

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

**DONNA CURLING, ET AL.,
Plaintiffs,**

v.

**BRIAN KEMP, ET AL.,
Defendants.**

Civil Action No. 1:17-CV-2989-AT

**COALITION PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION ON PAPER POLLBOOK BACKUPS**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Coalition for Good Governance, William Digges III, Laura Digges, Megan Missett, and Ricardo Davis (the "Coalition Plaintiffs"), move the Court to enter a preliminary injunction ordering the Secretary to direct every county election superintendent:

(1) to provide at each polling place at least one paper back-up of the pollbook for use on Election Day, which paper back-up shall be updated after the close of absentee in-person voting (early voting);

(2) to use the paper back-up of the pollbook in the polling place to attempt to adjudicate voter eligibility and precinct assignment;

(3) to allow voters who are shown to be eligible electors on the paper pollbook backups to cast an emergency ballot that is not to be treated as a provisional ballot; and,

(4) to take every reasonable measure to ensure that county election officials and pollworkers are trained as to how to generate and use paper pollbook backups and emergency ballots in conformity with this Order; and

Pursuant to Rule 65(d), the Coalition Plaintiffs have filed with this Motion a proposed order standing the reasons why it should issue, the terms specifically, the acts to be restrained and required, and the persons to be bound thereby.

Pursuant to Rule 7.1A of the Local Rules of the Northern District of Georgia, and Part III(a) of this Court's Standing Order, the Coalition Plaintiffs have filed herewith a brief citing legal authorities supporting the motion and the facts relied upon, together with supporting declarations and citations.

This relief sought in this Motion is substantially the same as the relief sought in the Coalition Plaintiffs' October 23, 2019 Motion for Preliminary Injunction (Doc. 640), which this Court dismissed without prejudice on August 7, 2020 (Doc. 768), and in the Coalition Plaintiffs' August 2, 2020 Notice of Filing Evidence and Request for Immediate Injunctive Relief on Paper Pollbook Backups (Doc. 756 at 6 – 32).

Respectfully submitted this 21th day of August, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1(D), I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ Bruce P. Brown
Bruce P. Brown

**IN THE UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2020, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

/s/ Bruce P. Brown
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**IN THE UNITED STATES DISTRICT COURT
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Civil Action No. 1:17-CV-2989-AT

**COALITION PLAINTIFFS' BRIEF IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION ON
PAPER POLLBOOK BACKUPS**

Coalition Plaintiffs submit this Brief in Support of their Motion for Preliminary Injunction Relating to Paper Pollbook Backups.

Preliminary Procedural Statement

The relief sought in this Motion is substantially the same as the relief relating to paper pollbook backups sought in the Coalition Plaintiffs' October 23, 2019 Motion for Preliminary Injunction (Doc. 640), which this Court dismissed without prejudice on August 7, 2020 (Doc. 768), and is the same relief that is addressed in Coalition Plaintiffs' August 2, 2020 Motion of Coalition Plaintiffs to File Notice of Filing Evidence and Request for Immediate Injunctive Relief on

Paper Pollbook Backups (Doc. 756).¹ The Coalition Plaintiffs are seeking this relief in a separate motion because (a) it concerns a narrow issue that is unrelated to the ballot marking devices, (b) the merits of this Motion have been thoroughly briefed by both parties in prior filings,² and (c) the relief is vitally necessary for the upcoming September 29, 2020 special election and the November 2020 general election and related runoffs and may easily be implemented without any *Purcell* issues whatsoever.³

Introduction and Summary

The continuing failure of the Defendants to have a workable paper backup to the electronic pollbooks contributed significantly to massive failures of the June 9, 2020 statewide Primary. In its July 30, 2020 Order, the Court stated:

It is unclear what actions, if any, the State has undertaken to address these deficiencies in the electronic pollbooks and MVP voter registration interface or new versions of such in advance of June 2020 elections or the elections to be held in August and November 2020. While the Court at this juncture has only preliminary evidence in the record before it that addresses these claims in their current form, the Court notes that alleged significant

¹ Coalition Plaintiffs incorporate by reference the arguments and evidence previously submitted, including Doc. 640-1, 680, 680-1, 755 and 756.

² *E.g.*, Coalition Plaintiffs' Brief in Support of Motion for Preliminary Injunction (Doc. 640-1 at 32-33), State Defendants' Response (Doc. 658 at 54), and Coalition Plaintiffs' Reply (Doc. 680 at 29-32); *see also* Coalition Plaintiffs' Notice of Filing (Docs. 765 and 766), State Defendants Response to Notice of Filing (Docs. 757), and Coalition Plaintiffs' Reply (Doc. 758).

³ Parts A and B of this Brief are very similar to Parts A and B of Coalition Plaintiffs' August 2, 2020 Notice of Filing Evidence (Doc. 756).

problems relating to the express pollbooks were reported by the media during the June 2020 election cycle.

(Doc. 751 at 23). Though complex issues relating to the security and reliability of the voter registration and electronic pollbook operations will remain, a simple step that can be taken now to reduce the most debilitating impact of a repeated system failure is to provide each precinct with an *updated* paper pollbook that can be used when the electronics malfunction. This simple solution will keep people voting on emergency paper ballots (in accordance with State Election Board regulations⁴) when the electronic pollbooks malfunction, whether because of technical problems, poor pollworker training, equipment shortages, lines exceeding 30 minutes, or malicious attack. Without this relief, another “meltdown” is almost inevitable, but this time with much more serious consequences: turnout for the upcoming elections will be far higher than the record turnout in the June 9 primaries, managing the lines and the voting process generally will remain extremely challenging during this ongoing pandemic, and few of the technical or administrative failures that caused the June 9 meltdown have been addressed.

In this Brief, Coalition Plaintiffs will in Part A summarize the procedural history of Coalition Plaintiffs’ claims relating to paper pollbook backups and the mountains of evidence already on file demonstrating the longstanding serious

⁴ Rule 1-183-12-.11.2(c)-(d).

deficiencies in Georgia’s registration and pollbook systems. Coalition Plaintiffs will also summarize the extensive and recent efforts that the Coalition and its counsel have undertaken to resolve this issue without court intervention. In Part B, Coalition Plaintiffs will summarize the evidence from the June 9 election (pre-filed at Doc. 755) showing that the extensive voting delays and chaos were a direct result of the ongoing failure of the State Defendants to provide the precincts with useful paper pollbook backups. Part C address evidence from the August 11, 2020 runoffs demonstrating that the underlying deficiencies have not been remedied. Part D addresses new evidence showing the stunning vulnerability of the electronic pollbooks. In Part E, Coalition Plaintiffs will explain the relief sought, and Part F responds to arguments raised in the State Defendants’ August 2, 2020 Response (Doc. 757) to Coalition’s Plaintiffs’ August 2 Notice of Filing (Doc. 756).

