

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

**GEORGIA STATE CONFERENCE OF  
THE NAACP, et al.,**

**Plaintiffs,**

**v.**

**STATE OF GEORGIA and  
BRIAN KEMP, Georgia Secretary of  
State,**

**Defendant.**

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**CA No. 1:17cv01397-TCB**

**DEFENDANTS, STATE OF GEORGIA AND BRIAN KEMP’S  
BRIEF IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR A PRELIMINARY  
INJUNCTION**

COME NOW THE STATE OF GEORGIA and BRIAN KEMP, Georgia Secretary of State (“Kemp”), by and through the Attorney General of the State of Georgia, and file this Brief in Opposition to Plaintiffs’ Motion for a Preliminary Injunction. Doc. 2.

**INTRODUCTION AND STATEMENT OF FACTS**

On April 18, 2017, a special election was held to fill a vacancy in the Sixth Congressional District. Georgia law requires a candidate for office, including congressional candidates, to secure a majority of the votes cast in the election.

O.C.G.A. § 21-2-501(a)(1). Since no candidate received a majority of the votes cast on April 18, 2018, a run-off is scheduled for June 20, 2017. O.C.G.A.

§ 21-2-501(a)(5). Georgia law considers run-offs to be a continuation of the initial election contest and mandates that only voters eligible to vote in the initial election are *eligible* to vote in the run-off. Ga. Const. Art. II, § II, Para. II; O.C.G.A.

§ 21-2-501(a)(10).

Plaintiffs filed this action on April 20, 2017 asserting a violation of the National Voter Registration Act (NVRA), 52 U.S.C. § 20507, and seeking both temporary and permanent injunctive relief. Plaintiffs have brought this action against both the Georgia Secretary of State, in his official capacity, and the State of Georgia.<sup>1</sup>

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<sup>1</sup> The State of Georgia is not a proper party for two reasons. First, Plaintiffs brought this action in part pursuant to 42 U.S.C. § 1983. The State of Georgia is not a “person” under 42 U.S.C. § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 64 (1989) (holding that a “State is not a person within the meaning of §1983.”); see also *Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 (1977) (rejecting an award of nominal damages, pursuant to Sec. 1983, against a state officer sued in his official capacity and explaining that a waiver of sovereign immunity was not relevant because “§1983 actions do not lie against a State.”). Second, the State of Georgia has Eleventh Amendment immunity from suit. “Unless a State has waived its Eleventh Amendment immunity or Congress has overridden it, [ ] a State cannot be sued directly in its own name regardless of the relief sought.” *Kentucky v. Graham*, 473 U.S. 159, 167 (1985) (citing *Alabama v. Pugh*, 438 U.S. 781 (1978) (per curium)). While an exception to Eleventh Amendment immunity exists under *Ex Parte Young*, 209 U.S. 123 (1908), it is limited to suits against state officers for prospective injunctive relief. *Arizonans for Official English*, 520 U.S. at 69 n.24. There are three ways to override the Eleventh Amendment bar: (1) consent by the state to be sued in federal court on the claim involved; (2) waiver of immunity by a state, or

## **ARGUMENT AND CITATION OF AUTHORITY**

### **A. Plaintiffs Have Not Met Their Burden of Showing That They are Entitled to a Preliminary Injunction.**

A preliminary injunction in advance of trial is an extraordinary measure. *United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir. 1983); *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). In order to prevail on a motion for preliminary injunction, the movant must show: 1) a substantial likelihood of prevailing on the merits; 2) that the plaintiff will suffer irreparable injury unless the injunction issues; 3) that the threatened injury to the movant outweighs whatever damages the proposed injunction may cause the opposing party; and 4) that if issued, the injunction would not be adverse to the public interest. *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169 (11th Cir. 1988); *Levi Strauss and Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982 (11th Cir. 1995). “A preliminary injunction is an ‘extraordinary and drastic remedy,’ and [Plaintiffs] bears the ‘burden of persuasion’ to clearly establish all four of these prerequisites. *Wreal, LLC v. Amazon.com*, 840

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(3) abrogation of immunity. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 253 (1985); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 72-77 (1996). Here, the State of Georgia has neither consented to suit nor waived its immunity. Moreover, Defendants maintain that the NVRA does not abrogate Eleventh Amendment immunity. Because Plaintiffs have also brought this action for injunctive relief against the Secretary of State, in his official capacity, Defendants will address the abrogation issue more fully in later briefing and focus this brief on the merits of Plaintiffs’ request for injunctive relief.

