**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE GEORGIA SENATE BILL 202	Master Case No.: 1:21-mi-55555-JPB

INTERVENORS' RESPONSE TO THE AME, GEORGIA NAACP, AND CBC PLAINTIFFS' PRELIMINARY INJUNCTION MOTION

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INTRODUCTION

This Court must presume that the Georgia Legislature acted in good faith when enacting SB 202. To prevail on their claims that Georgia enacted these provisions with a discriminatory intent, Plaintiffs must overcome that presumption and show that the Georgia Legislature enacted the challenged provision "because" they would have a discriminatory effect. *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). Plaintiffs are unlikely to meet this burden.

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Unable to muster evidence to meet their burden, Plaintiffs upend the presumption of good faith by inviting this Court to draw unsupported inferences of racial discrimination. For example, under the guise of applying *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), Plaintiffs argue that SB 202's provisions governing runoffs will have a disparate impact on black voters. *See* Doc. 574-1 at 14-16. They point to the effect the law would have had in 2020 to support this claim, even though that election was "historic" and "record-breaking" in their own telling. *Id.* at 5, 15. Still, they invite this Court to "presume" that the Georgia Legislature not only knew but intended these speculative impacts. *Id.* at 18. Having failed to show this intent, they add on that the Court should infer discriminatory intent because SB 202's runoff changes had "tenuous justifications." *Id.* at 20. Their support for this argument is that some election officials expressed

administrative concerns in opposition. *Id*. And they infer that the Legislature had discriminatory intent because SB 202 was enacted in a "rushed process" and Georgia has a "history of discrimination." *Id.* at 21-22.

Plaintiffs' inferences cannot be reconciled with the presumption of good faith required by the Eleventh Circuit. In fact, the Eleventh Circuit recently issued two decisions upholding Florida's and Alabama's election laws against the same arguments Plaintiffs raise here. *Greater Birmingham Ministries v. Sec'y of State for State of Ala.*, 992 F.3d 1299 (11th Cir. 2021); *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State* (*LWV*), 66 F.4th 905 (11th Cir. 2023). It advised against relying too heavily on impacts to infer discrimination unless there is "a clear pattern, unexplainable on grounds other than race." *Greater Birmingham Ministries*, 992 F.3d at 1322. It explained that "the concerns expressed by political opponents during the legislative process are not reliable evidence of legislative intent," but that is what Plaintiffs rely on to show that the Legislature knew of the alleged impacts and the challenged provisions had tenuous justifications. *LWV*, 66 F.4th at 940. It rejected an inference of discriminatory intent from "procedural maneuverings" like "truncated debate." *Greater Birmingham Ministries*, 992 F.3d at 1326. And it dismissed "an unlimited look-back to past discrimination." *Id.* at 1325.

Even if their claims had merit, Plaintiffs' undue delay bars preliminary relief. Plaintiffs must "show reasonable diligence" to obtain a preliminary

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injunction. *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (per curiam). This Court denied Plaintiffs' request for a preliminary injunction for the 2022 election cycle nearly a year ago. At that time, they did not seek relief from the provisions they now challenge. Instead, Plaintiffs waited until now—several months after this Court's previous preliminary injunction decision—to claim irreparable harm from those provisions. That unjustified delay forecloses relief.

Plaintiffs' request also fails under *Purcell*, which instructs "that a court should ordinarily decline to issue an injunction—especially one that changes existing election rules—when an election is imminent." *Coal. for Good Governance v. Kemp*, 2021 WL 2826094, at *3 (N.D. Ga. July 7). This Court previously looked to the four conditions that a plaintiff must "at least" satisfy under Justice Kavanaugh's opinion in *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring). It denied relief to Plaintiffs because they could not satisfy two of these requirements: the merits were not clearcut in their favor, and the changes they requested would add significant cost and confusion. The same is true here, but Plaintiffs also fail a third factor—undue delay. So *Purcell* bars relief.[1]

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[1] Intervenors join the State's opposition to Plaintiffs' preliminary injunction motion.

ARGUMENT

A preliminary injunction is an "extraordinary and drastic remedy that should not be granted unless the movant clearly carries its burden." *Georgiacarry.org, Inc. v. U.S. Army Corps of Eng'rs*, 788 F.3d 1318, 1322 (11th Cir. 2015). That burden requires Plaintiffs to show a "substantial likelihood" of success on the merits, irreparable injury absent an injunction, that the balance of the equities favors them, and that an injunction favors the public interest. *Id.* But that alone is not enough in cases like this one. Courts must also look to "considerations specific to election cases." *League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022). Those considerations instruct courts not to issue injunctions that could cause disruption and voter confusion close to an election. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). Plaintiffs cannot meet their burden on the merits or on the equities.

