

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

COMMON CAUSE GEORGIA, as an
organization,

Plaintiff,

v.

BRIAN KEMP, in his official capacity as
Secretary of State of Georgia

Defendant.

Case No. 18-cv-05102-AT

**SUPPLEMENTAL SUBMISSION
OF PLAINTIFF COMMON CAUSE GEORGIA**

Plaintiff Common Cause respectfully submits this memorandum, along with the accompanying Declarations of Michael McDonald, Edgardo Cortés, Logan Lamb, and Kevin Morris in response to the Court's November 9, 2018 Order to submit testimony from a statistician, and to further demonstrate why relief is necessary in order to prevent the very significant risk that provisional ballots cast by eligible voters will be rejected through no fault of the voters:¹

First, there is a statistically significant increase in the 2018 provisional ballot rates. In response to the Court's Order, at the November 8, 2018 hearing (the "Hearing"), Defendant produced data showing the number of provisional ballots cast, by county, in the 2018, 2016, and 2014 elections. Plaintiff and their statistician (Dr. McDonald) have now had a preliminary opportunity to review this data and the provisional ballot rate in 2018 as compared to those other two years does not appear to be a result of random variation. Additionally, Dr. McDonald's analysis shows a statistically-significant difference in the rate of

¹ In addition, Plaintiff is also submitting (as Exhibit A to the submission) a copy of the stipulated relief ordered in *Common Cause of Colorado v. Coffman*, 08-cv-2321-WYD (D. Colo) which is the basis for the form of the relief sought by Plaintiff here. As discussed at the November 8, 2018 hearing, Plaintiff is amenable to working out the logistics of such relief with Defendant, so long as the relief is reasonably tailored to ensure that provisional ballots cast by eligible voters not be rejected as a result of the security vulnerabilities in Georgia's voter registration system.

provisional ballots cast statewide in 2018 as compared to 2014, the election he views most comparable. *See* Declaration of Michael McDonald.

Second, the provisional ballots at issue could impact at least some of the 2018 election results. At the Hearing, Defendant also produced evidence purportedly demonstrating that there were not enough provisional ballots cast to make a difference in the Governor's race. However, Mr. Cortés, an Election Security Advisor with 15 years of experience working with all facets of the electoral process, explains in detail in his Declaration that the uncouned provisional ballots *could* prove pivotal in determining whether the contest for governor, among other contests, might be forced to go into a runoff. As Mr. Cortés explains, the numbers provided by Defendant may continue to change. Moreover, Defendant only provided information regarding the gubernatorial race and, according to public reports, the race for Secretary of State has a narrower margin than the Governor race. *See* Jessica Szilagyi, *Secretary of State Race Headed to Runoff After Rural & Metro Voters Split on Candidates*, All On Georgia (Nov. 7, 2018), <https://www.allongeorgia.com/georgia-state-politics/secretary-of-state-race-headed-to-runoff-after-rural-metro-voters-split-on-candidates/> (noting that as of November 7, 2018, Brad Raffensperger lead John Barrow by fewer than 27,000 votes, "making it the closest statewide race on the ballot").

As discussed at the Hearing, relief is necessary whether or not the relief could be outcome determinative. Every vote is important and it is critical to show that the fundamental right to vote will be protected, in order to give voters continued confidence in the system and not to discourage voters from voting in the future. That said, based on the information provided to date, Plaintiff does not believe the Court can be confident that the provisional ballots would not make a difference in some race. *See Cortés Declaration.*

Third, vulnerabilities in the My Voter Page have a relationship to the accuracy of ENET. Logan Lamb, a cyber security researcher, submitted a declaration explaining how, in his opinion, one could manipulate the actual voter registration database using the My Voter Page. A malicious actor could have actually changed the information in the voter registration database by using the My Voter Page exactly as it was intended, and it could be done on a large scale basis because it was automated.

Finally, the increase in provisional ballots cannot be explained by extended voting hours. At the Hearing, Defendant suggested that the increase in provisional ballots might be attributable to the fact that some locations had extended voting hours and a simple examination of the numbers disproves that. Kevin Morris, a Quantitative Researcher at the Brennan Center, examined the

provisional ballot numbers provided by Mr. Harvey, the numbers of total ballots cast placed on the Secretary of State's website, and news reports as to which counties had extended hours. *See* Morris Declaration. Given that there were only two counties with extended hours and neither of those counties provisional ballot rates increased materially, Defendant's suggestion is unlikely.

In addition to all of the reasons discussed in Plaintiff's prior submissions and at the Hearing, Plaintiff respectfully submits that this additional evidence demonstrates that relief is necessary to ensure that provisional ballots cast by eligible voters are not rejected because of the security vulnerabilities in Georgia's voter registration system.

This 9th day of November, 2018.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing SUPPLEMENTAL SUBMISSION OF PLAINTIFF COMMON CAUSE GEORGIA was prepared double-spaced in 14-point Times New Roman pursuant to Local Rule 5.1(C), and is in compliance with the 25 page length limitation set forth in Local Rule 7.1(D).

/s/ Christopher Campbell
Christopher G. Campbell
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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2018, I served the within and foregoing SUPPLEMENTAL SUBMISSION OF PLAINTIFF COMMON CAUSE GEORGIA with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties to this matter via electronic notification or otherwise.

This 9th day of November, 2018.

/s/ Christopher Campbell
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