F.3d 1244, 1247 (11th Cir. 2016) (citing *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000); *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (11th Cir. 1974) (same). Plaintiffs have the burden of establishing their entitlement to a preliminary injunction. *Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213, 1217 (11th Cir. 2009).

### **B. The Merits of Plaintiffs' Claim.**

The most important factor in deciding whether to grant or withhold a preliminary injunction is the consideration of a plaintiff's likelihood of succeeding on the merits, and a failure to meet this initial hurdle relieves a court from considering the remaining factors. *Church v. City of Huntsville*, 30 F.3d 1332, 1341-45 (11th Cir. 1994). Here, Plaintiffs are not likely to succeed on the merits of their claims.

The central question before the Court is whether the eligibility requirement set out in Ga. Const. Art. II, § II, Para. II and O.C.G.A. § 21-2-501(a)(10) is a voter qualification or a time, place, and manner regulation of the election. While Congress has the final "authority under the Elections Clause to set procedural requirements for registering to vote in federal elections . . . [the] individual states retain the power to set substantive voter qualifications." *Kobach v. United States Election Assistance Comm'n*, 772 F.3d 1183, 1195 (10th Cir. 2014). "[T]he Elections Clause empowers Congress to regulate how federal elections are held, but not who may vote in them."

*Arizona v. The Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2257 (2013).

Voter qualifications in elections are left to the states.

Article I, § 2, cl. 1 of the U.S. Const. provides that:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and *the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.*

(emphasis added). In Georgia, one qualification for voting in run-off elections is that the voter was qualified to vote in the initial contest leading to the run-off. The Georgia Constitution expressly provides that:

A run-off election shall be a continuation of the general election and only persons who were entitled to vote in the general election shall be entitled to vote therein; and only those votes cast for the persons designated for the runoff shall be counted in the tabulation and canvass of the votes cast.

Ga. Const. Art. II, § II, Para. II. The requirement essentially keeps the electorate in the initial and final contest constant.<sup>2</sup>

The NVRA preempts state law with respect to time, place, and manner regulation of elections but *not* with respect to the qualifications of voters to vote in those elections. The Supreme Court recognized in *Arizona* that “[p]rescribing voting

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<sup>2</sup> Prior to election date changes due to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20301, run-off elections in Georgia were held “twenty-one days following a regular or special primary election (and twenty-eight days following a regular or special general election).” *United States v. Georgia*, 952 F. Supp. 2d 1318, 1322 (N.D. Ga. 2013).

qualifications [ ] ‘forms no part of the power to be conferred upon the national government’ by the Elections Clause, which is ‘expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections.’” *Arizona*, 133 S. Ct. at 2258 (quoting *The Federalist* No. 60, at 371). Here, should this Court grant injunctive relief to Plaintiffs, the qualifications for voters in federal run-off elections will differ from those of voters in state run-off elections because state office elections are not affected by the NVRA.

Because Congress has no power to regulate voter qualifications, even with respect to federal offices, this Court should not read the NVRA in a manner that is inconsistent with Georgia’s voter qualifications. Because state law declares voters that were not eligible to participate in the April 18, 2017 Special Election, *ineligible* to participate in the continuation of that contest, the NVRA is not violated. The relevant section of the NVRA says that States “shall insure that any *eligible* applicant” can vote in an election. 52 U.S.C. § 20507(a)(1). The NVRA does not define “eligible” and thus, Georgia’s law that sets a qualification for voting in the runoff as being eligible to vote in the underlying election does not violate the NVRA.

**C. Plaintiffs Cannot Show Irreparable Harm Where There is No Violation of Federal Law.**

“A showing of irreparable harm is the ‘*sine qua non*’ of injunctive relief.” *Siegel*, 234 F.3d at 1176 (citations omitted). When a plaintiff has not shown a

likelihood of success on the merits, claims for irreparable injury have no merit.

*Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 578 (6th Cir. 2002). Here, Plaintiffs have failed to show irreparable harm because they have not shown a likelihood of success on the merits.

