



April 7, 2020

**Via Email Only**

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Subject: Objections to Violation of Sections 203 and 4(e) of the  
Voting Rights Act of 1965; Failure to Mail Absentee Ballot Applications to  
Gwinnett County's Limited English Proficient, Spanish Speaking Voters

Dear Secretary Raffensperger, Director Harvey, Members of the Gwinnett County Board of  
Elections, Mr. Germany and Mr. Ludwiczak:

On behalf of the Lawyers' Committee for Civil Rights Under Law, Georgia Association of  
Latino Election Officials (GALEO), Georgia Coalition for the People's Agenda (GCPA), Asian  
Americans Advancing Justice – Atlanta (Advancing Justice), New Georgia Project (NGP) and  
Common Cause, we are writing to object to sending English-only absentee ballot applications to  
Gwinnett County's limited English proficient Spanish speaking voters during the week of March  
30. This action violates Sections 203 and 4(e) of the Voting Rights Act of 1965.



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To ensure that this violation is remedied immediately because of the upcoming May 19<sup>th</sup> elections and the need for these voters to have a viable option to vote absentee due to the serious health risks posed by voting in-person as a result of the COVID-19 pandemic, we are demanding that you **commit in writing by noon on April 8, 2020** to take the following immediate remedial action:

- 1) Mail an accurately translated Spanish language version of Georgia's absentee ballot application form to all of Gwinnett County's active voters **by no later than 5:00 p.m. on April 10, 2020**. If that is impracticable under the circumstances, a legitimate alternative could include mailing the Spanish language version of the form to voters residing in all Gwinnett County precincts having 5% or more of voters who identified as Hispanic on their voter registration cards and to all voters who self-identified as "Hispanic/Latino" when they registered to vote **by no later than 5:00 p.m. on April 10, 2020**. We also demand that a Spanish language application be mailed to all voters who request one within one day of the request and that voters be informed about the online availability of the form; and,
- 2) Post an accurately translated downloadable Spanish language version of Georgia's absentee ballot application form on the websites of the Secretary of State and Gwinnett County's Board of Registrations and Elections with prominent instructions in Spanish language directing Spanish speaking voters to the location of the form on the websites and ensuring that the form is readily visible along with all other Spanish language election materials and voting forms **by no later than 5:00 p.m. on April 8, 2020**.

Due to the imminent close of voter registration for the May 19<sup>th</sup> presidential preference primary election; local, county, state and Congressional primaries; and non-partisan elections, we are requesting that you commit to undertake this remedial action by no later than noon on April 8, 2020. Should you fail to do so, we and the organizations described above, shall reserve all rights in this matter, including the right to seek formal legal remedies.

### **Summary of the Relevant Facts**

On March 14, 2020, Georgia Secretary of State, Brad Raffensperger, announced the postponement of voting in Georgia's March 24, 2020 presidential preference primary until May 19, 2020 due to the increasing threat to public health posed by the spread of the



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COVID-19 virus in Georgia.<sup>1</sup> The postponement of the presidential preference primary to May 19, 2020, coincides with local, county, state and Congressional primaries and non-partisan general elections that are scheduled to take place on the same date.<sup>2</sup>

Subsequently, on March 24, 2020 as the COVID-19 virus continued to spread in Georgia, Secretary Raffensperger announced that his office would take the unprecedented action to mail absentee ballot application forms to all of Georgia's active voters for the May 19, 2020 elections.<sup>3</sup> In a lengthy statement posted to the Secretary of State's website, Secretary Raffensperger said this action was taken "to protect the public health of Georgia voters while also upholding the integrity of the vote" and that "these temporary steps are being made because of the COVID-19 pandemic threatening public health in Georgia and around the world."<sup>4</sup> Secretary Raffensperger also stated:

Times of turbulence and upheaval like the one we Georgians face require decisive action if the liberties we hold so dear are to be preserved," said Raffensperger. "I am acting today because the people of Georgia, from the earliest settlers to heroes like Rev. Dr. Martin Luther King, Jr. and Congressman John Lewis, have fought too long and too hard for their right to vote to have it curtailed. Georgia has faced challenges before and overcome them, and we can do so again through the grit and ingenuity that has made America a shining example for democracies around the world."<sup>5</sup>

