --

1 THE COURT: I mean, isn't it because they're democratic
2 leaning, though? Isn't that why you sued them?

3 MR. KAUFMAN: Well, they are democratic leaning, but
4 they're also the metro counties that make up about at least half
5 of the voter population, and they are blue-leaning counties,
6 which gives us a great pause. And, again, we contend that it
7 didn't comply with the 21-2-215 provision, which would have had
8 -- given at least -- even a minimum of three days' notice.

9 Part of that notice also was to inform the Secretary of
10 State of that intention, which clearly we don't believe
11 occurred, as we've heard testimony today even from Chatham they
12 didn't make the decision Friday. We heard it's in the evidence
13 that Fulton County made that decision and announcement on
14 Friday, I believe around 1:30 p.m., and went to the public at 5
15 p.m. We have an affidavit from the election board member in
16 Fulton County, which is a county of about a million people, that
17 that decision wasn't even brought to the election board. And so
18 that's -- and she didn't find out about it until 5 p.m.

19 THE COURT: All right. Keep going, Counsel. I'll give
20 you at least five more minutes. Go ahead.

21 MR. KAUFMAN: Yes, Your Honor. And I believe -- I
22 believe that the Secretary of State even made a statement that
23 he was unaware of that, but of course, that's not in your -- of
24 your record of having been noticed that they were going to do
25 that.

1 The other aspects of it we've talked about the election
2 clause in our federal aspect of this case about the state having
3 the responsibility of the time and manner of running its
4 elections, but specifically also the federal elections, which
5 this clearly impacts, mainly the Presidential. And even if a
6 party -- we can address the abstention issue, if the Court
7 wishes.

8 THE COURT: Go right ahead.

9 MR. KAUFMAN: Yeah. So that's the Fulton County.
10 Again, we've talked -- abstention is from the exercise of
11 federal jurisdiction is the exception. It's not the rule.
12 Adoption of abstention under which the district court may
13 decline to exercise or postpone the exercise of its jurisdiction
14 is an extraordinary and narrow exception to the duty of a
15 district court to adjudicate a controversy properly before it,
16 which we believe we've met under the Equal Protection Clause and
17 uniformity. Abdication to decide cases can be justified under
18 the doctrine only in the exceptional circumstances where the
19 order to the parties to repair to the state court would clearly
20 serve an important countervailing interest. That case is
21 *Colorado River Water Conservation District vs. The United*
22 *States*. It's a SCOTUS case from 1976. And in it is an
23 argument, as mentioned, this *Pierce/Allegheny County* case. But
24 that also goes to the abstention issue. It says, even if
25 abstention applies, the Court is obliged to consider the request

1 for emergency relief. Notwithstanding a decision to abstain on
2 the merits, this court is still to consider its request for
3 preliminary relief. That's an '03 case. We've talked about
4 here Purcell --

5 THE COURT: Slow down just a little bit. Ms. McKee is
6 trying to keep up with you --

7 MR. KAUFMAN: I'm trying to get it in in time.

8 THE COURT: You're fine. You're fine. Keep going. I'm
9 going to give you all the time you need to make the arguments
10 you're going to need, so take your time. I took up a lot of
11 your time, so go ahead. And I have read all of your briefs, but
12 I understand you didn't get a chance to respond to theirs. So
13 keep going.

14 MR. KAUFMAN: Right. And, you know, here, obviously,
15 Purcell is about the deference to preserving the state's
16 election rules near the time of the election. Here, I believe
17 we are -- to the extent a party -- a defendant has already
18 sequestered these ballots, that would remain in the status quo,
19 which did relief harm. Of course, we are weighing the harm to
20 the movants versus this administrative burden harm, as well as
21 the harm to the other Georgia voters who are not in these
22 specific counties or were given this opportunity at the last
23 minute. And we also don't believe laches applies here based
24 upon the *Votevets Action Fund vs. Detzner*, D-E-T-Z-N-E-R, which
25 is a 2018 case from Florida.

1 So here it's been no unreasonable delay on the
2 plaintiffs' part. We've acted as quickly as possible, and
3 again, we don't have uniformity of parties in the Fulton -- as
4 they've alleged in the Fulton case.

5 And even more significant, of course, is in the Cobb
6 matter that was just appealed to the Supreme Court where the
7 Supreme Court granted our appeal for supersedeas and stayed and
8 specifically reevaluated and said, look, this is the end of
9 voting; it's not going to continue on. We think that that --

10 THE COURT: When did the Supreme Court of Georgia say
11 the end of absentee voting was?

12 MR. KAUFMAN: It said it was Friday.

13 THE COURT: For advance voting. Advance voting was
14 Friday.

15 MR. KAUFMAN: It said advance, I believe. I can pull
16 that up exactly.

17 THE COURT: Right.

18 MR. KAUFMAN: I don't want to misspeak to the Court. Of
19 course, it's just a temporary order granting the supersedeas,
20 and I think that's sort of demonstrative at least that --

21 THE COURT: Didn't the Supreme Court state that with
22 absentee voting that you can't receive an absentee ballot after
23 today? Wasn't that the issue in Cobb is that the lower court
24 was trying to give time --

25 MR. KAUFMAN: That was the issue --

1 THE COURT: -- after the close of the polls today --

2 MR. KAUFMAN: Correct.

3 THE COURT: -- and the Supreme Court said, no -- at your
4 client's urging, the Supreme Court said, no, you can't do that.
5 You have to stop at -- when the polls close today. So doesn't
6 that cut --

7 MR. KAUFMAN: Correct.

8 THE COURT: -- against that, that they should have
9 stopped on Friday?

10 MR. KAUFMAN: No, because we've certainly never disputed
11 that you can mail an absentee ballot as long as it's received by
12 7 p.m., and we've certainly never objected to UOCAVAs coming in
13 based upon the federal deadlines.

14 The issue here is a clarification between advance voting
15 via hand delivery versus advance voting via delivery to a drop
16 box, which we believe is what has been more clarified that that
17 ended on Friday.

18 THE COURT: Okay. Keep going. Anything else you'd like
19 to raise, take your time.

20 MR. KAUFMAN: I appreciate that. I do believe we have
21 standing. We've talked about from our voters from the party
22 perspective, both on the Georgia GOP and the RNC, of the last-
23 minute damage on resources and plans, association standing as
24 well as our own candidates. I think the case on that is
25 actually *Wood vs. Raffensperger*, which is an Eleventh Circuit

1 2022 case, which states that a political candidate suffers from
2 a personal distinct injury due to an inaccurate vote count.

3 Here, you have defendants admitting that they received
4 invalid votes that were sent in after that statutory deadline
5 for advance voting. This was where we're getting into absentee
6 versus advance. But we believe this is a concrete injury to the
7 Republican candidates who are members of the plaintiffs'
8 organizations.

9 And so, you know, I want to go back that we believe
10 we're preserving the status quo. We don't think this is more
11 than about 2,000 votes throughout the entire defendant pool,
12 that they should just be sequestered, to the extent that they
13 can or have been, that they should remain intact and that the
14 importance of this is really protecting the uniformity of the
15 vote, which we do not believe most of the other counties, the
16 vast majority, I believe 150 of them approximately, did not
17 participate in this kind of activity last minute.

18 THE COURT: Well, you just don't know. I mean you don't
19 believe it, but there's no record evidence for me to cite to on
20 that issue; right?

21 MR. KAUFMAN: Well, we didn't put forward the ones that
22 followed the law. We sued the ones that we were aware of in the
23 emergency status that, in our view, hadn't. So I'm not trying
24 to prove a negative. We just -- but I do understand the Court's
25 point how that impacts the majority of the counties, and I think

1 you have a county-wide issue as well as a population issue --

2 THE COURT: I mean, what if the evidence is that the
3 only county that didn't open up on the weekend was Athens-Clarke
4 County? Because that's the only evidence I have of a county
5 that didn't receive ballots, unless there's another defendant,
6 and all the other 159 counties did. That's a possibility,
7 right, on the record?

8 MR. KAUFMAN: Well, I don't think it's accurate, but it
9 certainly would be in the realm of possibility, but even there
10 it would show that citizens of Athens-Clarke, apparently, based
11 upon the record, didn't have the same opportunities and rights
12 or uniform conduct of an election as the other remaining
13 defendants.

14 THE COURT: So then you'd switch your argument and say
15 Athens-Clarke County was required to stay open on Saturday and
16 Sunday, but they didn't?

17 MR. KAUFMAN: Well, no. It wouldn't have been that they
18 were required. It still means that these counties that decided
19 to open at the last minute still didn't follow the obligations
20 under 21-2-215(e), which was notice and time to have done that,
21 in the event that that would have been appropriate. And the
22 reason for that, of course, is to give candidates and parties
23 the opportunity.

24 And then the other aspect, of course, that we had talked
25 about, which I know the Court is not necessarily persuaded by

1 it, but I want it on the record, is the issue of the
2 nonuniformity of allowing observers, and that's important
3 because these were not poll locations, so there was no ability
4 to even get a credential for poll watchers. And we have
5 evidence in the record that, for example, Fulton County
6 prevented observers in the public building, which, of course, is
7 the public policy reason for having transparency; and, in fact,
8 they were removed -- asked to leave. And there would have been
9 no way to even have the credentialed individuals there to make
10 sure that the process was appropriately followed for accepting
11 absentee ballots. And that is of great concern, which is the
12 other reason to have this sequestered until evidence can be
13 ascertained and evaluated.

