

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

IN RE: ENFORCEMENT OF ELECTION
LAWS AND SECURING
BALLOTS CAST OR RECEIVED
AFTER 7:00 P.M. ON
NOVEMBER 3, 2020

CIVIL ACTION NO. SPCV20-00982

PETITION TO COMMAND ENFORCEMENT OF ELECTION LAWS
PURSUANT TO O.C.G.A. § 21-2-412

COMES NOW, the Georgia Republican Party, Inc. and Donald J. Trump for President, Inc. (collectively, "Petitioners"), and petition the Court as follows:

1.

The Georgia Republican Party, Inc. ("GAGOP") is a state committee, as defined by 52 U.S.C. § 30101(15), a Georgia Political Party as defined by O.C.G.A. § 21-2-2(25), and the official Republican Party organization in the state of Georgia. The GAGOP represents a diverse group of stakeholders, including elected officials, candidates for elected office, state committee members, advisory caucuses, affiliate groups, grassroots activists, and of course, active voters. The GAGOP works to increase turnout to elect Republican candidates for local, state, and federal offices and to protect the right to vote for all Georgians.

2.

Donald J. Trump for President, Inc. ("Trump Campaign") is the principal campaign committee of President Donald J. Trump, the Republican Party nominee for

President of the United States of America and is registered with the Federal Election Commission. The Trump Campaign works to re-elect President Trump.

3.

The GAGOP has direct standing and associational standing to bring a claim to enforce the Georgia Election Code for several reasons.

4.

The Trump Campaign has direct standing to bring this a claim to enforce the Georgia Election Code for the reasons set forth herein.

5.

Failing to ensure that Georgia's election laws are followed directly harms the GAGOP's organizational missions of increasing voter turnout and helping to elect Republican candidates. The GAGOP has expended extraordinary resources to encourage Georgians to vote in the 2020 campaign, and the failure to safely store absentee ballots received by the Chatham County Board of Elections ("CCBE") after 7:00 P.M. on November 3, 2020 ("Election Day"), as required by O.C.G.A. § 21-2-386(a)(1)(F), and the possible counting of absentee ballots arriving after 7:00 P.M. on Election Day frustrates that organizational mission and dilutes lawful votes for Republican candidates in state, local, and federal contests.

6.

Failing to ensure that absentee ballots received after the deadline are stored in a manner to ensure that such ballots are not inadvertently or intentionally counted, as required under Georgia law, harms the interests of the Trump Campaign and President

Trump because it could lead to the dilution of legal votes cast in support of President Trump.

7.

Further, the possible counting of votes arriving after 7:00 P.M. on Election Day caused and will continue to cause a diversion of the Petitioners' resources. Petitioners must spend resources to inform election officials of the problem and ensure that lawful votes are protected from dilution.

8.

Finally, the GAGOP has associational standing based on injuries to its members. The GAGOP's members include current elected officials and hopeful Republican candidates for office, including candidates on the ballot in Fulton County. These candidates are injured if fewer voters are able to cast their ballots because the polling places opened late. The GAGOP members in Chatham County also include members of the Chatham County Republican Party who work to further the GAGOP's mission and work in Chatham County. The GAGOP's members are also part of the affected electorate itself, which will certainly be injured if their votes are diluted by the counting of unlawful votes that are received after the deadline.

9.

Absentee by Mail votes that are received after 7 P.M. on Election Day are subject to the following procedure:

All absentee ballots returned to the board or absentee ballot clerk after the closing of the polls on the day of the primary or election **shall be safely kept** unopened by the board or absentee ballot clerk **and then transferred**

to the appropriate clerk for storage for the period of time required for the preservation of ballots used at the primary or election and shall then, without being opened, be destroyed in like manner as the used ballots of the primary or election

O.C.G.A. § 21-2-386(a)(1)(F).

10.

Pursuant to O.C.G.A. § 21-2-412, “[a]t least one judge of the superior court of each judicial circuit shall be available in his or her circuit on the day of each primary or election from 7:00 A.M. eastern standard time ... until 10:00 P.M. eastern standard time and **so long thereafter as it may appear ... necessary** to secure a free, fair, and correct computation and canvass of votes cast at such ... election. During such period the court shall issue process, if necessary, to enforce and secure compliance with the ... election laws and shall decide such other matters pertaining to the primary or election as may be necessary to carry out the intent of this chapter.” (Emphasis added).