A. Procedural and Factual Background

In their June 21, 2019 Motion for Preliminary Injunction, the Coalition Plaintiffs moved for injunctive relief requiring the Secretary to direct the use of “an updated paper back-up of the pollbook in the polling places for adjudicating voter eligibility and precinct assignment problems.” (Doc. 419 at 4).⁵ In its August 15, 2019 Order granting in part Plaintiffs’ Motion, this Court found substantial

⁵ This requested relief was renewed in the Coalition Plaintiffs’ October 23, 2019 Motion. (Doc. 640-2 at 4-5).

evidence of voters being disenfranchised because of electronic pollbook problems.⁶ Based on these findings, the Court granted injunctive relief, referencing the recommendation of the National Academies of Sciences, that “all jurisdictions using electronic pollbooks ‘should have backup plans in place to provide access to *current* voter registration lists in the event of any disruption.’” (Doc. 579 at 148 n. 101) (emphasis added). The Court ordered: “The State Defendants should require all County Election Offices to furnish each precinct location with at least one printout of the voter registration list for that precinct.” (Doc. 579 at 150). The Court concluded:

Finally, the Court views the significant voter registration database and related ExpressPoll deficiencies and vulnerabilities demonstrated in this case as a major concern both relative to burdening or depriving voters’ ability to actually cast ballots. The Court therefore requires the State Defendants to develop procedures and take other actions to address the significant deficiencies in the voter registration database and the implementation of the ExpressPoll system.

(Doc. 579 at 152-153).

On September 12, 2019, the Coalition Plaintiffs filed a Rule 59(e) motion requesting, among other relief, that the Court modify its directive to require the use of an *updated* paper pollbook backup at each precinct, rather than the voter

⁶ “Forty-six individual voters described issues with the electronic pollbook, including voters not being listed as registered, wrong addresses listed for the voters, incorrect polling places, and listing voters have already voted.” (Doc. 579 at 98). The Court also summarized the evidence submitted by Coalition Plaintiffs relating to problems in the preceding November 6, 2018 general election. (Doc. 579 at 106 - 111, citing Doc. 258-1 at 62 *et seq.*)

registration list (Doc. 605 at 5). The paper print out of the voter registration list, as currently provided in the polling places, is not updated to reflect all early or absentee mail ballot voting and therefore cannot be used as a backup to malfunctioning electronic pollbooks to issue regular or emergency ballots. As the Coalition Plaintiffs explained, the clarification was necessary to assure “that the paper backup would be current (*after updating for early voting*).” (Doc. 621 at 17) (emphasis in original). In its October 23, 2019, Order Granting in Part and Denying In Part the Rule 59(e) Motion, the Court stated:

The Court recognizes the Coalition Plaintiffs’ motion was timely filed, however, a number of pragmatic considerations make the Court hesitant to modify this provision of the Order now that early voting has begun for the November 2019 election cycle. The Court potentially willing to consider this request for subsequent election cycles but only after hearing more concretely from the State regarding pragmatic implementation issues at a short conference or hearing. Therefore, the Coalition Plaintiffs’ request that the Court modify directive 2 on page 150 of the preliminary injunction Order to require the use of a paper pollbook backup is DENIED at this time.

(Doc. 637 at 2-3). The Court further reiterated its “expectation that the parties would use good judgment and their knowledge of the Court’s Order of August 15th as a whole in proceeding.” (Doc. 637 at 2).

In their October 23, 2019 Motion for Preliminary Injunction that seeks injunctive relief relating to the BMDs and other components of the State’s new Dominion Election System, the Coalition Plaintiffs moved again for an order

directing the Secretary to require paper pollbook backups. (Doc. 640 at 32).

Coalition Plaintiffs explained: “There is no reason to believe that the systemic problems with epollbooks will disappear with the transition to a new electronic pollbook component system. If anything, the rapid transition to a new epollbook system and the integration challenges will make these problems more severe.”

(Doc. 640 at 34). In response, the State Defendants argued that it already provides a paper copy of the registered voters. (Doc. 658 at 54). As Coalition Plaintiffs explained in their Reply, “what is needed is not the ‘paper copy of the registered voters for each precinct,’ as the State recites, but the *updated* copy of the pollbook.” (Doc. 680 at 30).⁷

Meanwhile, the quality and reliability of the new “KnowInk” Pollpads were tested in several counties’ municipal and county elections in November 2019, the December runoffs, and the first quarter 2020 special elections in State House District 171 and Senate District 13. Multiple PollPad problems were observed by Coalition’s members in numerous different polling locations in each of the

⁷ The briefing on the paper pollbook backup also contains discussion of State Election Board regulations. (See Doc. 658 at 54; Doc. 680 at 30). As discussed below, new regulations were promulgated in February 2020. The new regulations, though incomplete and not being followed by the Defendants, are not inconsistent with the relief that is sought by Coalition Plaintiffs. See *infra* Part E.

elections.⁸ Observer Elizabeth Throop spent 34 hours observing early, Election Day and run-off voting in 11 polling places in Paulding, Carroll, and Lowndes counties in the November pilot. (Doc. 680-1 at 83-91). Ms. Throop made the following prescient observations:

Based on my observations on the polling places it is my strong opinion that the risks of pollbook failure, malfunction, “bugs,” and insufficient poll worker training mandate the need for a back-up default paper pollbook that can be used as the official reference if the Poll Pad information is not available. . . . This over-reliance on electronic records seems to create an unacceptable risk for 2020 high turnout elections.

(Doc. 680-1 at 83-89).⁹ The Secretary’s own Executive Summary of the Pilots disclosed numerous issues with the PollPads and the failure to timely open the polls. (Doc. 680-1 at 101)

The issue of the paper pollbook backup arose again in the December 6, 2019 status conference. Coalition Plaintiffs’ counsel referenced the PollPad problems encountered in the November pilots, noting that requiring a paper pollbook backup would be an effective safeguard that would not be burdensome to Defendants.

⁸ See also GEORGIA RECORDER, link at Doc. 680-1 at 150 (“Voters in five counties experienced problems with new check-in devices, called “poll pads,” caused by a programming error that prevented them from using electronic ballot-marking devices.”).

⁹ See also Declaration of R. Martin, Doc. 680-1 at 76 (Reporting on the November 2019 pilot testing: “It was clear to me that despite three weeks of early voting, PollPad pollbook procedures were still buggy on Election Day, underscoring my fears of the impracticability of statement system conversion by the beginning of Presidential Primary Early Voting on March 2, 2020.”).