14 And the same in Chatham, we have an affidavit where our
15 folks say that they were removed and not permitted until about
16 2:30. And, in fact, we've even shown the statement from the
17 Secretary of State where he had to go in and correct and inform
18 Fulton County that, no, you do need to let the observers in.
19 But we have a nonuniformity of the observation process, which of
20 course, is part of the conduct of an election, and that has not
21 been -- the record is clear that that has not been uniform
22 throughout even the defendant counties, let alone the rest of
23 them.

24 So with that, you know, I believe that that's the thrust
25 of the plaintiffs' arguments.

1 THE COURT: Just so I can be clear about the timing
2 issue when it comes to absentee voting in Georgia, is it your
3 contention that let's use a hypothetical plaintiff, you know, he
4 or she -- she's a single mother, she's a truck driver, right?
5 She gets an absentee ballot. She looks at the statute. She
6 says, all right, I gotta fill it out before I leave town, but
7 I'm going to be out of town, you know, on Election Day, but
8 there's a member of my family who falls within the statutorily
9 defined people who will be in town, and she does plan to vote in
10 person, so I'm going to give it to her; and when I'm out of town
11 driving a truck, trying to support my family, I'm going to give
12 it to her, and she is going to -- let's just say it's her
13 mother, for example. You know, I'm going to give it to her;
14 she's going to go down to the polling place when she goes to
15 vote in person, and she can just turn in my absentee ballot, you
16 know. Perhaps this truck driver, like some of us, has had some
17 frustrations with the United States Mail and its delivery time
18 lately, and she wants to be sure that it's delivered. So
19 pursuant to the statute, she says, you know what, my mom will
20 take it down there on Election Day, and she'll just deliver my
21 absentee ballot while I'm out driving across the country. In
22 your argument am I correct that the board of elections or the
23 registrar or whomever, or the absentee clerk, whoever it is that
24 that is delivered to should not accept it, even if every other
25 requirement is correct, because it's late?

1 MR. KAUFMAN: Well, the registrar location wouldn't
2 be -- is not a polling location. So the person would have to go
3 and vote and then I guess drive elsewhere to drop it off.

4 THE COURT: Sure. Down here in South Georgia we don't
5 all live in town. Okay. Sometimes we make one trip to town a
6 week, you know. And so her mom makes the one trip to town for
7 the week, right, and she says, don't worry about it, honey.
8 When I drop off that -- you know, when I go down to vote for my
9 preferred candidate, I'm going to go drop off your ballot for
10 your preferred candidate, and I'll swing by the office and
11 everything else. I'm going to go swing by there on Election
12 Day, and I'm going to give it to them. Would the office,
13 whomever it would be, should they reject it because it's after
14 the advance voting period?

15 MR. KAUFMAN: I think, based upon the --

16 THE COURT: Yes or no.

17 MR. KAUFMAN: Potentially. I mean, potentially. I
18 mean, the issue is, one, she could have -- if the county had
19 arguably gone through the exceptions --

20 THE COURT: Everything else is fine. Everything else is
21 fine. Okay. Everything else is fine. The only issue with it
22 is that she's bringing it to them after the end of the advance
23 voting period. She's taking it to them today -- by she, I mean
24 the mother of our hypothetical absentee voter, who lives with
25 her. Everything else is fine. She's taking it to them today

1 rather than taking it to them on Friday. Okay. She's taking it
2 to them today during her one trip to town. She's taking it to
3 them today, not Friday, because she didn't want to make two
4 trips to town. She was going to town to vote today, and she was
5 going to drop off the ballot today. Are you telling me that the
6 folks down at the county are supposed to reject that ballot?

7 MR. KAUFMAN: Well, I think she would have had a month
8 of early voting opportunities to --

9 THE COURT: I understand. I understand. Yes or no.
10 Are the folks down at the county supposed to reject that ballot?

11 MR. KAUFMAN: I believe they should.

12 THE COURT: Okay. All right. I don't have any further
13 questions, Counsel. I appreciate your diligence, and I'll turn
14 to these defendants at this time.

15 I'm still going to keep the defendants to their
16 ten-minute time period. You know, the plaintiff -- we've got a
17 lot of defendants here, and I asked the plaintiff a lot of
18 questions; and they've got the burden, and that's why. I
19 typically ask folks who have the burden more questions than
20 folks who don't. So that's why I wanted to ask the plaintiffs a
21 lot of questions.

22 But I'll turn to the Chatham County defendants now.

23 MR. PERKINS: Thank you, Your Honor. Ben Perkins on
24 behalf of the Chatham County defendants. To pick up where you
25 left off, the answer to your question is, yes, the county would

1 have had to accept that ballot, that hypothetical ballot, and
2 that is because the statute requires that it do so.

3 You have O.C.G.A. 21-2-385(a) stating that voters may
4 personally or -- personally deliver their absentee ballots.
5 You've also got O.C.G.A. 21-2-382(a) specifying that counties
6 are permitted to establish places for receiving absentee
7 ballots. And then you've also got O.C.G.A. 21-2-386(a)(1)(A),
8 which states that county boards are to keep and store absentee
9 ballots received from absentee electors prior to the closing of
10 the polls on the day of the election. So the answer to your
11 question is yes, and that answer also -- also relates to the
12 uniformity --

13 THE COURT: Yes, they should accept it; no, they should
14 not reject it. Correct?

15 MR. PERKINS: That's right. Yes, sir, Your Honor.
16 Thank you for that clarification. And that also relates to the
17 question you were asking about the uniformity issue, because all
18 159 counties in this state should be accepting those ballots
19 that you referred to, and saying we have no evidence to indicate
20 they are not doing so that's in the record before Your Honor.

21 Your Honor, the plaintiff seeks, according to the
22 concluding paragraph of their motion, a preliminary injunction
23 prohibiting the defendants from continuing to receive absentee
24 ballots delivered in person after the advance voting period
25 ended. They also request that the absentee ballots be

1 segregated in such a manner after the end of the advance voting
2 period. So in order to be entitled to the relief they seek,
3 this Court has to conclude that county boards of registration
4 and boards of elections are not entitled to receive absentee
5 ballots that are delivered in person after the advance voting
6 period ended.

7 There is literally no law that has been presented to
8 Your Honor which would support such a half-baked theory. In
9 fact, all the law that is before this Court demonstrates that
10 boards of elections, boards of registrars are to accept hand-
11 delivered absentee ballots up until the closing of the polls on
12 Election Day. And it is important to note that the executive
13 director of the Georgia Republican Party admitted that very
14 principle that is clear under our election laws in the State of
15 Georgia.

16 Your Honor, finally, I wanted to note about the argument
17 that is made regarding O.C.G.A. 21-2-215(e), which was
18 repeatedly advanced by Mr. Kaufman. The text of that subsection
19 makes it clear that it relates to registration, and we're not
20 talking about registration today. We're talking about the
21 receipt of absentee ballots. So it is absolutely inapplicable
22 and irrelevant to the arguments that are being made today.

23 And, Your Honor, my focus today has been entirely upon
24 the fact that the plaintiffs do not have substantial likelihood
25 of success on the merits, and by the arguments I've just made

1 I've established that. Their claim should be dismissed. They
2 should not be given the relief sought for those reasons.

3 All the other parties, myself included, have also
4 demonstrated that the Equal Protection claim has no merit
5 because it's premised upon an alleged violation of state law.
6 There's been no violation of state law shown, and so --

7 THE COURT: I mean, I could find -- I could find, right,
8 Mr. Perkins, that the uniformity principle has been violated
9 even if state law is not violated. Right? It doesn't -- just
10 compliance with state law doesn't necessarily negate an Equal
11 Protection claim; correct?

12 MR. PERKINS: I agree with that, yes, Your Honor. But I
13 do think in this instance what they're alleging, though, is
14 entirely a violation of state law.

15 THE COURT: Okay.

16 MR. PERKINS: And, Your Honor, finally, as we've shown
17 in our brief, the balancing the harms and the public interest
18 favor the defendants. At the end of the day, if plaintiffs were
19 to be given the relief that they seek, they would be
20 disenfranchising voters, and that's just simply not appropriate.
21 And so, Your Honor, I promised to be brief, so I have been, I
22 hope, and I'm happy to answer any questions --

23 THE COURT: One question I have for you is why did
24 Chatham County wait until Friday to make a decision to accept
25 ballots on Saturday and Sunday?

1 MR. PERKINS: Your Honor, I don't have that information
2 before me, except -- all I could do is speculate, Your Honor. I
3 don't think that's been presented to the Court in the record.

4 THE COURT: Okay. All right. Thank you, Mr. Perkins.
5 I don't have any further questions.

6 I'll hear from the Fulton County counsel at this time.
7 You don't have to make an argument, by the way, if you feel like
8 you've already made a good record. Courts will never hold it
9 against you for ceding your time. But I want to give everybody
10 their opportunity. So Fulton County.

