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
SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, *et al.*, *Plaintiffs,* v. BRIAN KEMP, Governor of the State of Georgia, in his official capacity, *et al.*, *Defendants,* REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants.*	Civil Action No.: 1:21-cv-01284-JPB
GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*, *Plaintiffs,* v. BRAD RAFFENSPERGER, in his official capacity as the Secretary of State for the State of Georgia, *et al.*, *Defendants,* REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants.*	Civil Action No.: 1:21-cv-01259-JPB

AME & GEORGIA NAACP PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES, RULES, AND REGULATIONS

CONSTITUTIONAL AUTHORITIES

INTRODUCTION

S.B. 202 makes it a crime in Georgia to offer water to thirsty voters waiting in long lines to cast their ballots. Rather than focus on the merits of this indefensible law, State and Intervenor Defendants (collectively, "Defendants") primarily lean on vague and implausible platitudes and out-of-context case cites to claim there is not enough time to implement court-ordered relief. Yet no one disputes that enjoining the line relief ban would require only modest revisions to trainings that have not yet occurred and a simple return to the practice prior to S.B. 202's recent enactment.

On the merits, Defendants claim that line relief is not communicative because it does not express a particularized message in every conceivable instance. That doubly misstates the law. Conduct is expressive if a reasonable viewer would understand it to relay *some* message, and laws that unduly restrict speech in a substantial number of applications violate the First Amendment. Plaintiffs offered concrete evidence on each point. Defendants respond with mere speculation.

Otherwise, Defendants largely do not try to justify the line relief ban under the appropriate standards of review, instead arguing it survives rational basis review and the *Anderson*/*Burdick* balancing test. Neither is at issue. Preventing improper political pressure and voter intimidation are important interests, but that conduct was already illegal before S.B. 202. The bulk of Defendants' evidence concerns already-illegal electioneering, and Defendants offer no coherent connection between those

interests and nonpartisan groups' unconditional offer of items of minimal pecuniary value, like food and water, to queuing voters. Defendants cannot violate Plaintiffs' core First Amendment rights based on a theoretical possibility of already-illegal conduct by differently situated individuals. The Court should preliminarily enjoin this unnecessary criminalization of constitutionally protected, core electoral speech.[1]

I. *Purcell* Does Not Foreclose Relief

Purcell v. Gonzalez, 549 U.S. 1 (2006), does not relieve states of liability whenever an election is remotely near. It stands for the simple principle that courts "should ordinarily not alter the election rules on the eve of an election," *Republican Nat'l Comm. v. Democratic Nat'l Comm.* (*RNC*), 140 S. Ct. 1205, 1207 (2020), when it would "result in voter confusion," *Purcell*, 549 U.S. at 4-5, or administrative "chaos," *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring). Preliminarily enjoining S.B. 202's line relief ban raises none of those concerns.

A. *Purcell* Does Not Apply Because Enjoining S.B. 202's Line Relief Ban Raises No Feasibility Or Voter Confusion Concerns

Defendants mischaracterize *Purcell*, claiming it applies automatically whenever an election is in the foreseeable future. *See* Intervenors' Opp. 4; State's Opp. 7. But *Purcell* is not a mere counting exercise; it depends "on the nature of the election law at issue, and how easily the State could make the change without undue

[1] The County Defendants renew their claim that Plaintiffs lack standing. This Court has already found that argument to be "without merit." ECF 110 at 12-13.

collateral effects." *Merrill*, 142 S. Ct. at 881 n.1 (Kavanaugh, J., concurring). "[C]ourts must engage with the facts and specific circumstances of the case." *VoteAmerica v. Raffensperger*, 2022 WL 2357395, at *19 (N.D. Ga. June 30, 2022).

Courts invoke *Purcell* when an injunction would present serious, unavoidable feasibility and voter confusion concerns regarding already-underway election processes. *See*, *e.g.*, *RNC*, 140 S. Ct. at 1207 (staying change to absentee ballot deadline where "absentee voting has been underway for many weeks" and "voters have requested and have been sent their absentee ballots"); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1283-84 (11th Cir. 2020) (staying injunction affecting "already printed and mailed" ballots). In *Merrill*, for example, it was the many complex, interceding deadlines in the "seven weeks" before absentee voting that raised concern, not the four months to Election Day. 142 S. Ct. at 879-80 (Kavanaugh, J., concurring). By contrast, in *Wisconsin Legislature v. Wisconsin Elections Commission*, 142 S. Ct. 1245, 1248 (2022), the Court did not apply *Purcell* despite an election being only a few weeks further away because there was "sufficient time" to draw new maps.[2]