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I. Plaintiffs are not likely to succeed on their claims that Georgia's runoff regulations violate the Constitution.

To prevail on their Fourteenth Amendment and Fifteenth Amendment claims, Plaintiffs must show, among other things, that the challenged provisions were enacted with a discriminatory intent. This showing requires "more than intent as volition or intent as awareness of consequences." *Feeney*, 442 U.S. at 279. They must show that the Georgia Legislature enacted the challenged provisions "because of" their discriminatory effect. *Id.* To do this, they

must overcome the presumption that the Georgia Legislature acted in good faith when it passed SB 202. *See Greater Birmingham Ministries*, 992 F.3d at 1325.

After months of discovery, weeks of depositions, and millions of documents exchanged, Plaintiffs have found zero direct evidence of discriminatory intent. Although Plaintiffs can cite "circumstantial and direct evidence of intent as may be available," it still must be "evidence of intent." *Rogers v. Lodge*, 458 U.S. 613, 618 (1982). The only evidence Plaintiffs have is, at best, circumstantial evidence. So they turn to a "chain of inferences," reading between the lines of the evidence they proffer. *LWV*, 66 F.4th at 939.

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Plaintiffs would turn the presumption of good faith on its head. They claim SB 202's runoff provisions would have a "discriminatory impact" on black voters. Doc. 574-1 at 14. And they invite this Court to "presume" that the Georgia Legislature knew of—and intended—that impact. Doc. 574-1 at 18. But every piece of evidence that Plaintiffs say shows racial discrimination requires an inferential leap. At the motion to dismiss stage, the Court drew inferences in Plaintiffs' favor. But at this stage, this Court cannot credit their unsupported inferences. It must instead presume that the Georgia Legislature acted in good faith.

A. Plaintiffs haven't shown disparate impacts.

Plaintiffs lean heavily on the alleged disparate impacts of the challenged provisions. Doc. 574-1 at 14-16. But "it would be rare to find a case" where this factor shows discriminatory intent. *Greater Birmingham Ministries*, 992 F.3d at 1322. Unless there is "a clear pattern, unexplainable on grounds other than race," a disparate "impact alone is not determinative, and the Court must look to other evidence." *Id.* Plaintiffs' alleged disparate impacts fall far below this standard.

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To show a disparate impact from the reduction of time between the general election and runoff, Plaintiffs argue that black voters who were able to register between the general election and runoff in 2020 would not have been able to do so under SB 202. Doc. 574-1 at 15. But by their own account, the 2020 election was a "historic election" where a "record-breaking number" of black voters participated, including "a historic number of Georgians [who] registered to vote" between the general and runoff elections. *Id.* at 15-16. They offer no reason to think that in some future election a group of disproportionally black voters will want to register between the general election and runoff. In fact, their own evidence suggests otherwise. Their expert report notes that 21.8% of the individuals who were ineligible for the 2022 runoff but would have been eligible under the pre-SB 202 schedule were black, but black voters are "31.7% of registrants overall." Pls. Ex. 10, ¶¶170, 176.

Plaintiffs' argument that the reduced early-voting time will have a disproportionate impact on black voters similarly rests on unsupported speculation. They speculate that the reduced early voting time will cause longer lines in urban precincts and those lines will have a disproportionate effect on black voters. This speculation is not only baseless, it conflicts with the actual impacts in the 2022 runoff, which featured "record-breaking" early voting. Georgia Secretary of State, Record Breaking Turnout in Georgia's Runoff Election, https://perma.cc/JN69-439W. In any event, the Eleventh Circuit has rejected this kind of speculation. *League of Women Voters* rejected as "fatally imprecise" evidence that polling places with more black voters were more likely to have "a long wait time at some point during the day." 66 F.4th at 937. "Wait times … can vary dramatically throughout the day," and the evidence did not show "whether black voters are more likely to vote at those polling places when the lines are long or short." *Id*. Plaintiffs' speculation is even more imprecise than the argument in *League of Women Voters*, which at least pointed to the demographics at polling places on particular days.

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B. Plaintiffs failed to show that the Legislature knew of the alleged disparate impacts.