(Doc. 679 at 69-70). The Court then asked counsel for Defendants: “why wouldn’t the state just do that?” (Doc. 679 at 71). In response, counsel for the State Defendants stated: “the state already provides a paper pollbook backup in each precinct,” but then clarified that it was the voter registration list that the state provided, something that counsel may have believed (incorrectly) was the same thing as a current paper pollbook backup. (*Id.* at 72). At this point, the Court stated: “I encourage you-all to talk about it. . . . Because there is a lot of frustration obviously in the check-in process. And it could only benefit the State in my mind.” (*Id.* at 74).

From the December 6, 2019 Status Conference to the weeks immediately prior to the August 2, 2020 filing, the Coalition Plaintiffs made a number of efforts to resolve this issue outside the litigation with repeated petitions to the State Election Board and overtures to opposing counsel, all unsuccessful. (*See* Doc. 756 at 13-14 (detailing efforts)).

B. Electronic Pollpad Problems Cause Extreme Delays in June 9, 2020 Election

As the Court noted in its July 30, 2020 Order, “alleged significant problems relating to the express pollbooks were reported by the media during the June 2020 election cycle.” (Doc. 571 at 23). It cannot be overstated that the evidence establishes that the primary cause of the “meltdown” was the failure of the Defendants to simply print and use inexpensive paper pollbook backups and to

issue emergency paper ballots to eligible voters. The Defendants' recklessness in refusing to print current paper pollbooks is indefensible, particularly given that this Court ordered the State Defendants "to develop procedures and take other actions to address the significant deficiencies in the voter registration database and the implementation of the ExpressPoll system." (Doc. 579 at 152-153).

The chaos caused by the PollPads is shown in the official election records (Ballot Recap Sheets) from the Election Day polling places themselves. Standard ballot accounting of course calls for the number of voters checking in to reconcile to the number of ballots cast, accounting for spoiled ballots or other limited exceptions. But as a review of the public records show, material differences exist between the number of ballots cast and the number of voters recorded in the PollPads as checking in at many Fulton County precincts' Ballot Recap Sheets, (See Marks Declaration, Ex. 1, ¶ 23-24).

Coalition Plaintiffs have filed eye-witness accounts of the significant problems caused by the failure of the Defendants to have any paper backup for the electronic pollbooks, (Doc. 755), which can be counted on to fail. For example, in a report to the Cobb County Board of Registration and Elections on June 19, 2020, Cobb County Election Director Janine Eveler gave a damning report of the June 9 polling place problems, including numerous problems with the KnowInk electronic PollPads. (Doc. 755 at 36-40). Director Eveler told Board Members of the

extensive difficulties her department had through the weekend prior to Election Day attempting to upload the information into the PollPads. (*Id.* at 38 line 31). She reported the complexity of setting up polling places the morning of Election Day because of the difficulties in securing the equipment, with the goal of getting “at least one voting unit working by 7am.” (*Id.* at 39 line 12). Many polls were still being set up after the polls opened, causing longer lines to form. (*Id.*, line 14-15). “On election day, many polls reported that their poll pads were not syncing, or that they could not encode cards.” (*Id.*, line 25-26). “We were given no instructions on how to resolve these syncing issues.” (*Id.*, line 26-27).

Malfunctioning electronic pollbooks were the bottlenecks creating the long lines throughout the metro-Atlanta area. Coalition Plaintiffs have filed eye-witness accounts of voters having to wait in line for hours during the pandemic because electronic pollbooks were not working. *E.g.* Doc. 755 at 11-12 (at Central Park Recreation, Fulton County, a four hour wait); *id.* at 74-74 (at Antioch A.M.E., DeKalb County, three and one-half hour wait before first voter could vote); *id.* at 14 (at Park Tavern, Fulton County, a three hour wait); *id.* at 15 (at Miller Grove, DeKalb County, over two and one-half hour wait); *id.* at 148 (at Sope Creek, Cobb County, over a two hour wait)¹⁰; *id.* at 128 (Cross Keys, DeKalb County, over two

¹⁰ A voter at Sope Creek recounted: “Water and a chair were requested for a gentleman who was ‘collapsing from overheating.’ When I returned to the parking

hour wait, with 200 people crammed into hallways with no social distancing procedures); *id.* at 154 (Legacy Church, Cobb County, two hour wait); *id.* at 125 (at Water Department, Gwinnett County, a two hour wait); *id.* at 124 (at Dunwoody Library, DeKalb County, no voting until 8:15).

When the Pollpads malfunctioned, “voting was almost to a complete standstill” because pollworkers were forced to use provisional ballots (Doc. 755 at 12; *see also id.* at 74-75, 127, 128, 154). Crucially, there is no doubt that the failure to have a paper backup to the malfunctioning electronic pollbooks was *the* cause of these long lines: as voters waited in line to check-in, no one was voting on the BMDs. (Doc. 755 at 12; *see also id.* at 15, 101, 127). A Cobb County voter states: “This was the worst voting experience I have ever had, as it was a total fiasco.” (*Id.* at 155).

Though the State Defendants have blamed Defendant Fulton County for the meltdown, the long lines were experienced throughout Metro Atlanta and were caused by the State Defendants’ failure to provide the counties with a useable paper backup for the malfunctioning electronic pollbooks (which the State Defendants purchased and supplied).

lot, I was that emergency responders were tending to him and loading him into the ambulance. Sadly, he was not able to cast his vote this morning.” (*Id.* at 148).

C. The August 11 Runoffs

There is no evidence that Defendants have even acknowledged, much less solved, any of the electronic pollbook problems that plagued the June 9 elections. In the August 11, 2020 runoffs, even though turnout out was very low, malfunctioning electronic pollbooks caused long waits for some voters as pollworkers tried to check-in voters. Two witnesses describe the failures at the Fanplex polling location on Henry Aaron Drive in Fulton County. At Fanplex, the Pollpads initially would not recognize voters from Precinct 01F, even though Precinct 01F had been assigned to Fanplex. “Every voter we observed from precinct 01F was unable to check in.” (Whitley Declaration (Ex. 5) ¶ 13; *see also* Stippich Decl. (Ex. 4) ¶ 6). The poll manager called county officials and were overheard discussing how to “override” the PollPad system. Thereafter, the PollPads apparently recognized that Precinct 01F voters were in the right polling locations, but showed that each of them had received absentee ballots, which was uniformly incorrect. After further delays, one voter left and the others filled out provisional ballots. At 10:00, the poll manager announced that all Precinct 01F voters would be checked in using the polling place’s June 9, 2020 registered voters’ list and given emergency ballots. One observer found it “very problematic” that the poll manager was using an out-of-date voters list to give voters emergency ballots because “a list dated in early June would not account for newly registered

voters or show whether a voter had already voted in early voting or mail ballot voting.” (Whitley Decl. (Ex.5) ¶¶ 17-18, 20). Michael Stippich, who waited in line for three hours at Fanplex to vote on June 9, had to wait in line for over an hour on August 11, even though there were only a handful of voters trying to vote. (Stippich Decl. (Ex. 4) ¶ 14). Other problems with the Pollpads during the August 11 election are addressed in Part D.

