

No. 23-13085

**In the United States Court of Appeals
for the Eleventh Circuit**

IN RE: GEORGIA SENATE BILL 202

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

Master Case No. 1:21-mi-55555-JPE

**PLAINTIFFS-APPELLEES' MOTION TO DISMISS APPEAL
FOR LACK OF JURISDICTION**

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 to 26.1-3, Plaintiffs-Appellees Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., League of Women Voters of Georgia, Inc., GALEO Latino Community Development Fund, Inc., Common Cause, Lower Muskogee Creek Tribe, Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, Georgia Advocacy Office, and Southern Christian Leadership Conference certify that the following persons and entities have an interest in the outcome of this appeal:

1. Abbott, Robert, *Defendant*
2. Abudu, Nancy, *Attorney for Plaintiffs-Appellees*
3. ACLU Foundation of Georgia, *Attorneys for Plaintiffs-Appellees*
4. ACLU Foundation of Georgia, Inc., *Attorneys for Plaintiffs-Appellees*
5. Adegbile, Debo, *Attorney for Plaintiffs-Appellees*
6. Aden, Leah, *Attorney for Plaintiffs-Appellees*
7. Advancement Project, *Attorneys for Plaintiffs-Appellees*
8. Ameri, Mana, *Attorney for Plaintiffs-Appellees*
9. American Civil Liberties Union Foundation of Georgia, *Attorneys for Plaintiffs-Appellees*

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10. American Civil Liberties Union Foundation, Inc., *Attorneys for Plaintiffs-Appellees*
11. Andrews, Wanda, *Defendant*
12. Aquino, Nora, *Plaintiff-Appellee*
13. Asian Americans Advancing Justice-Asian Law Caucus, *Attorneys for Plaintiffs-Appellees*
14. Asian Americans Advancing Justice-Atlanta, *Plaintiff-Appellee*
15. Augusta Georgia Law Department, *Attorneys for Defendant*
16. Ausburn, Deborah, *Attorney for Defendants-Appellants*
17. Awuku, George, *Defendant*
18. Banks, Marques, *Attorney for Plaintiffs-Appellees*
19. Banter, James, *Attorney for Defendant*
20. Barnes, Sherry, *Defendant*
21. Barron, Richard, *Defendant*
22. Bartolomucci, Christopher, *Attorney for Defendants-Appellants*
23. Beausoleil, William, *Attorney for Plaintiffs-Appellees*
24. Beck Owen & Murray, *Attorneys for Defendant*
25. Begakis, Steven, *Attorney for Intervenors-Appellants*
26. Belichick, Joseph, *Attorney for Plaintiffs-Appellees*

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27. Bell, Jordan, *Attorney for Defendant*
28. Bennette, Matletha, *Attorney for Plaintiffs-Appellees*
29. Bibb County Board of Elections, *Defendant*
30. Bibb County Board of Registrars, *Defendant*
31. Black Voters Matter Fund, *Plaintiff-Appellee*
32. Blender, Matthew, *Defendant*
33. Bloodworth, Kristin, *Attorney for Defendant*
34. Boone, Annika, *Attorney for Defendants-Appellants*
35. Boulee, Jean-Paul (“J.P.”), *District Court Judge*
36. Bowman, Brad, *Attorney for Defendant*
37. Boyle, Donald, *Attorney for Defendants-Appellants*
38. Broder, Karl, *Attorney for Defendant*
39. Brooks, Jessica, *Defendant*
40. Brooks, Sofia, *Attorney for Plaintiffs-Appellees*
41. Brown, Marcia, *Defendant*
42. Bruning, Stephen, *Defendant*
43. Bruning, Steven, *Defendant*
44. Bryan, Bennett, *Attorney for Defendant*
45. Burwell, Kaye, *Attorney for Defendant*