Similarly, in *VoteAmerica*, the "election machinery" of printing and distributing absentee ballot applications was "already grinding," and an injunction

[2] Intervenors (at 7) argue the court-drawn maps in *Wisconsin Legislature* make it distinguishable, but that was not part of the Court's rationale and is irrelevant to whether the changes could be feasibly completed without voter confusion.

could have led to distribution of different application forms, causing voter confusion. 2022 WL 2357395, at *19. Yet in *Coalition for Good Governance v. Kemp* (*CGG II*), 558 F. Supp. 3d 1370, 1393 (N.D. Ga. 2021), this Court enjoined a rule against photographing ballots one month before the election because early voting had not begun, and the injunction would not interfere with processes already underway.[3]

The overwhelming weight of the evidence confirms that the narrow injunction sought here does not implicate *Purcell*. Defendants provide no evidence of potential confusion. *Cf.* Decl. of S. Lakin dated July 13, 2022 (Lakin Decl.) Ex. 1 (Decl. of D. Benning dated July 11, 2022) ¶ 7; Clarke Decl. ¶ 11. As to administrability, the declaration of a recent election administrator shows that Georgia already has an infrastructure for efficiently communicating far more complex election-related changes far closer to the beginning of voting than the injunction here would require, including through Official Election Bulletins (OEBs), online training sessions, and supplemental letters. *See* Lakin Decl. Ex. 2 (Supp. Decl. of D. Brower dated July 11, 2022 (Brower Decl.)) ¶¶ 5-7. The State's evidence does not suggest otherwise, and in fact shows that officials will train poll workers and issue new guidance before the general election anyway. *See* ECF 197-2 (Germany Decl.) ¶ 42, 197-4 (Bailey

[3] The Eleventh Circuit declined to stay an injunction issued the week *following* the election that mandated a 48-hour cure period for purported signature mismatches because the order "narrowly tailored its relief to home in on … one limited aspect." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1331 (11th Cir. 2019).

Decl.) ¶¶ 24-28; *see also* Germany Decl. Ex. B (October 26, 2020 OEB giving poll workers supplemental instructions just days before the 2020 general election). The minor burden of slightly modifying future trainings cannot justify denying relief.

Intervenors (at 1, 5) rely heavily on *League of Women Voters of Florida, Inc. v. Florida Secretary of State*, 32 F.4th 1363 (11th Cir. 2022). That case, however, largely "implicate[d] voter registration—which [was] currently underway" and "require[d] the state to take action now" while "local elections were ongoing." *Id.* at 1371. Not so here. To be sure, a line relief restriction was also at issue, but whether *Purcell* applies is a fact-specific inquiry, and the Eleventh Circuit did "not endeavor to articulate *Purcell*'s precise boundaries." *Id.* at 1371 n.6. "*Purcell* is not a magic wand that defendants can wave to make any unconstitutional election restriction disappear." *VoteAmerica*, 2022 WL 2357395, at *19 (cleaned up).

B. Plaintiffs Satisfy The *Purcell* Requirements

Even if *Purcell* applies, the preliminary injunction would still be appropriate. Plaintiffs sued within days of S.B. 202's enactment, and the "undue delay" factor "refer[s] to the timing of the complaint." *VoteAmerica*, 2022 WL 2357395, at *19. Plaintiffs also moved for this relief more than five months before the 2022 general election and as soon as feasible given discovery schedules. Moreover, the "key" consideration for *undue* delay is whether Plaintiffs acted early enough to avoid confusion and administrative problems. *VoteAmerica*, 2022 WL 2357395, at *19;

see also CGG II, 558 F. Supp. 3d at 1393. The record here confirms that the requested injunction would not confuse voters. And it would require just a single edit to the Poll Worker Manual to use the pre-S.B. 202 version of the law. *See* Germany Decl. Ex. G at 40. Even Fulton County could train poll managers on this change in ninety minutes. *See* Brower Decl. ¶ 9.

As explained below, Plaintiffs are clearly entitled to relief on the merits and would suffer clear irreparable harm absent an injunction. Defendants cannot hide behind *Purcell* to avoid defending the unconstitutional line relief ban on its merits.