11 MS. WARNER: Thank you, Your Honor. Lauren Warner. I'm
12 going to keep it quite brief.

13 This is a very narrow issue in plaintiffs' motion for
14 preliminary injunction. They ask one -- they pose one specific
15 question: Can the defendant counties receive hand-delivered
16 absentee ballots after the end of the advance voting period.
17 That's the way they framed the question, and the law is very
18 clear that the answer to that is, what they're arguing, those
19 two laws don't even apply to each other, right? There's zero
20 likelihood of success on the merits with the actual question
21 that they pose. Why? Because absentee ballots follow one
22 procedure, and advance voting follows another procedure. It's
23 set out in Section 385 separately and clearly. That alone is
24 really enough to reject the motion, on top of Mr. Rice's
25 testimony today as one of the plaintiffs in this action.

1 We also note in our brief, Your Honor, that Judge Farmer
2 rejected the very same argument on Saturday. It was about a
3 one-hour hearing. The transcript is quite clear that one of the
4 plaintiffs was one of the plaintiffs -- excuse me. The
5 plaintiff in that case was one of the plaintiffs in this case,
6 which is the Georgia Republican Party, and the defendant was
7 Fulton County. The very same arguments were advanced: Can
8 Fulton County accept these absentee ballots on Saturday and
9 Sunday, and the specific reason plaintiffs cite for why they
10 couldn't was the end of the advance voting period on November
11 1st. That was specifically rejected by Judge Farmer outright
12 under both Section 282 and 285. 282 dealt with the drop box
13 issue, which everybody admitted at that hearing was not
14 important. So the real basis for Judge Farmer's ruling that's
15 applicable here, or at least that should be considered here, was
16 his finding that Section 385(a) expressly permits voters to
17 personally deliver their absentee ballots up through the end of
18 the voting period on the day of the election.

19 Now, I do want to note, Your Honor, that to follow up on
20 a question that you asked a moment ago of Chatham County, and
21 that is if the election board can delegate to their members or
22 administrators who work with them the certain duties to go out
23 and perform and allow the board to operate within the law. And
24 I am confident that all of the affidavits -- or excuse me --
25 declarations submitted on behalf of the various counties today

1 demonstrate that each county did just that. They carefully
2 considered what the rules were and performed the duties that
3 they needed to perform to be able to operate in accordance with
4 the law.

5 There are a few things in some of the declarations that
6 were submitted by the plaintiffs that I've already argued are
7 irrelevant. I also want to point out for Your Honor that a
8 couple of the things are just simply wrong, and one example is
9 in the declaration that refers to an attempt to incorporate the
10 testimony that Ms. Williams gave before Judge Farmer. It's just
11 simply wrong. It's in Stephanie Endres' affidavit. It's Doc.
12 45 at 14. I just want to note that what's stated there
13 contradicts the record and the testimony available in the
14 YouTube video that preserves the hearing that's available on
15 Judge Farmer's channel. And I also want to note that there's
16 Paragraph 12 in Defendant Julie Adams's affidavit states that
17 there had to be two people present. That is false. I do not
18 want to really go into the details of the back and forth on this
19 monitoring issue because it's plainly irrelevant, but I also,
20 Your Honor, to the extent you may decide to consider it, didn't
21 want to leave a mistake of fact out there.

22 With that, Judge, I'm going to rest on what's in our
23 papers, because you've read them all, and I appreciate your time
24 and attention today. Unless there are any questions you have, I
25 will cede my time back to you so someone else can get their

1 argument done.

2 THE COURT: My question would be do you know how many
3 counties are receiving absentee ballots on -- in person on
4 today, yesterday, Sunday, Saturday. As far as today, what do
5 you know about today?

6 MS. WARNER: I don't have any knowledge, like actual
7 knowledge about what counties other than Fulton County are
8 doing. But I would point out for Your Honor that the law, 385,
9 allowed them to receive absentee ballots via hand delivery up
10 through the close of the polls today, which I believe is 7 p.m.

11 THE COURT: The record contains some pronouncements from
12 the Georgia Secretary of State to that effect that, you know,
13 you can turn them in by that date, et cetera? Is that right?

14 MS. WARNER: Correct, Your Honor. There is information
15 in the record from the Georgia Secretary of State. There are
16 various news publications from several counties that contain the
17 same information. There are citations to the statute. There's
18 Judge Farmer's interpretation of the law and his oral order.
19 And so all of those together, Your Honor, all say the same
20 thing.

21 And as I think several of the defendants have pointed
22 out, and you even heard some testimony to that effect today,
23 that has been the process for years now and has been
24 consistently followed since that's what the law requires,
25 without challenge. As far as I'm aware, this is the first

1 lawsuit challenging this particular aspect of the Georgia
2 Election Code.

3 THE COURT: Okay. All right. I don't have any further
4 questions. Thank you.

5 MS. WARNER: Sure. Thank you.

6 THE COURT: For DeKalb County.

7 MR. HERRIN: Thank you, Your Honor. Brent Herrin, and I
8 will be brief. I want to talk about a couple things that we
9 heard about today. If you look at Mr. Hooper's affidavit, which
10 is before the Court, there's no mention specifically about
11 DeKalb County related to any of the allegations that he contains
12 in that affidavit. He talks about the defendant counties
13 generally, but doesn't speak specifically about DeKalb.

14 With respect to Mr. Rice's testimony, he testified that
15 he didn't know about the actions of the DeKalb County Board of
16 Registration and Elections, had not attended their meetings,
17 didn't attend their meeting on October the 10th, which if he
18 had, he would know that there were certain actions taken at that
19 meeting related to the topic we're here for today.

20 He also said that he didn't follow the websites to know
21 whether or not there had been any public pronouncements about
22 the offices being open over the weekend, specifically with
23 DeKalb. But he did testify that he knew that DeKalb County
24 routinely accepts absentee ballots up until 7 p.m. on Election
25 Day.

1 If we look at the declaration of Ms. Smith, with respect
2 to the drop boxes, Paragraphs 9 and 10 specifically talk about
3 the drop boxes, and what she testifies to is that the drop
4 boxes -- no one was allowed to deposit any other ballots in the
5 drop box after 7 p.m. on this past Friday and that all of the
6 drop boxes were closed on or about 7 p.m. on Friday, November
7 1st of 2024.

8 She also testified, in Paragraph 17, that since she's
9 been employed by the DeKalb County Board of Registration and
10 Elections, that the office has remained open every weekend prior
11 to Election Day and has accepted hand-delivered absentee ballots
12 during that time.

13 What the plaintiffs seek to do here is to conflate the
14 three different types of voting, and I think you kind of honed
15 in on it in questioning Mr. Kaufman. You got advance, Election
16 Day and absentee balloting. Advance and Election Day are
17 conducted in the same way, just at different times. Absentee
18 balloting is different. You have a paper ballot that you hand
19 mark, that you put in an envelope, and that envelope is
20 delivered back to an elections office. And there's strict
21 timelines for that, and the code provides for those timelines.
22 There's timelines for when advance voting ends. There's
23 timelines when the Election Day voting ends, and there's
24 timelines when absentee balloting ends.

25 What the plaintiffs are asking you to do, Judge, is to

1 change those timelines. The General Assembly has set the
2 timelines for when voting in one of these three methods ends.

3 And under the Purcell principle, a federal court
4 shouldn't even be engaging in this analysis, because what the
5 Purcell principles say, if you're changing election law close to
6 an election, that causes voter confusion. Your Honor, I don't
7 know how much closer to an election we could be than 2:50 p.m.
8 on Election Day that we're arguing about whether or not you as a
9 federal judge should change Georgia election law. You can't get
10 any closer to Election Day than we are right now.

11 A couple other things. On the Equal Protection claim, I
12 would just point to Note 3 in our brief. The plaintiffs can sue
13 whoever they want to sue, but if they were really concerned
14 about whether or not different counties were treating different
15 people -- different voters different ways, seems to me the best
16 solution to that would be to sue all 159 counties to get a
17 uniform remedy. They didn't do that. They decided to cherry
18 pick specific counties that they wanted to sue, and only one of
19 the counties that they sued, mind you, is even in the Southern
20 District. The rest of them are in the Northern District. So
21 they made a strategic decision to file there, and they made a
22 strategic decision to only pick the counties that they picked.
23 And, in fact, as we've heard today, some of the counties haven't
24 even done what they've complained of, and they didn't do their
25 due diligence prior to filing their complaint to know whether or

1 not the counties that they sued did what they complained of.

2 With respect to the observers, and I know that's not
3 really a part of their claim, I just want to say that there's no
4 evidence before this Court that observers were ever denied
5 access to the DeKalb County voter registration office. So
6 there's no evidence to that. To the extent the Court is going
7 to consider that, I just want to point that out.

8 It was mentioned by counsel for Chatham County about the
9 21-2-215 and 21-2-224 statutes dealing with notice about office
10 hours. I just want to -- you know, 215, I'm kind of like you,
11 Judge. I like to look at the text. What does the text say?
12 And so what the text says in 215 is that the office shall remain
13 open -- right here it is. 215(c), "The main office of the board
14 of registrars in each county shall remain open for business
15 during regular office hours on each business day, except
16 Saturday." That means they don't have to be open on Saturday.
17 That doesn't mean that they should be closed on Saturday. That
18 means that they don't have to be open on Saturday. "And that
19 the main office or such other offices shall be open at such
20 designated times other than the normal business hours as
21 reasonably necessary to facilitate registration at such other
22 hours that will suit the convenience of the public." We have
23 testimony from Mr. McRae about that. But, again, this statute
24 really doesn't apply because we're not talking about
25 registrations. What we're talking about is acceptance of

1 absentee ballots. That is different than acceptance of voter
2 registrations. It's not what this case is about.

