UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, *Plaintiff*, v. THE STATE OF GEORGIA; et al., *Defendants*, REPUBLICAN NATIONAL COMMITTEE; et al., *Intervenor-Defendants*.	No. 1:21-cv-2575-JPB

INTERVENORS' BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS AND ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Though the Government is suing Georgia under section 2, this case is really about another provision of the Voting Rights Act: section 5. Before 2013, section 5 barred Georgia from passing even the most routine of elections laws until it went "hat in hand to Justice Department officialdom" and received preclearance. *Shelby Cty. v. Holder*, 679 F.3d 848, 885 (D.C. Cir. 2012) (Williams, J., dissenting), *rev'd*, 570 U.S. 529 (2013). The Government wants that power back. When announcing its decision to file this case, it stressed that, if it still had its preclearance "tool," then SB 202 likely "would never have taken effect." U.S. Dep't of Justice, *Attorney General Merrick B. Garland Delivers Remarks Announcing Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law* (June 25, 2021), bit.ly/3xbdUTs. The Justice Department thus filed this case on the eight-year anniversary of *Shelby County*, while "urg[ing] Congress to restore" preclearance. *Id.*

But the Government fails to appreciate *why* the Supreme Court invalidated the prior preclearance regime. Under our Constitution, the States are sovereign, equal, and primarily responsible for regulating elections. *Shelby Cty.*, 570 U.S. at 542-44. Absent extreme circumstances that no longer exist, Congress cannot create a regime that makes the same election reform valid in one State but invalid in another. *Id.* at 550, 544-45, 554. Nor can it "punish for the past." *Id.* at 553. No one doubts that, during the 130 years when the Democratic Party dominated all branches of Georgia's government, horrific racial discrimination occurred. But as the Eleventh Circuit recently explained, a

State's prior history cannot bar its current legislature from "enacting otherwise constitutional laws about voting." *Greater Birmingham Ministries v. Sec'y of State for State of Ala.*, 992 F.3d 1299, 1325 (11th Cir. 2021). In cases alleging intentional discrimination under section 2, the principle of equal sovereignty limits judicial review to "the precise circumstances surrounding the passage of the [challenged] law." *Id.*

While the Government might prefer preclearance under section 5, it chose to bring an intentional-discrimination claim under section 2—a claim it has failed to plausibly plead. Many of its allegations are legally barred, and the rest are paper-thin at best, self-contradictory at worst, and thoroughly unable to overcome the presumption that Georgia acted in good faith. The Government routinely convinces courts to dismiss claims of intentional discrimination at the pleading stage. *E.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *DHS v. Regents of the Univ. of Calif.*, 140 S. Ct. 1891 (2020). This Court should do that here. For the reasons below and the reasons in the State's brief (which Intervenors join), the Government's complaint should be dismissed with prejudice.

ARGUMENT

The Government filed its complaint on June 25, and some Defendants' motions to dismiss are due today (July 28). *See* Docs. 1, 29-32. But Intervenors had to file an answer with their motion to intervene, and they cannot move for judgment on the pleadings until Defendants file their answers. *See Virginia v. Ferriero*, 2021 WL 848706, at *3 n.1 (D.D.C. Mar. 5). Recognizing this dilemma,

the Court should allow Intervenors to file a post-answer motion to dismiss. *See Prade v. City of Akron*, 2015 WL 2169975, at *1-2 (N.D. Ohio May 8) (collecting cases). No party could possibly be prejudiced. *See Kern Cty. Farm Bureau v. Badgley*, 2002 WL 34236869, at *18-19 (E.D. Cal. Oct. 10) (allowing an intervenor to file a post-answer motion to dismiss because it was timely under the overarching deadline for motions to dismiss).

Out of an abundance of caution, Intervenors are alternatively styling this motion as a motion for summary judgment. Summary judgment can be sought "at any time." *Jenkins v. Lennar Corp.*, 216 F. App'x 920, 921 (11th Cir. 2007); *see* Fed. R. Civ. P. 56(b). Though pre-discovery motions for summary judgment are normally premature, they should be granted when they raise "only questions of law" because they challenge "'the legal sufficiency of a claim.'" *World Holdings, LLC v. Fed. Republic of Germany*, 701 F.3d 641, 655 (11th Cir. 2012). In fact, this Court should "treat" this motion "as a motion to dismiss." *Aerospace Precision, Inc. v. NexGen Aero, LLC*, 2017 WL 10186583, at *3 n.3 (S.D. Fla. Sept. 27); *e.g.*, *Virginia*, 2021 WL 848706, at *3 n.1. Because the motion-to-dismiss standard accepts the Government's well-pleaded allegations as true, this Court should also excuse the parties from the requirements of Local Rule 56.1(B) (requiring competing statements of undisputed material facts).