**D. The Damage to the Defendants Outweighs Any Alleged Injury to Plaintiff.**

On a motion for preliminary injunction, the plaintiff bears the burden of showing that the perceived injury outweighs the damages that the preliminary injunction might cause to the defendants. *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169 (11th Cir. 1988). “Only in rare instances is the issuance of a mandatory preliminary injunction proper.” *Harris v. Wilters*, 596 F.2d 678, 680 (5th Cir. 1979). Additionally, in election cases courts should give consideration to the proximity of the election and the potential for any voter confusion that a last minute change to the State’s processes may lead to. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

Here, the interruption to the state’s election processes is significant. As the declaration of Chris Harvey, Director of Elections for the State Elections Division of the Office of the Secretary of State, makes clear, making changes to the State’s voter registration and elections database regarding voter eligibility requirements for the runoff will require processing changes which would be difficult to complete and test

prior to the upcoming election. Exhibit 1 ¶¶ 7-9. In addition, if voter eligibility requirements are changed for the congressional run-off election on June 20, 2016, elections officials in Cobb County will be required to hire temporary workers to quickly process a significant backlog of voter registration applications prior to the beginning of advance voting on May 30, 2017. Exhibit 3 ¶¶ 8, 10, 11, 12. In addition, Cobb County will be administering another election, for State Senate District 32, on May 16, 2017. Exhibit 3 ¶ 6. Changing the eligibility requirements for voting in a runoff for federal office from the eligibility requirements of state office runoffs will also require additional training of polling officials. Exhibit 3 ¶¶ 14-16.

Finally, to the extent that Plaintiffs seek a preliminary injunction of Georgia's run-off eligibility requirements beyond the June 20, 2017 congressional district election, a preliminary injunction would result in general primary run-offs for federal office and state office having different eligibility requirements even while they are scheduled on the same date. O.C.G.A. § 21-2-501(a)(2). Administering both federal and state runoffs on the same day, with different eligibility requirements, would pose significant hardship to elections officials. As explained by Michael Barnes, Director of the Center for Election Systems at Kennesaw State University, if eligibility requirements for voting are different for state and federal offices, election officials

will have to administer the two elections separately, even when they occur on the same day. Exhibit 2 ¶¶ 8-9. Harvey echoed Barnes' concerns. Exhibit 1 ¶ 10. The concerns regarding simultaneous general primary runoffs for federal and state office, with different eligibility requirements, is also a significant concern to the local election officials who will be charged with administering the elections. Exhibit 3 ¶¶ 17-19; Exhibit 4 ¶¶ 4-8.

**E. The Preliminary Injunction Will Not Serve the Public Interest**

A plaintiff also bears the burden of showing that the preliminary injunction would serve the public interest. *Baker*, 856 F.2d at 169. Here, as demonstrated by the testimony discussed in Sec. D above, the public interest weighs heavily *against* the issuance of an injunction.

**CONCLUSION**

As Plaintiffs cannot satisfy the requirements for a preliminary injunction, their request for a preliminary injunction should be denied.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the forgoing Defendant's Response to Plaintiffs' Motion for Preliminary Injunction were prepared in 14-point Times New Roman in compliance with Local Rules 5.1(C) and 7.1(D).

### **Certificate of Service**

I hereby certify that on April 28, 2017, I electronically filed Defendants Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Julie Houk  
John Powers  
Ezra Rosenberg  
Lawyers' Committee for Civil Rights  
Under Law  
1401 New York Avenue, Suite 400  
Washington, DC 20005

Bryan Sells  
Law Office of Bryan Sells, LLC  
P.O. Box 5493  
Atlanta, GA 31107-0493

I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: NONE

This 28 day of April, 2017.

/s/Josiah B. Heidt  
JOSIAH B. HEIDT 104183  
Assistant Attorney General  
jheidt@law.ga.gov

# EXHIBIT 1

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

|                                        |                         |
|----------------------------------------|-------------------------|
| GEORGIA STATE CONFERENCE )             |                         |
| OF THE NAACP, et al., )                |                         |
| )                                      |                         |
| Plaintiffs, )                          | CIVIL ACTION FILE       |
| )                                      |                         |
| v. )                                   | NUMBER 1:17-cv-1397-TCB |
| )                                      |                         |
| STATE OF GEORGIA and BRIAN )           |                         |
| P. KEMP, in his official capacity as ) |                         |
| Secretary of State for the State of )  |                         |
| Georgia, )                             |                         |
| )                                      |                         |
| Defendants. )                          |                         |

**DECLARATION OF CHRIS HARVEY**

1.

