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

RHONDA J. MARTIN, *et al.*,	:	
Plaintiffs,	:	
v.	:	
BRIAN KEMP, *et al.*,	:	CIVIL ACTION NO. 1:18-CV-4776-LMM
Defendants.	:	

ORDER

This case is before the Court on Plaintiffs Rhonda J. Martin, Dana Bowers, Jasmine Clark, Smythe DuVal, Jeanne Dufort, and the Georgia Coalition for the People's Agenda, Inc.'s Amended Motion for Preliminary Injunction, Civ. A. No. 1:18-cv-4776 [hereinafter, "Martin"], Dkt. No. [19]. After due consideration, the Court enters the following Order:

I. BACKGROUND

This matter arises from a challenge to Georgia's statutory procedures for rejecting absentee ballot applications and absentee ballots, O.C.G.A. §§ 21-2-381, -386. On October 15, 2018, Plaintiffs filed their Complaint with this Court, alleging that such procedures infringe upon the fundamental right to vote in violation of the Fourteenth Amendment's equal protection clause and guarantee

of substantive due process. See Martin Dkt. [1] ¶¶ 56, 65.[1] One day later, on October 16, 2018, the Georgia Muslim Voter Project ("GMVP") and Asian-Americans Advancing Justice-Atlanta's ("Advancing Justice-Atlanta"), Civ. A. 1-18-cv-4789 [hereinafter, "GMVP"], also filed a complaint with this Court, likewise alleging that the same statutes infringe upon the fundamental right to vote in violation of the equal protection clause of the Fourteenth Amendment. See GMVP Dkt. No. [1] ¶¶ 60-65. The GMVP plaintiffs also claimed that the aforementioned Georgia statutes violate the procedural due process clause of the Fourteenth Amendment to the extent they deprive absentee ballot applicants and absentee voters of notice and an opportunity to be heard before their ballots or applications are rejected due to a signature mismatch. See id. ¶¶ 46-58.

The GMVP plaintiffs filed a motion for a temporary restraining order on October 17, 2018. See GMVP Dkt. No. [5]. Plaintiffs filed their motion for a preliminary injunction two days later, on October 19, 2018. Martin Dkt. No. [4]. Because Plaintiffs amended their motion for a preliminary injunction on the morning of the joint hearing (October 23, 2018), the Court only addressed the signature mismatch argument from the Martin Motion in its subsequent ruling and temporary restraining order. See Martin Dkt. Nos. [23] at 3; [26]. Having

[1] Plaintiffs' Complaint was amended on October 22, 2018 only to add an inadvertently omitted paragraph relating to Plaintiff Jeanne Dufort. See Martin Dkt. [10] at 1-2.

provided Defendants with the opportunity to fully brief Plaintiffs' remaining claims, the Court now turns to the additional relief that Plaintiffs seek.

Pursuant to O.C.G.A. § 21-2-386(a)(1)(C), an absentee ballot may be rejected "[i]f the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote." If an elector's ballot is rejected, the clerk "shall write across the face of the envelope 'Rejected,' giving the reason therefore. . . . [and] shall promptly notify the elector of such rejection." Id.

Plaintiffs' current focus is on the "category of mail-in voters whose ballots have been rejected for reasons *unrelated* to signature mismatches," namely those absentee voters whose ballots are rejected if "'required information' is missing or inaccurate." Martin Dkt. No. [39] at 2. Such required information can include a voter's year of birth, and ballots can be rejected for other clerical mistakes. Id. at 3. As Plaintiffs correctly note, the Georgia Supreme Court has held that while a failure to furnish required information is a "ground for rejection" under O.C.G.A. § 21-2-386(a)(1)(C), nothing in the statute mandates the "automatic rejection of any absentee ballot lacking the elector's place and/or date of birth." Jones v. Jessup, 279 Ga. 531, 533 n.5 (2005). Defendant Kemp responds that some counties require a voter's year of birth for identification purposes but also concedes that "where the year of birth is not necessary to confirm the identify of a

voter, it is not otherwise required by O.C.G.A. § 21-2-386(a)(1)(C)." See Martin Dkt. No. [36] at 3-4.

Plaintiffs seek an order prohibiting Defendants from rejecting an absentee ballot solely based on a discrepancy or omission relating to year of birth. Martin Dkt. No. [18] at 6. Plaintiffs also request "state wide relief for every rejected eligible absentee mail ballot voter." Id. at 9. Specifically, with respect to every mail ballot that has been submitted or that will be submitted in a timely manner for the November 6, 2018 election, Plaintiffs ask the Court to permit an absentee voter whose ballot is rejected to provide elections officials with a cure affidavit up until the close of business on the Friday after election day. See Martin Dkt. No. [39] at 3-4 (citing Martin Dkt. No. [19-1] at 10 (providing Plaintiffs' requested cure affidavit form)).[2]

II. LEGAL STANDARD

To obtain a preliminary injunction, the moving party must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not granted; (3) the threatened injury to the movant outweighs the damage to the opposing party; and (4) granting the injunction would not be adverse to the public interest. Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d 1205, 1210 (11th Cir. 2003). In the

[2] Because this Court has already issued a temporary restraining order addressing the issue of signature mismatches on absentee applications and ballots, the Court declines to consider any of Plaintiffs' requested relief to the extent it pertains to curing applications or ballots rejected due to a signature mismatch.