While it is commendable that Secretary Raffensperger decided to undertake this initiative to encourage Georgia's active voters to participate by absentee ballot in the May 19<sup>th</sup> election, he apparently neglected to consider the fact that Gwinnett County has been a covered jurisdiction under Section 203 of the Voting Rights Act since December 2016 due to its growing Hispanic population and that limited English proficient, Spanish speaking voters in Gwinnett County are

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<sup>1</sup> Greg Bluestein Mark Niese, *Georgia delays presidential primary due to coronavirus pandemic*, Atlanta Journal Constitution, March 14, 2020, accessible at: <https://www.ajc.com/news/state--regional-govt--politics/georgia-delay-presidential-primary-due-coronavirus-pandemic/0vJZpHIHdPQdPEda6GtvCP/>

<sup>2</sup> *Id.*

<sup>3</sup> Georgia Secretary of State's website, "Raffensperger takes unprecedented steps to protect safety and voter integrity in Georgia," [https://sos.ga.gov/index.php/elections/raffensperger\\_takes\\_unprecedented\\_steps\\_to\\_protect\\_safety\\_and\\_voter\\_integrity\\_in\\_georgia](https://sos.ga.gov/index.php/elections/raffensperger_takes_unprecedented_steps_to_protect_safety_and_voter_integrity_in_georgia) (last accessed 4/5/2020).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*



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entitled to receive Spanish language voting and elections materials so that they may participate in these elections in an effective and meaningful way. According to the 2018 American Community Survey 5-Year Estimates, there are approximately 13,937 limited English proficient Spanish speaking citizens of voting age in Gwinnett County, and 71,924 such individuals in Georgia.

Secretary Raffensperger also apparently neglected to consider the right of Gwinnett County's Puerto Rican educated, limited English proficient Spanish speaking voters to receive a Spanish language version of the absentee ballot application form under Section 4(e) of the Voting Rights Act.<sup>6</sup> According to the 2018 American Community Survey Public Use Microdata Estimates, there are approximately 6,288 voting age citizens who are Puerto Rican in Gwinnett County, and 50,740 such individuals in Georgia.

It appears that Gwinnett County also failed to mail a Spanish language version of the form to the county's limited English proficient Spanish speaking voters as required by Sections 203 and 4(e) to fill the minority language assistance gap left by the failure of the Secretary of State's office to include a Spanish language version of the form when it mailed the English only version to Gwinnett County's voters during the week of March 30, 2020.

Compounding the failure by both the Secretary of State and Gwinnett County to proactively mail the Spanish language version of the form to Gwinnett County's limited English proficient Spanish speaking voters is the fact that the Spanish language version of the form is not readily visible and accessible to Spanish speaking voters on the Gwinnett County Elections' website and is not offered at all to voters on the Secretary of State's website.

Currently, only the English language version of the form appears at the link on the election forms page of the Gwinnett County Elections' website.<sup>7</sup> In order to access the Spanish language version of the form, a Spanish speaking voter would have to know to scroll down to the bottom of the English only page and click a white rectangular box marked "English. >" in order to open a menu that provides a link to the Spanish language form.

In addition, the version of the Spanish language form on the Gwinnett County Elections' website is not an accurate translation of the English version. For example,

- Under the section titled "Election Date," there is a phrase in the English version of the form that reads "I hereby request a ballot be issued to me *for the following*

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<sup>6</sup> Federal Register, Vol. 81, No. 233, Monday, December 5, 2016, Notices, accessible at: <https://www.justice.gov/crt/file/927231/download>

<sup>7</sup> <https://www.gwinnettcountry.com/web/gwinnett/departments/elections/onlineelectionsforms>



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- *election.*" The Spanish language version of the form suggests that ballots may be requested for multiple elections: "Por la presente solicito que se me emita una boleta para las siguientes elecciones."
- Under the section titled, "Election Date", the English version of the form reads: "General Primary Election Runoff," while the Spanish version reads: "Elecciones primarias generales desempate." The Spanish language translation is awkward. A better translation of "General Primary Election Runoff" is: "Desempate para las elecciones primarias generals."
- In the section titled, "Mail ballot to my temporary out-of-county address," the Spanish version reads: "Boleta por correo a mi dirección temporal fuera del condado." This translation is also awkward. A better translation is: "Enviar la boleta a mi dirección temporal fuera del condado".

