

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

GEORGIA ASSOCIATION OF
LATINO ELECTED OFFICIALS, INC.,
as an organization, et al.,

Plaintiffs,

v.

GWINNETT COUNTY BOARD OF
REGISTRATION AND ELECTIONS, et
al.,

Defendants.

Civil Action

Case No. 1:20-cv-01587-WMR

**EXPEDITED TREATMENT
REQUESTED**

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

INTRODUCTION

This is a case about an unprecedented public health crisis testing the exercise of the right to vote in the upcoming primary. Practical realities created by the virus, including the need to engage in social distancing, are forcing voters in Gwinnett County to decide if it is worth risking their health to vote in person. To address the public health risk, the Secretary of State used funds from the CARES Act to mail absentee ballot applications to active registered voters in Georgia, including Gwinnett County. However, they are only in English; Spanish-speaking Gwinnett voters who are limited in their English proficiency such as Plaintiffs Limary Ruiz Torres and Albert Mendez cannot read them.

This violates federal law. Under Section 203 of the Voting Rights Act, Gwinnett County has a duty to provide absentee ballot applications in Spanish if the Secretary of State provides them only in English. Just as the Gwinnett County BORE had a duty to mail – and did mail – bilingual purge notices to inactive voters in 2019 even though the Secretary of State sent English-only notices to the rest of Georgia’s voters, so, too, county officials had the same duty here.

Immediate relief is required to protect the right to vote of Plaintiffs Ruiz Torres and Mendez, as well as thousands of limited English proficient Spanish speaking U.S. citizens in Gwinnett County, including the members of Plaintiff

organizations. Plaintiffs respectfully request that the Court issue an order requiring that officials immediately mail bilingual applications to Gwinnett voters who were sent English-only versions. Plaintiffs seek relief on behalf of all LEP Spanish-speaking voters under Section 203 against Gwinnett County and against all Defendants on behalf of LEP voters educated in Puerto Rico under Section 4(e).

I. DEVASTATING IMPACT OF COVID-19 ON GWINNETT COUNTY

The COVID-19 epidemic has paralyzed civic life in Gwinnett County. On March 13, President Trump declared the coronavirus pandemic a national emergency. Georgia is among the states with the highest number of cases; the most recent data indicates that there are at least 18,301 confirmed cases and 687 COVID-19-related deaths in Georgia and 1,099 cases and 38 deaths in Gwinnett County, according to the Georgia Department of Public Health.¹

On March 15, Defendant Raffensperger postponed Georgia's presidential primary election from March 24 to May 19, 2020, combining the presidential primary with the previously scheduled primary date for other offices. On March 27, emergency shelter in place orders were issued by Gwinnett County and its 16

¹ Exhibit A, Declaration of John Powers, Exhibit 1, Georgia Department of Public Health COVID-19 Daily Status Report, p. 3 (updated Apr. 19, 2020), *available at* <https://dph.georgia.gov/covid-19-daily-status-report>.

municipalities.² On April 2, Governor Kemp issued an executive order requiring “[t]hat all residents and visitors of the State of Georgia” shelter in place between April 3 and April 13.³ This marked an expansion on his March 23 order banning gatherings of more than 10 people and ordering a shelter in place for “medically fragile” residents,⁴ and his March 26 order closing public schools until April 24.⁵ On April 8, Governor Kemp extended the state of emergency in Georgia until May 13.⁶ On April 9, Defendant Raffensperger postponed the primary election from May 19 to June 9.⁷ His press release announcing the delay stated that “challenges will certainly remain on June 9” but the additional time would permit officials “to shore up contingency plans” and “find and train additional poll workers.” *Id.*

² Powers Decl., Ex. 3, Gwinnett Cty. Emergency Order 1-4, Mar. 27, 2020; Powers Ex. 4, Loganville Emergency Order; *Gwinnett County, including cities, issue ‘stay at home’ order*, Fox 5 Atlanta, Mar. 27, 2020, <https://www.fox5atlanta.com/news/gwinnett-county-including-cities-issue-stay-at-home-order>.

³ Powers Decl., Ex. 5, Georgia Executive Order to Ensure a Safe & Healthy Georgia, Gov. Brian Kemp, Apr. 2, 2020.

⁴ Powers Decl., Ex. 6, Georgia Executive Order, Gov. Brian Kemp, Mar. 23, 2020.

⁵ Powers Decl., Ex. 7, Georgia Executive Order Regarding School Closures, Gov. Brian Kemp, Mar. 26, 2020.

⁶ Powers Decl., Ex. 23, Executive Order, Renewal of Public Health State of Emergency, Gov. Brian Kemp, Apr. 8, 2020.

⁷ Powers Decl., Ex. 19, *Raffensperger Announces Postponement of Primary Election Until June 9*, Press Release, Apr. 9, 2020 (link included in declaration).

