

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

**DEBORAH GONZALEZ, APRIL BOYER  
BROWN, LINDA LLOYD, ADAM  
SHIRLEY, and ANDREA WELLNITZ,**

**Plaintiffs,**

**v.**

**BRIAN KEMP, GOVERNOR OF THE  
STATE OF GEORGIA, and BRAD  
RAFFENSPERGER, SECRETARY OF  
STATE, STATE OF GEORGIA,**

**Defendants.**

**Civil Action No. 20-cv-2118-  
MHC**

**SUPPLEMENTAL BRIEF SUPPORTING  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Deborah Gonzalez, April Boyer Brown, Linda Lloyd, Adam Shirley, and Andrea Wellnitz file this Supplemental Brief to provide the Court with evidence of recent district attorney vacancy appointments pursuant to the Georgia Statute at issue in this matter, O.C.G.A. § 45-5-3.2 (the "2018 Law"). Two June 2020 district attorney appointments illustrate how Governor Kemp is using the

2018 law, and timing his appointments, for the sole purpose of taking from citizens their right to vote for district attorney.

1. Griffin Judicial Circuit District Attorney

The Griffin Judicial Circuit District Attorney (“Griffin District Attorney”) position became vacant in early 2020 when Governor Kemp appointed then-District Attorney Benjamin Coker to fill a vacancy on the Griffin Judicial Circuit Superior Court. In a February 18, 2020 press release, Governor Kemp announced his selection of Mr. Coker to serve as a Griffin Superior Court judge. In the same press release, Governor Kemp “announced his selection of . . . Marie G. Broder to serve as the new Griffin Judicial Circuit District Attorney.”<sup>1</sup> Had Governor Kemp promptly – or at any time prior to May 3, 2020 – formally appointed Ms. Broder to be the Griffin Judicial Circuit District Attorney, then Ms. Broder would serve through December 31, 2020, and her successor, whose term would begin January 1, 2021 would be elected by the voters in the already-scheduled 2020 elections. Ga. Const. Art. VI, Sec. VIII, Par. I(a); O.C.G.A. § 45-5-3.2.

Instead of acting promptly, Governor Kemp waited until June 3, 2020 to formally appoint Ms. Broder as district attorney.<sup>2</sup> Though the governor formalized

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<sup>1</sup> The facts in the first 3 sentences of this paragraph are supported by <https://gov.georgia.gov/press-releases/2020-02-18/kemp-names-appointments-griffin-judicial-circuit>.

<sup>2</sup> Governor Kemp Executive Order dated June 3, 2020, Exhibit A hereto.

Judge Coker's appointment on March 5, 2020<sup>3</sup> and Ms. Broder was filling the vacancy created by his departure, Ms. Broder served as "Acting District Attorney" for 3 months before Governor Kemp made her appointment official.<sup>4</sup> Because Ms. Broder's formal appointment occurred after May 3, 2020, the 2018 Law dictates that the scheduled election for Griffin Judicial Circuit District Attorney, for the four-year term beginning January 1, 2021, be cancelled because Ms. Broder will serve until the end of 2022.

As in this case, the Secretary of State had either uncanny clairvoyance or inside knowledge because the Griffin Judicial Circuit District Attorney primary was not on the June 9, 2020 ballot even though, at the time those ballots were printed, there was still the possibility that the Governor would formally appoint Ms. Broder *before* June 3, 2020, and an election would have been required.

2. Alcovy Judicial Circuit District Attorney

The Alcovy Judicial Circuit District Attorney ("Alcovy District Attorney") position became vacant on June 2, 2020 when Governor Kemp issued an executive order appointing the Circuit's District Attorney Layla Zon as a Superior Court Judge.<sup>5</sup> Had the vacancy not occurred, the next regularly-scheduled general

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<sup>3</sup> Governor Kemp Executive Order dated March 3, 2020, Exhibit B hereto.

<sup>4</sup> <http://www.dagriffincircuit.org/news>.

<sup>5</sup> Governor Kemp Executive Order dated June 3, 2020, Exhibit C hereto. Governor Kemp announced the appointment in an official press release dated

election would have been November 3, 2020. Pursuant to the 2018 Law, the June 2<sup>nd</sup> vacancy will result in cancellation of the 2020 Alcovy District Attorney race.<sup>6</sup>

Respectfully submitted this 15<sup>th</sup> day of June, 2020.

/s/ Bruce P. Brown  
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Georgia Bar No. 064460  
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May 21, 2020. <https://gov.georgia.gov/press-releases/2020-05-21/gov-kemp-appoints-layla-h-zon-alcovy-judicial-circuit>.

<sup>6</sup> Apparently without inside knowledge as to the timing of this appointment, Secretary Raffensperger included the Alcovy District Attorney race on the June 9, 2020 primary election ballot.

<https://results.enr.clarityelections.com/GA/Newton/103721/web.247524/#/summary>;  
<https://results.enr.clarityelections.com/GA/Walton/103761/web.247524/#/summary>.

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing pleading 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

Georgia Bar No. 064460

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 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

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# THE STATE OF GEORGIA

## EXECUTIVE ORDER

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BY THE GOVERNOR:

IT IS HEREBY ORDERED:

That the Honorable Marie G. Broder of Spalding County, Georgia, be and is hereby appointed to succeed the Honorable Benjamin Coker as District Attorney of the Griffin Judicial Circuit for a term of office ending December 31, 2022.

This 3<sup>RD</sup> day of June, 2020.

A handwritten signature in black ink, appearing to read "B:Ph".

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GOVERNOR



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# THE STATE OF GEORGIA

## EXECUTIVE ORDER

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BY THE GOVERNOR:

**IT IS HEREBY ORDERED:**

That effective immediately, the Honorable Benjamin D. Coker is hereby appointed Superior Court Judge of the Griffin Judicial Circuit to fill the seat created by the passage of House Bill 28 during the 2019 session of the Georgia General Assembly, for a term of office ending December 31, 2022.

THIS 5<sup>TH</sup> DAY OF MARCH, 2020.

A handwritten signature in black ink, appearing to read "B. Ray Lujan".

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# THE STATE OF GEORGIA

## EXECUTIVE ORDER

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BY THE GOVERNOR:

**IT IS HEREBY ORDERED:**

That the Honorable Layla H. Zon is hereby appointed Superior Court Judge of the Alcovy Judicial Circuit to succeed the Honorable Samuel D. Ozburn, for a term of office ending December 31, 2022.

THIS 2<sup>ND</sup> DAY OF JUNE, 2020.

  
GOVERNOR

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