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46. Campbell-Harris, Dayton, *Attorney for Plaintiffs-Appellees*
47. Carver, William, *Attorney for Intervenors-Appellants*
48. Cathey, Thomas, *Attorney for Defendant*
49. Chalmers, Adams, Backer & Kaufman, LLC, *Attorneys for Defendant*
50. Chatham County Attorney, *Attorneys for Defendant*
51. Chatham County Board of Elections, *Defendant*
52. Chatham County Board of Registrars, *Defendant*
53. Clarke County Board of Election and Voter Registration, *Defendant*
54. Clayton County Board of Elections and Registration, *Defendant*
55. Cobb County Board of Elections and Registration, *Defendant*
56. Cochran, Ken, *Defendant*
57. Columbia County Board of Elections, *Defendant*
58. Columbia County Board of Registrars, *Defendant*
59. Common Cause, *Plaintiff-Appellee*
60. Consovoy McCarthy PLLC, *Attorney for Intervenors-Appellants*
61. Cramer, Raisa, *Attorney for Plaintiffs-Appellees*
62. Crawford, Teresa, *Defendant*
63. Crawford, Teresa, *Defendant*
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72. Day, Stephen, *Defendant*
73. DeKalb County Board of Registrations and Elections, *Defendant*
74. DeKalb County Law Department, *Attorneys for Defendant*
75. Delta Sigma Theta Sorority, Inc., *Plaintiff-Appellee*
76. Denmark, Emilie, *Attorney for Defendant*
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78. Deshazior, Zurich, *Defendant*
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82. Dicks, Terence, *Defendant*
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84. DiStefano, Don, *Defendant*
85. Doss, Travis, *Defendant*
86. Dozier, Shauna, *Defendant*
87. Drennon, Baxter, *Attorney for Intervenors-Appellants*
88. Duffie, Wanda, *Defendant*
89. Durbin, Jauan, *Plaintiff-Appellee*
90. Durso, Katherine, *Defendant*
91. Edwards, Gregory, *Defendant*
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93. Ellington, Thomas, *Defendant*
94. Enjeti-Sydow, Anjali, *Plaintiff-Appellee*
95. Evans, James, *Attorney for Defendant*
96. Evans, Rachel, *Attorney for Plaintiffs-Appellees*
97. Evans-Daniel, Karen, *Defendant*
98. Eveler, Janine, *Defendant*
99. Exousia Lighthouse International C.M., Inc, *Plaintiff*
100. Faith In Action Network, *Plaintiff*
101. Falk, Donald, *Attorney for Defendants-Appellants*
102. Fambrough, Willa, *Defendant*

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108. First Congregational Church, United Church of Christ Incorporated, *Plaintiff-Appellee*
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116. Galeo Latino Community Development Fund, Inc., *Plaintiff-Appellee*
117. Gammage, Keith, *Defendant*
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119. Gartland, Pat, *Defendant*
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121. Gay, Nancy, *Defendant*
122. Geiger, Debra, *Defendant*
123. Georgia Adapt, *Plaintiff-Appellee*
124. Georgia Advocacy Office, *Plaintiff-Appellee*
125. Georgia Coalition for the People's Agenda, Inc., *Plaintiff-Appellee*
126. Georgia Department of Law, *Attorneys for Defendants-Appellants*
127. Georgia Latino Alliance for Human Rights, Inc., *Plaintiff-Appellee*
128. Georgia Muslim Voter Project, *Plaintiff-Appellee*
129. Georgia Republican Party, Inc., *Intervenor-Appellant*
130. Georgia State Conference of the NAACP, *Plaintiff-Appellee*
131. Georgia State Election Board, *Defendant*
132. Ghazal, Sara, *Defendant*
133. Gibbs, Fannie, *Plaintiff-Appellee*
134. Gillon, Thomas, *Defendant*
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180. Jester, Nancy, *Defendant*
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183. Johnson, Ben, *Defendant*
184. Johnson, Darlene, *Defendant*
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196. Kennedy, David, *Defendant*