II. Plaintiffs Are Likely To Succeed On The Merits Of Their Claim

A. Plaintiffs' Line Relief Activities Are Expressive, Protected Conduct

State Defendants' main argument (at 16) is that conduct is only expressive if it "convey[s] a singular, specific" message. Intervenors (at 11-12) likewise contend it must communicate a "particularized" message. But controlling precedent makes clear that, "in determining whether conduct is expressive, we ask whether the reasonable person would interpret it as *some* sort of message, not whether an observer would necessarily infer a *specific* message." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004) (emphasis in original); *see also Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995) (rejecting argument that only "particularized message[s]" are protected). Plaintiffs

submitted evidence showing that many recipients of line relief understand it to communicate a core electoral message. *See* ECF 171-1 (AME Br.) 8, 12, 14.[4]

The "surrounding circumstances," as set out in the governing *FLFNB I* factors, also make clear that, at a minimum, the reasonable voter would understand line relief "as conveying some sort of message." *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale* (*FLFNB I*), 901 F.3d 1235, 1242-43 (11th Cir. 2018). *First*, although unnecessary to render the conduct communicative, line relief is often intertwined with verbal messages of practical support, reinforcing the parallel message communicated by the line relief itself. AME Br. 9. *Second*, line relief is "open to everyone," which, "in and of itself, has social implications." *FLFNB I*, 901 F.3d at 1242. *Third*, it occurs on sidewalks and streets, which are "quintessential public forums." *Burson v. Freeman*, 504 U.S. 191, 196 (1992).[5] Providers of line relief do not hand out free samples to passersby anywhere at any time. They provide support on voting days, outside polling places, where voters are waiting in long lines

[4] Defendants also ignore that the ban extends to straightforward verbal speech, criminalizing "offer[ing] to give" voters water or food. O.C.G.A. § 21-2-414(a).

[5] This point is not up for debate. Intervenors (at 14) mischaracterize *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1886 (2018), which held only that the "interior" of a polling place is not a public forum. And Defendants ignore that the Eleventh Circuit has already held that the *Burson* plurality's decision that the streets and sidewalks around polling places are public forums is controlling. *See Citizens for Police Accountability Pol. Comm. v. Browning*, 572 F.3d 1213, 1218 n.9 (11th Cir. 2009). And Defendants do not grapple with the other decisions in this circuit holding that such spaces *are* public forums. *See* AME Br. 17 n.6.

to cast their ballots. AME Br. 6-8. *Fourth*, it is "without dispute" that the burden of long lines and the importance of voting—the foundation of line relief—are "issue[s] of concern in the community." *FLFNB I*, 901 F.3d at 1242-43.[6] *Fifth*, sharing food has a unique history of symbolizing community and solidarity. *See id.* at 1243. That symbolism is even stronger when the food is provided by majority-Black social justice organizations with histories of providing food to communicate support in their neighborhoods. *See* Jackson Decl. ¶¶ 17-18; Briggins Decl. ¶ 19.

Line relief is thus far more comparable to the food-sharing events in *FLFNB I* than privately mailing a ballot application. Plaintiffs offer line relief in person to their neighbors. Those face-to-face offers leave voters fortified, even if they decline food or water. That is precisely because line relief does not just facilitate voting. It also conveys a concrete message of solidarity and dignity. Long lines—particularly disparately long lines—make clear whose voices the State values and whose it does not. Groups like Plaintiffs use line relief to tell voters that, no matter how the State treats them, they are vital members of our political community. Their voices matter.[7]

[6] In his rebuttal report, Dr. Stephen Pettigrew explains that Defendants' expert Dr. Daron Shaw's declaration "supports [his] claim that Georgia had among the longest wait times in the country." Lakin Decl. Ex. 4 at 4. "Georgians, particularly those who are not white, experience some of the worst voting lines in the country," *id.* at 8—further crystallizing the message communicated through line relief.

[7] Contrary to State (at 17) and Intervenor (at 13) Defendants' position, conduct that facilitates voting can be expressive in context. Dropping off a friend's absentee ballot may not be, but a parade to the drop box is. *See Hurley*, 515 U.S. at 568.

Rather than grapple with the unique context of line relief, State (at 14-15) and Intervenor (at 12) Defendants contend that line relief communicates *too many* messages to be protected. But expressive conduct is useful (and protected) precisely because it can communicate many messages at once, often more effectively than mere words. *See Hurley*, 515 U.S. at 569. Defendants' position is also untrue. The messages conveyed and received share a central theme, even if it is expressed in many ways: Your vote is important, and we support you. *See* AME Br. 4-8.