My name is Chris Harvey. I am over the age of 21 and legally competent to testify. I give this declaration as evidence in the above-styled action and for any other lawful purpose. I make this declaration based upon my personal knowledge of its contents.

2.

I am the Director of Elections for the State Elections Division of the Office of the Secretary of State. The Elections Division is responsible for carrying out the duties of the Secretary of State pertaining to election laws. In carrying out these responsibilities, the office coordinates elections across

the state, maintains the statewide Georgia Voter Registration System (“GVRs”), and compiles election results, as well as carrying out other responsibilities.

3.

In Georgia, the county boards of registrars or boards of elections and registrars serve as the registrar for that county. County officials determine whether applicants are eligible to register to vote and enter information into GVRs from voter registration applications.

4.

In addition to storing voter registration records, GVRs also is used to maintain information on candidates for specific elections, provide content for ballots, process absentee ballot applications, issue absentee and UOCAVA ballots, receive and store credit for voting in elections, ensure that voters are not allowed to vote more than once, generate reports used internally and by the public, and create the electronic poll book lists used on election day to check in and credit voters. GVRs, in conjunction with the electronic poll books used on Election Day, are what poll workers and registrars use to determine that eligible voters are allowed to vote and receive the correct ballot and that ineligible voters are not allowed to vote.

6.

In rare scenarios, the Elections Division will initiate a “hot fix,” which is an update that is done to fix significant issues that affect immediate vital processes, such as issuing an absentee ballot. However, due to the increased risk on the system, a “hot fix” is not the preferred way to make an update. “Hot fixes” are inherently more dangerous than regularly scheduled releases because there is less time to identify all issues that might be affected, come up with an adequate testing plan, or conduct “regression testing” that determines if the change will have any unforeseen impact on the system. Changing the registration date for the June 20, 2017 special election would be a “hot fix.”

7.

Changing the registration date for the June 20, 2017 special election runoff will require changes to the system. GVRS was created in such a way that a runoff election is connected in the system to the underlying election that led to the runoff. In order to change the registration date for the June 20, 2017 election and make sure that all eligible voters are in GVRS and the electronic poll book and that absentee ballots are issued correctly, that connection would have to be broken. Breaking that connection will mean that the normal processes for identifying and issuing ballots to eligible voters

will not work without an update to the system. As a result, we would have to create functionality that treats the runoff as its own election, including changes to the way that GVRS creates the Express Poll Out file for this election, which is the file that is loaded into the electronic poll books and contains all eligible voters for the election as well as changes to the way that GVRS creates the Elector's List file, which is used to create the paper backup list of eligible voters.

8.

Making code changes to GVRS to allow a different registration deadline for the special election runoff is not a simple process. In order to make changes to GVRS, the Elections Division, working with SOS IT, would internally determine the scope of the desired changes and the correct way to communicate the needed requirements to the vendor, including coming up with a testing plan. Then, the Elections Division communicates those requirements to the vendor and engages in follow-up conversations with the vendor to ensure that the requirements are correctly understood. The vendor then develops an implementation plan and cost estimate that has to be reviewed and approved by the Elections Division. Upon approval, the vendor undertakes the coding changes to the system in a test environment and conducts its own internal testing before releasing the update to user-

acceptance testing. The Elections Division then conducts user-acceptance testing in the test environment to ensure that the changes accomplish the initial objectives as well as ensuring other parts of GVRs are not negatively impacted. In this instance, since one of the main areas of concern would be ensuring that any update file still works with the electronic poll books, Kennesaw State University's Center for Elections Systems would need to receive an electronic poll list file from the test environment and verify that it works with the current configuration of the electronic poll books. If any issues arise in the user-acceptance testing, those issues are communicated back to the vendor so that they can correct the issues. The changes then go back into user-acceptance testing. While the user-acceptance testing is extensive, it is not possible to test every conceivable scenario that may arise. Once the change has been fully vetted in the test environment, the Elections Division approves the change and the vendor pushes the changes to the production environment. This is not a quick process; changes can have serious unintended consequences so the vetting process is vitally important, especially near an election.

9.