11.

As stated above, this Court has broad power to ensure the election is carried out pursuant to Georgia law.

12.

There has been litigation around extending the deadline for receipt of absentee ballots and a court-ordered extension of the deadline was stayed by the Eleventh Circuit Court of Appeals. *New Ga. Project v. Raffensperger*, 976 F.3d 1278 (11th Cir. 2020).

13.

A significant degree of confusion may still exist regarding whether ballots received after 7:00 P.M. can be legally counted in Georgia – and they cannot.

14.

While at the CCBE's Elections Facility on November 4, 2020, a GAGOP poll watcher witnessed absentee ballots that had not been properly processed apparently mixed into a pile of absentee ballots that was already set to be tabulated. The proper chain of custody for the ballots was not followed. Attached hereto as Exhibit A is the Declaration of Sean Pumphrey regarding what he witnessed.

15.

Despite attempts by the poll watcher to obtain information from the CCBE regarding the source of the absentee ballots in mixed into other, already-processed absentee ballots being tabulated in Chatham County, no information to confirm the source of such absentee ballots was provided to the poll watcher. Ex. A. Whether the absentee ballots had been received by the CCBE prior to the close of the polls at 7:00 P.M. on Election Day or that all such absentee ballots are being safely stored in accordance with O.C.G.A. § 21-2-386(a)(1)(F) remains unknown. As a result, Petitioners do not know whether absentee ballots in Chatham County are being sufficiently accounted for or whether absentee ballots received after the close of the polls at 7:00 P.M on Election Day are being safely stored by the CCBE in accordance with Georgia law.

16.

Accordingly, Petitioners request this Court command the CCBE to collect, secure, and safely store all absentee ballots received by the CCBE after 7:00 P.M. on Election Day and provide an accounting of all such absentee ballots, including the number of ballots received after 7:00 P.M. on Election Day, the name of the absentee voter, and the time and date that such absentee ballot was received.

17.

The voters of Chatham County and Georgia generally are entitled under the United States Constitution to equal protection of the laws of this State. U.S. Const. Amend. XIV. This Court is empowered by law to ensure local officials follow the Georgia Election Code, and is granted broad authority to designate the means by which it achieves that end and to ensure that lawful votes are not diluted by the unlawful actions—intentionally or otherwise. Under the current circumstances, the relief herein requested is both prudent and necessary.

THEREFORE, Petitioner prays for the following relief:

a. That the Superior Court Judge issue an Order that requires the CCBE to collect, secure, and safely store all absentee ballots received by the CCBE after 7:00 P.M. on Election Day and provide an accounting of all such absentee ballots, including the number of ballots received after 7:00 P.M. on Election Day, the name of the absentee voter, and the time and date that such absentee ballot was received, to Petitioners.

b. That the CCBE shall, upon receiving, securing, and storing the affected ballots in accordance with this petition, shall await further instruction from this Court as to their final disposition.

c. Such other relief as the Court deems fair and equitable.

Respectfully submitted this 4th day of November, 2020.

/s/ Vincent R. Russo

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EXHIBIT A

SEAN PUMPHREY,

Debtor.

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AFFIDAVIT

PERSONALLY APPEARED affiant, SEAN PUMPHREY, who swears under penalty of perjury knowing this affidavit is to be used in a court of law, states:

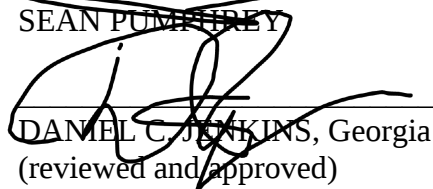
1. My name is SEAN PUMPHREY, and I reside in Lexington County, South Carolina. I am over the age of 18 years, I am not suffering from any mental defect or disability, I am not under the influence of any mind-altering substances, and I am competent to provide the information in this Affidavit from my personal experience and knowledge.
2. The facts stated herein are as I know them to be true.
3. I, as an officially registered poll watcher in Richmond County Georgia observing elections in Chatham County, Georgia, I did personally observe four bins of ballots opened, signatures verified, name, address and date of birth and those ballots rubber banded together in a manner familiar to me which I believe was in accordance with Georgia law. These "Identified Ballots" were placed in separate bins.
4. I then observed a poll worker bring a stack of ballots from a back room and place on a table near the bins.
5. I then left the room for a and returned a short time later. When I returned to the room the stack of ballots were no longer on the table. I asked a poll worker I believe to be a supervisor named Sabrina Newbie where the ballots had gone. She described the "Additional Ballots" as to tranches, to wit: one stack of three (3)

ballots, and a second stack of fifty-three (53) ballots)