State (at 16) and Intervenor (at 12) Defendants submit only their mere say-so that viewers and recipients of line relief do not understand it to communicate *any* message. That cannot be enough. The communicative impact of line relief is obvious from context and demonstrated by the evidence Plaintiffs have adduced.[8]

B. Defendants Misstate The Governing Standard For Facial Relief

Intervenor (at 15-16) and State (at 14 n.6) Defendants argue against an injunction because they can imagine statutory violations not involving expressive conduct. But a law violates the First Amendment if it "punishes a substantial amount of protected free speech, judged in relation to the statute's plainly legitimate sweep." *Virginia v. Hicks*, 539 U.S. 113, 118-19 (2003) (cleaned up). So it does here. Plaintiffs have shown that many non-profits coordinate large efforts to provide

[8] Because S.B. 202 restricts expressive conduct rather than merely "control[ling] the mechanics of the electoral process," the *Anderson-Burdick* balancing test does not apply. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995).

nonpartisan line relief, which is now undisputedly criminal. By contrast, Intervenor (at 16) and State (at 14) Defendants just invented some "commercial promotions" or people trying to "get rid of … extra waters." That scattered hypothesizing cannot overcome Plaintiffs' actual evidence. Moreover, the ban on electioneering is not at issue—only the ban on giving nonpartisan aid. That portion of the law falls largely if not entirely on groups like Plaintiffs who use line relief to communicate support.

C. The Line Relief Ban Is Subject To Heightened Scrutiny

State Defendants (at 21 & n.11) argue that the line relief ban is content neutral because it "bans *everyone* from doing the same thing." That "conflates two distinct" doctrines: viewpoint discrimination and content-based restrictions. *Reed v. Town of Gilbert*, 576 U.S. 155, 168-69 (2015). "[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter." *Id.* (cleaned up). State Defendants (at 20) also argue that the ban is content neutral because the "plain text" does not explicitly reference the message line relief conveys. But "facially content neutral" laws are still "content-based regulations of speech" if they "cannot be justified without reference to the content of the regulated speech" or "were adopted by the government because of disagreement with the message the speech conveys." *Id.* at 164 (cleaned up).

This precedent squarely applies here. The law targets interactions only with *voters*, making clear its purpose to silences messages that line relief communicates.

Indeed, the State has repeatedly and solely purported to justify the ban by pointing to the content of the message they believe line relief communicates. *See* AME Br. 16; ECF 185-1 (NGP Br.) 11-12. Even now, State Defendants claim (at 18-19) that the ban arose from concern about "organizations attempting to influence … votes by providing food and drinks." Defendants thus expressly attempt to justify the law based on concerns about its communicative content—the supposed potential to influence voters. That is the same purported justification underlying bans on electioneering near polling places, so the law is subject to the same strict scrutiny. *See Burson*, 504 U.S. at 199. Unlike narrowly targeted electioneering bans, indiscriminate criminalization of all line relief cannot survive strict scrutiny.[9]

Separately, the mismatch between the State's purported end and the means selected shows that the State is not "in fact pursuing the interest it invokes" but "rather" attempting to silence a "disfavor[ed]" communicative tool to affirm voters waiting to cast their ballots. *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 802 (2011). That justification also turns on the content of the message expressed, and this mismatch "is alone enough to defeat" the challenged restriction. *Id.*

[9] State Defendants (at 27) argue that content-based restrictions are subject to only exacting scrutiny, citing *Burson*. Although that opinion used "strict" and "exacting" scrutiny interchangeably, *see* 504 U.S. at 198, 199, 207, 211, the Supreme Court has since clarified that content-based restrictions, like those in *Burson*, are subject to strict scrutiny. *See*, *e.g.*, *Reed*, 576 U.S. at 163-64; *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 451 (2015) (describing *Burson* as applying strict scrutiny).

Alternatively, the line relief ban is subject to exacting scrutiny because line relief's message of the importance of voting is core election-related speech. *See* AME Br. 18-20; NGP Br. 12-13. State Defendants (at 27 n.14) argue against exacting scrutiny because "Plaintiffs may still encourage voter participation." But even if that were the only message that line relief conveys—it is not—exacting scrutiny applies to burdens on election-related expression even if there are "other means to disseminate their ideas." *Meyer v. Grant*, 486 U.S. 414, 424 (1988). The First Amendment protects a person's "right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Id.*

D. SB 202's Line Relief Ban Cannot Survive Heightened Scrutiny

Plaintiffs are entitled to relief under even intermediate scrutiny, and certainly under the appropriate strict or exacting scrutiny. *See* AME Br. 21-26; NGP Br. 13-15. Offering water to a thirsty voter does not enable intimidation, and non-partisan, unconditional offers of *de minimis* value items does not facilitate bribery. Banning line relief, however, does restrict broad swaths of protected, expressive conduct. The State's ostensible interest could just as easily be served by laws that do not criminalize *all* line relief irrespective of intent and risk of improper influence. *See* Lakin Decl. Ex. 3 (Decl. of S. Flack dated July 11, 2022) ¶¶ 6-10.