D. New Evidence of Electronic Pollpad Vulnerability

Additional evidence obtained in the investigation of the August 11 election confirms that the PollPads as deployed by the Defendants are extremely vulnerable to malicious attack or innocent malfunction. First, the PollPads permit the issuance of multiple encoding cards to a single voter. According to Cherokee County Voting Systems Manager Johnathan Densmore: “the poll pads can issue an unlimited number of voter access cards to same voter, with no override pass-code or anything required from the Election Office.” (Exhibit C to Marks Declaration (Ex. 1)).

Second, the electronic pollbooks contain extremely important information, obviously, controlling who can and who cannot vote in person. For this reason, electronic pollbooks must be password protected and, for the June 9 election,

electronic pollbooks in Georgia were password-protected.¹¹ During the June 9 elections, Defendants had multiple problems with the PollPad passwords. So, starting with the August 11 runoffs, KnowInk, the PollPad manufacturer, made the determination that in Georgia passwords would no longer be required on PollPads because they were a “redundant security measure.”¹² Therefore, any person who has physical access to an electronic pollbook has the power to disenfranchise every voter – or a selection of voters – on election day.

Worse, as Harri Hursti explains in his Declaration (Exhibit 1), even password-protected electronic pollbooks “present a compelling attack surface for any domestic or foreign adversarial actor who considers disrupting or sowing discord.” *Id.* ¶ 5 (b). “Measures like removing passwords, and therefore weakening the security should never be a workaround for reliability issues.” *Id.* ¶ 12. This security failure must be addressed regardless of the disposition of this Motion, but, even if it is addressed, this lapse demonstrates how little Defendants

¹¹ KnowInk, the manufacturer of the electronic pollbooks, used the clever password “1 2 3 4” to protect their Pollpads. (Doc. 680-1 at 50).

¹² Hurst Declaration (Ex. 1) at ¶ 10; Marks Declaration (Ex. 2) at ¶¶ 6-7; Patterson Declaration (Ex. 3) at ¶ 21 (“The start up of the Pollpads does not require a password, which is concerning to me given the important of the data in the Pollpads, and the user’s ability to impact which voters are shown as eligible for voting.”)

can be trusted to deploy this complex equipment responsibly and how necessary it is to have back-up systems in place in the event the equipment continues to fail.

Mr. Hursti further confirmed the technical difficulties that pollworkers were having in Fulton County using the PollPads on August 11, 2020, witnessing numerous problems with synchronizing the units and, at Fanplex, incorrectly showing that all voters had voted by mail. “These are prime examples,” Mr. Hursti concludes, “of the need for an updated back up paper pollbook so that such discrepancies can be handled in the polling place permitting voting to continue.”

Id. at 19.

E. Effective Relief Can be Granted Immediately

The problem and the solution are well understood. The Court has previously found that a backup to the PollPads is necessary to protect the right to vote: “If voters’ capacity to cast votes are thwarted through an inaccurate express pollbook voting check-in or voter website, this burdens their right to cast votes, scrambles election day voting procedures, and ultimately, in turn affects voting results.” (Doc. 579 at 89-90). The Defendants have never articulated a coherent reason for not providing paper pollbook backups and their failure to do so led directly to the

“Complete Meltdown”¹³ on June 9, 2020. There is no reason to believe that, without these changes, the same problems will not plague the upcoming elections.

Coalition Plaintiffs note that the State Election Board revised its regulations on paper pollbook backups in February 2020 to make it clear that such backups may be used in place of the electronic pollbooks:

Electronic poll books shall be the primary method for checking in voters and creating voter access cards, but the superintendent shall cause every polling place to be equipped with a paper backup list that of every registered voter assigned to that polling place. The paper backup list shall be used in case the electronic poll books do not properly function. The superintendent shall cause poll workers to be adequately trained in checking in voters on both electronic poll books and paper backup list.

Ga. Comp. R. & Regs. 183-1-12-.19 (adopted February 12, 2020). The passage of this regulations does not obviate the need for injunction relief, however, for three reasons. First, though the regulation says to use the paper backup list “in case the electronic poll books do not properly function,” the regulation does not explicitly require that the paper pollbooks be updated after early voting. If the pollbook is not current, pollworkers cannot reasonably issue ballots, other than provisional ballots. Second, based on the eye-witness accounts of the June 9, 2020 election, there is no evidence that this regulation is effective to cure the problems associated with

¹³ <https://coalitionforgoodgovernance.sharefile.com/d-s8b9d3ca459e42638>

electronic pollbook malfunctions. Third, and closely related, the regulation does not explicitly require the counties to give voters whose eligibility is established by reference to the paper backup an emergency ballot, and instead could be read to allow pollworkers to continue to undertake the time-consuming, frustrating and potentially disenfranchising process of giving such voters provisional ballots. Thus, the injunctive relief requested – which is not inconsistent with the new Board rule – is necessary to prevent the long lines and disenfranchisement caused by the present system.¹⁴

To make compliance by the Defendants easier and most effective, and to reduce the potential for the scope or purpose of the relief to be misunderstood, Coalition Plaintiffs are seeking relief that is modified from the relief sought in the October 23, 2019 Motion (Doc. 640-2 at 4-5) in two respects. First, since the purpose of the relief is to allow election officials to adjudicate the eligibility of voters on Election Day so that they may cast a ballot (and not have to complete a provisional ballot), the amended proposed order makes this intent express by adding the clause “to allow voters who are shown to be eligible electors on the

¹⁴ In addition, compliance with an appropriate order is even easier now for the State Defendants that it would have been with the old Diebold System. A stated feature of the KnowInk (PollPad) system is its ability to print up-to-the minute pollbooks at the Secretary of State’s offices or at central county offices. (Doc. 755 at 16).

paper pollbook backups to cast an emergency ballot that is not to be treated as a provisional ballot.”

Second, through the course of collecting evidence on the new systems, Coalition Plaintiffs have discovered that the training that the State currently offers to pollworkers on the issuance of emergency ballots (including the source of pollbook information) is not only insufficient but affirmatively misleads and confuses pollworkers, and as a result will continue to disenfranchise voters.¹⁵ The State must immediately clarify its instructions to pollworkers for issuing emergency ballots before the September 29 special election, whether or not the requested relief is granted. Hence, the amended proposed order adds a clause stating: “to take every reasonable measure to ensure that county election officials and pollworkers are trained as to how to generate and use paper pollbook backups and emergency ballots in conformity with this Order.”¹⁶

F. State Defendants’ Response is Meritless

¹⁵ See Doc. 755 at 76-79 (with links to SOS “Poll Worker Manual” and SOS Pollworker Training Video). The cited declaration also describes the mistakes in the training instructions.