To support their disparate-impact argument, Plaintiffs argue that the Legislature knew about those impacts. Even assuming Plaintiffs had shown

disparate impacts, they have failed to show that the Legislature knew about them.

Plaintiffs first rely on an email sent by the Cobb County Election Director and a statement by a former member of the Secretary of State's office in opposition to SB 202. *See* Doc. 574-1 at 17, 18. But again, the Eleventh Circuit recently rejected the inference that Plaintiffs invite this Court to draw. It explained that "the concerns expressed by political opponents during the legislative process are not reliable evidence of legislative intent." *LWV*, 66 F.4th at 940. That is especially the case where, as here, it is unclear how many legislators "considered the information," or even read it. *Id.*

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Plaintiffs wander even further afield by arguing that "[e]lection officials … had information" about the disparate impact of the law because they had data on the most recent runoff election. Doc. 574-1 at 17. But the question is whether the Legislature acted with "racially discriminatory intent," not what data election officials had available. *Greater Birmingham*, 992 F.3d at 1327. Because that question turns on the knowledge of a "multimember body," information in the hands of election officials is not enough even when "an unspecified number of *individual legislators* requested information by phone, by email, at hearings, and the like." *LWV*, 66 F.4th at 939.

Plaintiffs' next try burden shifting. They argue that the Legislature can be presumed to have intended that SB 202's alleged impacts because they were

natural consequences. This Court, however, must employ "the presumption of legislative good faith." *Id.* at 923. That presumption must be overcome with evidence, not Plaintiffs' invitation to presume discrimination.

C. Plaintiffs offer no support for their assertion that SB 202's timing shows discriminatory intent.

Plaintiffs complain that SB 202 "passed immediately after" successful black electoral efforts that had involved "70,000 Georgians … concentrated in Georgia's four largest counties" registering to vote between the general and runoff election. Doc. 574-1 at 19. Even if that's true, "it is impossible to say whether any relationship is causal based on a mere correlation." *LWV*, 66 F.4th at 932. And that is especially the case when the difference is just as easily explained by partisan differences. *See id.* at 924-25. The same expert report relied on by Plaintiffs notes that "the majority" of individuals who registered to vote between the general and runoff election "identified as Democrats" and that "Biden won by double-digit margins" in the four counties with most of the new registrants. Pls. Ex. 4 at 141.

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At most, Plaintiffs' evidence of statistical disparities shows partisan motive, not racial motive. But "partisan discrimination must not be conflated with racial discrimination." *LWV*, 66 F.4th at 925. "A connection between race and partisan voting patterns is not enough to transform evidence of partisan purpose into evidence of racially discriminatory intent." *Id.* at 931. And "while it

might be suspicious if partisan reasons were the only consideration or justification for the law," those partisan considerations do not weigh against the State when it "has provided valid neutral justifications (combatting voter fraud, increasing confidence in elections, and modernizing [the State's] elections procedures) for the law's passage." *Greater Birmingham Ministries*, 992 F.3d at 1326-27 (footnote omitted). Plaintiffs make no attempt to untangle partisan impact from racial impact.

D. Plaintiffs ignore SB 202's legitimate justifications.

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Plaintiffs try to bolster their case by arguing that the challenged provisions had "tenuous" justifications. Doc. 574-1 at 20. They point out that when proposing a shorter runoff period Representative Wes Cantrell said it would address the "onerous" nine-week runoff. *Id.* To refute this, they point to statements from election officials opposing the change because of administrative concerns. *Id.* at 20-21.

Plaintiffs haven't even identified the justifications for the runoff provisions. To begin, Plaintiffs point to only a single word from a single representative as the justification for these provisions. Stripped of any context, this one word uttered by Rep. Cantrell—"onerous"—gives no insight even to his justification. Even if it did, "[i]t is questionable whether the sponsor speaks for all legislators." *Greater Birmingham Ministries*, 992 F.3d at 1324. "[I]t stretches

logic to deem a sponsor's intent … as *the* legally dispositive intent of the entire body." *Id*. at 1324-25.

Moreover, Plaintiffs have not refuted any justification for the runoff provisions. They point only to statements from election officials citing administrative burdens in opposition to the changes. But "the concerns expressed by political opponents during the legislative process are not reliable evidence of legislative intent." *LWV*, 66 F.4th at 940.