3 Your Honor, my client, DeKalb County, has done nothing
4 wrong. All we've done is follow the law. We have complied with
5 Georgia law. We will continue to comply with Georgia law, and
6 we would ask that you deny all relief that the plaintiffs have
7 asked for. We would ask that you dismiss this case.

8 Furthermore, DeKalb County is currently sequestering
9 ballots, and we would ask that this Court enter an order at this
10 point saying that we no longer have to sequester ballots and
11 that we can process them in the normal course and that they can
12 be added to the count once we start doing tabulations later this
13 evening.

14 With that, Your Honor, I have nothing further.

15 THE COURT: Thank you, Counsel. Turning from DeKalb
16 County, I'll now hear argument from the next in line, which is
17 Cobb County.

18 MR. WHITE: Thank you, Your Honor. Daniel White for the
19 Cobb County Board of Elections and Registration. I could be
20 very, very brief, Your Honor, and just say this case is moot as
21 to Cobb County. That's really all it boils down to.

22 There's really no jurisdiction for the Court. There's
23 testimony in the record from Director Fall. She testified in
24 her declaration that all of the ballots from Saturday and Sunday
25 and most of the ballots from Monday that were received by hand

1 delivery or otherwise were opened and processed. So the relief
2 they're asking for can't be granted. So that's just baseline
3 for Cobb County.

4 I don't really want to -- I don't think you need me to
5 rehash all of the arguments that the other counties have pointed
6 out. I just want to point out what's really going on with
7 plaintiffs' complaint and with their motion for TRO, and it's a
8 pattern that keeps happening with what they've been filing with
9 the Court and sort of what they're putting out to the public.

10 And I'm just going to point the Court to plaintiffs' TRO
11 motion on Page 5 where -- or excuse me. Their TRO motion on
12 Page 3, where they start the paragraph about why they're likely
13 to succeed on the merits by saying, "Under Georgia law the
14 period of advance voting shall end on the Friday immediately
15 prior to the election." So they start off talking about advance
16 voting and then they talk about the deadline, and by the end of
17 the paragraph they switched into talking about returning
18 absentee ballots. And they know this, and they did some of the
19 same type thing in their complaint. They're starting talking
20 about one method, and then they just kind of bait and switch and
21 move to another method of voting. And, Your Honor honed in on
22 that very clearly, and there's no reason to beat that dead
23 horse, but the reason Mr. Kaufman had difficulty answering your
24 question about that is because they know very well those are two
25 different methods of voting, that there are two different

1 schedules that apply. They have knowledge about how counties
2 are permitted to accept ballots up through Election Day, to the
3 close of polls today. They've known that for years; and, in
4 fact, Mr. Rice was pretty transparent that, look, if they'd have
5 known -- if we'd have known they were accepting ballots, we
6 would have sent our ballot chasers out and tried to get people
7 in to bring things in. But the reality is it doesn't seem
8 like -- it doesn't seem like these plaintiffs wanted to know.
9 It seems like they want to have some willful confusion that
10 they're trying to sew with this complaint and this TRO, and I
11 just don't think -- Your Honor asked them directly about Cobb
12 County and said, you know, well, isn't it moot, and he wasn't
13 willing to admit that.

14 And then he also said -- I think Mr. Kaufman argued
15 that, well, if we'd met some notice requirements, and you
16 pointed out that Cobb County -- as was brought up with Mr. Rice,
17 Cobb County published their notice on their website in August
18 and published it in the paper in October, so it's been public
19 knowledge that our offices were going to be receiving ballots
20 for months now; and the fact that the plaintiffs chose to remain
21 willfully blind, that's not a basis for them to come to court
22 and say, well, we were confused and we want to talk about one
23 deadline and have the Court enforce it on another type of
24 voting.

25 And it's just completely improper that they would bring

1 this argument to the Court, especially on the eve of election.
2 And I just -- you know, I just say, you know, all the counties
3 on here are trying to -- trying to work in the right direction.
4 I mean, everybody -- it's an Election Day. Folks are -- there's
5 a lot of anxiety and angst among the population about voting,
6 and for them to come in today and try to make this argument that
7 some counties were cheating and receiving ballots, you know,
8 when they shouldn't have been, it's inappropriate. They should
9 be working to instill confidence in elections. And I just think
10 it's disheartening to see this kind of thing filed in court on
11 the eve of an election when they've known -- I mean, in 2022
12 Cobb County's offices were open, and their folks were up there;
13 and if they'd have sent folks up to Cobb County this weekend,
14 they would have seen people sitting in our lobby taking pictures
15 of people delivering these ballots. So it was not some kind of
16 secret thing. It was not last minute. These ballots can't be
17 separated. The plaintiffs didn't bother to do due diligence.

18 They didn't even know Clarke County was not open this
19 weekend. So I can't really see any other purpose behind this
20 lawsuit other than to sort of raise the specter of, you know,
21 people trying to do improper things around the election, and I
22 just -- the Court should not count in its -- we'd ask you to
23 sort of join the counties and do like Thomas Carlyle talks about
24 and just work in the right direction and get this stuff cleared
25 up for folks so we don't have people out there creating

1 narratives that don't need to be out there.

2 THE COURT: Thank you, Counsel. Next in line is
3 Gwinnett County. Is that correct?

4 MR. WHITE: Your Honor, this is Daniel White. I wanted
5 to correct one other matter that they raised about the
6 litigation hold. I know there's a note that I just wanted to
7 make sure we have on the record. There was nothing received by
8 Cobb County until late -- the first notice was late Saturday
9 night. The second one was sent on Sunday. I'm not sure that
10 that ever -- but to the extent -- when you asked him about, you
11 know, what Cobb County should have done and Mr. Kaufman said
12 they sent a litigation hold Saturday morning, both of those
13 statements are incorrect, and they didn't put it in the record
14 either way. So I just want to make sure -- and they can't add a
15 requirement for us to handle our ballots differently, other than
16 what's under Georgia law anyways. Sorry to come in there on the
17 last minute, but I had that note I wanted to make.

18 THE COURT: I appreciate it. Thank you. I'll turn to
19 Gwinnett County at this time.

20 MR. GERMANY: Thank you, Your Honor. This is Ryan
21 Germany for Gwinnett County. I've got four quick things. I'm
22 not going to talk about the statutory constructions because I
23 think Your Honor is clear on that, the idea that there's some
24 hidden requirement in Georgia law that requires voters to hand
25 deliver their ballots by October [sic] 1st. It's just not

1 there, and frankly, there's never been any confusion about that
2 prior to this case.

3 I do want to talk about drop boxes, because there seems
4 to be some conflation between the fact that drop boxes close
5 on -- at the end of the advance voting period versus hand
6 delivery of ballots to registrars, which is clearly open until
7 the close of polls at 7 p.m. on Election Day. And the reason
8 for that, the example I use, for instance, in Gwinnett County
9 there's six drop boxes. Those close -- or open during the
10 advance voting period. It's very clear in the law when they
11 open, when they close. And the reason that they close the
12 advance voting period, it's kind of like if you're overnighting
13 FedEx. If you're dropping it off far away from the airport,
14 you've gotta get it in the box by 11 a.m., but if it's later
15 than that, you can still take it down to the Atlanta airport and
16 get it there at a later time.

17 And that's kind of what happens here. Those drop boxes
18 have to be collected, taken back to the registrar. So what
19 happens after the advance voting period in Gwinnett County is
20 the only place you can return your ballot is at the registrars'
21 office. It's getting closer to Election Day. The voter has to
22 take it directly to the office, so then it's right there; it can
23 be processed immediately, because then the election workers are
24 starting to have a time crunch and want to get these things
25 processed as soon as possible.

1 So I think that's why there's a distinction between
2 returning your ballot to a drop box, which clearly does close at
3 the end of the advance voting period, versus hand delivering
4 your ballot to a registrar, which clearly does not close until
5 the end of 7 p.m. on Election Day.

6 You asked a question earlier how many counties are
7 accepting hand-delivered ballots today and yesterday. I would
8 posit -- and I don't have evidence on this, but I would posit
9 that all counties are. It's a requirement in Georgia law, and
10 if they were not, I know when I was with the Secretary of
11 State's Office, we would have heard about that, and this is
12 something that we never heard about. It's not a real area of
13 confusion.

14 As to the question of are counties accepting ballots
15 over the weekend, I would say it's probably not all, but it
16 probably is a lot more than you think, because the weekend
17 before the election, election workers are at their office;
18 they're working; they're getting things ready. So it's not like
19 -- and this is across the state. It's not like they're having
20 to show up just to open the office to accept absentee ballots.
21 They're already there, so it's a question of if you're already
22 there, are you going to turn away a voter who shows up.