II. THE SECRETARY OF STATE MAILES ABSENTEE BALLOT APPLICATIONS TO ACTIVE VOTERS DUE TO COVID-19

To address the coronavirus outbreak – noting the “[t]imes of turbulence and upheaval like the one we Georgians face” – the Secretary of State began mailing English-only absentee ballot applications to all active voters in Gwinnett County and the rest of Georgia the week of March 30.⁸ On April 16, the AJC reported that an unprecedented number of Georgians (395,000) submitted absentee ballot applications for the upcoming primary in the midst of the COVID-19 pandemic.⁹

Under state law, any registered voter may vote absentee regardless of whether they have an excuse for not voting on Election Day. O.C.G.A. § 21-2-380. To vote by mail, a voter must first submit an absentee ballot application via mail, fax, e-mail, or in-person. *Id.* § 21-2-381. To fill out the application, voters must select a political party, sign the forms, add a 55-cent stamp, and place the envelope in the mail. *See Powers Decl., Ex. 8.* Upon receipt of the application, election officials mail a ballot to the voter, which will be counted if the voter

⁸ Powers Decl., Ex. 8, *Raffensperger Takes Unprecedented Steps to Protect Safety and Voter Integrity in Georgia*, Press Release, Mar. 24, 2020 (link in declaration); Mark Niese, *Voters mailed absentee ballot request forms for May 19 Georgia primary*, Atlanta Journal-Constitution, Apr. 2, 2020

⁹ Powers Decl., Ex. 15, Mark Niese, *Record number of absentee ballot requests pour in for Georgia primary*, Atlanta Journal Constitution, April 16, 2020.

returns it to officials by the time polls close. *See id.* Counties began sending out mail ballots to voters on March 31, 2020.¹⁰

Defendant Raffensperger acknowledges that “Georgians who need language assistance” are among the groups who are less likely to be able to take advantage of mail voting. Powers Decl., Ex. 8 (noting “eliminating in-person voting could disproportionately disenfranchise Black, Latino, and young voters”). Voting in person, however, risks public health; non-profits have ceased in-person get out the vote work in Gwinnett County. Exhibit B, Declaration of Gerardo Gonzalez ¶ 27. Poll workers, many of whom are elderly and vulnerable to COVID-19, are quitting in large numbers, risking the closure of polling places.¹¹

III. ALL-ENGLISH APPLICATIONS IMPACT INDIVIDUAL PLAINTIFFS AND THOUSANDS OF GWINNETT VOTERS

As Defendants concede,¹² the absentee ballot applications mailed to Gwinnett County voters by the Secretary of State are in English only. This will have a huge impact on Latino voters in Gwinnett County. According to the 2018 American Community Survey 5-Year Estimate, there are 13,937 limited English

¹⁰ *See* Powers Decl., Ex. 2, Georgia Election Calendar for the May 19 Election.

¹¹ Powers Decl., Ex. 16, Mark Niese, *Loss of poll workers threatens in-person voting in Georgia primary*, Atlanta Journal-Constitution, Apr. 7, 2020.

¹² Powers Decl., Ex. 22, Ltr. from Bryan P. Tyson, p. 3, Apr. 7, 2020.

proficient Spanish speaking citizens of voting age in Gwinnett County,¹³ out of 40,576 total LEP Spanish speakers in the county.¹⁴

This is not an abstract problem. Plaintiffs Limary Ruiz Torres and Albert Mendez are LEP Gwinnett County voters who were educated in Spanish-speaking schools in Puerto Rico.¹⁵ Plaintiffs Ruiz Torres and Mendez, as well as LEP Gwinnett County voters Nelson Romero, Hugo Alvarez, and Clara Lunarejo Moreno, do not understand the English-only absentee ballot applications mailed to them.¹⁶ Mr. Romero, due to his limited proficiency in English, thought the application was junk mail and put it in a pile with mail he intended to throw away before his son saw it and explained its contents to him.¹⁷ Plaintiffs Ruiz Torres and Mendez also thought their applications were junk mail; by contrast, they were able to complete their U.S. Census form because it was mailed with a Spanish

¹³ Exhibit O, Declaration of Jason Enos ¶ 8, Ex. 2, 2018 ACS 5-Year Estimate, Citizenship Status by Age by Language Spoken By Ability To Speak English.

¹⁴ Enos Decl. ¶ 9, Ex. 3, 2018 ACS 5-Year Estimate, Age by Language Spoken at Home by Ability to Speak English.

¹⁵ Exhibit L, Declaration of Limary Ruiz Torres ¶ 3; Exhibit M, Declaration of Albert Mendez ¶ 3.

¹⁶ Ruiz Torres Decl. ¶¶ 12-13; Mendez Decl. ¶¶ 12-13; Exhibit F, Declaration of Nelson Romero ¶¶ 9-11; Exhibit G, Declaration of Clara Lunarejo Moreno ¶ 10-12; Exhibit H, Declaration of Hugo Alvarez ¶¶ 11-13.

¹⁷ Romero Decl. ¶¶ 9-11, Ex. 3.

translation.¹⁸ Mr. Romero, Mr. Alvarez, Ms. Moreno, and Plaintiffs Ruiz Torres and Mendez have not yet completed their English-only applications and are awaiting translation assistance from family members; the translation process is lengthy and burdensome.¹⁹

The individual Plaintiffs and declarants are not the only LEP Latino voters in Gwinnett County who need to vote by mail in the upcoming primary. Others are not sheltered in place with a bilingual relative during the COVID-19 outbreak.²⁰ State House District 99 candidate Jorge Granados, who is bilingual, spoke with several LEP voters who live in the Norcross area near Singleton Road and Country Downs Drive in Spanish while campaigning. Granados Decl. ¶¶ 9-10. Mr. Granados' campaign, however, has limited resources and is not able to help them in the midst of the COVID-19 outbreak and the shelter in place order. *Id.* ¶¶ 15-18.

The COVID-19 outbreak exacerbates barriers to accessing the mail voting process. Many LEP voters like Plaintiffs Ruiz Torres and Mendez, Mr. Romero,

¹⁸ Ruiz Torres Decl. ¶¶ 11, 21; Mendez Decl. ¶¶ 11, 21.