Finally, these opposition statements do not even speak to the justifications for the runoff provisions. Representative Cantrell did not rest his argument for the four-week runoff on a reduction in administrative burdens. He described the runoff as "onerous" because of its impact on candidates and voters, explaining that the change would prevent "having our Christmas and New Year's completely inundated with negative campaigning."[2] That long runoff "hurts our voter engagement because people are tired."[3] That justification is reflected in the text of SB 202, which found that "[t]he lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors." SB 202 §2 (11). While SB 202 discussed "easing the burdens on election officials and electors," it sought to do this by limiting that burden to "a more manageable

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[2] *Hearing Before the H. Spec. Comm. on Election Integrity Subcomm.*, 2021 Ga. Leg., 2:45-3:02 (Feb. 17, 2021), bit.ly/445aQbT.

[3] *Id*. at 16:59-17:03.

period." *Id*. Representative Cantrell also thought that the "major benefit" of the change would be to "return all of our runoffs to four weeks," since only federal elections used a nine-week runoff.[4] And he explained that the proposal resembled the system in five other states.[5] None of Plaintiffs' evidence has anything to do with those justifications.

E. Plaintiffs' alleged procedural departures do not show discriminatory intent.

Plaintiffs turn to the legislative record to support their claim, but the record is bare. They implicitly admit that the Legislature followed all procedural rules in enacting SB 202. *See* Doc. 574-1 at 21. Indeed, their chief complaint is not about any substantive violation of the legislative process, but rather the "lack of transparency" and "a rushed process" of the bill. *Id*. But "procedural maneuverings" such as "truncated debate" are part and parcel of the legislative process, and thus poor evidence of *racial* motive. *Greater Birmingham Ministries*, 992 F.3d at 1326.

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Plaintiffs also complain that some meetings excluded black members of the minority party. Doc. 574-1 at 21. But Plaintiffs provide no evidence that those members were excluded *because of their race*, rather than because they and others who were not invited to attend those sessions opposed the entire SB

[4] *Id.* at 2:37-2:44.
[5] *Id.* at 1:34-1:46.

202 project. *See Greater Birmingham Ministries*, 992 F.3d at 1326. Nor do Plaintiffs point to evidence that the procedures were anomalous. The Georgia Legislature's reaction to one of the most unusual and hotly contested elections in modern American history mirrored the reactions of legislatures across the country, including Florida. *See LWV*, 66 F.4th at 941 ("[E]xamining the record reveals that the finding of intentional discrimination rests on hardly any evidence.").

F. The Eleventh Circuit has rejected inferences from outdated history.

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Finally, Plaintiffs rely on "the backdrop of Georgia's ongoing history of discrimination." Doc. 574-1 at 22-23. But "past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful." *City of Mobile v. Bolden*, 446 U.S. 55, 74 (1980), *superseded by statute on other grounds as stated in Thornburg v. Gingles*, 478 U.S. 30, 35 (1986). Instead, the Court must presume the legislature acted in good faith "even in the light of 'a finding of past discrimination.'" *LWV*, 66 F.4th at 923 (citation omitted).

Plaintiffs offer no argument to support an inference from Georgia's history. Instead, they provide a single citation to an expert report's discussion of "distant instances" of discrimination. *Id.* That discussion focuses on history that is decades—and in some cases over a century—old. *See* Doc. 574-1, Ex. 4

at 9-79. But "old, outdated intentions of previous generations" cannot ban Georgia's "legislature from ever enacting otherwise constitutional laws about voting." *Greater Birmingham Ministries*, 992 F.3d at 1325.

Plaintiffs' reliance on long-past discrimination cannot be justified by the *Arlington Heights* factors. Those factors do not provide "an unlimited look-back to past discrimination." *Id.* at 1325. *Arlington Heights* analysis must focus on the "specific sequence of events leading up to the challenged decision." *Id.* (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977)). Plaintiffs' references to other Georgia cases discussing different laws are thus irrelevant to whether SB 202 is discriminatory. *See* Doc. 574-1 at 23 (citing *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297 (M.D. Ga. 2018) (finding that a county's method of electing its board of education violated the Voting Rights Act); *Rose v. Raffensperger*, 619 F. Supp. 3d 1241, 1268 (N.D. Ga. 2022) (finding that Georgia's system for electing Public Service Commission members violated the Voting Rights Act)).

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II. Plaintiffs' undue delay defeats their request for a preliminary injunction.