Defendants offer no meaningful evidence that line relief is harmful, arguing instead that they need no such evidence. State Defendants (at 28-31) rely almost

exclusively on *Burson*, which upheld a ban on electioneering within 100 feet of a polling place. They claim (at 30) that *Burson* allows them to impose any speech restriction that might serve the "compelling interest in prohibiting voter interference" where "buffer zones are nearly identical." That is self-evidently wrong.[10] *Citizens for Police Accountability Political Committee v. Browning*, 572 F.3d 1213 (11th Cir. 2009), confirms the point. *Browning* upheld a restriction on soliciting signatures for ballot measures from voters as they exited the polls. *Id.* at 1215. In doing so, the Eleventh Circuit expressly distinguished between nonpartisan activities and "advocating for the success of some political proposal or candidate." *Id.* at 1219 n.11. Permitting activities that demand attention and time from voters—like solicitation in *Browning* and electioneering in *Burson*—means opening the door to parties "competing … for the attention of the same voters … to discuss different issues or different sides of the same issue." *Id*. at 1220. That is "fundamental[ly] differen[t]" from nonpartisan activities that simply provide voters with support. *Id.* at 1219 n.11. The Eleventh Circuit has therefore "reject[ed] the comparison" between political and nonpartisan First Amendment activity near polling places. *Id.*

State (at 29-30) and Intervenor (at 18-19) Defendants also rely on *Burson* to claim that they need not show any evidence justifying the line relief ban. Not so.

[10] The buffer zone here is not "nearly identical," but in fact 50% longer no matter where voters are waiting in line and then extending 25 feet from any voter waiting in line, no matter how far the line extends into traditional public forums.

Burson held only that Tennessee did not have to provide empirical evidence that a 100-foot buffer zone, as opposed to 25 feet, was necessary. 504 U.S. at 208-10. It also expressly clarified that "States must come forward with more specific findings to support regulations directed at intangible 'influence,'" rather than when "the First Amendment right threatens to interfere with the act of voting itself." *Id.* at 209 n.11. Defendants nowhere argue that line relief impedes the ability to vote, pointing only to purported intangible influences. The "modified 'burden of proof'" on which Defendants rely therefore "does not apply." *Id.* The State must "point to 'record evidence or legislative findings' demonstrating the need to address a special problem." *Fed. Election Comm'n v. Ted Cruz for Senate*, 142 S. Ct. 1638, 1653 (2022) (citations omitted). "[M]ere conjecture" is inadequate, particularly because the activity is "already regulated" as with anti-electioneering laws. *Id*. at 1652-53.

Defendants must justify the line relief ban to survive even intermediate scrutiny. They have not done so. State Defendants point only to the Germany Declaration, which does not help them. For example, they cite an email from a voter who claimed that other, unidentified "older voters felt intimidated" by Black individuals providing nonpartisan line relief, based solely on a supposed "look of fear on their faces." Germany Decl. ¶ 30(a) & Ex. F. This inherently suspect triple hearsay predicated on facial expressions stretches even the relaxed preliminary injunction evidentiary standard beyond its breaking point. *See Levi Strauss & Co.*

v. Sunrise Int'l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995) (evidence at preliminary injunction stage must be "appropriate" to rely on).

Germany (at ¶¶ 29-31) also repeatedly cites an email chain involving a food truck in which the election official on the ground explained those in the truck were "not campaigning," and that she was "having a hard time justifying why they need to stop doing any of this." Germany Decl. Ex. C. State Defendants' insistence that this was somehow problematic underscores their true purpose: treating nonpartisan speech of which it disapproves as "campaigning" and so targeting it for suppression.

Indeed, much of the Germany declaration simply confirms that narrower options are plentiful, including Georgia's pre-existing ban against campaigning near polling places. Even if a more prophylactic approach were justified, the State itself points to numerous less restrictive options. As it explained in an OEB pre-dating S.B. 202, "[b]ottles of water and crackers or peanuts [are] reasonable" and so could be permitted even if "fancier" refreshments were not. Germany Decl. ¶¶ 22, 30, 31, 36 & Ex. B. The State (at 28) also favorably cites statutes in Montana and New York, calling them merely "not identical" when in fact they are drastically more narrowly tailored. *See* AME Br. 25-26. Georgia's line relief ban is a unique and uniquely unjustifiable restriction on protected expressive conduct. It cannot stand.

CONCLUSION

Plaintiffs' motion for a preliminary injunction should be granted.