¹⁹ Ruiz Torres Decl. ¶¶ 17-20; Mendez Decl. ¶¶ 17-20; Romero Decl. ¶ 13; H. Alvarez Decl. ¶¶ 16-18, 21; Moreno Decl. ¶¶ 15-17, 20.

²⁰ Exhibit I, Declaration of Jorge Granados Decl. ¶¶ 8-9, 12-13; Gonzalez Decl. ¶ 17-18, 31; Moreno Decl. ¶ 20; H. Alvarez Decl. ¶ 21; Exhibit J, Darrick Alvarez Decl. ¶¶ 4-5.

Mr. Alvarez, and Ms. Moreno are not familiar with voting by mail and do not know how to obtain an absentee ballot application or who to contact to get one.²¹ Many LEP voters in Gwinnett County, like Plaintiff Ruiz Torres, Plaintiff Mendez, Mr. Alvarez, and Ms. Moreno, are elderly and are limited in their ability to navigate the internet, if they access the internet or use a computer at all.²²

Another problem is that many LEP voters usually rely on their children to translate English mailings for them, which is very time-consuming.²³ That is no longer an option for many; public health officials are recommending that young people stay away from the elderly to avoid infecting vulnerable individuals.

Gonzalez Decl. ¶ 18. Therefore, many elderly Latino voters in Gwinnett County cannot receive assistance because their children are quarantined or not living in the same house. *Id.* Moreover, due to the inflamed nature of the immigration debate, many Latinos are reluctant to contact government officials or even organizations like GALEO to ask for help translating their absentee ballot application. *Id.* ¶ 36.

²¹ Ruiz Torres Decl. ¶ 14; Mendez Decl. ¶ 14; Romero Decl. ¶ 12; H. Alvarez Decl. ¶ 13; Moreno Decl. ¶ 12.

²² Gonzalez Decl. ¶ 21; Ruiz Torres Decl. ¶ 15; Mendez Decl. ¶ 15; Moreno Decl. ¶¶ 14-15, 19; H. Alvarez Decl. ¶¶ 15-16, 20.

²³ H. Alvarez Decl. ¶ 15; Moreno Decl. ¶ 14; Romero Decl. ¶ 7.

There is no bilingual or Spanish language absentee ballot application on the Secretary of State's website.²⁴ Gonzalez Decl. ¶ 22. As of April 13, 2020, when this litigation was filed, the only visible absentee ballot application on the Gwinnett County BORE website was in English but not in Spanish.²⁵ Gonzalez Decl. ¶ 22, Ex. 1. While the BORE has since posted a bilingual application,²⁶ that fact has not been publicized and voters have to navigate the BORE's English-only "Absentee Voting By Mail" website to access it. Gonzalez Decl. ¶¶ 23-25; Vargas Decl. ¶¶ 12-17. As a practical matter, most LEP voters will not navigate an English-only website to find the bilingual application. Gonzalez Decl. ¶ 26.

If Spanish-speaking voters want to access a computer-generated Spanish translation of the website, they have to find a small button in the bottom right hand corner of the webpage that says, "English," click it, and select "Español" from a

²⁴ The Georgia Secretary of State's English-only absentee ballot application can be accessed here: https://sos.ga.gov/admin/files/absentee_ballot_app.pdf.

²⁵ A Spanish-language computer-generated translation on the BORE site was not accurate; GALEO Program Coordinator for Operations and Communications Leopoldo Vargas found that the Spanish version (1) included a nonsensical phrase, (2) failed to issue a command contained in the English version, and (3) asked voters to select multiple elections while the English version asks for one election. Exhibit N, Declaration of Leopoldo Vargas ¶¶ 7-11.

²⁶ Gwinnett County's online absentee ballot application can be accessed here: <https://www.gwinnettcountry.com/web/gwinnett/Departments/Elections/AbsenteeVoting-Civilians/ApplicationforAbsenteeBallot>.

menu. Gonzalez Decl. ¶ 25. Crucially, the link to the Spanish language version of the absentee ballot application is incorrect and misleading on the computer-generated Spanish translation. A Spanish-speaking voter would need to click “In English” to access the Spanish-language application, making it virtually impossible to find. Exhibit N, Declaration of Leopoldo Vargas ¶¶ 14-17; Exhibit K, Declaration of Cynthia Battles ¶¶ 17-18. Moreover, the quality of the computer-generated Spanish translation of the “Absentee Voting By Mail” website is poor; the Spanish translation is riddled with errors that could prevent Spanish-speaking voters from navigating the mail voting process. *Id.*; *see also* Vargas Decl. ¶¶ 18-22. Gwinnett County Defendants appear to anticipate these issues; their website includes a lengthy disclaimer acknowledging “the machine-generated website translations . . . may not be entirely correct” and “[a]ny person that uses the translation service does so at that person’s own risk and accepts the legal implications of any shortcomings or difference in translation.”²⁷

IV. ARGUMENT

Plaintiffs seek limited relief on behalf of Plaintiffs Mendez and Ruiz Torres, as well as other LEP Spanish-speaking voters served by the organizational

²⁷ Powers Decl., Ex. 20, Language Translation and External Site Link Disclaimer, <https://www.gwinnettcounty.com/web/gwinnett/contactus/translation>.