"[A] party requesting a preliminary injunction must generally show reasonable diligence." *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (per curiam). The "balance of the equities … tilt[s] against" a party who cannot show reasonable diligence. *Id.*; *see also Adventist Health Sys./Sunbelt, Inc. v. HHS*,

17 F.4th 793, 806 (8th Cir. 2021) (Delay "means that the balance of the equities favors the denial of a preliminary injunction."). This principle "is as true in election law cases as elsewhere." *Benisek*, 138 S. Ct. at 1944. Delay also "militates against a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2021); *see also Adventist Health Sys.*, 17 F.4th at 806 (Delay "refuted … allegations of irreparable harm.").

So far, Plaintiffs have misread *Wreal*. Plaintiffs argued that "a delay in seeking a preliminary injunction matters only where it 'militates against a finding of irreparable harm.'" Doc. 590 at 16 (quoting *Wreal*, 840 F.3d at 1248). That has it backwards: "[A] party's failure to act with speed or urgency in moving for a preliminary injunction *necessarily undermines* a finding of irreparable harm." *Wreal*, 840 F.3d at 1248 (emphasis added).

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Plaintiffs failed to act with reasonable diligence in moving for a preliminary injunction. The NAACP and AME Plaintiffs moved to enjoin the line-warming provisions for the 2022 election, claiming those provisions would cause irreparable harm. *See* AME and Georgia NAACP PI Motion (Doc. 171) (May 25, 2022). But the Plaintiffs did not ask the Court to enjoin the runoff provisions. Plaintiffs' failure to request for the *last* election the relief they want for *this* election shows "that the harm would not be serious enough to justify a preliminary injunction." *Adventist Health Sys.*, 17 F.4th at 805 (quoting Wright & Miller, 11A Fed. Prac. & Proc., §2948.1 & n.13 (3d ed. 2013)). Plaintiffs have

been free to move for a preliminary injunction for the 2024 election cycle since filing their lawsuit. At the very least, they should have sought relief after the November 2022 elections. Instead, they waited over six months to file their motion as discovery closed and the parties prepared for summary judgment briefing.

Far more modest delays have defeated requests for a preliminary injunction. *Wreal* found that a "five-month delay" supported denial of a preliminary injunction. *Wreal*, 840 F.3d at 1248. A delay "even of only a few months," the Eleventh Circuit explained, "militates against" a preliminary injunction. *Id.* This Court should reach the same conclusion based on Plaintiffs' unexplained six-month delay.

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Ongoing discovery does not excuse a party for delay in seeking for a preliminary injunction. *Benisek* confirmed that privilege disputes that "delayed the completion or discovery … d[id] not change the fact that plaintiffs could have sought a preliminary injunction much earlier." 138 S. Ct. at 1944. And delay is especially unjustified when "the preliminary-injunction motion relied exclusively on evidence that was available" earlier. *Wreal*, 840 F.3d at 1248-49 (rejecting preliminary-injunction motion based on evidence "available" to the moving party "at the time it filed its complaint").

Plaintiffs' delay cannot be excused because the 2024 election was not impending six months ago. At most, the time until the 2024 election might

support an argument that Plaintiffs are only now facing irreparable injury. But courts have "reject[ed] [the] implausible assertion of law" that "delay bears on irreparable harm only where the plaintiff delays despite suffering the harm." *Adventist Health Sys.*, 17 F.4th at 806 (cleaned up). More importantly, "the balance of the equities" would still "tilt[]" against Plaintiffs because of their delay. *Benisek*, 138 S. Ct. at 1944. In fact, the Supreme Court rejected a delayed request for preliminary relief looking only to the balance of the equities and public interest, not irreparable harm, in *Benisek*. *See id*. The same is true here; Plaintiffs' "unreasonable delay … means that the balance of the equities favors the denial of a preliminary injunction." *Adventist Health Sys.*, 17 F.4th at 806.

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III. *Purcell* forecloses relief.

The *Purcell* principle is a "bedrock tenet of election law." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of stay applications). This principle instructs that the "traditional test" for injunctive relief "does not apply" when a plaintiff asks for "an injunction of a state's election in the period close to an election." *Id*. Instead, "[w]hen an election is close at hand, the rules of the road must be clear and settled." *Id*. at 880-81.