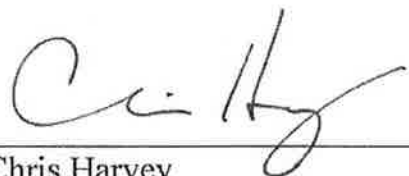
With early voting to begin on Tuesday May 30<sup>th</sup> for the federal special election runoff, it will be difficult to fully vet changes to the GVRs in the

amount of time remaining. The next regularly scheduled batch release is not scheduled to come out until late May and the requirements for that release have already been submitted to the vendor. During a normal testing period, it is already hard to anticipate and troubleshoot every possible scenario that might occur during an election. Because a test is not a live environment updated in real time, it is hard to truly replicate Election Day operations. An accelerated testing period further increases the risk of a serious mistake to the election process that might damage the integrity of the election.

10.

In addition to the issues facing the upcoming federal runoff election, there will also be problems in re-opening registration in future elections. It is highly probable that there will be primary runoffs in 2018 for federal and state offices, which would be held on the same day in Georgia. If federal runoff elections are required to have a different registration deadline than state runoff elections and those elections are held on the same day, counties would be forced to use completely separate electronic poll books and voting machines, while maintaining voter databases. This would require more poll workers, more equipment, increase voter confusion, increased wait times, and lead to more errors by county election officials.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of April, 2017.

A handwritten signature in black ink, appearing to read "Chris Harvey", written over a horizontal line.

Chris Harvey  
Director, Division of Elections  
Office of the Secretary of State

## EXHIBIT 2

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

**GEORGIA STATE CONFERENCE OF \*  
THE NAACP, et al., \***

**Plaintiffs, \***

**v. \***

**STATE OF GEORGIA and \*  
BRIAN KEMP, Georgia Secretary of \*  
State, \***

**Defendant. \***

**CA No. 1:17cv01397-TCB**

**DECLARATION OF MICHAEL BARNES**

1.

My name is Michael Barnes. I am the Director of the Center for Election Systems at Kennesaw State University. I am over the age of twenty one and legally competent to testify.

2.

I give this declaration as evidence in the above-styled action and for any other lawful purpose.

3.

I make this declaration based upon my personal knowledge of its contents.

4.

The Center for Election Systems provides services to Georgia Election Officials including testing, education, training, consultation, technical support, and ballot building.

5.

State law provides that general primary run-off elections for state and federal office are held on the same date. O.C.G.A. § 21-2-501(a)(2).

6.

State law provides further that in order to vote in a run-off election the voter must have been eligible to vote in the initial election that led to the run-off.

O.C.G.A. § 21-2-501(a)(10)

7.

The election contests a voter is shown on his or her ballot are based on the residence of the voter and the political districts to which that residency is assigned. The political districts in which a voter simultaneously resides include Federal, State, and County jurisdictions. Elections are often held on the same date and have the same deadline date for registering to vote. This allows election officials the ability to create a single ballot containing all contests, regardless of jurisdiction to which the contests are associated. In addition, this allows election officials to prepare a single list of voters deemed eligible for all races on the created ballot.

When Election Day arrives, the single list of eligible voters is used, and one prepared ballot containing all races across governmental jurisdictional lines is distributed to those voters wishing to participate. This list is known as the “Express Poll.”

8.

If the eligibility requirements to vote in the run-off election are different for state and federal offices, then whenever a federal office and state office are in a run-off election on the same day, counties election officials will have to essentially conduct those races as two entirely separate elections. In other words, each precinct with both a federal and state candidate would be required to have voters check in once for a ballot with the federal candidate, vote that ballot and then check in at a different station for a ballot for the state candidate(s), and then vote that ballot.

9.

The operation of simultaneous run-offs for federal and state office requires election officials to precisely execute the following election procedures.

- Voting equipment must be assigned to each database because voting equipment cannot contain both databases simultaneously;
- Pre-election Logic and Accuracy testing must be completed on both sets of equipment;

- Voting equipment used during Advance Voting and on Election day must remain separated by associated election database and setup accordingly so that voters know which machines contain which election;
- Electors lists connected to each database must be prepared;
- During absentee and advance voting, the ballots connected to each separate database issued to each voter must be closely monitored so that voter activity is properly connected to the associated election;
- Absentee and advance voters must be properly identified on the various electors lists generated for the election;
- During election night tabulation, balloting information from one election must be uploaded and completed before balloting information from the second election is started because the state's voting system cannot facilitate uploading two election databases at the same time; and
- Multiple election night reporting displays must be constructed, one for each jurisdiction, due to the fact that the export files containing election results are generated from separate and apart databases.