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210. Lang, Antan, *Defendant*
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212. Latino Community Fund of Georgia, *Plaintiff-Appellee*
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221. Lindsey, Edward, *Defendant*
222. Lower Muskogee Creek Tribe, *Plaintiff-Appellee*
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225. Luth, Barbara, *Defendant*
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228. Mahoney, Thomas, *Defendant*
229. Manifold, Zach, *Defendant*
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231. Mashburn, Matthew, *Defendant-Appellant*
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238. McFalls, Tim, *Defendant*
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241. Mcrae, Colin, *Defendant*
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243. Metropolitan Atlanta Baptist Ministers Union, Inc., *Plaintiff-Appellee*
244. Mijente, Inc., *Plaintiff*
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253. Motter, Susan, *Defendant*
254. Murchie, Laura, *Attorney for Plaintiffs-Appellees*
255. Murray, Karen, *Defendant*
256. NAACP Legal Defense and Education Fund, Inc., *Attorneys for Plaintiffs-Appellees*
257. National Association for the Advancement of Colored People, Inc., *Parent Corporation of Georgia State Conference of the NAACP*
258. National Republican Congressional Committee, *Intervenor-Appellant*
259. National Republican Senatorial Committee, *Intervenor-Appellant*
260. Natt, Joel, *Defendant*
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264. Newland, James, *Defendant*
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276. O'Lenick, Alice, *Defendant*
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279. Paik, Steven, *Plaintiff-Appellee*
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288. Pullar, Patricia, *Defendant*
289. Qadir, Hunaid, *Defendant*
290. Radzikinas, Carla, *Defendant*
291. Raffensperger, Brad, *Defendant-Appellant*
292. Raffle, Rocky, *Defendant*
293. Ramahi, Zainab, *Attorney for Plaintiffs-Appellees*
294. Rich, James, *Attorney for Plaintiffs-Appellees*
295. Richardson, Jasmyn, *Attorney for Plaintiffs-Appellees*
296. Richmond County Board of Elections, *Defendant*
297. Ringer, Cheryl, *Attorney for Defendant*
298. Rise, Inc., *Plaintiff-Appellee*
299. Rodriguez, Anthony, *Defendant*
300. Rosborough, Davin, *Attorney for Plaintiffs-Appellees*
301. Rosenberg, Ezra, *Attorney for Plaintiffs-Appellees*
302. Rosenberg, Steven, *Attorney for Defendant*
303. Russ, John, *Attorney for Plaintiffs-Appellees*
304. Ruth, Kathleen, *Defendant*
305. Ryan, Elizabeth, *Attorney for Plaintiffs-Appellees*
306. Sabzevari, Arash, *Attorney for Defendant*

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307. Sachdeva, Niharika, *Attorney for Plaintiffs-Appellees*
308. Samuel Dewitt Proctor Conference, Inc., *Plaintiff*
309. Sankofa United Church of Christ Limited, *Plaintiff*
310. Schaerr | Jaffe LLP, *Attorneys for Defendants-Appellants*
311. Schaerr, Gene, *Attorney for Defendants-Appellants*
312. Scott, William, *Attorney for Defendant*
313. Seals, Veronica, *Defendant*
314. Segarra, Esperanza, *Attorney for Plaintiffs-Appellees*
315. Sells, Bryan, *Attorney for Plaintiffs-Appellees*
316. Shah, Niyati, *Attorney for Plaintiffs-Appellees*
317. Sheats, Gala, *Defendant*
318. Shelly, Jacob, *Attorney for Plaintiffs-Appellees*
319. Shirley, Adam, *Defendant*
320. Sieff, Adam, *Attorney for Plaintiffs-Appellees*
321. Silas, Tori, *Defendant*
322. Sixth District of the African Methodist Episcopal Church, *Plaintiff-Appellee*
323. Smith, Casey, *Attorney for Plaintiffs-Appellees*
324. Smith, Dele, *Defendant*
325. Smith, Mandi, *Defendant*

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326. Solh, Chahira, *Attorney for Plaintiffs-Appellees*
327. Solomon, Elbert, *Plaintiff-Appellee*
328. Sosebee, Charlotte, *Defendant*
329. Southern Poverty Law Center, *Attorneys for Plaintiffs-Appellees*
330. Sowell, Gregory, *Attorney for Defendant*
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332. Squiers, Cristina, *Attorney for Defendants-Appellants*
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334. Sumner, Stuart, *Attorney for Intervenors-Appellants*
335. Sung, Connie, *Attorney for Plaintiffs-Appellees*
336. Sung, Connie, *Attorney for Plaintiffs-Appellees*
337. Swift, Karli, *Defendant*
338. Szilagyi, Heather, *Attorney for Plaintiffs-Appellees*
339. Tatum, Tobias, *Attorney for Defendants-Appellants*
340. Taylor English Duma LLP, *Attorneys for Defendants-Appellants*
341. Taylor, Wandy, *Defendant*
342. Thatte, Anuja, *Attorney for Plaintiffs-Appellees*
343. The ACLU Foundation Disability Rights Program, *Attorneys for Plaintiffs-Appellees*