Motions to dismiss are governed by the familiar *Twombly-Iqbal* standard. This Court must accept the Government's factual allegations as true, but not its "'legal conclusions'" or its "'naked assertions devoid of further factual

enhancement.'" *Harris ex rel. Davis v. Rockdale Cty. Sch. Dist.*, 2020 WL 5639684, at *3 (N.D. Ga. Aug. 12). This Court can also consider "documents incorporated into the complaint by reference" and matters subject to "judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Based on these materials, the Government's claim must be "'plausible'"—meaning the Court has a "'reasonable expectation that discovery will reveal evidence'" supporting it. *Harris*, 2020 WL 5639684, at *3.

Like any other claim, claims of intentional discrimination must be dismissed at the pleading stage if they fail to cross the plausibility threshold. The Government won that point in *Iqbal*, in recent litigation over the census, and in countless other cases. *See, e.g.*, *Iqbal*, 556 U.S. at 680-83; *DHS*, 140 S. Ct. at 1915-16. Especially in this day and age, good-faith disagreements over policy often regrettably devolve into "*ad hominem*" accusations of racism. *Greater Birmingham*, 992 F.3d at 1326. The Federal Rules do not "unlock the doors of discovery" for plaintiffs who fail to substantiate this serious accusation. *Iqbal*, 556 U.S. at 678. Plaintiffs cannot "insulate their claims from dismissal by contending that [courts] should not determine the 'sensitive inquiry' into racial animus at the motion to dismiss stage." *Robinson v. Md. Dep't of the Env't*, 2014 WL 2038022, at *11 (D. Md. May 16).

Dismissal of an intentional-discrimination claim is particularly appropriate when the plaintiff challenges "a policy," rather than some discrete action. *Iqbal*, 556 U.S. at 682-83. That's because the plaintiff must plausibly allege that *the policymakers* had the impermissible intent. *Id.* Here, that means

"the legislature as a whole." *Brnovich v. DNC*, 141 S. Ct. 2321, 2350 (2021). But "determining the intent of the legislature is a problematic and near-impossible challenge." *Greater Birmingham*, 992 F.3d at 1324. And the plaintiff must overcome a presumption that the legislature acted in good faith. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018).

Further, the fact that the plaintiff hasn't conducted discovery yet bears little relevance in cases challenging legislation. Due to legislative privilege, plaintiffs can never serve discovery on legislators or governors or use discovery to ask about their motives. *See In re Hubbard*, 803 F.3d 1298, 1310 (11th Cir. 2015). The pleading rules do not allow plaintiffs alleging "discriminatory intent on the part of [a] legislature" to conduct "a fishing expedition for unspecified evidence" via "discovery." *Wesley v. Collins*, 791 F.2d 1255, 1262-63 (6th Cir. 1986). SB 202, in particular, is a highly public and scrutinized piece of legislation. If evidence exists that does not appear in the complaint, that omission is due to the Government's lack of research, not its lack of discovery.

The Government has not plausibly alleged intentional racial discrimination.

The allegations in the Government's complaint, "either singly or in concert," do not raise a "plausible inference" of intentional discrimination against African Americans. *DHS*, 140 S. Ct. at 1915-16. The bulk are legally irrelevant, the rest are insufficient, and all fail to overcome obvious alternative explanations. This Court should hold, as a matter of law, that the Government has not pleaded a plausible claim of intentional discrimination.

A. Many of the Government's allegations are legally irrelevant.

Under *Greater Birmingham*, the Government's allegations of intentional discrimination must be rooted in "the precise circumstances surrounding the passing of [SB 202]." 992 F.3d at 1325. Large swaths of the Government's complaint ignore this rule.