Plaintiffs, under Section 203 against Gwinnett County and against the Secretary of State on behalf of LEP voters educated in Puerto Rican schools under Section 4(e). The standard for obtaining a temporary restraining order is identical to that for obtaining a preliminary injunction. *Windsor v. United States*, 379 F. App'x 912, 916-17 (11th Cir. 2010). To prevail on a motion for a preliminary injunction, Plaintiffs must show: (1) a substantial likelihood that they will succeed on the merits; (2) the preliminary injunction is necessary to prevent irreparable injury; (3) the threatened injury absent an injunction outweighs the injury an injunction may impose on Defendant; and (4) the injunction would not be adverse to the public interest. *Osmose, Inc. v. Viance, LLC*, 612 F.3d 1298, 1307 (11th Cir. 2010). In determining whether a preliminary injunction is warranted, “a district court need not find that the evidence positively guarantees a final verdict in plaintiff’s favor.” *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995).

A. The Individual and Organizational Plaintiffs Have Standing

Plaintiffs Ruiz Torres and Mendez have standing to bring their Section 203 and 4(e) claims. They are LEP Gwinnett County voters who were educated in Spanish-speaking schools in Puerto Rico who cannot read English and have not

completed the English-only absentee ballot applications they received in the mail.²⁸ They will continue to have standing even if they are ultimately able to navigate the language barrier and complete their absentee ballot application. *Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville, Fla.*, 508 U.S. 656, 666 (1993) (stating that the injury-in-fact is “the denial of equal treatment resulting from the imposition of the barrier”); *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351-52 (11th Cir. 2009) (having to produce photo ID is sufficient to confer standing); *see also Veasey v. Perry*, 29 F. Supp. 3d 896, 911 (S.D. Tex. 2014) (voters with IDs have standing because officials must determine whether the names on the ID cards are “substantially similar” to voters’ names in the voter file).

The organizational Plaintiffs – GALEO, Advancing Justice, GCPA, NGP, and Common Cause – also have standing. Organizations engaged in voter registration and get out the vote activities have standing when a defendant impairs those activities, forcing them to divert time, money and staff to assist voters. *See, e.g., Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341-42 (11th Cir. 2014); *see also Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1350-51 (11th Cir. 2009); *Fla. State Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1165-66 (11th Cir. 2008); *Ga.*

²⁸ Ruiz Torres Decl. ¶¶ 3, 12-13, 17; Mendez Decl. ¶¶ 3, 12-13, 17.

Coal. for People’s Agenda, Inc. v. Kemp, 347 F. Supp. 3d 1251, 1258 (N.D. Ga. 2018). Here, Plaintiff organizations must divert resources to contact and assist LEP Latino voters in Gwinnett County, educate them about how to navigate the mail voting process, and, where necessary, help them with understanding and translating the English-only absentee ballot application. Ex. B, Gonzalez Decl. ¶¶ 19-20, 27-34; Exhibit C, Declaration of Helen Butler ¶¶ 13, 16; Exhibit D, Declaration of Stephanie Cho ¶¶ 6-8; Exhibit E, Declaration of Nse Ufot ¶¶ 11-12, 14; Ex. K, Battles Decl. ¶¶ 15-16, 19-20. For example, GALEO is actively reaching out to LEP Spanish-speaking voters in Gwinnett County to provide information about voting in the upcoming primary and to help them navigate the mail voting process. Gonzalez Decl. ¶¶ 13, 32-34.

GALEO also has associational standing. *See Arcia*, 772 F.3d at 1342; *Browning*, 522 F.3d at 1160. An organization needs to establish, among other elements, “that at least one member faces a realistic danger of [injury].” *Browning*, 522 F.3d at 1163. GALEO’s membership in Gwinnett County includes

voters who are disadvantaged by Defendants’ failure to provide a bilingual absentee ballot application.²⁹

B. Plaintiffs are Substantially Likely to Succeed on the Merits

1. Section 203 of the Voting Rights Act

Section 203 of the Voting Rights Act seeks to “enable members of applicable language minority groups to participate effectively in the electoral process.” 28 C.F.R. § 55.2(b); *see also U.S. v. Sandoval Cty., N.M.*, 797 F.Supp.2d 1249, 1250 (D.N.M. 2011) (“In enacting [Section] 203 of the Voting Rights Act ... Congress intended that language minority populations have substantive access to the ballot” (internal quotations omitted)).

Gwinnett County became covered under Section 203 of the Voting Rights Act on December 5, 2016.³⁰ Section 203 imposes an affirmative obligation on covered jurisdictions to provide bilingual voting materials for the applicable language minority group. Gwinnett County must provide “any registration or voting notices, forms, instructions, assistance, or other materials or information

²⁹ *See* Gonzalez Decl. ¶ 6; *see also* Powers Decl., Ex. 24, Declaration of Gerardo Gonzalez, *Ga. State Conf. of the NAACP v. Gwinnett Cty.*, No. 1:16-cv-02852-AT, Dkt. 311-3 ¶ 6 (Sept. 21, 2018) (approximately 54 members in Gwinnett County).