Eleventh Circuit, a "preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant 'clearly carries the burden of persuasion' as to the four prerequisites." United States v. Jefferson Cty., 720 F.2d 1511, 1519 (11th Cir. 1983) (quoting Canal Auth. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974)). Further, cases involving impending elections may trigger special considerations warranting particular caution. To illustrate, in Reynolds v. Sims the Supreme Court explained:

> [O]nce a State's [election-related] scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan. However, under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.

377 U.S. 533, 585 (1964); see also Purcell v. Gonzalez, 549 U.S. 1. 4 (2006) ("Faced with an application to enjoin operation of voter identification procedures just weeks before an election, the Court of Appeals was required to weigh . . . considerations *specific to election cases* and its own institutional procedures.") (emphasis added); see also Curling v. Kemp, No. 1:17-cv-2989-AT, 2018 WL 4625653, at *16 (N.D. Ga. Sept. 17, 2018) ("While Plaintiffs have shown the threat of real harms to their constitutional interests, the eleventh-hour timing of their motions and an instant grant of the paper ballot relief requested could just as

readily jeopardize the upcoming elections, voter turnout, and the orderly administration of the election.").

III. DISCUSSION

The Court finds a preliminary injunction is not warranted here because Plaintiffs have failed to meet their burden in establishing the third and fourth prongs of the preliminary injunction standard—whether the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and if issued, whether the injunction would not be adverse to the public interest.[3] See Four Seasons Hotels, 320 F.3d at 1210. The Court considers these factors "in tandem, as the real question posed in this context is how injunctive relief at this eleventh-hour would impact the public interest in an orderly and fair election." Curling, 2018 WL 4625653, at *16.

Plaintiffs' assertion that there is "no reason why the Court cannot order the Martin Plaintiffs' simple remedy given that it already ordered relief in the GMVP case" mischaracterizes the nature of Plaintiffs' requested relief as compared to the relief granted by the Court on the signature mismatch issue. See Martin Dkt. No. [39] at 27. First, as this Court explained earlier this week in its

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[3] Because the Court finds that Plaintiffs have failed to carry their burden as to the third and fourth prongs, the Court declines to consider Defendants' arguments on the preliminary issues of standing and Eleventh Amendment sovereign immunity. See Martin Dkt. No. [36] at 6-13. The Court does not, at this unique and early juncture, take a position on the merits of Plaintiffs' constitutional claims. The Court's ruling is limited to finding that Plaintiffs have simply not carried their burden in establishing all the prerequisites for such extraordinary injunctive relief for the election taking place *in less than one week*.

order denying Secretary Kemp's Motion to Stay Pending Appeal [27], the Court's temporary restraining order regarding signature matching "simply requires county elections officials to apply the *already established procedures* set forth in O.C.G.A. §§ 21-2-229(e), -419, -493." Martin Dkt. No. [38] at 8 (emphasis added). By contrast, Plaintiffs' proposed procedure would require this Court to, in essence, rewrite the entirety of the absentee ballot statutes in order to provide clear and effective direction to elections officials.

Specifically, Plaintiffs ask the Court to order elections officials to provide any absentee voter whose ballot has been rejected with a "one-stop cure." Martin Dkt. [39] at 4. Plaintiffs' proposed "one-stop cure" requires county elections officials to provide "instructions and notification" to any absentee voter whose ballot is rejected, informing the voter that they "may cure such rejection up to the close of business on the Friday after Election Day." Martin Dkt. [19] at 3. Such notification "shall include instructions for tracking the status and progress of the ballot acceptance on the Secretary of State's website." Id. 3-4. Plaintiffs also request that an absentee voter be permitted to cast an absentee ballot until 7 p.m. on Election Day by delivering the absentee ballot to the voter's precinct. Id. at 4. Plaintiffs also ask the Court to order a review of all mail ballot applications and ballots rejected to date in order to apply the requested relief retroactively. Id. Finally, to ensure their injunction is followed, Plaintiffs request that pollwatchers be permitted to observe the absentee ballot process.