Start with the Government's recounting of Georgia's history of discrimination. *E.g.*, Compl. ¶¶30-34. Courts "cannot accept official actions taken long ago as evidence of current intent." *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20 (1987). Georgia's history of discrimination once subjected it to preclearance, but the Supreme Court ended that regime precisely because "things have changed dramatically." *Shelby Cty.*, 570 U.S. at 547. From 1965 to 2013, racial gaps in registration and turnout disappeared, minority candidates were elected at unprecedented levels, and preclearance objections and section 2 suits plummeted. *Id.* at 542, 547-49. None of the history cited by the Government stems from "the precise circumstances" surrounding SB 202's passage; it all predates SB 202. *Greater Birmingham*, 992 F.3d at 1325. Using that history to prevent Georgia from enacting otherwise valid election reforms would bring section 2 in conflict with the constitutional principle of equal sovereignty. *Id.*

The Government's references to statements made during campaigns are irrelevant for similar reasons. *E.g.*, Compl. ¶¶97-99. These statements—"remote in time and made in unrelated contexts"—"do not qualify as contemporary statements probative of" the Georgia's legislature motive for passing SB 202. *DHS*, 140 S. Ct. at 1916 (cleaned up). They were not made "about the law

at issue in this case." *Greater Birmingham*, 992 F.3d at 1323. And they were not made by the Governor or anyone in the Georgia legislature. *See DHS*, 140 S. Ct. at 1916. The same goes for the Government's allegations about other individuals who hold no office in Georgia. *E.g.*, Compl. ¶¶102-104, 106. In fact, as the Government admits, Georgia's officials actively *opposed* those statements and actions. *E.g.*, Compl. ¶¶107-08, 104.

Statements from individual legislators fare no better. *E.g.*, Compl. ¶¶105, 110-11, 114. Notably, the Government cites "not a single comment made by any sitting [Georgia] legislator in reference to [SB 202]." *Greater Birmingham*, 992 F.3d at 1325. The statements it does reference were not made "at the same time, or even during the same session, as the passage of [SB 202]." *Id.* at 1323. Even if they were, what matters is the intent of "the legislature as a whole." *Brnovich*, 141 S. Ct. at 2350. Legislators "who vote to adopt a bill are not the agents of the bill's sponsor or proponents," *id.*, and this Court cannot treat the intent of individual legislators "as *the* legally dispositive intent of the entire body of the [Georgia] legislature on [SB 202]," *Greater Birmingham*, 992 F.3d at 1325.

The only reliable evidence of *the legislature's* purpose is the formal findings that the majority voted on and included in SB 202. According to those legislative findings (which the Government attaches to its complaint), SB 202 was enacted to "boost voter confidence"; to "streamline … elections" by "promoting uniformity"; to "reduce the burden on election officials"; to prevent "improper interference, political pressure, or intimidation"; and to make it "'hard

to cheat.'" Compl. Ex. 1, §2. These purposes are race neutral and entirely legitimate. *See Brnovich*, 141 S. Ct. at 2349-50 (preventing fraud, voter intimidation, and undue influence); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191-97 (2008) (op. of Stevens, J.) (improving procedures, preventing fraud, and promoting confidence); U.S. Amicus Br. 27, *Brnovich v. DNC*, Nos. 19-1527 and 19-1258 (U.S. Dec. 2020), bit.ly/2UZjmvD ("prevention of fraud" is a "strong race-neutral justification[]").

The Government takes issue with only one of these stated purposes, asserting that the legislature's concern with fraud was "tenuous" given the "lack of evidence of voter fraud in the 2020 election cycle." Compl. ¶136(h). Less than a week after the Government filed its complaint, the Supreme Court rejected the exact same argument in *Brnovich*. The Ninth Circuit had similarly deemed Arizona's justifications for its law "tenuous" because "there was no evidence that fraud in connection with early ballots had occurred in Arizona," but the Supreme Court reversed. 141 S. Ct. at 2348. Preventing fraud was "not the only legitimate interest served by" the challenged regulation of mail voting, the Court explained. *Id.* Preventing "pressure and intimidation" were also legitimate interests that sustained the law. *Id.*

More broadly, "concerns regarding fraud" do not morph from a legitimate state interest into "a facade for racial discrimination" whenever the legislature fails to cross some imaginary evidentiary threshold. *DNC v. Reagan*, 904 F.3d 686, 719 (9th Cir. 2018). States can pass election reforms to prevent fraud without "any evidentiary showing," *Common Cause/Ga. v. Billups*, 554 F.3d 1340,

1353 (11th Cir. 2009), and can act prophylactically to prevent fraud "without waiting for it to occur and be detected within its own borders," *Brnovich*, 141 S. Ct. at 2348. Both the Carter-Baker Commission and the Supreme Court have already confirmed, after all, that "[f]raud is a real risk," especially with absentee voting. *Id.* at 2347-48; *accord Crawford*, 553 U.S. at 194-96 (op. of Stevens, J.). Even if all these concerns with fraud were "'mistaken,'" the Government alleges nothing to suggest they aren't "'sincere.'" *Brnovich*, 141 S. Ct. at 2350. And the Government ignores Georgia's "independent" interest in restoring "public confidence in the integrity of the electoral process." *Crawford*, 553 U.S. at 197 (op. of Stevens, J.).