³⁰ “Voting Rights Act Amendment of 2006, Determinations Under Section 203,” Federal Register, Vol. 81, No. 233, Dec. 5, 2016, *available at* <https://www.justice.gov/crt/file/927231/download>.

relating to the electoral process, including ballots . . . in the language of the applicable minority group as well as in English.” 52 U.S.C. § 10503(c). These requirements are “broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections.” 28 C.F.R. 55.15; *U.S. v. Metro. Dade Cty., Fla.*, 815 F. Supp. 1475, 1478 (S.D. Fla. 1993) (applying regulation to pamphlet answering questions about upcoming elections). Furthermore, in interpreting provisions of the Voting Rights Act, courts should give the statute a broad construction. *Metro. Dade Cty.* at 1477-78 (citing *Allen v. State Bd. of Elections*, 393 U.S. 544, 565 (1969)).³¹

Covered jurisdictions are required to offer translations of all election-related written materials including the ballot, voter registration forms, sample ballots, election notices, and website. *Navajo Nation Human Rights Comm’n v. San Juan Cty.*, 215 F. Supp. 3d 1201, 1220 (D. Utah 2016) (stating Section 203 requires “all written voting materials to be provided ‘in the language of the applicable minority group as well as the English language’”) (emphasis in original); *see also Metro.*

³¹ In *Navajo Nation Human Rights Comm’n v. San Juan Cty.*, 215 F. Supp. 3d 1201 (D. Utah 2016), the district court observed that the Eleventh Circuit’s holding finding an implied private right of action in *Schwier v. Cox*, 340 F.3d 1284, 1294-96 (11th Cir. 2003), supports the finding “that there is an implied private right of action under Section 203.” *Navajo Nation*, 215 F. Supp. 3d at 1219.

Dade Cty. at 1477-78. Under the plain language of the statute, jurisdictions are strictly liable for any failure to translate written materials. *Chinese for Affirmative Action v. Leguennec*, 580 F.2d 1006, 1008-09 (9th Cir. 1978) (holding that a locality cannot avoid liability under Section 203 by claiming it acted in good faith).

Courts have routinely held that documents must be translated under Section 203 even if they are for informational purposes:

Dade County essentially contends that the pamphlet is not subject to Section 203 of the Voting Rights Act because the pamphlet is not a necessary procedural document issued prior to and during an election, such as a notice of polling places or a sample ballot. The Court concludes, however, that the pamphlet is covered under the plain language of Section 203 as “assistance or other materials or information relating to the electoral process.”

United States v. Metro. Dade Cty., Fla., 815 F. Supp. 1475, 1478 (S.D. Fla. 1993).

There is no exception to the requirement that written materials be translated unless the relevant minority language is unwritten. *Navajo Nation*, 215 F. Supp. 3d at 1221 (holding “where the relevant minority language is unwritten or historically unwritten, the State or subdivision is not required to provide *all* materials orally in the minority language, as it would if the language were written”).

The discriminatory impact on Latino voter participation of sending English-only absentee ballot applications to LEP Gwinnett County voters, including Plaintiffs Ruiz Torres and Mendez and Messrs. Moreno, Alvarez, and Romero, will

be immense. While an unprecedented number of Georgians have already submitted absentee ballot requests, Gwinnett County's LEP Spanish speaking voters are being left behind due to the Secretary of State mailed an English-only version of the form to active voters, no bilingual form is available on the Secretary of State's website, and the form on the Gwinnett County BORE's website is virtually hidden from LEP, voters who must click a box marked "English" to access the Spanish language translation.

According to the 2018 American Community Survey 5-Year Estimate, there are 13,937 limited English proficient Spanish speaking citizens of voting age in Gwinnett County, out of 40,576 total LEP Spanish speakers in the county. Enos Decl. ¶¶ 8-9. The Section 203 rights of Plaintiffs Ruiz Torres and Mendez, and other LEP Gwinnett County voters such as Romero, Alvarez, and Moreno are being violated; they cannot read English, have not completed their English-only applications, and are entitled to a bilingual application under the statute.³²

Gwinnett County must provide equal access to the voting process when the Secretary of State's office mails absentee ballot applications or other materials to county voters. *See* 28 C.F.R. 55.10(c) (providing that for "elections for an office

³² Ruiz Torres Decl. ¶¶ 17-20; Mendez Decl. ¶¶ 17-20; Romero Decl. ¶ 13; H. Alvarez Decl. ¶¶ 16-18, 21; Moreno Decl. ¶¶ 15-17, 20.

representing more than one county . . . the bilingual requirements are applicable on a county-by-county basis”). According to the applicable Department of Justice regulation, “a county subject to the bilingual requirements must insure compliance with those requirements with respect to all aspects of the election.” 28 C.F.R. 55.10(b). Such an interpretation, moreover, is “consistent with the central purpose of Section 203 of the Voting Rights Act.” *Metro. Dade Cty.*, 815 F. Supp. at 1478.

Precedent demonstrates Gwinnett County officials are aware of their obligations. In 2019, the Secretary of State mailed English-only “last chance” notices to all inactive voters at risk of removal in Georgia – except for Gwinnett County, which sent its own bilingual notices to its voters.³³ A Gwinnett Daily Post article quoted Elections Director Kristi Royston as saying, “[s]ince we’re the only county that has both English and Spanish (elections language requirements), we get the file and then work with our vendor to produce and print our notices.” *Id.* In 2018, then-Elections Director Lynn Ledford noted that Gwinnett County provided bilingual “I Voted” stickers in response to guidance from the Department of Justice.³⁴ Furthermore, Gwinnett municipalities provide bilingual election

³³ Powers Decl., Ex. 17, Curt Yeomans, *About 22,000 Gwinnett voters may face removal from county's voter rolls*, Gwinnett Daily Post, Oct. 22, 2019.

