

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

IN RE GEORGIA SENATE BILL 202

Master Case No.
1:21-MI-55555-JPB

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF GEORGIA; *et al.*,

Defendants,

THE REPUBLICAN NATIONAL
COMMITTEE; *et al.*,

Intervenor-Defendants.

Civil Action No.
1:21-CV-2575-JPB

**UNITED STATES' UNOPPOSED MOTION AND BRIEF IN SUPPORT
OF A MOTION FOR EVIDENTIARY HEARING**

The United States respectfully submits this unopposed motion for an evidentiary hearing in connection with Plaintiffs' Joint Motion for Preliminary Injunction. ECF 566. The Joint Motion for Preliminary Injunction, submitted on behalf of the United States and certain private plaintiffs, seeks injunctive relief as to five provisions of Senate Bill 202 on the grounds that they violate the prohibition on

intentional racial discrimination under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and the Fourteenth and Fifteen Amendments to the U.S. Constitution. A hearing would allow the Court to hear directly from witnesses, hear arguments from the parties, and ask questions the Court may have.

This proposed hearing would relate only to the motion filed on May 30, 2023, regarding racial discrimination under Section 2 of the Voting Rights Act and violations of the U.S. Constitution. *See* ECF 566.

Counsel for the United States conferred with counsel for the State of Georgia and Defendant Intervenors, and they do not oppose the scheduling of an evidentiary hearing. The United States has also conferred with counsel for Private Plaintiffs, who support this motion.

Plaintiffs' Joint Motion for a Preliminary Injunction marshals a large body of evidence in support of the contention that the challenged provisions of SB 202 were motivated by discriminatory purpose in violation of Section 2 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution. A hearing would allow the Court to hear directly from witnesses and arguments from the parties. First, the Court would hear from voters who are burdened by the challenged provisions of SB 202 and organizations working on behalf of Black voters. Second, the Court would hear from legislators who are willing to testify

about the legislative process. Testimony from these witnesses would provide important context to Plaintiffs' claims. Third, the Court would hear from one or two experts who can testify, among other things, on the disproportionate impacts that SB 202 will have on Black voters. And finally, the Court would hear argument from the parties about the proper legal framework and evidentiary burden under the claims at issue, and an explanation for how relief may appropriately be granted in time for elections in 2024. A hearing would also offer, given the voluminous record before the Court on this motion, an opportunity to highlight key points and address questions the Court may have. The United States would also work with this Court and the other parties to ensure that evidence and testimony is presented in an efficient manner.

We are also mindful of this Court's prior order addressing the *Purcell* doctrine, *see* ECF 241 at 63 (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006)). There, this Court found that private plaintiffs were substantially likely to show that the ban on providing food and water to voters was unconstitutional within a supplemental zone more than 150 feet from the polling place. *Id.* at 61. Because of the upcoming 2022 general election, however, the Court found that the *Purcell* doctrine precluded issuing an injunction at that time. *Id.* at 71.

To ensure more than enough time to avoid similar concerns here given the

upcoming 2024 federal election cycle, the United States and private plaintiffs believe that a hearing in the coming weeks would allow sufficient time for the state to implement any relief ordered by this Court, with minimal disruption.¹

Dated: August 14, 2023

Respectfully submitted,

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¹ The United States has consulted with the other parties about potential availability for a hearing. Counsel for the United States and private plaintiffs are generally available in September or October. Lead counsel for the Defendants is unavailable from September 5-20 or so due to a trial and will also be away October 6-18. Defendant Intervenors are available any weekday between September 6-27; in October, they are available October 9, 10, and the week of October 23. If a hearing could not be held by October, the United States might forgo an evidentiary hearing to ensure the Court has sufficient time to consider the evidence before it ahead of the 2024 election cycle.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(D)

Pursuant to Local Rule 7.1(D), I certify that the foregoing document was prepared in Times New Roman 14-point font in compliance with Local Rule 5.1(C).

/s/ John A. Russ IV
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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2023, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ John A. Russ IV
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