6. Ms. Newbie was questioned as to the location of the ballots at which time she became agitated, removed her COVID mask, stated the ballots were “not on the manifest” and had to be individually processed and entered into the computer. She stated the “Additional Ballots” were placed in the crate with the Identified Ballots and en route to the Chatham County Board of Elections Annex.
7. I immediately drove to the Annex with poll worker Jackson Carter (who observed most of what I observed) and asked where the mail crates were located that should have just arrived.
8. I located the four bins, two of the bins were already opened, and we were able to locate the stack of three Additional Ballots. I was not able to locate the stack of fifty-three Additional Ballots.
9. In accordance with my training and experience the actions taken by poll workers do not comply with Georgia law’s safeguards to insure chain of custody. I have been provided no reasonable explanation as to why an exception to procedure occurred.

This affidavit is made upon my own personal knowledge of the facts stated herein and made under penalty of perjury, this day, November 4, 2020.


SEAN PUMPHREY


DANIEL C. JENKINS, Georgia Bar No. 142345
(reviewed and approved)

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

IN RE: ENFORCEMENT OF ELECTION
LAWS AND SECURING THE
SEGREGATION OF BALLOTS CAST
OR RECEIVED AFTER 7:00 P.M. ON
NOVEMBER 3, 2020

CIVIL ACTION NO. _____

ORDER TO COMMAND ENFORCEMENT OF ELECTION LAWS
PURSUANT TO O.C.G.A. § 21-2-412

WHEREAS, the Georgia Republican Party, Inc. and Donald J. Trump for President, Inc. have petitioned the Court to issue an Order that requires the Chatham County Board of Elections (“CCBE”) to collect, secure, and safely store all absentee ballots received by the CCBE after 7:00 P.M. on November 3, 2020 (the “Election Day Receipt Deadline”) and to provide an accounting of all such absentee ballots, including the number of ballots received after 7:00 P.M. on Election Day, the name of the absentee voter, and the time and date that such absentee ballot was received, to Petitioners, the Court finds as follows:

1.

Petitioners have standing to bring this Petition.

2.

Pursuant to O.C.G.A. § 21-2-412, “At least one judge of the superior court of each judicial circuit shall be available in his or her circuit on the day of each ... election from 7:00 A.M. eastern standard time ... to secure a free, fair, and correct computation and canvass of votes cast at such primary or election. During such period the court shall issue process, if necessary, to enforce and secure compliance

with the primary or election laws and shall decide such other matters pertaining to the primary or election as may be necessary to carry out the intent of this chapter.”

3.

There has been litigation around extending the deadline for receipt of absentee ballots and a court-ordered extension of the deadline was stayed by the Eleventh Circuit Court of Appeals. *New Ga. Project v. Raffensperger*, 976 F.3d 1278 (11th Cir. 2020).

5.

The evidence shows that the CCBE may have mixed absentee ballots being tabulated by the CCBE with absentee ballots received after the Election Day Receipt Deadline, which is not permissible under Georgia law.

6.

Accordingly, Petitioners request this Court issue an Order that requires the CCBE to collect, secure, and safely store all absentee ballots received after the Election Day Receipt Deadline and to provide an accounting of all such absentee ballots, including the number of ballots received after 7:00 P.M. on Election Day, the name of the absentee voter, and the time and date that such absentee ballot with timely received absentee ballots.

THEREFORE, BE IT ORDERED:

- a. The Chatham County Board of Elections provide Petitioners with an accounting of all such absentee ballots received after the Election Day Receipt Deadline, which shall include the number of ballots received, the

name of the voter, and the time and date that such absentee ballot was received, at the following intervals every day until further ordered by this Court: 9:00 A.M., 12:00 P.M., 5:00 P.M., and 9:00 P.M.

- b. That the affected absentee ballots described in the petition be stored separate and apart from any other absentee ballots received by the Chatham County Board of Elections, and that the Board, upon storing the affected ballots, await further instruction from this Court as to their final disposition.

SO ORDERED this 4th day of November, 2020.

Superior Court Judge
Chatham Judicial Circuit

Order prepared and presented by:

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