³⁴ Powers Decl., Ex. 18, Curt Yeomans, *Gwinnett officials outline steps to comply with federal bilingual voting mandate*, Gwinnett Daily Post, Apr. 26, 2018.

materials and notices and are subject to Section 203 although they run their own elections and are not independently covered according to the Census Bureau.³⁵

Under Georgia law, the Gwinnett BORE has authority over the county's absentee ballot application processes. *See* O.C.G.A. §§ 21-2-381(a)(1)(A) (applications must be submitted to “registrar’s or absentee ballot clerk’s office”), 21-2-381(b)(1) (requiring the “registrar or absentee ballot clerk” to determine applicants’ eligibility). Gwinnett County Division Director Lynn Ledford, who currently oversees the BORE’s operations, testified recently that it is responsible for “supervising all aspects of early voting and absentee ballots.”³⁶ This includes “overseeing the processing of absentee ballot applications,”³⁷ which county officials review in detail.³⁸ Another Atlanta metro area county has already

³⁵ *Compare* Federal Register, Vol. 81, No. 233, Dec. 5, 2016, *with* Powers Decl., Ex. 9, City of Duluth “City Elections // Elecciones De La Ciudad” website; Powers Decl., Ex. 10, Lawrenceville “Election Information // Informacion Electoral” website (both stating that “Gwinnett County and all municipalities within Gwinnett County were designated as a covered jurisdiction under Section 203”).

³⁶ Powers Decl., Ex. 11, Declaration of Lynn Ledford, *Gwinnett County NAACP v. Gwinnett Cty. Bd. of Registrations and Elections*, No. 1:20-912-SDG, Dkt. 11-1 ¶ 2 (Mar. 2, 2020).

³⁷ Powers Decl., Ex. 12, Declaration of Lynn Ledford, *Ga. Muslim Voter Project v. Kemp*, No. 1:18-cv-4789-LMM, Dkt. 23-1 ¶ 4 (Oct. 22, 2018).

³⁸ Powers Decl., Ex. 13, Declaration of Lynn Ledford, *Martin v. Kemp*, No. 1:18-cv-4776-LMM, Dkt. 37-2 ¶¶ 7-10 (Oct. 29, 2018).

exercised its authority to provide additional absentee ballot applications to voters; Cobb County's election office mailed out a second set of (English-only) absentee ballot applications to nearly 150,000 registered voters in that county who are over 60 years old in March.³⁹

Gwinnett County officials cannot evade liability because the applications were sent by the Secretary of State's office, which exercises substantial authority over the conduct of county elections. *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1282-84 (N.D. Ga. 2019) (concluding "Georgia law [specifically O.C.G.A. §§ 21-2-31 and 21-2-50(a)(11)] grants Defendants oversight authority to set uniform standards across the state, to train, and to investigate failures of local elections officials"); *see also Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011) (the Secretary of State, "as a member and the chairperson of the State Election Board, [] has both the power and the duty to ensure that the entities charged with those responsibilities comply with Georgia's election code in carrying out those tasks [H]is power by virtue of his office sufficiently connect[s] him with the duty of enforcement"); *see also* O.C.G.A. § 21-2-50(a)(11)-(13).

³⁹ Powers Decl., Ex. 14, Mark Niese, *Cobb voters over 60 mailed two different absentee ballot request forms*, Atlanta Journal-Constitution, Apr. 13, 2020.

Election materials disseminated to Gwinnett County voters must be bilingual. *See Lopez v. Monterey County*, 525 U.S. 266, 282 (1999) (holding that a covered county was required to submit a state law for preclearance under Section 5 of the VRA “notwithstanding the fact that the State is not itself a covered jurisdiction”). Any contrary rule risks gutting Section 203 – and Congress’s intent to expand access to the ballot for language minority voters – because (1) counties could shift its election administration responsibilities to the Secretary of State and (2) Gwinnett County municipalities could stop complying with Section 203. *See Florida v. United States*, 885 U.S. 299, 348-49 (D.D.C. 2012) (Section 5 applies to state acts “to the extent that that law affects voting in jurisdictions properly designated for coverage,” even if the state is not covered itself); *Quiver v. Nelson*, 387 F. Supp. 2d 1027, 1033 (D.S.D. 2005) (three-judge district court) (same); *United Ossining Party v. Hayduk*, 357 F. Supp. 962, 968 (S.D.N.Y. 1971) (same).

Here, where Secretary Raffensperger’s decision to mail absentee ballot applications to active voters has fundamentally transformed Georgia’s – and Gwinnett County’s – election process, Section 203 requires the Gwinnett BORE to keep pace. It may not shirk its responsibility under the law – thereby undermining the clear intent of Congress – simply by pointing fingers toward Atlanta.

2. Section 4(e) of the Voting Rights Act

Section 4(e) mandates protection of the voting rights of non-English speaking U.S. citizens and forbids conditioning the right to vote of persons educated in an American-flag school on their degree of fluency in English. *See* 52 U.S.C. § 10303(e)(2). Under the statute, no jurisdiction can deny these individuals the right to vote based on their “inability to read, write, understand, or interpret” English. *Id.* The statute therefore applies squarely to the Georgia Secretary of State (in addition to the Gwinnett County BORE). *Madera v. Detzner*, 325 F. Supp. 3d 1269, 1276-78 (N.D. Fla. 2018) (holding the Florida Secretary of State responsible under Section 4(e) for 32 counties’ failure to provide bilingual materials and finding the argument “he has no relevant power over the county supervisors of elections” to be “not convincing”).