¹⁶ In their August 2, 2020 Response Brief, the State Defendants’ quibble with this aspect of the Motion, stating that the Secretary is not “responsible for training poll workers.” (Doc. 757 at 3). But the Secretary in April published the “Poll Worker Training Manual” and the “Poll Worker Training Video” (referenced in the preceding footnote), that purport to train poll workers on exactly this topic: what to do when the Pollpads malfunction.

In response to the Coalition Plaintiffs’ August 2, 2020 Notice of Filing (Doc. 755) and Motion (Doc. 756) relating to Immediate Injunctive Relief on Paper Pollbook Backups, the State Defendants’ filed a Response (Doc. 757). The State Defendants’ Response confirms that injunctive relief can and should be granted.

Initially, the State Defendants do not explain *why*, as a practical or legal matter, this commonsense relief (of providing each polling place with an updated paper back-up copy of the pollbook) should not be granted, and they never have: they did not explain why in their *one-page* response to Plaintiffs’ Motion for Preliminary Injunction (Doc. 658 at 54); nor in open court in response to the Court’s questions (Doc. 679, Tr. at 71); nor in their Response Brief. (Doc. 757). The State Defendants do not dispute—and thus concede—that the lack of paper pollbook backups materially contributed to the “Complete Meltdown” that the Defendants oversaw on June 9, 2020. Instead of responding on these core issues, the State Defendants raise several meritless arguments:

1. *Motion should be considered only after “normal discovery track”*

The State Defendants argue that “this case should proceed on a normal discovery track instead of on an emergency basis.” (Doc. 757 at 1).¹⁷ Yet the

¹⁷ The Coalition Plaintiffs in this Motion are not seeking expedited discovery and, even if they were, this Court rejected the premise of the State Defendants’ argument in its August 11, 2020 Order (Doc. 775 at 1-2): “Defendants’ wholesale objection to expedited discovery in its Response brief (Doc. 772) and arguments that there is ‘no emergency’ and ‘no need for

issue before the Court concerns a Motion for a *Preliminary* Injunction. (Doc. 640). If the need for a “normal discovery track” were sufficient to defeat a motion for preliminary injunction, then no preliminary injunction would ever be granted. But that is not the law. “[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

Similarly, the State Defendants argue that this relief should not be considered on an “emergency basis.” (Doc. 757 at 1). There is nothing rushed about the consideration of this relief. It has been a continual subject of Coalition Plaintiffs’ motions since at least June, 2019 (Docs. 419, 605, 640), and this Court’s Orders and conferences since August, 2019 (Docs. 579, 679 at Tr. 69-72).

For months, the State Defendants have had the opportunity to muster evidence (all of which is within their own possession or control) disputing the factual basis of Coalition Plaintiffs’ claim. But they have come up with nothing and instead insist upon a “normal discovery track” for the transparent purpose of running out the clock on any possibility for timely relief.

expedited discovery’ because there is ‘no pending preliminary injunction’ ignore this Court’s assessment of the case posture and directives communicated to counsel.”

2. *Reliance on Hearsay and Policy Statements*

The State Defendants complain that the Coalition Plaintiffs' Motion relies on hearsay. (Doc. 757 at 1). That is not a valid objection to evidence filed in support of a motion for preliminary injunction. *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (at the "preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction"). The State Defendants also criticize the Coalition Plaintiffs for filing policy statements that the Coalition submitted to the State Election Board as "personal opinions." (Doc. 757 at 2). The submissions to the State Election Board speak for themselves: they do not contain "personal opinions," but instead are fact-based, well-reasoned submissions showing how the Coalition Plaintiffs have scrupulously followed this Court's directives to make every effort to resolve this issue outside of litigation, including by (fruitlessly) petitioning the State Election Board for relief.

3. *It is "too late to make these changes." (Doc. 757 at 3).*

The State Defendants do not support this conclusory statement with any citation to the record or with any analysis or evidence. The reason why is because the requested relief is trivially easy for the State to implement: printing a paper backup of the electronic pollbooks in each polling place involves minimal skill, time and cost. The ease and simplicity of the requested relief are why paper

pollbook backups are not just considered a best practice, but a necessary procedure by the National Academy of Sciences (*see* Doc. 579 at 148 n. 101) and by the Brennan Center for Justice (*see* Doc. 755 at 112).

Conclusion

The Defendants' collective unwillingness to attend to this issue contributed directly and significantly to the "Complete Meltdown" for which Defendants were, collectively, responsible. Unless this injunctive relief is granted, there is a virtual certainty that it will happen again.

Respectfully submitted this 21th day of August, 2020.

/s/ Bruce P. Brown

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

**DONNA CURLING, ET AL.,
Plaintiffs,**

v.

**BRAD RAFFENSPERGER, ET AL.,
Defendants.**

Civil Action No. 1:17-CV-2989-AT

CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1(D), I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

/s/ Bruce P. Brown
Bruce P. Brown

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

**DONNA CURLING, ET AL.,
Plaintiffs,**

v.

**BRAD RAFFENSPERGER , ET AL.,
Defendants.**

Civil Action No. 1:17-CV-2989-AT

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2020, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

/s/ Bruce P. Brown
Bruce P. Brown

Declaration of John T. Peterson

John T. Peterson declares, under penalty of perjury, pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. My name is John T. Peterson.
2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.
3. I am a registered voter in Cherokee County.
4. I was a Field Support Technician for Dominion Voting this General Primary Runoff Election Day, August 11th, 2020.
5. I answered an advertisement I saw posted on July 24th that a friend had seen on Twitter and forwarded to me. (See Exhibit 1.)
6. There was no formal application process, but I filled out a Google form asking for very basic information (name, phone number, email, was I tech savvy?) that day at HelpGAElections.com.
7. There was no interview or other security check, which was worrisome for me as I felt like technical positions should not be filled this easily.
8. I went in for training on Aug 7th at what appeared to be a warehouse being used by Dominion Voting for the election – it was full of voting equipment. There were BMDs and other machines set up as a mock precinct for training. The address was 7000 Highlands Pkwy, Suite 160, Smyrna 30082.