Respectfully submitted, this 13th day of July, 2022.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: July 13, 2022

/s/ *Leah C. Aden*
Leah C. Aden
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2022, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: July 13, 2022

/s/ *Leah C. Aden*
Leah C. Aden
Counsel for Plaintiffs

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
SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, *et al.*, *Plaintiffs,* v. BRIAN KEMP, Governor of the State of Georgia, in his official capacity, *et al.*, *Defendants,* REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants.*	Civil Action No.: 1:21-cv-01284-JPB
GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*, *Plaintiffs,* v. BRAD RAFFENSPERGER, in his official capacity as the Secretary of State for the State of Georgia, *et al.*, *Defendants,* REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants.*	Civil Action No.: 1:21-cv-01259-JPB

DECLARATION OF SOPHIA LIN LAKIN IN SUPPORT OF AME & GEORGIA NAACP PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

I, Sophia Lin Lakin, hereby declare:

1. All facts set forth herein are based on my personal knowledge, and if called upon to testify as to the contents of this Declaration, I could and would do so.

2. I am an attorney with the ACLU Foundation and am serving as counsel for Plaintiffs Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, Georgia Advocacy Office, and Southern Christian Leadership Conference in the above-captioned matter.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the declaration of Dexter Benning dated July 11, 2022.

4. Attached hereto as **Exhibit 2** is a true and correct copy of the supplemental declaration of Dwight C. Brower dated July 11, 2022.

5. Attached hereto as **Exhibit 3** is a true and correct copy of the declaration of Sarah Flack dated July 11, 2022.

6. Attached hereto as **Exhibit 4** is a true and correct copy of the Response to Declarations of Dr. Daron Shaw and Mr. C. Ryan Germany of Dr. Stephen Pettigrew dated July 12, 2022.

7. I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 13, 2022

/s/ *Sophia Lin Lakin*
Sophia Lin Lakin

Counsel for Plaintiffs

Exhibit 1

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

DECLARATION OF DEXTER BENNING

DECLARATION OF DEXTER BENNING
(pursuant to 28 U.S.C. § 1746)

My name is Dexter Benning. I am over the age of 21 and fully competent to make this declaration. Under penalty of perjury, I declare the following based upon my personal knowledge:

1. I am a U.S. citizen, a resident of Bartow County, Georgia, and a registered voter in Georgia.

2. Bartow County is located about 65 miles north of Atlanta along Interstate 75, and has a population of about 108,000.

3. I serve as a member of the Bartow County Board of Elections (the "Board"). I have served in this role for six years. My duties as a member of the five-person board include certifying election results for the county, addressing funding requests, managing employee issues, and ensuring that election laws and rules are being followed. As a member of the Board, I have also visited polling locations when voting was taking place and helped manage voting lines at certain locations.

4. Based on my work as a member of the Board, I am familiar with the laws and rules governing the provision of food, water, and other items (which I will call "line relief"). I am also familiar with the changes made to these laws and rules following the passage of SB 202 in 2021.

5. I understand that SB 202 imposes criminal sanctions on persons "who give, offer to give, or participate in the giving of any money or gifts, including, but not limited to, food and drink, to an elector," even without any conditions attached. From my understanding, these restrictions apply within 150 feet of a polling place or 25 feet of any voter in line.

6. As a Board member, we receive reports about issues relating to potential concerns about compliance with election laws and rules. During the time that I have served as a Board member, I have not received any complaints or reports from voters regarding line relief and I am not aware of any complaints or issues that the Bartow County Elections Office has received regarding line relief.

7. Because I have never received any complaints or reports of issues regarding line relief during the entire time that I have served as a Board member, and based on my experience managing voting lines at polling locations, I do not believe there would be any voter confusion or confusion among poll workers if the line relief rules were to change and revert back to the rules in place prior to S.B. 202.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/11/2022

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DEXTER BENNING

Exhibit 2

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
SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, *et al.*, *Plaintiffs*, v. BRIAN KEMP, Governor of the State of Georgia, in his official capacity, *et al.*, *Defendants*, REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants*.	Civil Action No. 1:21-CV-1284-JPB

SUPPLEMENTAL DECLARATION OF DWIGHT C. BROWER

SUPPLEMENTAL DECLARATION OF DWIGHT C. BROWER
(pursuant to 28 U.S.C. § 1746)

My name is Dwight C. Brower. I am over the age of 21 and fully competent to make this declaration. Under penalty of perjury, I declare the following based upon my personal knowledge:

1. I am a U.S. citizen, a resident of Newton County, Georgia, and a registered voter in Georgia. I retired as the Chief of Elections in the Fulton County Department of Voter Registration and Elections in 2019, where I had worked since about 2006. From July through November 2020, I returned to the Department of Voter Registration and Elections and worked as a contractor to fulfill the job duties of Chief of Elections during a vacancy. I have worked in election administration in Georgia in various capacities and jurisdictions from 1996 through 2020.