The number of Gwinnett County voters educated in Puerto Rico schools is substantial. The Center for Puerto Rican Studies at Hunter College, CUNY has confirmed that Gwinnett County has the largest Puerto Rican population – by far – of any county in Georgia, both in terms of raw numbers and their share of the

county's overall Latino population.⁴⁰ The 2018 ACS Public Use Microdata Estimates indicates there are approximately 4,676 Gwinnett County citizens of voting age who were born in Puerto Rico,⁴¹ and the 2018 ACS 5-Year Estimates indicates that 11,993 Puerto Rican citizens reside in Gwinnett County.⁴² This latter figure is notable because Plaintiff Mendez (and likely many other Gwinnett County LEP voters) was educated in a Spanish-speaking school in Puerto Rico even though he was born in New York City. Mendez Decl. ¶ 3.

In any event, unlike Section 203, the language of Section 4(e) does not apply only to jurisdictions that meet certain population thresholds. *Madera v. Detzner*, 325 F. Supp. 3d 1269, 1279-81 (N.D. Fla. 2018) (holding Section 4(e) applies in Wakulla and Taylor Counties, with approximately 24 and 4 Puerto Rican voters).

The text of the statute is unambiguous:

Nothing in Section 4(e)'s plain language indicates any numerical threshold to trigger its protections. No court has even hinted that Section 4(e) contains a numerical requirement.

⁴⁰ Exhibit O, Declaration of Jason Enos ¶ 12, Ex. 6, *Puerto Ricans in Georgia, the United States, and Puerto Rico, 2014* (Sept. 2016), p. 5, Center for Puerto Rican Studies, Hunter College, CUNY (13,263 Puerto Ricans in Gwinnett County).

⁴¹ Enos Decl. ¶ 10, Ex. 4, U.S. Census Bureau, American Community Survey, Five-Year Public Use Microdata Sample, 2014-2018.

⁴² Enos Decl. ¶ 11, Ex. 5, 2018 ACS 5-Year Estimate, Hispanic or Latino Origin by Specific Origin.

Id. at 1279. Here, the Section 4(e) rights of Puerto Rico-educated Gwinnett County voters Plaintiff Ruiz Torres and Plaintiff Mendez are being violated; they cannot read English, they have not completed their English-only absentee ballot application, and they are entitled to a bilingual application under the statute.⁴³ They, and the thousands of other Puerto Rico-educated voting age citizens who are registered to vote in Gwinnett County, must be given equal access to the electoral process and are entitled to bilingual written materials. *See, e.g., Arroyo v. Tucker*, 372 F. Supp. 764, 768 (E.D. Pa. 1974) (issuing order requiring officials to “provide all written materials which are directly connected with the registration of and election by voters in both Spanish and English, including, but limited to, sample ballots, voter’s certificates, registration certificate and all instructions to voters”).

Section 4(e) applies to materials that are information in nature because the right to vote under the statute “encompasses the right to an effective vote.” *PROPA v. Kusper*, 490 F.2d 575, 580 (7th Cir. 1973). Voters have “the right to be informed as to which mark on the ballot, or lever on the voting machine will effectuate the voter’s political choice.” *Id.* at 579; *Madera*, 325 F. Supp. 3d at 1279 (“The right to vote includes not only the right to ... fill out a ballot, but also

⁴³ Ruiz Torres Decl. ¶¶ 17-20; Mendez Decl. ¶¶ 17-20.

the right to comprehend and understand what is on the ballot”); *Torres v. Sachs*, 381 F. Supp. 309, 312 (S.D.N.Y. 1974) (holding that “a voter must be able to effectively register his or her political choice”). Section 4(e) requires that jurisdictions provide instructions, ballots, and “any other material which forms part of the official communication to registered voters prior to an election” in Spanish. *Id.* at 312; *see also United States v. Berks Cty.*, 250 F. Supp. 2d 525, 528 (E.D. Pa. 2003) (observing that “[a]dvertisements of the location of polling places and sample official ballots are meaningless if a large segment of the voters in a particular precinct cannot read the material”). Moreover, a failure to provide any written voting materials in Spanish violates Section 4(e). *See id.* at 537 (finding probability of success on Section 4(e) claim seeking to have bilingual ballots and voting materials provided in 45 precincts).

C. Plaintiffs Will Suffer Irreparable Harm Absent Relief.

“The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm.” *Jones v. Governor of Florida*, 950 F.3d 795, 828 (11th Cir. Feb. 19, 2020). “[B]y finding an abridgement to the voters’ constitutional right to vote, irreparable harm is presumed and no further showing of injury need be made.” *Touchston v. McDermott*, 234 F.3d 1133, 1158-59 (11th Cir. 2000); *Common Cause/Ga.*, 406 F.

Supp. 2d at 1376 (“[T]he right to vote is a fundamental right and is preservative of all other rights. Denying an individual the right to vote works a serious, irreparable injury upon that individual.”).

Providing English-only absentee ballot applications will impose irreparable harm on Plaintiffs Ruiz Torres and Mendez, as well as the organizational Plaintiffs that are attempting to prevent the disenfranchisement of thousands of LEP voters in the upcoming primary. There are approximately 13,937 LEP Spanish-speaking citizens of voting age in Gwinnett County, virtually all of whom are legally prohibited from leaving their house under the shelter in place order.⁴⁴ Plaintiff organizations have been forced to cease all in-person get out the vote activities due to the COVID-19 epidemic and are severely hampered in their ability to assist LEP voters. Gonzalez Decl. ¶¶ 27-34. Avenues of relief for LEP residents have been cut off. Gwinnett County offices, like others around the state, have faced closures.⁴⁵ The application on the Secretary of State’s website is only in English and LEP voters have to navigate Gwinnett County’s English-only website to access a

⁴⁴ See Enos Decl. ¶ 8, Ex. 2.