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344. The Arc of the United States, *Plaintiff-Appellee*
345. The Concerned Black Clergy of Metropolitan Atlanta, Inc., *Plaintiff-Appellee*
346. The Georgia State Election Board, *Defendant*
347. The Justice Initiative, Inc., *Plaintiff-Appellee*
348. The Law Office of Bryan L. Sells, LLC, *Attorneys for Plaintiffs-Appellees*
349. The New Georgia Project, *Plaintiff-Appellee*
350. The Republican National Committee, *Intervenor-Appellant*
351. The State of Georgia, *Defendant-Appellant*
352. The United States of America, *Plaintiff-Appellee*
353. The Urban League of Greater Atlanta, Inc., *Plaintiff-Appellee*
354. Thomas, Ethan, *Attorney for Plaintiffs-Appellees*
355. Thompson, Grace, *Attorney for Plaintiffs-Appellees*
356. Till, Ann, *Defendant*
357. Topaz, Jonathan, *Attorney for Plaintiffs-Appellees*
358. Trent, Edward, *Attorney for Defendants-Appellants*
359. Tucker, William, *Attorney for Plaintiffs-Appellees*
360. Tyson, Bryan, *Attorney for Defendants-Appellants*
361. Uddullah, Angelina, *Plaintiff-Appellee*
362. Unger, Jess, *Attorney for Plaintiffs-Appellees*

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363. United States Department of Justice, *Attorneys for Plaintiffs-Appellees*
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365. Vander Els, Irene, *Attorney for Defendant*
366. Varghese, George, *Attorney for Plaintiffs-Appellees*
367. Varner, Johnny, *Defendant*
368. Vasquez, Jorge, *Attorney for Plaintiffs-Appellees*
369. Vaughan, Elizabeth, *Attorney for Defendants-Appellants*
370. Waite, Tristen, *Attorney for Defendant*
371. Wang, Emily, *Attorney for Plaintiffs-Appellees*
372. Wardenski, Joseph, *Attorney for Plaintiffs-Appellees*
373. Ward-Packard, Samuel, *Attorney for Plaintiffs-Appellees*
374. Weber, Gerald, *Attorney for Plaintiffs-Appellees*
375. Weigel, Daniel, *Attorney for Defendants-Appellants*
376. Wesley, Carol, *Defendant*
377. White, Daniel, *Attorney for Defendant*
378. White, William, *Attorney for Intervenors-Appellants*
379. Wiggins, Larry, *Defendant*
380. Wilberforce, Nana, *Attorney for Plaintiffs-Appellees*
381. Wilborn, Eric, *Attorney for Defendant*

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382. Williams, Gilda, *Attorney for Plaintiffs-Appellees*
383. Williams, Tuwanda, *Attorney for Defendant*
384. Wilmer Cutler Pickering Hale and Dorr LLP, *Attorneys for Plaintiffs-Appellees*
385. Wilson, Jacob, *Attorney for Defendant*
386. Wilson, Melanie, *Attorney for Defendant*
387. Wingate, Mark, *Defendant*
388. Winichakul, Pichaya, *Attorney for Plaintiffs-Appellees*
389. Women Watch Afrika, *Plaintiff-Appellee*
390. Woodfin, Conor, *Attorney for Intervenors-Appellants*
391. Woolard, Cathy, *Defendant*
392. Wurtz, Lori, *Defendant*
393. Yoon, Meredyth, *Attorney for Plaintiffs-Appellees*
394. Young, Sean, *Attorney for Plaintiffs-Appellees*
395. Zatz, Clifford, *Attorney for Plaintiffs-Appellees*

Members of the above-named Plaintiff-Appellee groups and residents of the State of Georgia also have an interest in the outcome of this appeal.

Except Plaintiff-Appellee Georgia State Conference of the National Association for the Advancement of Colored People (whose parent corporation is

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National Association for the Advancement of Colored People, Inc.), none of the above parties has a parent corporation, and no corporation owns 10% or more of any party's stock. No publicly traded company or corporation has an interest in the outcome of this case or appeal.

Per Eleventh Circuit Rule 26.1-2(c), Appellees certify that the certificate of interested persons contained in this motion is complete.

Dated: October 13, 2023

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INTRODUCTION

Pursuant to Fed. R. App. P. 27 and this Court’s Local Rules, the undersigned Plaintiffs-Appellees respectfully move this Court for an order dismissing this appeal for lack of subject matter jurisdiction. The State Defendants-Appellants and the Intervenors-Appellants (together, “Appellants”) appeal an order from the District Court granting Plaintiffs-Appellees’ motion for a preliminary injunction as to certain *non*-appealing county defendants. In the proceedings below, State Defendants-Appellants opposed Plaintiffs-Appellees’ motion for a preliminary injunction, arguing there was an absence of traceability and redressability because county officials, not state officials, process absentee ballots. The District Court accepted State Defendants-Appellants’ argument and enjoined only the county defendants not to violate the Civil Rights Act’s prohibition on immaterial voting requirements, declining to enjoin any Appellant. Yet now, Appellants, as prevailing parties below against whom no order was entered, attempt to overturn the District Court’s Order. Appellants lack standing to do so and their appeals should be dismissed.