9. The training was run by Dominion-employed technician trainers for 9 or 10 of us temporary technicians. According to the trainers, the first two, and most important, rules were:
 - a. Do not talk to the Press – send them to the polling manager. We were told that as technicians we are not allowed to tell reporters anything about the new technology or our opinion about the technology.
 - b. Don't touch anything. We were strictly forbidden to touch anything, even the Poll Pads. Whenever offering technical assistance, we were to have our hands behind our backs.
10. Our actual training was only 2 or 3 hours long – we were by no means experts on the equipment by the end of it.
11. As soon as we first approached the BMDs, one of the trainees remarked, “Won't everyone be able to see everyone's choices?” A trainer answered by saying something along the lines of, “There will be screens so everything will be fine.”
12. They taught us how to set up Poll Pads, BMDs, printers, and scanners, and how to turn on, turn off, and use the equipment. We were also taught where all the power buttons, cables, and connections are.
13. It is my understanding that the only difference between the training we were given and that poll managers were given, is that we received Dominion

manuals which had troubleshooting steps that the poll managers' manuals didn't, so I considered myself basically to be a "talking book".

14. We also learned some things which I considered to be high-security information in detail, like how to open and close the polls, and where all the security ties on the equipment were. This seemed strange to me, since poll managers, not technicians, are expected to open and close polls, and technicians were only supposed to be there to troubleshoot equipment problems.
15. The only unique skill I had learned compared to poll managers, was how to deal with a paper jam if it came up on the printers and/or scanners. Not to unjam the paper, since I could not touch the equipment, but for scanner jams, I was to advise whether to rescan the paper printout or whether it had been successfully scanned and had been dropped into the printout receptacle.
16. I was not asked to take any type of oath or sign any type of confidentiality agreement.
17. On August 11th, I was assigned to the precinct located at New Beginnings United Methodist Church in Kennesaw, Cobb County. I was asked to arrive at 5:55 a.m. The poll manager's name was Kayla, and aside from Kayla and the assistant poll manager, there were 4 other poll workers.
18. Other than the Poll Pads, which were still in their carrying cases, all of the

equipment was in place and connected when I arrived. Poll workers said this was the first time they were allowed to set up the equipment the night before and turn them on in the morning.

19. I am not aware what kind of overnight security there was, if any. I did note that at the time of the poll set up, there were no seals over the power buttons applied the night before, just stickers. Therefore, it appeared that if someone had entered the room overnight, they would have had unfettered access to the equipment.

20. None of the poll workers seemed familiar with setting up the Poll Pads, so I helped with assembly. I instructed the poll workers on putting all the pieces together, attaching the ID scanner, attaching the encoder, and plugging in all the different cables in the right place in the right way. I found that it would be very easy to make mistakes setting up Poll Pads because there are so many components and different cables. Even though I am technologically savvy, had I not been trained on this just 4 days prior, I am sure that I would have forgotten some of the steps, and I can see how easily a cable could be attached in the wrong way.

21. The start-up of the Poll Pads does not require a password, which is concerning to me given the importance of the data in the PollPads, and the user's ability to impact which voters are shown as eligible for voting.

22. When the polls opened, only 7 out of the 10 BMDs were working; three would not turn on. I did not notice this until I walked the room at 8 a.m. When I asked Kayla why they weren't on, she said, "We're not sure why, they're just not turning on." I was shocked that I was never asked to troubleshoot it, but my technical training did not prepare me to deal with BMDs that would not turn on, and I would not have been able to help in any case. My guess is that because Kayla's mom was the area supervisor, she had checked with her about it before I arrived. When the area supervisor arrived to check on us later, she said she thought too much power was being drawn by the other BMDs and UPSs for those 3 BMDs to operate.

23. By 9:30 a.m., technical issues had caused two more BMDs to break for a total of half of the BMDs being inoperable. One BMD printer had a paper jam, causing a "USB change" error that the poll workers had not been taught how to fix. Since I was not allowed to touch the printer and the poll workers couldn't find the piece of paper that was jammed, we had to wait for a Dominion technician in order to be able to use that BMD/printer.

24. The other BMD turned off after a simple printer issue for which both the printer and BMD were turned off. The printer became functional again, but the BMD refused to turn back on. This was not covered in my training or in the troubleshooting guide, so we had to wait for a Dominion tech.

25. Although there was supposed to be a help desk that I could call for issues serious enough to call a Dominion tech, I was never given a link, so I sent in a report to my supervisor every couple of hours about problems we encountered, and I was never told if a Dominion tech would be dispatched or not.
26. Around 10:45 a.m., a technician from Dominion (whose name was Bill or Bob,) finally showed up. Neither the poll manager nor I had been informed that he was coming.
27. He fixed the paper jam in the first printer. For the second unit, he explained that that if you connect the printer to the BMD after the BMD was turned on, it can cause the BMD to shut down. However, even when he turned everything off and turned the printer on before the BMD was turned on, the BMD still did not turn back on. He tried several other things, and finally, when he turned off the UPS and turned it back on again, the BMD worked. This was when the area supervisor said there probably wasn't enough power for all of the machines to power up.
28. As for the 3 BMDs that never turned on in the first place, the Dominion technician said, "I think the batteries (for each BMD) must be too drained to boot up, so in a couple hours, try turning them on again." This did not make sense to me since the BMDs had been connected to power since the day before, and the battery levels all showed 100%. They were not connected to

UPSs, but directly to wall outlets, so if the batteries were at 100% and they were connected to the wall, I felt they should have turned on. The technician told me that if they didn't turn on, I should get permission from Kayla and just box the 3 BMDs up.

29. After the technician left around 11:15 a.m., I asked a poll worker to come with me to check on the 3 BMDs. I asked him to press the same power button that the poll manager, assistant manager, and Dominion tech had all pressed before with no luck, and after several tries all three BMDs turned on. It seems they eventually started working for no apparent reason besides luck.

30. For most of the day, I sat by the Poll Pads. From my vantage point, I noticed that many people didn't seem to even realize that their paper printout was their actual "ballot"; the poll workers had to direct them to the printer and tell them that the printout was their ballot and that they weren't done until it was scanned. A few people then seemed to glance at the printouts, but I never saw anyone carefully verifying their choices on their printout.

31. In total, 84 voters came to vote at the precinct between 7AM and 7PM. There was no wait all day even when half the machines were down, because no more than two voters were present at a time. All of the poll workers told me that had there been nearly as many voters as for the June 9th Primary, it would've been disastrous with all of the technical issues we had at our polling place. With

more voters we would likely have had even more technical issues coming up, and there would have been a line out the door in the morning. Based on what I observed, I believe they are absolutely correct.

32. The reason I believe that we would have many more technical issues had there been more voters is that not only can every piece of equipment possibly fail, but each cable and connection between the pieces of equipment is also a point of possible failure. I feel that a paper jam should not be a technical issue that could result in a BMD not being operational for a prolonged period of time, but this is what I witnessed with the Dominion equipment.

33. Even though I was placed in a polling place as a technician, there were many issues that I could not have resolved, even with training. I believe it was pure luck that the 5 BMDs which went down became functional again, but they could have easily stayed inoperable for the rest of the day, as there was no apparent reason why they came back on when they did.