23 So it's obviously the plaintiffs' burden to show that,
24 but I think the assumption that there's no other counties doing
25 this is -- over the weekend is not merited. And for the Monday

1 and Tuesday, if you ordered those ballots not to be counted, I
2 think that would be creating a massive Equal Protection problem
3 because I feel very confident that every other county is
4 accepting ballots returned, hand delivered in person to the
5 office yesterday and today.

6 Two quick things. There's been some questions about
7 proper notice of hours, and I want to just draw Your Honor to
8 one case. It's *Malone v. Tyson*, 248 GA 209, from 1981. That
9 case holds that even if a registrar's office had hours that were
10 not properly noticed -- that case was about registrations -- the
11 registrations are not invalidated. And I think the same logic
12 would apply to absentee ballots that are returned.

13 There is a law that's new this year, Your Honor. I call
14 it the 8 p.m. rule. It's 21-2-386. The legislature clearly
15 favors quick reporting of results. There is a law that says all
16 absentee ballots that were received by yesterday, the results of
17 those have to be reported by 8 p.m. tonight. And so the request
18 to sequester ballots is basically putting counties in a position
19 of not being able to comply with that law; and I just wanted to
20 make Your Honor aware of that, and that's all I have.

21 THE COURT: Thank you, Counsel. I don't have any
22 further questions of you. Thank you. Give me just one moment.
23 I think we now have Clayton up next. Is that correct?

24 MR. SABZEVARI: That's correct, Your Honor. Ali
25 Sabzevari for Clayton County. I'm going to be very brief as

1 well. In addition to the arguments for denial of plaintiffs'
2 motion for preliminary injunction, as we've already presented in
3 the briefing in the record as well as today, I do want to
4 mention that it's the plaintiffs' burden here, and there has
5 been no mention in the evidence of my client Clayton County here
6 today.

7 Me declining to cross-examine the witness was very
8 intentional. There's just no mention of Clayton County. The
9 only evidence in the record presented by the plaintiffs that
10 mentions Clayton County specifically is Paragraph 42 of the
11 verified complaint, which Your Honor has already alluded to,
12 stating that it did not have locations open this weekend for
13 advance -- or this past weekend for advance voting.

14 And while Mr. Rice testified of his understanding that
15 there was approximately 2,000 ballots that were hand delivered,
16 no evidence was submitted to show which if any of those 2,000
17 ballots were in Clayton County. Same with Mr. Hooper's
18 affidavit that the plaintiffs submitted, no mention of Clayton
19 County either.

20 So in sum, Your Honor, plaintiffs have not shown a
21 substantial likelihood of success on the merits of their claims,
22 and we ask that the plaintiffs' motion for preliminary
23 injunction be denied.

24 THE COURT: Thank you, Counsel. I'll turn to
25 Athens-Clarke County at this time.

1 MR. HAWKINS: Your Honor, John Hawkins, deputy chief
2 attorney in the Athens-Clarke County Attorney's Office. I, too,
3 hope to keep this very brief. Your Honor, similar to the
4 argument from counsel from Clayton County, there are no explicit
5 allegations in the complaint about Athens-Clarke County; and as
6 a matter of fact, the evidence introduced for this hearing shows
7 that Athens-Clarke County didn't commit the alleged violation
8 that the plaintiffs have latched onto in this case. So we're a
9 little confused why we're here.

10 Beyond that, Your Honor, one other thing I do want to
11 notice, and I want to echo the comments from counsel for
12 Gwinnett and counsel for DeKalb. We are presently holding some
13 ballots that were received on Monday, sequestering those
14 ballots, and I like Mr. Germany's characterization of that, the
15 8:00 rule. My clients are very concerned about that and are
16 really concerned about what to do with those ballots. And so
17 just wanted to express that to Your Honor.

18 But, Your Honor, I won't beat a dead horse. I think the
19 other defense counsel have made much better arguments than I
20 ever could, and I echo their comments on this case.

21 THE COURT: Thank you, Counsel. And just to be clear,
22 Athens-Clarke County did not receive any ballots on Saturday and
23 Sunday, absentee ballots in person; is that correct?

24 MR. HAWKINS: That is correct, Your Honor, and that's in
25 the declaration of Director Sosebee. Furthermore, we had no

1 additional locations on Monday. Any walk-in ballots that were
2 received were received at the main office on 155 East Washington
3 Street.

4 THE COURT: So when at Doc. 1, Page 3 plaintiffs stated
5 that various counties, including Athens-Clarke, announced at the
6 eleventh hour they will be open this weekend and Monday for
7 voters to return absentee ballots, was that an accurate
8 statement of the facts?

9 MR. HAWKINS: Not to our knowledge, Your Honor. As a
10 matter of fact, in Director Sosebee's declaration she mentions
11 the fact that the elections office had not issued any
12 advertisements about such a thing.

13 THE COURT: Okay. Thank you. I just wanted to be sure
14 there was no confusion on that. Okay. All right. Thank you.

15 And, finally, I'll turn to the Democratic National
16 Committee.

17 MS. ELLSWORTH: Thank you, Your Honor. Felicia
18 Ellsworth for the DNC and the DPG. I won't repeat the arguments
19 that have already been ably made about the Georgia Elections
20 Code. I did want to speak just briefly about the two supposed
21 constitutional claims, were the Court even inclined to reach the
22 merits of any of this, and I will talk about why the Court in
23 our view should abstain altogether at the end.

24 As to the Equal Protection Clause claim, the juris
25 prudence on Equal Protection Clause, its applicability to

1 elections is quite clear that it relates to the counting and
2 processing of votes and not to the manner of casting ballots.
3 That is, of course, what the fact pattern was in *Bush v. Gore*
4 itself, and we did point the Court to an Oregon Supreme Court
5 case, the *City of Damascus vs. Oregon*, that makes that very
6 clear. But the Court can stay closer to home. The Eleventh
7 Circuit in *Wexler vs. Anderson* also made very clear that
8 variations among systems for elections are not Equal Protection
9 Clause violations, that the real question is whether or not a
10 voter's -- or a voter is less likely to cast an effective vote,
11 and there's been nothing presented to the Court and certainly
12 nothing in the record that suggests that any variations in
13 availability of delivery of in-person absentee ballots would
14 have an effect on a voter's -- the effectiveness of a vote.

15 I would also note, and the Court has observed, that
16 there is an absence of evidence that would support a uniformity
17 claim under the Equal Protection Clause because we don't have
18 any evidence as to what at least 152 counties are doing, and
19 some of the other counsel have pointed out the inconsistent
20 evidence among even the defendants. So I would just note that
21 on the Equal Protection Clause there's both a record --
22 challenges in the record as well as the legal claim itself is
23 not viable.

24 As to the elections clause, that claim really does rise
25 and fall on whether there is a violation of the underlying state

1 law here, the Georgia Election Code. That's how the plaintiffs
2 pled it in their complaint. I would point the Court to
3 Paragraph 69 of Document 1 where it says defendants are
4 violating Georgia election law, and their actions must be
5 declared invalid under the elections clause. So that one really
6 does rise or fall on the state law question, as does the Equal
7 Protection Clause claim, but this one under the pleading itself.
8 But it's also nonmeritorious even if the Court were inclined to
9 look beyond the underlying state law violation.

10 The plaintiffs are complaining about how counties are
11 interpreting or applying the straightforward language of the
12 Georgia Code, which is, of course, enacted by the Georgia
13 legislature.

14 To the extent the elections clause has any applicability
15 in elections into the manner of setting federal elections has to
16 do with courts interpreting law, what the legislature has
17 enacted, and we don't have anything even approximating that type
18 of a factual allegation here.

19 And then, finally, as we noted in our brief, we do think
20 that the Court should decline to exercise jurisdiction here
21 given that this is really a pretty blatant attempt to forum shop
22 by the plaintiffs. Having been denied relief in the state court
23 on Saturday, it came to the federal court on Sunday.

24 The arguments as to the Georgia Election Code were
25 definitively rejected by Judge Farmer in an oral ruling. That

1 oral ruling is memorialized in what's before the Court as Fulton
2 County Exhibit 2, which is a transcript of that hearing.
3 Principles of comity require this Court to abstain when what the
4 plaintiffs are asking the Court to do here are to simply answer
5 the same question that the Fulton County Court already answered
6 it by hoping to get a different answer from this Court.

7 The plaintiffs have tried to cloak this state law claim
8 in the federal Constitution, but that does not alter the
9 fundamental nature of the dispute, which is a question of
10 whether the Georgia Election Code allows for in-person return of
11 absentee ballots on dates up to and including Election Day,
12 which it unequivocally does. And so to avoid the risk of
13 inconsistent rulings and federal interference with state court's
14 interpretation of state law, the Court should stay or dismiss
15 this action in favor of the earlier filed Fulton County suit.

16 The last two points I would make, Your Honor, we heard a
17 lot in the testimony and in the record about poll watching or
18 poll observers. There's no reference in the complaint,
19 certainly not in the prayer for relief, but nowhere in the
20 complaint, to poll watchers or observers. There's also no
21 reference in the complaint to Georgia Code 2-21-215(e), which is
22 that three-day notice provision Mr. Kaufman discussed, or any
23 references or allegations in the complaint about timeliness.
24 Like I said, that code section is not cited.