BACKGROUND

This appeal concerns a provision of Georgia Senate Bill 202 (“SB 202”), the Georgia omnibus election law passed in March 2021. That provision excludes otherwise valid absentee ballots for failure to include a correct birthdate on the return envelope—an immaterial requirement that has already disenfranchised at least

hundreds of qualified Georgia voters. To submit an absentee ballot under SB 202, registered voters who have already been verified and deemed eligible to vote absentee must place their absentee ballot in one envelope, then place that envelope in a second ballot return envelope which, in relevant part, has a space to include their full date of birth. SB 202 § 28 at 1453-60 (the “birthdate requirement”). If a voter does not properly write his or her birthdate on the second ballot return envelope, SB 202 requires the official to reject the ballot. *Id.* at 1593-99. The record establishes that hundreds (and likely thousands) of duly qualified voters made mistakes in responding to this immaterial requirement, like filling in today’s date, resulting in their valid votes being rejected.

SB 202 was not the first time that Georgia has required voters to write their birthdates on ballot return envelopes in order for their vote to be counted. When the State previously instituted birthdate requirements, the District Court for the Northern District of Georgia also enjoined it. *See Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018); *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324 (N.D. Ga. 2018).

On May 17, 2023, plaintiff groups (“Plaintiffs-Appellees” or “Plaintiffs”)¹ moved for a preliminary injunction against the birthdate requirement, arguing that it

¹ The moving plaintiffs consist of the plaintiffs in two of five actions that were consolidated for pre-trial proceedings: *Georgia State Conference of the NAACP et al. v. Brad Raffensperger et al.*, No. 1:21-cv-01259-JPB (Georgia State Conference

violates the materiality provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B). Motion for Preliminary Injunction (ECF No. 548) (**Exhibit 1**).² “This provision was intended to address the practice of requiring unnecessary information for voter registration with the intent that such requirements would increase the errors or omissions on the application forms, thus providing an excuse to disqualify potential voters.” *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003).

In the District Court, Plaintiffs sought an order “enjoining Defendants from rejecting absentee ballots based on any error or omission relating to SB 202’s requirement of birthdates on ballot return envelopes, directing the Secretary of State to issue guidance to all counties to comply, and ordering the Secretary of State to count such ballots and refuse certification of election results until all such ballots have been counted.” Plaintiffs’ Brief in Support of Motion for Preliminary Injunction (ECF No. 548-1) (**Exhibit 2**) at 28 of 33. Plaintiffs argued that State Defendants-Appellants had the authority to require counties to comply with the

of the NAACP, Georgia Coalition for the People’s Agenda, Inc., League of Women Voters of Georgia, Inc., GALEO Latino Community Development Fund, Inc., Common Cause, and the Lower Muskogee Creek Tribe), and *Sixth District of the African Methodist Episcopal Church et al. v. Brian Kemp et al.*, No. 1:21-cv-01284-JPB (Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, Georgia Advocacy Office, and Southern Christian Leadership Conference).

² ECF citations refer to the District Court ECF record.

birthdate requirement through administrative suspension and other enforcement powers provided under SB 202. Plaintiffs' Reply Brief in Support of Motion for Preliminary Injunction (ECF No. 595) (**Exhibit 3**) at 12–13 of 37. Plaintiffs also argued that the State Defendants-Appellants had responsibility for and could amend the absentee ballot envelope that required a birthdate. *Id.* at 12 of 37.