B. The Government's remaining allegations fail to cross the plausibility threshold.

Because the legislature provided "valid neutral justifications … for [SB 202]"— "combatting voter fraud, increasing confidence in elections, and modernizing [Georgia's] elections procedures"—most of the Government's remaining allegations are irrelevant. *Greater Birmingham*, 992 F.3d at 1326-27. It does not matter whether SB 202 was passed, for example, "at the end of the … legislative session," after "truncated debate," on a "strictly party-line vote," or with "no black legislators" voting for it. *Id.* The Government's remaining allegations are also allegations that courts routinely find insufficient to state a claim for intentional discrimination.

The Government identifies no relevant procedural irregularities. The legislature's formal findings "find[] and declare[]" that SB 202 reflects its

"considered judgment" after considering "hours of testimony," making "significant modifications," and "applying the lessons learned from conducting an election in the 2020 pandemic." Compl. Ex. 1, §2. The Government offers nothing to question the legislature's good faith. That opponents of SB 202 complained about "the brevity of the legislative process" is not the kind of allegation that can "overcome the presumption of legislative good faith." *Abbott*, 138 S. Ct. at 2328-29.

The Government's alleged irregularities are not even irregular. The legislature put "significant time and effort" into considering SB 202. *Abbott*, 138 S. Ct. at 2329 n.23. The bill was no rush job: The Government admits it was passed at the end of a 40-day legislation session where legislators were especially focused on election reform. Compl. ¶¶4, 112-13. While the Government echoes opponents' complaints about not having time to review the bill, it admits that SB 202 borrowed "numerous sections from other elections bills" that were already before the legislature. Compl. ¶¶118-20. The Government also admits that the president of the Georgia senate (the person empowered to make the decision) ruled that no fiscal note was required for SB 202. Compl. ¶131; *see Robinson*, 2014 WL 2038022, at *12 (deeming implausible "claimed improprieties" that "have already been rejected" by the relevant authority).

In all events, the Government's allegations fail to suggest racial discrimination because the alleged irregularities would have affected "all individuals" equally, not some "identifiable minority group." *Rollerson v. Port Freeport*, 2019 WL 4394584, at *8 (S.D. Tex. Sept. 13). The Government "[n]otably" does

not allege that these procedural departures ever materialized into "substantive departures." *Greater Birmingham*, 992 F.3d at 1326 n.39. The measures that ultimately passed mirror laws that exist in other States, and the Government does not claim that these reforms would be illegal if they were passed in, say, New York or Delaware.

The Government instead suggests that the legislature *knew* SB 202 would have disparate impacts on African-American voters; but this allegation is triply flawed. First, the Government makes this assertion in the most conclusory terms possible. *See* Compl. ¶¶2, 135, 138, 150. To the extent it provides any factual elaboration, it appears to be divining the legislature's "knowledge" based on arguments and testimony provided by *opponents* of SB 202. *See* Compl. ¶¶164, 123, 127. But "[t]he Supreme Court has … repeatedly cautioned … against placing too much emphasis on the contemporaneous views of a bill's opponents"; the "speculations and accusations of … opponents simply do not support an inference of the kind of racial animus discussed in … *Arlington Heights*." *Butts v. N.Y.C.*, 779 F.2d 141, 147 (2d Cir. 1985). Section 2 does not give the opponents of election reform a heckler's veto; a bill's supporters can simply disbelieve the arguments and predictions of the other side. *Cf. Greater Birmingham Ministries*, 992 F.3d at 1327 (refusing to infer that the legislature had "foreknowledge" of disparate impacts because its proffered justifications were legitimate).