These are just a few examples of the work that must be done in order to administer a run-off election for both a federal and state office on the same day.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed this 27th day of April, 2017.

A handwritten signature in black ink, appearing to read 'Michael Barnes', is written over a horizontal line.

Michael Barnes  
Director, Center for Election Systems  
Kennesaw State University

## EXHIBIT 3

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

GEORGIA STATE CONFERENCE \*  
OF THE NAACP, et al., \*

Plaintiffs, \*

v. \*

STATE OF GEORGIA and \*  
BRIAN KEMP, Georgia Secretary of \*  
State, \*

Defendant. \*

CA No. 1:17cv01397-TCB

DECLARATION OF JANINE EVELER

1.

My name is Janine Eveler and I am the Director of Elections with the Cobb County Board of Elections and Registration. I have been in that position since 2010. I am over 18 years old and otherwise legally competent to testify.

2.

I give this declaration as evidence in the above styled action and for any other lawful purpose.

3.

I make this declaration based upon my personal knowledge of its contents.

4.

I am familiar with election processes and procedures in Georgia. The longstanding requirement for eligibility to vote in a runoff in Georgia is that the elector has to have been registered in the underlying election. At the county level, our systems, procedures, training, and staffing levels are set up based on this requirement.

5.

Changing the longstanding requirement at this stage of the election calendar for the June 20, 2017 runoff in the 6<sup>th</sup> Congressional District would be disruptive to my office and make the administration of the June 20, 2017 Runoff more difficult for the reasons discussed below.

6.

In addition to the runoff in the 6<sup>th</sup> Congressional District on June 20, 2017, Cobb County is conducting a runoff for State Senate District 32 on May 16, 2017. In the May 16 state runoff, electors will have had to have been eligible to vote in the April 18 election that caused the runoff.

7.

Absentee ballots for the May 16, 2017 state runoff will begin going out on or around May 1, 2017. Advance in person voting for the May 16, 2017 state runoff will begin on or around May 8, 2017. Logic and accuracy testing for the voting

machines to be utilized in the state runoff will start on April 28, 2017. Research of provisional ballots will take place between May 17, 2017 and May 19, 2017, and the May 16 state runoff results will be certified by the Cobb County Board of Elections & Registration on May 22, 2017.

8.

Advance voting for the June 20, 2017 Congressional District 6 runoff begins on Tuesday, May 30, 2017 and continues until June 16, 2017. Ballots by mail will be issued starting May 2, and continuing through June 16, 2017.

9.

Election Day poll workers will have an express poll, or an electronic list of voters that are eligible to vote in the election. This list is generated by KSU-Center for Election Systems, under contract to the Secretary of State's Office, and for the June 20, 2017 runoff that express poll list will be pulled after close of business on June 8, 2017.

10.

Due to office workload and priorities, this office stopped processing voter registration applications on March 20, 2017 so that we could concentrate on the administration of the April 18, 2017 special election and we are now in the process of completing evidence and clean up of that special election. While we expect to

begin processing applications again next week, we now have a backlog of registration applications to process of at least 17,000 and growing by 600 a day.

11.

When processing voter registration applications it is not possible, from a quick glance of the application, to determine whether a voter resides in a particular congressional district. Instead, the registration official must process the application to determine what congressional district the voter lives in. Therefore, it is impossible to know how many of the 17,000 applications currently waiting to be processed currently reside in the Sixth Congressional District. Furthermore, it is not possible to determine ahead of time if an application is from a new voter, a voter transferred from another county, or a voter who moved within the same county. Therefore the best way to process the applications is to methodically do them all, in the order in which they were submitted. Attempting to process only “new voters” results in a staggering waste of staff time because in that case most of the process is actually done twice.

12.

Given the current backlog of registration applications, my office would have to hire a significant number of temporary workers in order to process all of the applications in time for advance voting. Whenever inexperienced workers are

used, and we are pushed to go faster than usual, we increase the potential for making errors.

13.

In addition to the difficulty of processing all voter registration applications prior to the beginning of advance voting, the overlap between Senate District 32 and Congressional District 6 boundaries creates additional administrative problems. There are fifty precincts in Congressional District 6 from Cobb County. Of those fifty precincts, 41 of them are also within Senate District 32.