None of the eleven County Defendants opposed the motion. *See* Order Granting in Part and Denying in Part Motion for Preliminary Injunction (ECF No. 613) (**Exhibit 4**) at 6 of 38, n.6. But State Defendants³ and Intervenors⁴ did. *See* State Defendants' Brief in Opposition to Motion for Preliminary Injunction (ECF No. 582) (**Exhibit 5**); Intervenors' Brief in Opposition to Motion for Preliminary Injunction (ECF No. 583) (**Exhibit 6**). In particular, State Defendants-Appellants argued that Plaintiffs lacked standing to seek an injunction against them, claiming

³ State Defendant-Appellants consist of the State of Georgia, Brian Kemp (Governor of Georgia), Brad Raffensperger (Secretary of State of Georgia), the Georgia State Election Board ("SEB"), Sara Tindall Ghazal (member of the SEB), Janice W. Johnston (member of the SEB), Edward Lindsey (member of the SEB), Matthew Mashburn (member of the SEB), and Gregory W. Edwards (District Attorney for Dougherty County). Mr. Edwards was not listed among the "State Defendants" in the District Court's order, *see* Exhibit 4 (ECF No. 613) at 5 of 38, n.2, but has appealed that order. Nor did that order identify Dougherty County in its listing of "County Defendants." *Id.* at 5 of 38, n.3.

⁴ Intervenors consist of Georgia Republican Party, Inc., National Republican Congressional Committee, National Republican Senatorial Committee, and Republican National Committee. The Court allowed the Intervenors to intervene under Fed. R. Civ. P. 24(b)(2) (permissive intervention). No. 1:21-cv-01259, ECF No. 40.

“[t]here is no traceability or redressability because county officials, not State Defendants, process absentee ballots.” Exhibit 5 (ECF No. 582) at 16 of 30. State Defendants-Appellants declared that “the processing of absentee ballots has **nothing to do with State Defendants**, eliminating any claim against State Defendants for an injunction related to the absentee voter verification provisions.” *Id.* (emphasis added). Instead, State Defendants-Appellants contended that their role in elections was entirely separate from the County Defendants and thus outside injunctive power: “this Court may not bind non-party county officials by enjoining State Defendants to provide guidance, stop certification, or take other action,” they argued, because “State Defendants do not appoint the county registrars, they are not part of state government, and State Defendants can only resort to ‘coercive judicial process’ to enforce the Election Code if county registrars do not follow the law.” *Id.* at 18 of 30.

On August 18, 2023, the District Court entered an Order Granting in Part and Denying in Part Plaintiffs’ motion. Exhibit 4 (ECF No. 613). On the merits, the District Court found that the birthdate requirement on absentee ballot envelopes was an immaterial voting requirement that violated the Civil Rights Act. It granted the motion as to the County Defendants, enjoining them “from rejecting absentee ballots based on any error or omission relating to the Birthdate Requirement.” *Id.* at 38 of 38. But the District Court denied the motion as to the State Defendants-Appellants,

determining that “Plaintiffs’ injury—the rejection of absentee ballots with missing or incorrect birthdates—is not redressable by an order directed to State Defendants, who are removed from the process of accepting or rejecting absentee ballots.”⁵ *Id.* at 16 of 38.

Plaintiffs disagree that the birthdate requirement is not traceable to, or redressable through an order against, State Defendants-Appellants. Indeed, Plaintiffs have cross-appealed the District Court’s order on that basis. But, having prevailed on their argument that any injuries resulting from the birthdate requirement were not traceable to nor redressable by State Defendants-Appellants, they, and the Intervenors-Appellants, nonetheless appeal the order in their favor—an order that does not order them to do or refrain from doing anything. State Defendants-Appellants may not now—in an about-face from their contention that this was solely a dispute between the Plaintiffs and the County Defendants—invoke this Court’s jurisdiction as to an order directed only at the non-appealing County Defendants. Based on the State Defendants-Appellants’ representations made to the District Court to obtain a favorable ruling, their attempt to seek relief in this Court as to other parties should be rejected.

⁵ The District Court’s order likewise does not order Intervenors-Appellants to do, or refrain from doing, anything.

LEGAL STANDARD

Fed. R. App. P. 27 permits appellees to move to dismiss an appeal for defects such as lack of jurisdiction. *See Wolfe v. Carnival Corp.*, No. 19-10422-AA, 2019 WL 2183347 (11th Cir. May 15, 2019) (granting appellee’s motion to dismiss appeal for lack of jurisdiction); *Fuller v. Carollo*, 977 F.3d 1012, 1013 (11th Cir. 2020) (dismissing appeal *sua sponte* for lack of jurisdiction). “A litigant may appeal only if he is aggrieved by the decision. Thus, parties may lack standing to appeal trial court rulings that do not affect their interests.” *Schultz v. Alabama*, 42 F.4th 1298, 1317 (11th Cir. 2022), *cert. denied sub nom. Hester v. Gentry*, 143 S. Ct. 2610 (2023). As the parties seeking to invoke the Court’s jurisdiction, Appellants must affirmatively “establish *their* standing not only to bring claims, but also to appeal judgments.” *Wolff v. Cash 4 Titles*, 351 F.3d 1348, 1353 (11th Cir. 2003) (emphasis added); *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) (“The standing Article III requires must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance.”) (citations omitted). It is not incumbent upon Plaintiffs-Appellees to negate it.