25 So those issues are really just not properly before the

1 Court on this TRO at all. If the Court doesn't have any
2 questions, I don't have any more argument to make.

3 THE COURT: I don't have any questions. Thank you. I'm
4 going to take a five-minute recess, and then I'll issue an oral
5 ruling. We'll be back on the record at 3:20.

6 (Proceedings stood in recess from 3:15 p.m. until 3:23 p.m.)

7 THE COURT: All right. Everyone, we're back on the
8 record. This is Judge Baker. 4:24-CV-248. This will be the
9 Court's ruling on the plaintiff's motion for preliminary
10 injunction.

11 Please be certain that everyone else mutes your
12 microphone at this time.

13 We start, as we must, with the standard of review. To
14 be entitled to a preliminary injunction, plaintiffs must show,
15 one, a substantial likelihood of ultimate success on the merits;
16 two, that an injunction or protective order is necessary to
17 prevent irreparable injury; three, the threatened injury
18 outweighs the harm the injunction would inflict on the
19 nonmovant; and, four, the injunction or protective order would
20 not be adverse to the public interest.

21 In the Eleventh Circuit an "injunction is an
22 extraordinary and drastic remedy not to be granted unless the
23 movant clearly established the 'burden of persuasion' as to the
24 four prerequisites." That's in *Horton v. City of Augustine*,
25 Eleventh Circuit 2001. Granting a preliminary injunction should

1 be "the exception rather than the rule." That's *Siegel vs.*
2 *LePore*, a 2000 case from the Eleventh Circuit. If a plaintiff
3 succeeds in making such a showing, then the Court may grant
4 injunctive relief, but the relief must be no broader than
5 necessary to remedy the constitutional violation. That's *Newman*
6 *v. Alabama*, all the way back in 1982, of the Eleventh Circuit.

7 Turning to the first factor, the likelihood of success
8 on the merits is generally considered the most important of the
9 four factors, *Garcia-Mir v. Meese* from 1986. If plaintiffs
10 cannot satisfy their burden with respect to this factor, I don't
11 need to consider the other three factors, though I can.

12 Although plaintiffs raised multiple claims against the
13 defendants in this case, they need to only show a substantial
14 likelihood of success on the merits of one claim. There are
15 multiple alternative hurdles that the plaintiffs here cannot
16 clear when it comes to succeeding on any of their claims. One
17 of these hurdles would be enough, but in the interest of
18 completeness, I'm going to discuss all of the most glaring
19 hurdles that they cannot clear.

20 First, the defendants have made a compelling case that
21 the Court would more than likely need to abstain from this
22 proceeding or at least abstain from some of plaintiffs' claims
23 due to comity and the ongoing litigation of claims in more
24 convenient state forum that ultimately turn on interpretations
25 of state law, and that was the first filed claims, and thereby

1 this court would give deference to the state court.

2 Second, defendants have made a persuasive case that
3 granting plaintiff relief would violate the bedrock principles
4 of election law established in *Republican National Committee vs.*
5 *Democratic National Committee* -- it's a 2020 United States
6 Supreme Court case -- and the *Purcell v. Gonzalez* case from
7 2006, those being that lower federal courts should ordinarily
8 not alter the election rules on the eve of an election. I've
9 cited that before, but rarely when it's literally on the eve of
10 an election, and that is the case today.

11 I've gotta exercise great restraint, particularly here
12 when the plaintiffs waited until this late hour to challenge a
13 system for accepting absentee ballots that the counties have
14 used -- some of them at least have used -- for years and years.
15 Even this year, on July 17th, Gwinnett's Election Board voted in
16 a public meeting to keep their office open on November 2nd and
17 3rd for the purpose of accepting hand delivered absentee
18 ballots, but I didn't hear anything about it until -- or no
19 federal court heard anything about it until Sunday.

20 That point brings me to my third reason why the Court is
21 unlikely to reach the merits of plaintiffs' underlying claim,
22 that being the doctrine of laches. Plaintiffs delayed in
23 asserting their claims that this process for receiving absentee
24 ballots was improper until the eve of the election. Their delay
25 was not excusable, and their delay caused defendants undue

1 prejudice, including depriving defendants and the citizens of
2 those counties to deliver their absentee ballots through some
3 other process, if this process would have been declared to be
4 invalid.

5 Fourth, and perhaps most substantively, what we've
6 discussed today, even if plaintiffs could clear these
7 justiciability hurdles, they still would not likely succeed on
8 the underlying merits of their claims.

9 I'm going to work a little bit backwards here. Count
10 Three and Four, in those counts the plaintiffs claim that these
11 defendants have violated the election clause of the U.S.
12 Constitution. That clause, which is contained in Article 1,
13 Section 4, provides that the time, places and manner of holding
14 elections for senators and representatives shall be prescribed
15 in each state by the legislature thereof.

16 Plaintiffs contend that the Georgia General Assembly has
17 done this by unambiguously requiring that advance voting "shall
18 end on the Friday immediately prior to each election," which
19 this year was November the 1st, 2024. That's O.C.G.A. Section
20 21-2-385(d) (1) (B). Plaintiffs argue the defendants have
21 violated that deadline by accepting absentee ballots in person
22 after Friday, November the 1st, 2024.

23 Well, for one, plaintiffs have made these allegations of
24 least one defendant, Athens-Clarke County, who did not accept
25 ballots over the weekend. Putting the factual problems aside,

1 the plaintiffs' argument does not withstand even the most basic
2 level of statutory review and reading comprehension.

3 Plaintiffs confuse "advance voting" with "absentee
4 voting." Under Georgia's election code and reams and reams of
5 Georgia precedent, advance voting and voting by absentee ballot
6 are distinct processes subject to different statutory
7 requirements. Plaintiffs point to no statute or regulation or
8 precedent that classifies absentee voting as advance voting, nor
9 could they. It's clear they're different.

10 The very first subsection of the statute plaintiff
11 cites, O.C.G.A. 21-2-385(a), states that an elector can fill out
12 his or her absentee ballot, "at any time after receiving an
13 official ballot, but before the day of the election." So
14 obviously the elector could have filled out the ballot
15 yesterday. Counsel conceded that. So then counsel can't
16 logically argue that somehow the elector could not have filled
17 out the ballot -- excuse me, elector was required to return the
18 ballot on Friday. I don't think they're saying that these
19 electors should have a DeLorean and a flux capacitor, so I don't
20 see how the elector could have filled out the ballot yesterday,
21 but then turned it in on Friday. Makes no sense.

22 That same section goes on to explain that the elector or
23 a litany of relatives of the elector may then mail or personally
24 deliver the absentee ballot to the board of registrars or
25 absentee ballot clerk. Then Subsection 21-2-385(e) provides the

1 duties of a county board of registrars and absentee ballot clerk
2 during the "absentee voting period." It is important to note
3 that the General Assembly used a different phrase, period of
4 advance voting, in the very preceding subsection, Subsection
5 385(d), and within Subsection (e) itself, thus, again, basic
6 reading comprehension skills tell us that the Georgia General
7 Assembly understood, and we understand, that absentee voting
8 period is different than the period of advance voting and are
9 the plaintiffs' attempts to conflate the same.

10 Moreover, O.C.G.A. 21-2-386(a)(1)(A) makes abundantly
11 clear that board of registrars and absentee ballot clerks are
12 supposed to receive, secure and count all absentee ballots
13 received, "prior to the closing of the polls on the day of the
14 primary or election." That would be today. Prior to the
15 closing of the polls on today, not Friday.

16 Subsection 21-2-386(a)(2) then explains that the county
17 officials are to count those absentee ballots received prior to
18 the closing of the polls, not prior to the advance voting
19 period; prior to the closing of the polls on the date of the
20 election.

21 If there were any doubt, O.C.G.A. 21-2-386(a)(1)(F)
22 explains that when an absentee ballot is received late what the
23 registrars or clerks are supposed to do with them. So we can
24 look there to see what does the General Assembly mean when they
25 mean late. Quote, All absentee ballots returned to the board or

1 absentee ballot clerk after the closing of the polls on the day
2 of the primary or election. Pretty clear. So it's pretty
3 obvious that all such late ballots mean -- when it says all such
4 late ballots shall be delivered and stored but then destroyed,
5 what they're talking about is those that are received after the
6 close of the polls on the date of the election.

7 To put the final nail on the proverbial coffin when it
8 comes to the statutory argument, O.C.G.A. Section 21-2-382(a)
9 allows counties to establish locations for the receipt of hand
10 delivered absentee ballots "notwithstanding any other election
11 code provisions." Of course, notwithstanding means putting all
12 those other provisions aside. And the statute states,
13 specifically, any other provisions of this chapter to the
14 contrary notwithstanding, the board of registrars may establish
15 additional registrars' offices or places of registration for the
16 purpose of receiving absentee ballots.

17 So, in sum, the Georgia statutes are abundantly clear
18 that when it comes to the deadline for the receipt of absentee
19 ballots, the defendants must count all proper absentee ballots
20 received prior to the closing of the polls on the day of the
21 election.

22 Plaintiffs' claim in their complaint that the deadline
23 was Friday and that the defendants somehow violated state law by
24 continuing to receive absentee ballots after that time is
25 frivolous. The hypothetical single mother truck driver, she's

1 allowed to have her mother deliver the ballot today when her
2 mother goes and votes.