⁴⁵ Curt Yeomans, *Gwinnett County government closing all Lawrenceville-area buildings because of COVID-19*, Gwinnett Daily Post, Mar. 18, 2020, https://www.gwinnettdaily.com/local/gwinnett-county-government-closing-all-lawrenceville-area-buildings-because-of-covid-19/article_f7b1325c-6959-11ea-af1d-0f7610215499.html.

bilingual version; many voters cannot access the internet anyway. Gonzalez Decl. ¶¶ 21-24; Moreno Decl. ¶ 14; H. Alvarez Decl. ¶ 15.

The Secretary sent out absentee ballot applications because “the COVID-19 pandemic threaten[s] public health in Georgia” and, “[w]ith social distancing as the most important tool for limiting the spread of coronavirus, providing alternatives to voting in person is crucial.” Powers Decl., Ex. 8. As he acknowledged in his press release, most voters are unfamiliar with voting by mail: “[i]n the 2016 and 2018 November elections, around 95 percent of Georgia voters opted to cast their ballot in person versus the 5 percent who did so by mail.” *Id.* Absentee ballot applications serve as a critical gateway that allows voters access to the franchise during the unique circumstances of the COVID-19 pandemic.

However, due to the spread of COVID-19, Plaintiff organizations cannot adequately assist LEP Spanish speaking voters in Gwinnett County with completing their absentee ballot application for the upcoming primary. Voters like Plaintiffs Ruiz Torres and Mendez and Messrs. Romero, Alvarez, and Moreno, or similarly situated voters encountered by State House candidate Jorge Granados, are left to fend for themselves and have no recourse if they are not living with a bilingual relative. This harm cannot be remedied absent this Court granting the requested relief. *See Common Cause/Ga.*, 406 F. Supp. 2d at 1365-66.

D. The Balance of Equities Favors Plaintiffs

The balance of hardships clearly weighs in favor of Plaintiffs, particularly Plaintiffs Ruiz Torres and Mendez, and in favor of granting the requested relief herein. *See Jones v. Governor of Florida*, 950 F.3d 795, 829 (11th Cir. 2020) (concluding administrative burdens and other state “interests, while significant, are unavailing as compared to the plaintiffs’ interest in their opportunity to exercise the core democratic right of voting”).

First, Plaintiffs brought this lawsuit in timely fashion. The organizational Plaintiffs found out for the first time on Friday, April 3, that the absentee ballot applications sent to Gwinnett County voters were in English only. *See, e.g.*, Gonzalez Decl. ¶ 16. Plaintiffs promptly sent a letter requesting remedial action to Defendants on April 7.⁴⁶ The Gwinnett County Defendants responded on April 8 that “[a]t this point, Gwinnett County will not comply with either demand for remedial action contained in your letter” and Plaintiffs brought this action on April 13.⁴⁷ To date, Defendants have failed to mail any bilingual absentee ballot applications. Filing this motion now permits the inclusion of individual Plaintiffs – and impacted Gwinnett County voters – Ruiz Torres and Mendez.

⁴⁶ Powers Decl., Ex. 21, Letter from Julie Houk and John Powers, Apr. 7, 2020.

⁴⁷ Powers Decl., Ex. 22, Letter from Bryan P. Tyson, p. 4, Apr. 8, 2020.

The hardship to voters such as Plaintiffs Ruiz Torres and Mendez and Messrs. Romero, Alvarez, and Moreno is particularly severe due to the COVID-19 pandemic; voting in person is simply not a realistic option for many. By contrast, the requested relief will not subject election officials to unreasonable hardship. Any administrative inconvenience is not sufficient to deprive Gwinnett County's LEP voters of having a legitimate opportunity to vote in the upcoming primary. A few weeks ago, state officials and Cobb County prepared separate English-only absentee ballot application mailings on short notice. *See* Powers Decl., Ex. 14. It is feasible to make similar arrangements again in Gwinnett County.

E. The Public Interest Weighs Heavily in Plaintiffs' Favor

The public interest is best served by permitting Plaintiffs Ruiz Torres and Mendez, as well as other LEP Gwinnett County voters such as Messrs. Romero, Alvarez, and Moreno, to read their absentee ballot application and have a meaningful opportunity to vote, thereby preserving this fundamental right and fostering trust in the integrity of elections. *See Jones*, 950 F.3d at 831 (holding the public “has every interest in ensuring that their peers who are eligible to vote are able to do so”); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (holding injunction protecting “Plaintiffs’ franchise-related rights is without question in the public interest”); *League of Women Voters v. Detzner*,

314 F. Supp. 3d 1205, 1224 (N.D. Fla. 2018) (“Throwing up roadblocks in front of younger voters does not remotely serve the public interest. Abridging voting rights never does.”).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order granting their motion for a preliminary injunction.

Dated: April 20, 2020

Respectfully submitted,

/s/ Bryan L. Sells

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LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE

I certify that this pleading has been prepared with Times New Roman font, 14 point, as approved by the Court in L.R. 5.1(C), N.D. Ga.

/s/ Bryan L. Sells

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Bryan L. Sells

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