2. I reviewed the Declarations of C. Ryan Germany and Lynn Bailey that accompanied the Opposition to Plaintiffs' Motion for a Preliminary Injunction from the State of Georgia Defendants. I make this supplemental declaration to address some of Mr. Germany's and Ms. Bailey's statements and to provide further information about implementing changes to election rules and the practice of handing out food, water, and the like to voters waiting in line at polling locations, which I'll call line relief.

Communicating and Implementing Last Minute Changes to Election Rules

3. Last minute changes that affect operations inside or outside the polling place routinely happen. These changes have happened before primaries, runoffs, and general elections. For example, candidate withdrawals often happen between elections within the same cycle. Another example is the change to the citizenship verification process (discussed in paragraph 8

below) that occurred between the primary and general election in 2018.

4. When there is a statewide change in election rules, the Secretary of State's office often disseminates an Official Election Bulletin ("OEB") to explain the change and how elections officials should go about implementing those changes. These OEBs have been issued within days of an election.

5. When I worked for Fulton County, we would communicate these changes to poll management staff through additional online training sessions. These supplemental online training sessions were scheduled in addition to the general poll official training class that all poll workers attended. Doing so ensured the poll management staff received any and all updates to procedures, and relevant training materials even if they had undergone regular poll official training prior to a change in procedures, election code or SEB rules. These types of additional trainings were fairly common while I worked in Fulton County elections, and have happened up until the Monday before an election.

6. Additionally, my office would issue a supplemental letter of instruction on the Sunday before Election Day. This document contained important reminders of existing procedures and commonly included last-minute changes and clarifications to election rules governing activities inside or outside polling places. Usually, this document was approximately 3 pages long. Such changes communicated through the supplemental letter of instruction were not difficult for our office to implement during my tenure at Fulton County.

7. Last-minute changes that came through an OEB commonly involved candidate withdrawals. To address a candidate withdrawal, for instance, Fulton County would notify the poll managers at the polling places and the managers would be required to provide written

notification of the candidate withdrawal to voters by posting a sign at the relevant polling stations.

8. I also recall that right before the November 2018 general election, a judge issued an order changing the rules about how to verify citizenship. This change required posting certain information at every polling location, additional training for poll managers, and changing the procedure for verifying proof of citizenship at polling places. On November 2, 2018, four days before the election, the Secretary of State's office notified county officials and registrars of these changes through an OEB. I do not recall any significant issues in implementing these last-minute changes in advance of that election despite the fact that it affected each poll worker and voter. Based on my decades of election administration experience, if the line relief ban were to be lifted prior to the November general election, I believe it could be successfully implemented as late as one day before the advance voting period began on October 17, 2022.

9. If the line relief ban were to be lifted, it would not be difficult to implement. This is because such a change would simply involve notifying poll managers of the change and require poll workers to revert back to line relief procedures in place prior to 2021. Fulton County could provide all of the necessary training to poll managers in 90 minutes the day before the election by giving instructions that reverted to the preexisting policies for poll workers. Any cost, confusion, or hardship on the administration of elections could be readily mitigated through a combination of methods Fulton County has in place for implementing last-minute changes as outlined in the preceding paragraphs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 11, 2022

DWIGHT C. BROWER

Exhibit 3

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

DECLARATION OF SARAH FLACK

My name is Sarah Flack. I am over the age of 21 and fully competent to make this declaration. Under penalty of perjury, I declare the following based upon my personal knowledge:

1. I am the Founder and Managing Attorney of Sarah Flack Law, which I founded in February 2017. The firm exclusively handles all state felony and misdemeanor laws in Georgia. I have active cases in Fulton, Gwinnett, Cobb, Paulding, Henry, and Rockdale Counties.
2. Before starting my firm, I served as a Deputy Community Prosecutor in the Fulton County District Attorney's office from 2014 to 2017. As a prosecutor, I underwent trainings on state felony and misdemeanor laws in Georgia.
3. Within the District Attorney's office, I was the Deputy Community Prosecutor for Zone 5, which includes the Midtown neighborhood of Atlanta.