3 Indeed, if any of the defendants had adopted plaintiffs'
4 interpretation of the statute and rejected properly voted
5 ballots delivered prior to the closing of the polls today, then
6 they would likely be in violation of the election clause.

7 Put another way, it is plaintiffs, not defendants, who
8 propose a method for receiving absentee ballots that would
9 violate the General Assembly's directive and thereby violate
10 United States Constitution Article 1, Section 4, Clause 1.

11 Now, plaintiffs have tried to shoehorn into this matter
12 a claim about poll access and notice of changes of hours of
13 operation. These are red herring arguments. The claims were
14 not included in their complaint. They're not before the Court.
15 But even if they were, they're not cognizable. There's no
16 supporting facts. There's no supporting law.

17 The evidence indicates that while there may have been
18 some confusion about the plaintiffs' ability to observe the
19 processing of votes during these extended hours, that evidence
20 is quite scant. The defendants have the better of the argument
21 there on the evidence that I've received and reviewed. And,
22 again, the plaintiffs have the burden.

23 Moreover, the claim that they could not get poll
24 watchers to these locations because of last-minute announcements
25 is particularly dubious. The defendants' [sic] own in-person

1 witness testified that he knew the counties could accept
2 absentee ballots up until the close of the polls today. The
3 evidence is replete with evidence that some of the defendant
4 counties have been doing this for years and years.

5 Moreover, one of the defendants made a pronouncement in
6 a newspaper months ago that they would be accepting absentee
7 ballots during this time. Another one adopted a resolution in a
8 public meeting. May have been -- not months ago. May have been
9 weeks ago, but anyway, there was a lot of notice.

10 The claim of surprise is suspect as many of these
11 counties, again, have been doing this for decades, and the claim
12 about Section 21-2-215(e), that's another red herring. That
13 statute subsection pertains to registration hours, not absentee
14 voting receipt. Furthermore, if you read the entirety of the
15 statute instead of cherry picking one subsection, you realize
16 the defendants did not violate it.

17 So that deals with those Count Three and Four, which are
18 constitutional claims, but they're underpinned by these
19 statutory claims.

20 Now, I'll turn to Counts One and Two, which are alleged
21 violations of the Equal Protection Clause of the Fourteenth
22 Amendment to the United States Constitution. Indeed, in *Bush v.*
23 *Gore*, 531 U.S. 98, 2000, the Supreme Court stated that "having
24 once granted the right to vote on equal terms, the state may
25 not, by later and arbitrary disparate treatment, value one

1 person's vote over that of another." This is often referred to
2 as the uniformity principle.

3 To be sure, plaintiffs' uniformity principle arguments
4 are somewhat more credible than their arguments that the
5 defendants are violating state law. Nonetheless, they have no
6 likelihood of success on the merits whatsoever.

7 For one, plaintiffs have not presented sufficient
8 evidence of the disparity between the opportunity available for
9 the electors in these seven counties to cast absentee ballots
10 versus the opportunities available in Georgia's other 152
11 counties. There's just no evidence. Plaintiffs have not
12 presented it.

13 Moreover, the Court can take judicial notice of the
14 Georgia Secretary of State's records. There's a number of cases
15 on that point. I'll cite my colleague in the Northern District
16 of Georgia in *Capital Inventory, Incorporated vs. Green*,
17 Northern District of Georgia, February 5th, 2021, taking
18 judicial notice of the records of Georgia Secretary of State's
19 website. The Northern District of Georgia has got several cases
20 on it. So does this district; in fact, it's got a lot of them.
21 But in any event, the Georgia Secretary of State's Guide For
22 Registered Voters states as follows: And this has been the same
23 for a long time. Quote, submitting a voter absentee ballot --
24 so this is basically telling a registered voter, here's how you
25 submit your absentee ballot -- a ballot must be received by the

1 county registrar no later than the close of polls on Election
2 Day. Delivery can be either U.S. First Class Mail or hand
3 delivered, close quote.

4 The Court's cursory review of the available public
5 materials when it comes to all the counties seems like all the
6 counties are accepting absentee ballots today. Certainly
7 there's not a finding that only these seven counties are.

8 Also, uniformity principle, even if there was some
9 difference, you know, let's just say for purposes of argument
10 that these were the only counties that were accepting ballots on
11 Saturday and Sunday, I still don't think that gets the
12 plaintiffs there. The uniformity principle is not a principle
13 of identicalness. In all events local entities in the exercise
14 of their expertise may develop different systems for
15 implementing elections consistent with the Equal Protections
16 Clause. That's the very case that plaintiffs cite in the
17 gravamen of their uniformity principle, *Bush*, 531 U.S. at 109.
18 And state law may "reasonably provide for jurisdiction-by-
19 jurisdiction variation." That's the *Election Integrity Project*
20 *of California, Incorporated vs. Weber* from the Ninth Circuit in
21 2024.

22 Getting closer to home, plaintiffs do rely on *Wexler v.*
23 *Anderson*, the Eleventh Circuit case, in support of their equal
24 protection claim, but that decision, well, it actually supports
25 the defendants' positions. The *Wexler* plaintiffs alleged that

1 voters in counties using touchscreen voting machines were
2 subjected to arbitrary and disparate treatment relative to
3 voters in counties that used optical scan technology. The
4 Eleventh Circuit held that the equal protection inquiry turned
5 on whether "voters in touchscreen counties were less likely to
6 cast an effective vote than voters in optical scan counties."

7 So the question was not whether uniform procedures had
8 been followed across the state regardless of differences in
9 voting technology, and the Eleventh Circuit made that clear at
10 Page 1232.

11 So as in *Wexler*, the answer to the relevant question,
12 whether plaintiff has shown that voters in the locations that
13 did not open return locations are, quote, less likely to cast an
14 effective vote is no. Plaintiffs just haven't shown it. Not at
15 all.

16 Persuasive authority also cuts against plaintiffs.
17 There is a case out of Pennsylvania, the Third Circuit, of 2020,
18 *Trump v. Secretary of Pennsylvania*. The Third Circuit stated
19 that when boards of election vary considerably in how they
20 decide to reject ballots, those local differences in
21 implementing state-wide standards do not violate equal
22 protection. Well, here, there's no considerable variance.
23 There's, if anything, minute variances.

24 Also, there's a Middle District of Pennsylvania from
25 November 21st of 2020 where the Middle District stated,

1 requiring that every single county administrator -- excuse me --
2 every single county administer elections in exactly the same way
3 would impose untenable burdens on counties, whether because of
4 population, resources or a myriad of other reasonable
5 considerations.

6 Courts have rejected challenges to the early voting that
7 involved variations far more than those at issue here. For
8 example, the District of Montana, a great state, in *Donald J.*
9 *Trump For President, Incorporated vs. Bullock*, stated that the
10 crux of plaintiff's argument as pled in their complaint is that
11 the use of a mail ballot system by some counties and not others
12 resulted in unconstitutionally disparate treatment. The Court
13 went on to say, few, if any, electoral systems could survive
14 constitutional scrutiny if the use of different voting
15 mechanisms by counties offended the Equal Protection Clause.

16 Similar here, if we just start talking about what hours
17 one is open, what hours not open, et cetera, well, we're going
18 to get to the point where counties are handcuffed; they don't
19 know what to do.

20 Even the most fervent proponents of the uniformity
21 principle find violations of the principle only when a statute
22 continues to apply different rules or substantially differing
23 interpretations of a vague or general rule to various voters
24 participating in the same election and the disparate treatment
25 caused, "substantial disparities in the likelihood of voters

1 being able to cast their votes and have them be counted."

2 That's the Law Review article from Michael T. Morley, talking
3 about *Bush v. Gore's* uniformity principle in the 2020 election,
4 in the Wake Forest Law Review, 179, 187 from 2023. That's the
5 Law Review article that plaintiffs lean on pretty heavily here.

6 Well, here, there's no substantial disparities in the
7 likelihood of voters being able to cast their votes. Here, at
8 most, defendants [sic] have shown that these seven -- likely at
9 most six -- counties provided two more days when voters in their
10 county could hand deliver absentee ballots than voters in other
11 counties. Again, that's the most they've shown, and I don't
12 think the evidence showed that, but just assuming that they did
13 show that, when considering the wealth of options for voting
14 under Georgia's voting statutes, this is simply not a
15 substantial disparity.

16 Voters in all of Georgia counties had the ability to
17 vote early in person for multiple weeks, to mail in absentee
18 ballots for multiple weeks, to hand deliver absentee ballots for
19 multiple weeks, including via drop box, and to vote in person
20 today on Election Day. Cherry picking a few additional weekend
21 hours when a voter in some counties was able to drop off an
22 absentee ballot from this robust voting system that spans weeks
23 simply does not give rise to a uniformity violation, no matter
24 what your view on that doctrine may be.

25 Thus, I find, for multiple reasons, plaintiffs do not

1 have any likelihood of success on their claims, much less
2 substantial likelihood of success to garner the extraordinary
3 remedy of a preliminary injunction.

4 I could end my inquiry there, and I'm sure some of you
5 listening would be glad if I did, but in the interest of
6 completeness and the prospect of an appeal, I must go on and
7 analyze the remaining requirements for preliminary injunctive
8 relief.