Second, even assuming the Government pleaded knowledge, a legislature's knowledge that a law will have disparate impacts is not intentional

discrimination. *Iqbal*, 556 U.S. at 676 (citing *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)); *see Friends of Lake View Sch. Dist. Inc. No. 25 of Phillips Cty. v. Beebe*, 578 F.3d 753, 761-62 (8th Cir. 2009). Intentional discrimination means the legislature passed a particular law "at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *McCleskey*, 481 U.S. at 298 (quoting *Feeney*, 442 U.S. at 279). The Government alleges nothing like that—an allegation that would be implausible anyway given the States' "wide discretion" in crafting election laws and Georgia's "legitimate reasons" for choosing these reforms. *Id.* at 298-99. As the Supreme Court explained in *Brnovich*, virtually every election reform can cause "predictable disparities" on minorities, given preexisting disparities in "employment, wealth, and education." 141 S. Ct. at 2339. Yet section 2 is not designed to "make it virtually impossible" for States to pass election reforms. *Id.* at 2343.

Third, the Government alleges no disparate impacts to begin with. The Government notes that African-American voters followed certain rules and procedures before SB 202, and then implausibly predicts that they won't follow the rules and procedures imposed by SB 202. *E.g.*, Compl. ¶¶45-80. The Government also makes no attempt to quantify these supposed impacts. *E.g.*, Compl. ¶80 ("can be expected"); ¶59 ("more likely"). In its one attempt, it uses statistics in the "highly misleading" fashion that the Supreme Court criticized in *Brnovich*, 141 S. Ct. at 2345; *see* Compl. ¶¶53-54. That the Government cannot muster any evidence of disparate impacts fatally undermines its allegation that the Georgia legislature must have *known* about those impacts.

Disparate impacts alone cannot state a claim for intentional discrimination anyway. *Benitez v. Georgia Dep't of Cmty. Health*, 2007 WL 9710227, at *4 (N.D. Ga. Oct. 3). The Government does not deny that SB 202 is facially race-neutral. As the Eleventh Circuit recently explained, courts will not "'regard neutral laws as invidious ones, *even when their burdens purportedly fall disproportionately on a protected class*.'" *Greater Birmingham*, 992 F.3d at 1327 (quoting *Crawford*, 553 U.S. at 207 (Scalia, J., concurring in the judgment)). No one contends that this is the "rare" case where impacts alone are determinative. *Id.* at 1322.

Nor can the Government get traction based on the timing of SB 202. *E.g.*, Compl. ¶¶1, 81, 151. As the legislature explained, SB 202 was enacted after a once-in-a-generation pandemic triggered a wave of litigation and a "dramatic increase in absentee-by-mail ballots." Compl. Ex. 1, §2. It "should come as no surprise" that Georgia would want to address this topic at this time. *Iqbal*, 556 U.S. at 682. Several other States took the same opportunity to enact similar election reforms, yet the Government is not suing any of them. If Georgia were worried about African-American turnout instead, then it would have acted after the 2008 or 2012 elections, when African-American turnout was higher.*

* *Compare* U.S. Census Bur., *Voting and Registration in the Election of November 2008*, tbl. 4b (July 2012), bit.ly/3f5D1RH (estimated turnout in Georgia for "Black alone or in combination" was 65.2% in 2008), *and* U.S. Census Bur., *Voting and Registration in the Election of November 2012*, tbl. 4b (May 2013), bit.ly/3f8cAdQ (62.2% in 2012), *with* U.S. Census Bur., *Voting and Registration in the Election of November 2020*, tbl. 4b (Apr. 2021), bit.ly/3f5nZLC (61.3% in 2020). *See also generally* Ga. Sec'y of State, *Voter Turn Out by Demographics*, bit.ly/3zJsKm2.

The Government's "bald allegations of purposeful discrimination" based on SB 202's "proximity" to the last election simply cannot state a plausible claim. *Robinson*, 2014 WL 2038022, at *11; *see also Inclusive Communities Proj., Inc. v. Heartland Cmty. Ass'n, Inc.*, 824 F. App'x 210, 220 (5th Cir. 2020) (affirming the dismissal of an intentional-discrimination claim that turned on a similar allegation about timing).

C. The Government's allegations raise, and then fail to plausibly overcome, obvious alternative explanations.

Lastly, "discrimination is not a plausible conclusion" from the Government's allegations in light of "'obvious alternative explanation[s].'" *Iqbal*, 556 U.S. at 682 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 567 (2007)). The Government itself provides those explanations in its complaint.