“Only a litigant who is aggrieved by the judgment or order may appeal. Thus, it is entirely possible that named defendants in a trial proceeding, who would doubtless have appellate standing for the purposes of challenging some final rulings by the trial court, could lack standing to appeal other trial court rulings that do not

affect their interests.” *Wolff*, 351 at 1353–54 (citations omitted); *see also Henderson v. Ford Motor Co.*, 72 F.4th 1237, 1245 (11th Cir. 2023) (“[P]revailing parties lack standing to appeal absent some prejudice by the collateral estoppel effect of the district court’s order.”). A generalized interest in determining the validity of a law as applied to the general public is insufficient to confer standing. *See Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020) (a party cannot satisfy redressability requirement of standing by seeking a declaration as to “the legal effect of the statute in all contexts”).

ARGUMENT

I. STATE DEFENDANTS-APPELLANTS LACK STANDING TO APPEAL THE PRELIMINARY INJUNCTION.

State Defendants-Appellants prevailed at the District Court; the District Court did not enjoin them from engaging in any behavior. Nonetheless, State Defendants-Appellants appeal an order enjoining County Defendants—who did not oppose Plaintiffs’ motion—from engaging in behavior that, by State Defendants-Appellants’ own argument, has “nothing to do with” them. As the “prevailing party,” State Defendants-Appellants lack standing to appeal that order. *Henderson*,

72 F.4th at 1245. This Court thus lacks jurisdiction to entertain the appeal and it should be dismissed at the outset.⁶

State Defendants-Appellants presented no argument to the District Court that they had an interest in the birthdate requirement dispute; in fact, they exclusively argued the opposite. *See* Exhibit 5 (ECF No. 582) at 3 of 30 (arguing “Plaintiffs lack standing against State Defendants-Appellants to obtain an injunction against them”); *id.* at 16 of 30 (“[T]he processing of absentee ballots has ***nothing to do with State Defendants***, eliminating any claim against State Defendants for an injunction related to the absentee voter verification provisions. Simply put, any alleged injury by Plaintiffs is ***not the result of conduct of State Defendants*** nor of any action that this Court can order State Defendants to take.”) (emphases added); *id.* at 17 of 30 (arguing no judicial power to order that the “State Defendants provide ‘guidance’ on the absentee voter verification provisions”); *id.* at 18 of 30 (“[T]his Court may not bind non-party county officials by enjoining State Defendants to provide guidance, stop certification, or take other action.”); *id.* (“State Defendants can only resort to ‘coercive judicial process’ to enforce the Election Code if county registrars do not follow the law.”).

⁶ Ruling on Plaintiffs’ Motion to Dismiss, rather than carrying it with the case, will serve the interests of judicial economy and expedient resolution by disposing of this appeal without full briefing on the merits and by narrowing the issues for argument.

The District Court ultimately denied Plaintiffs' motions as to State Defendants-Appellants because it agreed that Plaintiffs' injuries were "not redressable by an order directed to State Defendants." Exhibit 4 (ECF No. 613) at 16 of 38. Plaintiffs continue to disagree. But based on the positions State Defendants-Appellants took in the proceeding below, and especially to the extent State Defendants-Appellants continue to take these positions in opposition to Plaintiffs' cross appeal, they cannot now avail themselves of this Court's appellate jurisdiction. State Defendants-Appellants are not "aggrieved by the judgment or order" in any manner that gives them standing to appeal. *Wolff*, 351 F.3d at 1353–54. Because "the injunction, by its very terms, does not require [State] Defendants to do anything, and the injunction could not be enforceable against [State] Defendants through contempt," the State Defendants-Appellants do not have standing to appeal. *Schultz*, 42 F.4th at 1317.

Further, because State Defendants-Appellants successfully opposed Plaintiffs' motion, they do not have standing to appeal. "An appellee may not attack a decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary." *Henderson*, 72 F.4th at 1245 (internal citations omitted). State Defendants-Appellants successfully argued their disinterest in this dispute, and the County Defendants did not oppose the injunction request. State Defendants-Appellants therefore have no standing to now appeal the result favorable to them.