9 The irreparable injury requirement, in order to satisfy
10 that, a party must show that the threat of injury is neither
11 remote nor speculative, but actual and imminent. That's from
12 the *Northeast Florida Chapter of Association of General*
13 *Contractors of America vs. The City of Jacksonville*, 896 F.2d
14 1283 from 1990, quoting the *Schlesinger* case.

15 Here, the plaintiffs have not explained how they'll be
16 irreparably injured if the Court does not grant them the
17 injunctive relief they seek. It's confusing what they actually
18 seek. In their complaint their prayer for relief does not
19 request that the Court invalidate any votes received, but it
20 does request that the Court order the defendants to stop
21 receiving any absentee ballots in person, including today. So
22 that would have the practical effect of eliminating those votes.

23 Also, the sequestration of the votes, it's confusing as
24 to how that would afford them any relief when, indeed, as has
25 been stated, there's a state statute that says those votes have

1 to be counted. And, additionally, some counties have already
2 sequestered some of the votes, so that request would be moot as
3 to those counties.

4 On the other hand, those counties who have not and have
5 already commingled the votes, well, the request would be futile
6 as to those counties. Moreover, state law mandates the counties
7 count the votes, so it's not clear what good it would do the
8 Court to order them to be sequestered.

9 Furthermore, there's just been no showing of how these
10 plaintiffs would be injured because there's been no showing of
11 what's gone on in the other counties. Even if the plaintiffs
12 are asking, as I think they truly are asking, to invalidate all
13 the votes in these seven counties, it's not clear that this
14 would cure any irreparable injury to them. Again, the
15 plaintiffs have not provided any specifics about how many votes
16 were received in these counties and whether these votes would
17 have been simply cast at another time, but for the Saturday and
18 the Sunday hours. And when pressed as to why they selected
19 these counties versus the other counties, really, what it came
20 down to is that these counties are democratic leaning.

21 When it comes to the balance of the harms and the public
22 interest, courts often deal with these final two factors of
23 preliminary injunctive relief together, and that's appropriate
24 to do here because the two factors involve many of the same
25 facts, particularly when you're dealing with the right to vote,

1 and these facts weigh heavily against plaintiffs' request for
2 substantially similar reasons.

3 As far as the harm that the plaintiffs are asking me to
4 prevent, that harm, as I just stated, is amorphous and uncertain
5 at best. On the other side of the ledger, we have the
6 proposition that Justice Hugo Black espoused 60 years ago in
7 *Wesberry v. Sanders*, 376 U.S. 1, 1964. Justice Black eloquently
8 said, "no right is more precious in a free country than that of
9 having a voice in the election of those who make the laws under
10 which as good citizens we must live. Other rights, even the
11 most basic, are illusory if the right to vote is undermined.
12 Our Constitution leaves no room for classification of people in
13 a way that unnecessarily abridges this right."

14 In urging the people to adopt the Constitution, Madison
15 said in No. 57 of *The Federalist*, "Who are to be the electors of
16 the federal representatives? Not the rich more than the poor,
17 not the learned more than the ignorant, not the haughty heirs of
18 distinguished names more than the humble sons of obscure and
19 unpropitious fortune. The electors are to be the great body of
20 the people of the United States."

21 If I were to grant plaintiffs their requested relief, I
22 would unquestionably be depriving those individuals who have
23 cast their ballots and are casting their absentee ballots in the
24 manner prescribed by a state statute and by their local election
25 officials of that precious right. There is no feasible process

1 by which the voters who submitted absentee ballots in person to
2 the elections office today or over the weekend could withdraw
3 that ballot, submit a new ballot or appear to vote in person.
4 So what we'd be doing is we'd just be canceling all those
5 ballots.

6 I have not seen, plaintiffs have not cited any case
7 where a court takes that extraordinary measure of using the
8 uniformity principle to invalidate votes that have already been
9 cast.

10 Even more concerningly, I would only be invalidating
11 votes in the select counties that plaintiffs have cherry picked
12 based on nothing more than the past political preferences of the
13 citizens in those counties. After all, there's evidence that
14 the votes were cast in the same manner that plaintiffs challenge
15 in many of the other 152 counties. But plaintiffs would have
16 those votes stay in place merely because perhaps they preferred
17 a different political party. Thus, plaintiffs are patently
18 inviting me to tip the scales of this election by discriminating
19 against the citizens that are less likely to vote for their
20 candidate. To grant that relief would not only violate the
21 United States Constitution and state law, but also my oath of
22 office to administer justice without respect to persons.

23 For all these reasons, I deny the plaintiff's motion for
24 temporary restraining order and for a preliminary injunction.
25 That's my order.

1 Now, before we adjourn, I've gotta address some concerns
2 I have with the litigation tactics in this case. This Court has
3 a reputation of being a stickler when it comes to the duty of
4 candor, the forum shopping and being certain that you represent
5 the law and the facts uprightly. My predecessors for sure, my
6 colleagues and I, we've been known, we've got a reputation to be
7 equal opportunity in this respect. We've garnered quite a
8 reputation for holding attorneys to a high standard regardless
9 of political affiliation or other characteristic.

10 At Doc. 1, Page 3 plaintiff stated, "The law is clear --
11 the period of advance voting is over, but that hasn't stopped
12 Fulton, DeKalb, Cobb, Gwinnett, Athens-Clarke, Clayton and
13 Chatham Counties from announcing at the eleventh hour that they
14 will be open this weekend and Monday for voters to return
15 absentee ballots. The counties' actions violate state law.
16 Worse, the counties' actions violate the Equal Protection Clause
17 of the Fourteenth Amendment by granting special privileges to
18 voters of those counties in violation of state law, thus
19 arbitrarily and disparately affecting against voters and
20 candidates in other counties. Worse still, the counties'
21 actions violate the Federal Elections Clause by flouting the
22 Georgia General Assembly's regulations setting the manner of
23 federal elections."

24 That parade of horrors is factually and legally
25 incorrect. One of the main defendants was not even receiving

1 ballots this weekend. But that did not save them from a stripe
2 with which the plaintiffs' counsel is painting.

3 Moreover, the law is clear that not only were the
4 defendants allowed to receive ballots up to the close of the
5 polls today, they are required to do so. Their own in-person
6 witness testified today that he understood that is the law. If
7 he understands it, I don't understand why plaintiffs' counsel
8 does not.

9 Now, I understand that in today's day and time,
10 individuals often play fast and loose with the facts and the law
11 in the political arena, and perhaps I'm just a little bit old
12 fashioned, but, look, we don't do that in the courtroom. Public
13 perceptions notwithstanding, when a lawyer speaks, this Court
14 expects that as officers of this Court, the lawyers and their
15 clients are doing their level best to present the truth, nothing
16 more, nothing less. Our system of justice demands it,
17 particularly when it comes to matters that underpin our
18 constitutional republic, including our election system. Those
19 of us in the legal profession owe an obligation not only to the
20 Court, but also to our fellow citizens, that we not pull any
21 punches, but also that we not strike any foul blows.

22 Unfortunately, plaintiffs' counsel has missed that mark
23 in this case. It is dangerous when a non-lawyer makes claims
24 that are just factually and legally incorrect about the right to
25 vote, but as lawyers it's even more dangerous. We gotta realize

1 that lawyers' words matter. They're given special attention.
2 And that's why we have serious repercussions for lawyers who
3 violate their duty of candor.

4 I'm not going to do that in this case. I don't think
5 that's the right thing to do. I'm not going to turn to those
6 issues.

7 But Mr. Kaufman and Mr. Feemster will tell you that a
8 late predecessor of mine, he liked to hand out reading
9 assignments. I haven't adopted that. Usually his reading
10 assignments were a dense tome on ancient history or some other
11 volume that he'd quiz you on the next time he saw you. I was
12 certainly a victim of that.

13 Like I say, I don't do that, but I do commend to you a
14 much shorter but just as powerful read, that being the fable of
15 the child which kept the sheep, also known as The Boy That Cried
16 Wolf. When the watchmen scream that there's a constitutional
17 violation at the door and there just simply is none, eventually
18 those who are called upon to answer the door are going to
19 question when the knock comes as to whether there's really a
20 violation behind it. I'm not saying that we've gotten there,
21 but I'm worried that we will. So please don't take us any
22 closer to that ledge.

23 All right. That's the Court's pronouncement of the
24 ruling.

25 With nothing further from either side, we'll be

1 adjourned. And, Counsel, you're excused. Thank you.

2 (Proceedings concluded at 3:54 p.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER
2

3 I, Kelly A. McKee, Registered Diplomate Reporter,
4 Registered Merit Reporter and Certified Realtime Reporter, in
5 and for the United States District Court for the Southern
6 District of Georgia, do hereby certify that pursuant to Section
7 753, Title 28, United States Code, that the foregoing is a true
8 and correct transcript of the stenographically reported
9 proceedings held in the above-entitled matter and that the
10 transcript page format is in conformance with the regulations
11 of the Judicial Conference of the United States.
12

13 Dated this 6th day of November, 2024.
14

15
16 *Kelly A. McKee*

17 KELLY A. McKEE, CCR, RMR, CCP, RDR

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