The most obvious alternative explanation is that the legislature thought SB 202 was good policy. As the Government puts it, the proponents of SB 202 insisted that "absentee voting needed to be more secure" and that this package of reforms "would restore integrity in the vote." Compl. ¶¶122, 128. The whole legislature echoed these (and other legitimate) concerns in its formal findings. *See* Compl. Ex. 1, §2. The Government does nothing to pierce the presumption that these statements and findings were made in good faith. Indeed, legislators can have "a serious legislative debate on the wisdom of early mail-in voting" without incurring liability for intentional discrimination. *Brnovich*, 141 S. Ct. at 2349-50. Georgia cannot be liable for expressing the same concerns over

absentee-voting fraud that both the Supreme Court and the Carter-Baker Commission have credited.

The most telling indication that SB 202 is about policy, not racial discrimination, is the fact that the Government only "challenges *portions* of SB 202." Compl. ¶4 (emphasis added). If racial discrimination were the motivation behind SB 202, then that motivation would taint the entire bill. But the Government refuses to go that far, since it knows that many provisions of SB 202 make it easier to vote. For example, SB 202 requires precincts to reduce in-person wait times, increases the number of mandatory early-voting days, eliminates signature matching, and requires drop boxes for the first time in Georgia's history. *See* Compl. Ex. 1, §§2, 18, 25-26, 28-29, 34. And though the legislature likely knew SB 202 would be challenged in court, it stressed that each provision of SB 202 was severable—meaning the expansive provisions would survive even if one of the election-integrity measures were invalidated. §2(17).

If the Government is right that African-American voters suffer longer wait times and prefer to vote absentee, then it "raises the question": "'why would a racially biased legislature'" adopt reforms that make these options *easier*? *Greater Birmingham*, 992 F.3d at 1324. And why would the legislature let the unchallenged reforms stand even if the challenged ones fall? The Government has no answers—certainly none that cross the plausibility threshold.

While SB 202 surely reflects the legislature's sincere views about policy, the Government identifies another obvious explanation for it besides race: partisanship. Section 2 addresses discrimination "on account of race or color," 52

U.S.C. §10301(a), and "partisan motives are not the same as racial motives," *Brnovich*, 141 S. Ct. at 2349; *see Rucho v. Common Cause*, 139 S. Ct. 2484, 2503 (2019) ("securing partisan advantage" is a "permissible intent"). Yet the Government's complaint alleges partisan motivations throughout—from stressing various "party line" votes to identifying the legislature's goal as stopping the mobilization of Democratic voters and the election of Democratic politicians. Compl. ¶¶39, 81-86, 125, 128, 130, 132. Every allegation that the Government makes about race is equally consistent with partisanship; the Government never makes any effort to disentangle the two; and "judicial experience and common sense" suggest that partisan motives will predominate over racial ones. *Iqbal*, 556 U.S. at 679, 682; *see Luft v. Evers*, 963 F.3d 665, 671 (7th Cir. 2020).

In short, the Government's allegations, "[t]aken as true," might be "consistent with" intentional racial discrimination. *Iqbal*, 556 U.S. at 681. But "given more likely explanations, they do not plausibly establish this purpose." *Id.* Because the Government has not crossed "the line from conceivable to plausible," its complaint "must be dismissed." *Twombly*, 550 U.S. at 570.

CONCLUSION

The Court should dismiss the Government's complaint with prejudice. Intervenors join the State's brief and ask for the opportunity to be heard at any oral argument that the Court schedules.

Respectfully submitted,

Dated: July 28, 2020

/s/ Tyler R. Green

John E. Hall, Jr.
Georgia Bar No. 319090
William Bradley Carver, Sr.
Georgia Bar No. 115529
W. Dowdy White
Georgia Bar No. 320879
HALL BOOTH SMITH, P.C.
191 Peachtree St. NE, Ste. 2900
Atlanta, GA 30303
(404) 954-6967

Tyler R. Green (*pro hac vice*)
Cameron T. Norris (*pro hac vice*)
Steven C. Begakis (*pro hac vice*)
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
tyler@consovoymccarthy.com
cam@consovoymccarthy.com
steven@consovoymccarthy.com

Counsel for the RNC, NRSC, and GAGOP

CERTIFICATE OF COMPLIANCE

I certify that this document complies with Local Rule 5.1(B) because it uses 13-point Century Schoolbook font.

/s/ *Tyler R. Green*

CERTIFICATE OF SERVICE

On July 28, 2021, I e-filed this document via ECF, which will serve everyone requiring service.

/s/ *Tyler R. Green*