

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

COAKLEY PENDERGRASS; TRIANA
ARNOLD JAMES; ELLIOTT
HENNINGTON; ROBERT RICHARDS;
JENS RUECKERT; and OJUAN GLAZE,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State;
SARA TINDALL GHAZAL, in her
official capacity as a member of the State
Election Board; ANH LE, in her official
capacity as a member of the State Election
Board; EDWARD LINDSEY, in his
official capacity as a member of the State
Election Board; and MATTHEW
MASHBURN, in his official capacity as a
member of the State Election Board,

Defendants.

CIVIL ACTION FILE
NO. 1:21-CV-05339-SCJ

**PLAINTIFFS' OBJECTIONS TO DEFENDANTS' LISTS OF WITNESSES
AND EXHIBITS FOR PRELIMINARY INJUNCTION PROCEEDINGS**

Pursuant to the Court's coordinated order of January 28, 2022, *see* ECF No. 51, Plaintiffs respectfully submit the following objections to certain witnesses that Defendants expect to call to testify in connection with the preliminary injunction

hearing anticipated to commence on February 7, 2022. In support of such objections, Plaintiffs show the Court as follows:

1. Defendants' lists of witnesses and exhibits dated January 31, 2022, *see* ECF No. 52, stated that they plan to call the following individuals to testify as "expert witness[es]" at the preliminary injunction hearing: John Morgan, Lynn Bailey, Gina Wright, and Dr. John Alford. *Id.* at 1.¹

2. Defendants filed no expert reports in connection with their lists of witnesses and exhibits. *See id.* at 2–3.

3. Although Defendants previously submitted witness declarations in connection with their response in opposition to Plaintiffs' motion for preliminary injunction, they did so on behalf of only Mr. Morgan and Michael Barnes. *See* ECF Nos. 40-1, 40-2.

4. The Court's coordinated order set a deadline of January 31, 2022, for the parties to file "a numbered list of exhibits, with any exhibits not previously submitted attached." ECF No. 51 at 2. Defendants' failure to timely file expert reports on behalf of Ms. Bailey, Ms. Wright, and Dr. Alford in advance of this deadline runs afoul of Federal Rule of Civil Procedure 26(a)(2)(B).

¹ Ms. Wright has been designated as both "an expert and fact witness on mapdrawing and demographics." ECF No. 52 at 1. Michael Barnes, while not specified as an expert or fact witness, does not appear to be testifying in an expert capacity. *See id.*

5. Rule 26(a)(2)(B) provides that “[u]nless otherwise stipulated or ordered by the court, [expert] disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party’s employee regularly involve giving expert testimony.”

6. Courts have ruled that Rule 26’s requirements pertaining to expert reports apply to preliminary injunction proceedings. *See, e.g., Radiant Glob. Logistics, Inc. v. Furstenuau*, 368 F. Supp. 3d 1112, 1117 (E.D. Mich. 2019); *Spurlock v. Fox*, No. 3:09-cv-0756, 2010 WL 3807167, at *5–6 (M.D. Tenn. Sept. 23, 2010); *cf. Midwest Guar. Bank v. Guar. Bank*, 270 F. Supp. 2d 900, 908 n.2 (E.D. Mich. 2003) (suggesting that strict compliance with Rule 26 is not required in preliminary injunction proceedings where expert nevertheless filed declaration). Applying Rule 26’s requirements to preliminary injunction proceedings is consistent with the purpose of the rule: “reducing unfair surprises to the opposing party.” *Nitta v. United States*, No. 2:17-cv-01137-GMN-CWH, 2019 WL 8272658, at *5 (D. Nev. June 28, 2019).

7. Defendants’ failure to timely file expert reports significantly prejudices Plaintiffs because, among other reasons, Plaintiffs have no means to discern the scope and substance of the experts’ testimonies or assess the experts’ reliability and

qualifications, and thus Plaintiffs cannot adequately prepare cross-examinations or otherwise challenge the experts' participation in this case.

8. Plaintiffs therefore object to Defendants calling Lynn Bailey, Gina Wright, and Dr. John Alford as expert witnesses in connection with the preliminary injunction hearing anticipated to commence on February 7, 2022. Plaintiffs move to strike Ms. Bailey, Ms. Wright, and Dr. Alford from Defendants' witness list and preclude their expert testimonies.

9. In the alternative, Plaintiffs request that the Court (1) order Defendants to submit expert reports by Ms. Bailey, Ms. Wright, and Dr. Alford by no later than 12:00 p.m. (EST) on Friday, February 4, 2022, and (2) provide Plaintiffs additional time as needed to meaningfully cross-examine each expert witness.

Dated: February 2, 2022

By: /s/ Joyce Gist Lewis

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing Plaintiffs' Objections to Defendants' Lists of Witnesses and Exhibits for Preliminary Injunction Proceedings with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: February 2, 2022

/s/ Joyce Gist Lewis
Counsel for Plaintiffs