To the extent State Defendants-Appellants attempt to invoke this Court’s ruling in *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State* as substantiating standing, any such reliance would be misplaced. 66 F.4th 905 (11th Cir. 2023). In that case, the district court enjoined Florida Attorney General Ashley Moody and Secretary of State Laurel Lee from enforcing several provisions of a state election law. Final Order, *League of Women Voters of Florida. v. Lee*, 595 F.Supp.3d 1042 (N.D. Fla. 2022). Unlike in the instant case, the Secretary of State who appealed the judgment in *League of Women Voters* was actually one of the parties enjoined. Further, the injunction effectively bound the state itself by enjoining a state official tasked with implementing the law at-issue. *See Seminole Tribe of Fla. v. State of Fla.*, 11 F.3d 1016, 1028 (11th Cir. 1994), *aff’d* 517 U.S. 44 (1996) (observing legal “fiction” which “allows an individual to obtain a federal injunction against a state officer to force the officer to comply with federal law”); *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F. 4th at 945 (noting appellant had a “statutory obligation to uniformly administer elections according to the election code adopted by the Legislature”). By contrast, here the District Court declined to order action by any party to this appeal. And, more generally, the injunction does not purport to bind any state official such that the state is effectively enjoined by the order. The policy rationale in *League of Women Voters*—that some representative of the state must be permitted to appeal in order to represent the state’s interest in not being

bound by the injunction—does not apply here where, at the State Defendants-Appellants’ own urging, only county administrators were subject to the District Court’s order.

II. INTERVENORS-APPELLANTS LACK STANDING TO APPEAL THE PRELIMINARY INJUNCTION.

Intervenors-Appellants, likewise, lack standing to appeal the District Court’s order. The order below did not require the Intervenors-Appellants to do, or refrain from doing, anything. “To have standing, a litigant must seek relief for an injury that affects him in a ‘personal and individual way.’” *Hollingsworth v. Perry*, 570 U.S. 693, 705–06 (2013) (“The only individuals who sought to appeal [the injunction] were petitioners, who had intervened in the District Court. But the District Court had not ordered them to do or refrain from doing anything.”). Where an intervenor’s “only interest in having the District Court order reversed [is] to vindicate the constitutional validity of a generally applicable [] law,” they lack standing to appeal. *Id.*

This principle is especially salient here, where Intervenors-Appellants “have no ‘personal stake’ in defending [the law’s] enforcement that is distinguishable from the general interest of every citizen of [the state].” *Id.* at 707. Indeed, Intervenors-Appellants “have no role—special or otherwise—in the enforcement of” SB 202 or the birthdate requirement. *Hollingsworth*, 570 U.S. at 707. The only conceivable argument Intervenors-Appellants might assert is that the birthdate requirement

somehow aids in the election of their preferred Republican candidate. Whether true or not—and Intervenor offered no evidence on this point—regardless, this Court has held that contentions of “standing based on ‘systemic disadvantage’ to [a political party] ‘relative to other political parties’” is “based on nothing more than ‘generalized partisan preferences’” and therefore insufficient to establish standing” in voting rights litigation. *Jacobson*, 974 F.3d at 1251; *see also Democratic Nat’l Comm. v. Bostelmann*, 976 F.3d 764, 766–67 (7th Cir. 2020), *on reconsideration*, 977 F.3d 639 (7th Cir. 2020) (finding Republican National Committee Republican Party of Wisconsin lacked standing to appeal voting rights injunction, where “[t]he district court did not order them to do something or forbid them from doing anything” and “[t]he political organizations themselves do not suffer any injury caused by the judgment”).

Just as State Defendants-Appellants cannot appeal an injunction against another party after disclaiming their interest in the injunction, Intervenor-Appellants may not appeal since they have no standing in the present dispute.

CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court dismiss both State Defendants-Appellants’ and Intervenor-Appellants’ appeals for lack of jurisdiction.

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limits of Federal Rule of Appellate Procedure 27(d)(2) because, excluding the parts of the motion exempted by Federal Rules of Appellate Procedure Rule 27(a)(2)(B) and 32(f) and Eleventh Circuit Rule 32-4, this motion contains 3,041 words.

2. This motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Laurence Pulgram
Laurence Pulgram

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