Purcell is an equitable principle that protects against disruption of elections. Preliminary injunctions barring the enforcement of election laws cause "voter confusion" that encourages voters to stay "away from the polls." *Purcell*

v. Gonzalez, 549 U.S. 1, 4-5 (2006). They also cause confusion for election administrators who may have to "grapple with a different set of rules." *Coal. for Good Governance v. Kemp*, 2020 WL 2829064, at *3 (N.D. Ga. July 7).

Plaintiffs make no effort to justify a preliminary injunction under *Purcell*. *See* Doc. 566-1 at 64-65. Nor could they. To "overcome" *Purcell*, they must show "at least … (i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship." *Milligan*, 142 S. Ct. 881 (Kavanaugh, J., concurring). This Court found that some Plaintiffs "failed to show at least two" of these factors in their previous line-warming motion: the merits are not clearcut in their favor, and a change would not be feasible without significant cost, confusion, or hardship. Doc. 241 at 741-42. The same analysis applies to Plaintiffs' motion this time. And now, Plaintiffs cannot satisfy the third factor either. By waiting over six months to move for a preliminary injunction, Plaintiffs unduly delayed. Thus, *Purcell* provides sufficient basis to deny Plaintiffs renewed motion. *League of Women Voters*, 32 F.4th at 1371.

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Since they cannot justify an injunction under *Purcell*, Plaintiffs announce that it "is not applicable." Doc. 574-1 at 24. But *Purcell* applies to Plaintiffs' request. Even an election several months away is close enough for *Purcell*.

The Supreme Court applied *Purcell* to an election that was "about four months" away in *Milligan*. 142 S. Ct. at 88 (Kagan, J., dissenting). And the Eleventh Circuit found that four months "easily falls within" *Purcell*'s reach. *League of Women Voters*, 32 F.4th at 1371. Other courts have applied *Purcell* six months before an election. *Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir. 2020). In each of these cases, the Courts measured from the time when the State would have to implement a disruptive change. *See Milligan*, 142 S. Ct. at 88 (Kagan, J., dissenting) (Election is "four months from now."); *League of Women Voters*, 32 F.4th at 1371 ("[D]istrict court … issued its injunction" when the next election was "set to begin in *less* than four months); *Thompson*, 959 F.3d at 813 ("[M]oving or changing a deadline or procedure now will have inevitable, further consequences."). While Georgia's next potential federal runoff may not be until June 2024, these decisions confirm that *Purcell* is not categorically inapplicable because a plaintiff sought relief several months before an election.

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The costs of an injunction reinforce *Purcell's* applicability. In *Milligan*, Justice Kavanaugh noted that "'[h]ow close to an election is too close may depend in part on … how easily the State could make the change without undue collateral effects." The collateral effects of a change here would be great. This Court has a noted that "S.B. 202 is already the law, and an injunction … would not merely preserve the status quo." Doc. 241 at 69. Since voters have already voted with the challenged requirements in place, a change would cause voter

confusion. *See id.* at 69-70. That risk of confusion would be particularly high here because SB 202 merely changed the timeframe for federal runoffs to match the timeframe for other runoffs. SB 202 §42. But an injunction would mandate that Georgia move back to a system where federal and state runoffs proceed on different schedules after enacting a law to ensure that they follow the same schedule. It would also require retraining election officials who have been trained to follow the challenged requirements. *See id*. These unavoidable costs confirm that *Purcell* applies to Plaintiff's request.

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CONCLUSION

This Court should deny Plaintiffs' motion for preliminary injunction.

Dated: August 10, 2023

Respectfully submitted,

/s/ William Bradley Carver

Cameron T. Norris*
Gilbert C. Dickey*
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Suite 700
Arlington, Virginia 22209
(703) 243-9423

Tyler R. Green*
CONSOVOY MCCARTHY PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101
(703) 243-9423

*admitted pro hac vice

John E. Hall, Jr.
Georgia Bar No. 319090
William Bradley Carver, Sr.
Georgia Bar No. 115529
Baxter D. Drennon
Georgia Bar No. 241446
HALL BOOTH SMITH, P.C.
191 Peachtree Street NE, Suite 2900
Atlanta, Georgia 30303
(404) 954-5000
(404) 954-5020 (Fax)

Counsel for Intervenors

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CERTIFICATE OF COMPLIANCE

This document complies with Local Rule 5.1(B) because it uses 13-point Century Schoolbook.

/s/ *William Bradley Carver*

CERTIFICATE OF SERVICE

On August 10, 2023, I e-filed this document on ECF, which will email everyone requiring service.

/s/ *William Bradley Carver*

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