Aside from providing a sample "cure affidavit," Plaintiffs propose no specific instructions for county elections officials to issue, nor do Plaintiffs suggest a procedure for receiving and processing such affidavits across the entire state. As Gwinnett County Defendants correctly observe, "[t]here is no statute to use as a template for potential relief, because no such process exists for how to process a 'cure affidavit.'" See Martin Dkt. No. [37] at 9. Accordingly, if the Court were to grant Plaintiffs' injunction, the Court would leave county elections officials without any guidance as to what to do if various parts of the oath are left blank, unsigned, if the address matches publicly available information but not other information in the voter's file, or how to otherwise verify a voter's identification. See id. at 8. Thus, unlike the GMVP plaintiffs, who proposed relief that already existed within the bounds of Georgia's existing statutory scheme, Plaintiffs' requested injunction leaves a variety of critical and practical questions unanswered.[4]

Moreover, Plaintiffs' requested relief impacts a much larger universe of individuals. See Martin Dkt. No. [18] at 9 ("Martin Plaintiffs are seeking state wide relief for every eligible absentee mail ballot voter."). For example, Gwinnett

[4] Gwinnett County has also explained that its poll worker training has already concluded, its elections officials only have a procedure in place for collecting provisional ballots at polling sites, and—as the only county in Georgia covered by Section 203 of the Voting Rights Act—all forms and letters that Plaintiffs propose must also be translated. See Martin Dkt. No. [37] at 7-8. Given the close proximity to the election and the vagueness of Plaintiffs' requests, the Court agrees that Gwinnett County would face a "massive disruption" if forced to implement Plaintiffs' proposed remedies. Id. at 7.

County has rejected over 1,500 applications and ballots for a variety of reasons, but only 300 applications and ballots due to signature mismatch. See Martin Dkt. No. [37] at 9. Indeed, Plaintiffs aver that their requested injunction will provide relief for "many of the approximately 92 percent of rejected mail ballot voters whose ballots were cast aside for reasons other than an alleged signature mismatch." See Martin Dkt. No. [39] at 4. As such, in considering Plaintiffs' request for injunctive relief, the Court's greatest concern is that the "massive scrambling" required to implement an entirely new process for a significant number of voters five days before the election will place an impossible burden on the already overtaxed elections officials. Curling, 2018 WL 4625653, at *16 ("[T]he massive scrambling required to implement such injunctive relief in roughly 2,600 precincts and 159 counties will seriously test the organizational capacity of the personnel handling the election, to the detriment of Georgia voters.").

And, as Defendants correctly point out, in the context of signature matching, the Court expressed its concern that the existing cure option for absentee voters whose applications or ballots are rejected due to a signature mismatch is illusory because "[t]here is simply no guarantee that such voters' signatures might match on a second absentee ballot or absentee ballot application." See Martin Dkt. No. [23] at 24. But in the context of a missing or incorrect birth year or other clerical error, a voter who carefully reads and fills out the form has other options to cure his or her prior ballot deficiencies. See

Martin Dkt. No. [37] at 7. Further, because O.C.G.A. § 21-2-386(a)(1)(C) requires an elections official to provide both prompt notice and a reason for rejection, an absentee voter whose ballot or application is rejected due to a deficient birth year or clerical error can cure such error on a second absentee application or ballot and have his or her vote counted.[5]

In sum, the November 6, 2018 election is rapidly approaching. The absentee voting process began on September 21, 2018, and the deadline for mailing absentee ballots is today, November 2, 2018. See Martin Dkt. No. [37] at 6. Poll worker training has long since concluded. See Martin Dkt. No. [37-2] ¶ 26. Implementing an entirely new process for an extremely large subset of absentee voters just days before the election will both burden elections officials and increase the risk of voter confusion. As a result of the magnitude and timing of the relief requested—coupled with the premise that courts should use discretion in considering injunctions that will have a "chaotic and disruptive effect on the electoral process"—the Court finds that Plaintiffs have failed to carry their burden in demonstrating that balance of harms weighs in their favor and that the requested injunction would not be adverse to the public interest. See, e.g., Fishman v. Schaffer, 429 U.S. 1326, 1330 (1976). This does not mean that the Court is not troubled by some of the allegations in Plaintiffs' Motion. Instead, it

[5] Plaintiffs identify several individuals who have not received notice or who have received insufficient notice. See Martin Dkt. No. [39] at 14. However, Plaintiffs have not requested specific injunctive relief for those individuals. As such, the Court will not consider the issue.

merely holds that there is not enough time to adequately implement the more wide-ranging solutions proposed. Plaintiffs' Motion is therefore **DENIED.**

IV. CONCLUSION

The remaining relief requested by Plaintiffs' Amended Motion for a Preliminary Injunction [19] is **DENIED.** This Order does not affect the injunction already in place regarding signature mismatches.

IT IS SO ORDERED this 2nd day of November 2018.

Leigh Martin May
United States District Judge