There is also a link to a "Language Assistance" page on the Gwinnett County Elections' website that is in English only and the Spanish version of the page is not readily visible. A Spanish speaking voter would have to know to scroll down to the bottom of that page and click the rectangular box marked "English >" to access the page translated into Spanish language.<sup>8</sup>

The combined failure of the Secretary of State and Gwinnett County to send Spanish language versions of the absentee ballot application form to Gwinnett County's limited English proficient, Spanish speaking voters, along with the lack of adequate Spanish language instructions on the Gwinnett County Elections' website directing Spanish speaking voters to the absentee ballot application form, denies Gwinnett County's limited English proficient, Spanish speaking voters equal access to the absentee ballot application form.

The failure to provide Gwinnett County's Spanish speaking voters with equal access to a Spanish version of the form necessary to obtain an absentee ballot is particularly problematic for Gwinnett voters who lack access to the internet, a computer, printer or other means of access to the absentee ballot application form from their homes. In addition, access to the absentee ballot application form has become even more problematic for Gwinnett County's Spanish speaking voters who do not have the technological capacity to print the applications at home because the Executive Order issued by Governor Brian Kemp on April 2, 2020 that went into effect at 6:00 p.m. on April 3, 2020 requires Georgians to "shelter in place" and imposes severe restrictions on the ability of Georgians to conduct business for any reasons other than in connection with

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<sup>8</sup> <https://www.gwinnettcountry.com/web/gwinnett/Departments/Elections/LanguageAssistance>



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“essential services” specified in the Order.<sup>9</sup>

### Summary of the Relevant Law

#### A. Georgia State Law Concerning Absentee Voting

In order to vote by mail in Georgia, a registered voter is required to submit an absentee ballot application form to their county registrar by no later than the Friday prior to an election. O.C.G.A. § 21-2-381. If the registrar or absentee ballot clerk determines that the applicant is eligible to vote, an absentee ballot is mailed to the applicant or is provided to the applicant in person if the applicant chooses to vote absentee in person during the early voting period.

In the event the registrar or absentee ballot clerk determines that the applicant is not currently registered to vote, O.C.G.A. § 21-2-381(b)(5), requires the absentee ballot clerk or board of election to *immediately mail* a blank registration card to the applicant. If otherwise qualified, the applicant shall be deemed eligible to vote by absentee ballot in such primary or election, if the registration card, properly completed, is returned to the clerk or the board on or before the last day for registering to vote in such primary or election. In this case, that deadline is April 20, 2020 for the May 19<sup>th</sup> election.

If the closing date for registration for the May 19<sup>th</sup> election has not passed, the clerk or registrar shall also mail an absentee ballot to the applicant, as soon as it is prepared and available; and the ballot shall be cast in such primary or election if returned to the clerk or board not later than the close of the polls on the day of the primary or election concerned.

Thus, the proactive mailing of the absentee ballot applications to Georgia’s active voters provides an added benefit to voters who move outside of their county of registration more than thirty days before the election because it gives them an opportunity to both register in their new county and vote by absentee ballot in the May 19<sup>th</sup> election if they are able to return the voter registration card sent to them pursuant to O.C.G.A. § 21-2-381(b)(5) by the close of registration on April 20<sup>th</sup>.

However, the limited English proficient, Spanish speaking voters in Gwinnett County were denied this opportunity due to the failure of the Secretary of State and Gwinnett County to send them the Spanish language version of the absentee ballot application form as part of the mass mailing of the English only version of the form during the week of March 30<sup>th</sup>. Even now, their

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<sup>9</sup> Georgia Governor Brian Kemp’s Executive Order, <https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders>, April 2, 2020.



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ability to submit the new registration card by the close of registration on April 20<sup>th</sup> has been severely compromised by this delay.

## **B. Summary of the Applicable Federal Law**

### **1. Section 203 of the Voting Rights Act**

Congress' primary purpose in enacting Section 203 of the Voting Rights Act was to protect the voting rights of language minority citizens who would otherwise be effectively excluded from participation in the electoral process because of unequal educational opportunities that resulted in high illiteracy rates and low voting participation. 52 U.S.C. § 10503(a).