14.

All training for Cobb County poll officers that will work on Election Day was completed on March 21, 2017.

15.

Election officials were trained, consistent with state law, that voter eligibility in the runoff is contingent on the voter having been eligible to vote in the election leading to the runoff. Except for election officials that work through the advance voting period, the Election Day poll officials will not attend training prior to the Runoff. This makes retraining of the Election Day poll officials problematic due to their limited availability to attend a subsequent training class in the time before the Runoff. It would be difficult to adequately convey the change to eligibility requirements between state and federal offices so that the workers would

understand and retain the information other than in a face-to-face training. In addition, all of the instructions for the poll workers state that the last day to register was March 20, 2017, or 30 days before the original election. The information appears in numerous places such as the poll workers manual, checklists and forms. Normally we have two months before each election to update that information. In this case, it would have to be redone quickly and at considerable cost, both for reprinting and for replacing it in the bags and boxes in which it is normally delivered to the polls.

16.

During advance voting, and also for absentee by mail applicants, election officials do not use an express poll book and the election officials are responsible for determining, by using a laptop with access to the statewide database, which registered voters are eligible to vote in the runoff election. The fact of overlapping elections is already very confusing, but the election database will also necessarily include a voter registration date cutoff, currently March 20, 2017. The cutoff for the May 16, 2017 Senate District 32 contest will remain March 20, 2017. If the cutoff for the congressional district 6 runoff is changed to anything beyond the March 20, 2017 date reflected in the database, then election officials processing absentee ballot requests for the congressional election, while simultaneously

administering advance voting for the state office contest, will have to determine voter eligibility on a case by case basis, increasing the potential for human error.

17.

If the eligibility requirements to vote in the run-off election were different for state and federal offices, then whenever a federal office and state office were in a run-off election on the same day, we would have to essentially conduct those races as two entirely separate elections. In other words, each precinct with both a federal and state candidate would be required to have voters check in once for a ballot with the federal candidate, vote that ballot and then check in at a different station for a ballot for the state candidate(s), and then vote that ballot.

18.

Administering separate federal and state run-off elections on the same day would be an extremely difficult task and likely to lead to tremendous confusion at each precinct affected by such a requirement.

19.

Requiring voters to check in twice and vote twice could lead to longer lines and voters deciding to vote in only one of the two elections.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed this 28 day of April, 2017.

  
Janine Eveler  
Director of Elections  
Cobb County Board of Elections  
And Registration

## EXHIBIT 4

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

**GEORGIA STATE CONFERENCE OF \*  
THE NAACP, et al., \***

**Plaintiffs, \***

**v. \***

**STATE OF GEORGIA and \*  
BRIAN KEMP, Georgia Secretary of \*  
State, \***

**Defendant. \***

**CA No. 1:17cv01397-TCB**

**DECLARATION OF RICHARD BARRON**

1.

My name is Richard Barron. I am the Director of the Department of Registration and Elections for Fulton County, Georgia. I am over the age of twenty one and legally competent to testify.

2.

I give this declaration as evidence in the above-styled action and for any other lawful purpose.

3.

I make this declaration based upon my personal knowledge of its contents.

4.

State law provides that general primary run-off elections for state and federal office are held on the same date. O.C.G.A. § 21-2-501(a)(2).

5.

State law provides further that in order to vote in a run-off election the voter must have been eligible to vote in the initial election that led to the run-off.

O.C.G.A. § 21-2-501(a)(10)

6.

If the eligibility requirements to vote in the run-off election were different for state and federal offices, then whenever a federal office and state office were in a run-off election on the same day, we would have to essentially conduct those races as two entirely separate elections. In other words, each precinct with both a federal and state candidate would be required to have voters check in once for a ballot with the federal candidate, vote that ballot and then check in at a different station for a ballot for the state candidate(s), and then vote that ballot.

7.

Administering separate federal and state run-off elections on the same day would be an extremely difficult task and likely to lead to tremendous confusion at each precinct affected by such a requirement.

8.

Requiring voters to check in twice and vote twice could lead to longer lines and voters deciding to vote in only one of the two elections.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed this 28<sup>th</sup> day of April, 2017.



*Brenda E. McCloud*

Richard Barron  
Director of the Department of  
Registration and Elections  
Fulton County