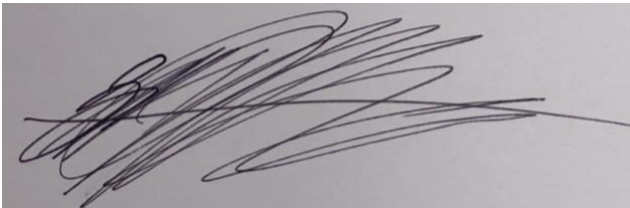
34. Also, even though there were 10 BMDs, only 2 UPCs (back-up batteries) were supplied. Had there had been a power outage, only 4 BMDs would've had back-up power. With an unprecedented voter turnout predicted in November, I fear the Dominion equipment cannot be relied on and there will be long lines again like there were in June.

35. Lastly, it took a long time to generate a report from the Poll Pads for just the

84 voters at the end of the day. The poll workers had to sit and wait for 5 minutes while it loaded the number of check-ins, which is very long time for a computer to load such simple information. If the amount of time it takes to load check-ins depends on the number of voters, it could take much longer for the report to be generated if there are thousands of voters at a precinct in November.

36. As a first-time temporary technician, my overall impression is that the technical issues we experienced would have been exacerbated by a larger number of voters, and caused exceedingly long wait times.

Executed August 18th, 2020

A rectangular area containing a handwritten signature in black ink. The signature is highly stylized and appears to be 'JP' followed by some illegible scribbles.

John Peterson

(Exhibit 1 on next page)

John T. Peterson Exhibit 1: Dominion Voting Technician advertisement posted on social media

HELP WANTED

DOMINION VOTING
Our customers come first.

HIRING FIELD SUPPORT TECHNICIANS @ \$18/HOUR
Earn \$400 for three days of work including paid training

Short-term assignment for the August 11 run-off election

- COVID symptom screening and PPE provided
- Election-day work at polling sites in Cobb, DeKalb, Fulton, Gwinnett and Chatham counties

REQUIREMENTS

- 16+ years of age with reliable means of transportation
- Comfortable using tablets, computers, printers and scanners
- Positive attitude, excellent people skills, desire to help others
- Cannot be actively involved in a campaign on the August 11 ballot

For more details or to apply, visit
www.helpgaelections.com

APPLY BY AUG. 1

DECLARATION OF MICHAEL STIPPICH

MICHAEL STIPPICH, hereby declares under penalty of perjury, pursuant to 28 U.S.C. (s) 1746, that the following is true and correct:

1. My name is Michael Stippich.
2. I am over the age of 18 and competent to testify if called on to do so. I have personal knowledge of the facts reported herein.
3. I am a registered voter in Fulton County and voted on Election Day in the August 11th election at 768 Hank Aaron DR SE, Fanplex polling place
4. Earlier this year on June 9th election I voted at the same location on Election Day. The lines were so long it took me about 3 hours to vote. This polling place added new precincts that had recently closed.
5. I went to the polling place on August 11th earlier than I had previously to hopefully avoid long lines. This time there was no line. When I saw no lines, I assumed I would be in and out within five minutes. That was not the case.
6. I first arrived and handed my license to the poll workers to check in. While checking me in, the poll worker told me that the PollPads showed an error for my precinct. After a few minutes of getting the same error they asked me to wait and sit off to the side while they tried to figure this out. My precinct was 01F
7. A few more people from my precinct showed up and all had similar issues. I ended up waiting 40 minutes before the poll manager finally got a hold of someone from the county who could offer some sort of help.
8. I overheard the conversation because the poll manager had the phone on speaker. From what I heard, the county official kept telling the poll workers the same thing, that "this is not an issue" or when asked what was the password to overwrite the issue the answer was "there is no password, there is no issue."
9. The poll manager finally managed to get a password from someone from the county and called those of us back to try checking us in again on the PollPads. At that time, I had been waiting at least 45 minutes.
10. They finally could use the password to allow the PollPad to check us in at the location our precinct was supposed to be registered to. However, the worker told me that the system was now saying that we couldn't vote because we had applied for an absentee ballot.
11. I never applied for an absentee ballot and have always voted in person. I explained to them I did not ask/register for an absentee ballot.
12. I observed the situation happening to all the voters waiting from my precinct.
13. I ended up having to vote a provisional ballot, even though I was at my correct polling location and had not requested an absentee ballot.
14. Something that should have taken me 5 minutes ended up taking over an hour. I still am unsure if they fixed the problem for the rest of the day. This is incredibly problematic that an entire precinct would be forced to vote provisional because the check in machines were not working and there was no updated paper back up polling list. Luckily, this happened during the runoff election when there was no line.

15. It was frustrating to me to experience these issues. I just want to vote, to be a part of the system that's supposed to be created to give us all an equal say in these events. I just want our voices to be heard, but right now it just feels like we are being muted and not treated equally.

Executed on August 16, 2020

A handwritten signature in black ink, appearing to read 'M Stippich', written over a horizontal line.

Michael Stippich.

DECLARATION OF SAMANTHA WHITLEY

SAMANTHA WHITLEY, hereby declares under penalty of perjury, pursuant to 28 U.S.C. (s) 1746,

that the following is true and correct:

1. My name is Samantha Whitley.
2. I am over the age of 18 and competent to testify if called on to do so. I have personal knowledge of the facts reported herein.
3. I am an analyst for the Coalition for Good Governance.
4. On August 11th, I was a poll watcher in Fulton County for both the Constitution and Libertarian parties.. I poll watched as a two-person team with my colleague, Harrison Thweatt. I was also a poll watcher during the June 9, 2020 election and provided a declaration. (Doc. 755 at 124). In my work as an analyst for Coalition for Good Governance, I worked with Harrison helping organize and analyze his documentation from his extensive poll watching during both the June 9 and August 11, 2020 elections.
5. We first poll watched at the Fanplex polling location in Fulton county. We arrived at 7:45.

Errors in PollPads for Precinct 01F

6. After poll watching for about ten minutes, one voted (voter 1) came in and the electronic Pollbook would not check in the voter. I heard the poll worker saying that the PollPad claimed he was “out of precinct.”
7. The pollworker said the problem was that the precinct he was in, 01F, was assigned to the Fanplex polling location. The poll worker was confused as to why the PollPad was showing he was out of precinct, even though precinct 01F was assigned to Fanplex. The poll manager

came to help and claimed she had to override the PollPad, but she did not have the proper password. She told the voter to go sit down while she called the county.