Subsection (b) of Section 203, prohibits States and political subdivisions covered by Section 203 from providing voting materials only in the English language. Subsection (c) of Section 203 further provides that:

Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language.

52 U.S.C. § 10503(c).

Examples of voting materials that courts have determined to be subject to the language requirements of Section 203 have included a voter information pamphlet explaining changes in election format, registration and voting times, and voting places; and a citizen-sponsored county initiative. See *U.S. v. Metropolitan Dade County, Fla.*, 815 F. Supp. 1475 (S.D. Fla. 1993)(voter information guide)and *In re County of Monterey Initiative Matter*, 427 F.Supp.2d 958 (N.D. Cal. 2006)(citizen-sponsored initiative).

Since the limited English proficient, Spanish speaking voters of Gwinnett County were mailed an English only version of the absentee ballot application form and envelope, it appears clear that the Secretary of State and Gwinnett County are liable for their failure to ensure that the requirements of Section 203 were carried out in the proactive mass mailing of the absentee ballot applications to all of Georgia's active voters.



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

Section 4(e) of the Voting Rights Act of 1965 (52 U.S.C. §10303(e)) protects the voting rights of persons educated in “American-flag schools” in languages other than English, by prohibiting the States from conditioning the right to vote of such individuals on the ability to read or understand English. *Katzenbach v. Morgan*, 384 U.S. 641, 645 & n.3, 652 (1966).

Under Section 4(e), States are required to provide Spanish language voting materials and language assistance to all persons who attended school in Puerto Rico and are unable to vote effectively in English. *United States v. Berks Cty.*, 277 F. Supp. 2d 570, 579 (E.D. Pa. 2003).

In *Rivera Madera v. Lee*, Case No. Case No. 1:18-cv-152-MW/GRJ, 2019 WL 2077037 (N.D. Fla. May 10, 2019), the court granted the plaintiffs’ motion for a preliminary injunction in a case challenging the failure of certain Florida counties to provide language assistance to limited English proficient Puerto Rican educated voters. Among the remedies ordered by court was the requirement that voters be given access to Spanish language absentee ballot application forms and envelopes.

Neither the Secretary of State, nor Gwinnett County, took any action to ensure that limited English proficient, Spanish speaking Puerto Rican educated voters in Gwinnett County received the absentee ballot application in Spanish language when it was mailed out by the Secretary of State’s office to all of Georgia’s active voters. Clearly, they were entitled to receive this critical document in a Spanish language version to ensure that they can effectively exercise their right to vote absentee in the May 19<sup>th</sup> election – particularly in the face of the increasing health threat posed by in-person voting due to the COVID-19 public health crisis.

### C. Demand for Remedial Action

Given this clear violation of the minority language requirements of the Voting Rights Act, we demand that you **commit in writing by noon on April 8, 2020 to do the following:**

- 1) Mail an accurately translated Spanish language version of Georgia’s absentee ballot application form to all of Gwinnett County’s active voters **by no later than 5:00 p.m. on April 10, 2020**. If that is impracticable under the circumstances, a legitimate alternative could include mailing the Spanish language version of the form to voters residing in all Gwinnett County precincts having 5% or more of voters who identified as Hispanic on their voter registration cards and to all voters who self-identified as “Hispanic/Latino” when they registered to vote **by no later than 5:00 p.m. on April 10, 2020**. We also demand that a Spanish language application be mailed to all voters



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who request one within one day of the request and that voters be informed about the online availability of the form; and,

- 2) Post an accurately translated downloadable Spanish language version of Georgia's absentee ballot application form on the websites of the Secretary of State and Gwinnett County's Board of Registrations and Elections with prominent instructions in Spanish language directing Spanish speaking voters to the location of the form on the websites and ensuring that the form is readily visible along with all other Spanish language elections materials and voting forms **by no later than 5:00 p.m. on April 8, 2020.**

Please contact the undersigned **by no later than noon on April 8, 2020** to confirm whether you intend to immediately implement the remedial action we have demanded in this letter. If we do not reach a satisfactory informal resolution of this matter by that time, we and the organizations we represent in this matter will reserve all of our rights to take any and all action necessary.

Thank you for your attention and anticipated cooperation.

Very truly yours,

Lawyers' Committee for Civil Rights Under Law

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