8. She called the county on speaker phone, so I could hear everything she was saying. She remained on hold for quite a while.
9. While she was on hold, a second voter (voter 2) was voting on a BMD. Both Harrison and I could see her touchscreen. The screen turned black with a white error box in the middle. I was unable to read the small font, but a poll worker called over the Dominion tech, who was a teenager. I could see that he was playing his Nintendo switch during the entire time we were poll watching at FanPlex. The poll worker made him go to the voter to help her, but he just went over, looked at the screen, and walked away saying he wasn't trained to do that. He went back to playing his game.
10. Then the assistant poll manager went and pressed some displayed choices on the screen and the box went away. I noticed this happening to at least 3 other voters.
11. Another problem associated with this was that anyone waiting in line or behind the BMDs could clearly observe the voters' votes on the touchscreen. I could see exactly what was happening on the screen and Harrison and I discussed how we and others could see voters' private choices on the screens from at least 24 feet away.
12. Two more voters from the 01F Precinct arrived by 8:40 am. Both were unable to check in because the PollPads apparently treated 01F as out of precinct, even though the county had assigned 01F to this location. By 8:47, four voters were waiting.
13. Every voter we observed from precinct 01F was unable to check in. At 8:52, the poll manager finally got on the phone with a county official and eventually was given a passcode

to “override” the PollPad system. I heard this conversation because the poll manager remained on speaker phone.

14. I do not know what is meant by “overriding” the PollPad system. However when the poll worker took the steps apparently instructed by the county, and “overrode” the system, she hung up with the official.
15. However, when they tried again to check in the first voter and a third voter, both PollPads showed that they had received absentee ballots. The third voter is Michael Stippich, who provided his declaration of this event. I heard both voters swear they did not receive absentee ballots. This was the case for all four voters from the 01F precinct that I observed.
16. The poll manager asked for them all to sit back down while she called the county to see what to do. Around twenty minutes later the first two voters voted provisionally and then left. One voter expressed her frustration with the process, left and did not vote during the time I was at the precinct
17. By 10:00 am, the poll manager said that she was told by county officials that any voter from 01F should fill out a voter certificate, write down their drivers’ license name and number on a sheet of paper for the poll manager, and then could vote on an emergency ballot that could be scanned.
18. The poll workers were using a paper list to check registered voters’ names after the PollPad brought their name up, but the list was dated June 9th, 2020 and not August 11th, 2020. I saw the printed date on the top on the paper list. I found that to be very problematic.
19. While I believe using emergency ballots is preferable to issuing provisional ballots when the voter can be proven eligible, if the polling location had an updated paper voter list to use as a backup, these voters wouldn’t have had to wait over 45 minutes to vote.

20. Also, I was concerned that issuing ballots in the polling place based on a list dated in early June would not account for newly registered voters or show whether a voter had already voted in early voting or mail ballot voting.
21. After 10:00, almost every voter from 01F was able to vote via emergency ballots. I only observed one voter after 10:00 am that experienced difficulties checking in.
22. Another problem I observed was that a man tried to check in, but the PollPad would not recognize and scan his official voter ID card. The man had no license, his only form of ID was the voter ID card. He was forced to vote provisionally.

BMD Printing Test Ballots During Voting

23. While Harrison and I were observing people voting on the BMDs, at FanPlex, we noticed that a printer had printed more than one paper ballot. We discussed our concern, as the printers are supposed to print the ballot on one sheet.
24. We informed a poll worker of what we saw, her name was Ashley. She told me that has been happening all day, either the voter just leaves the paper by the BMD or the poll workers go around and collect it. She said not to worry, as it was simply a test ballot. She showed us the test paper, it said on the top "test ", but had a barcode underneath it. When Harrison and I went to the BMDs to observe the public count, we observed these test copy papers at approximately 7 BMD stations.
25. While observing for over four hours, I observed that very few voters made the effort to look at their printed ballot before casting it into the scanner. I did not hear or observe poll workers advising voters to review their ballot.

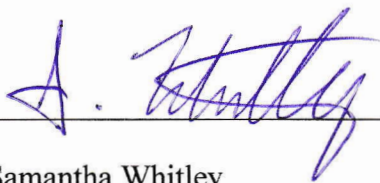
26. This followed what I saw on June 9th while poll watching. At JC07 in Fulton, Cross Keys in Dekalb, the Gwinnett Water Department in Gwinnett, and at Howard B Stroud Elem School in Athens Clarke, I observed less than 5% of voters reviewing their ballots before casting it into the scanner.

Southeast Library Polling Place

27. We left the polling location around 11:30. Around 2:00 we went to the Southeast Library polling location. There was no one voting when we arrived and we only stayed for 15 minutes.

28. The voting location room was small with 10 BMDs crammed in addition to two scanners, poll pads, and numerous poll workers. It was set up where the BMD carriers were against one wall directly across from the poll workers checking voters in. Due to the small room, any person checking in or any poll worker could easily see how people vote due to the large screens. Especially with COVID, there were no social distancing procedures able to be put in place in such a small room.

Executed this 16th day of August 2020



Samantha Whitley

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

**DONNA CURLING, ET AL.,
Plaintiffs,**

v.

**BRIAN KEMP, ET AL.,
Defendants.**

Civil Action No. 1:17-CV-2989-AT

**PROPOSED ORDER GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION ON PAPER POLLBOOK BACKUPS**

This matter is before the Court on the Motion for Preliminary Injunction of Plaintiffs Coalition for Good Governance, William Digges III, Laura Digges, Megan Missett, and Ricardo Davis (the "Coalition Plaintiffs"), relating to paper pollbook backups. This relief was originally sought in the Coalition Plaintiffs' October 23, 2019 Motion for Preliminary Injunction (Doc. 640), which this Court dismissed without prejudice on August 7, 2020 (Doc. 768).

Upon considering the motion and supporting authorities, the response from the Defendants, and the evidence and pleadings of record, the Court finds that Plaintiffs are likely to succeed on the merits of their claims, that they will be irreparably harmed if this motion is not granted, that the balance of equities tip in

Plaintiffs' favor, and that an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

The Court accordingly GRANTS the motion and issues the relief set forth below.

UNTIL FURTHER ORDER OF THIS COURT:

Effective immediately, the Secretary shall direct every county election superintendent (1) to provide at each polling place at least one paper back-up of the pollbook for use on Election Day, which paper back-up shall be updated after the close of absentee in-person voting (early voting); (2) to use the paper back-up of the pollbook in the polling place to attempt to adjudicate voter eligibility and precinct assignment; (3) to allow voters who are shown to be eligible electors on the paper pollbook backups to cast an emergency ballot that is not to be treated as a provisional ballot; and (4) to take every reasonable measure to ensure that county election officials and pollworkers are trained as to how to generate and use paper pollbook backups and emergency ballots in conformity with this Order.

SO ORDERED this ____ day of _____, _____.

U.S. District Court Judge Amy Totenberg