4. Fulton County Community Prosecutors are strategically placed in community-based offices for greater visibility and accessibility to residents. As Deputy Community Prosecutor for Zone 5, I attended all community meetings in Zone 5, including city council, police department, HOA, elected official, and neighborhood leader meetings. On average, I attended about six community meetings per month. I prosecuted all community-based crimes, including repeat offenders, continuing nuisances, felonies, and misdemeanors. In my position, I also oversaw all Fulton County Community Prosecutors, so I was generally aware of any issues reported to County Community Prosecutors.

5. During my time as Deputy Community Prosecutor, I did not receive and am not aware of any complaints in Fulton County related to individuals or groups who provided free water or food to voters standing in line at polling places. If there had been any complaints, I would have been aware of them due to the nature of the office, communications between Community Prosecutors, communications between Community Prosecutors and the District Attorney, and because of my supervisory responsibilities in overseeing all Fulton County Community Prosecutors.

6. Both before and after S.B. 202 became law, Georgia law prohibits vote buying, certain forms of electioneering, and voter intimidation.

7. Georgia law, for example, prohibits "giving or receiving, offering to give or receive, or participating in the giving or receiving of money or gifts for registering as a voter, voting, or voting for a particular candidate. Any person who gives or receives, offers to give or receive, or participates in the giving or receiving of money or gifts for the purpose of registering as a voter, voting, or voting for a particular candidate in any primary or election shall be guilty of a felony." O.C.G.A. § 21-2-570. A person would be charged under this statute if that person provides any item, including food or water, on the condition that the voter receiving the food, water, or another item registers to vote, changes votes for a particular candidate, or votes at all. This prohibition applies in all contexts, including if someone tries to engage in this prohibited conduct by approaching voters standing in line. And this prohibition was effective before S.B. 202 and remains effective following S.B. 202's enactment.

8. Before S.B. 202's enactment, people providing free food and water to voters at polling locations would not have been charged under O.C.G.A. § 21-2-570, subject to compliance with other relevant Georgia laws

governing conduct at polling locations including, but not limited to, O.C.G.A. § 21-2-413(d) (outlining prohibitions on electioneering within polling places), O.C.G.A. § 21-2-414(a) (outlining prohibitions on electioneering in the vicinity of polling places), and § 21-2-567 (outlining prohibitions on voter intimidation).

9. Georgia law also prohibits certain forms of electioneering and did so before S.B. 202. Under O.C.G.A. § 21-2-413(d), "No person, when within the polling place, shall electioneer or solicit votes for any political party or body or candidate or question." Likewise, under O.C.G.A. § 21-2-414(a), "No person shall solicit votes in any manner or by any means or method, nor shall any person distribute or display any campaign material. . . nor shall any person solicit signatures for any petition, nor shall any person, other than election officials discharging their duties, establish or set up any tables or booths on any day in which ballots are being cast:

   (1) Within 150 feet of the outer edge of any building within which a polling place is established;

   (2) Within any polling place; or

   (3) Within 25 feet of any voter standing in line to vote at any polling place."

10. Under O.C.G.A. § 21-2-567, a person may be guilty of voter intimidation if the person "uses or threatens to use force and violence, or acts in any other manner to intimidate any other person, to (1) Vote or refrain from voting at any primary or election, or to vote or refrain from voting for or against any particular candidate or question submitted to electors at such primary or election; or (2) Place or refrain from placing his or her name upon a register of electors."

11. In my position, I would have heard complaints, concerns, and cases related to charges under O.C.G.A. §§ 21-2-570, 21-2-413(d), 21-2-414(a), and 21-2-567. I would have also prosecuted cases based on felony charges under these statutes, except if the charges involved a public official or candidate. In my four years as Deputy Community Prosecutor, I am not aware of any complaints or the prosecution of any cases related to these crimes, and I do not recall anyone in my office discussing complaints or prosecutions for these types of crimes.

12. This declaration is not intended to capture all my knowledge or experiences that may be related to this matter or to provide legal advice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/11/2022

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SARAH FLACK

Exhibit 4

Response to Declarations of Dr. Daron Shaw and Mr. C. Ryan Germany

Dr. Stephen Pettigrew

July 12, 2022

My name is Dr. Stephen Pettigrew. I have been retained as an expert witness by the AME, GA NAACP, and CBC Plaintiffs in this case. In this declaration, I respond to the declarations of Dr. Daron Shaw and Mr. C. Ryan Germany. I focus here on a few of their specific points that pertain most closely to the contents of my original declaration. I acknowledge that the declarations by Dr. Shaw and Mr. Germany have other points that I do not specifically address here. I do not believe those points are relevant to the analysis I provided in my declaration, but I reserve the right to address them.

Average wait time on Election Day 2020

In paragraph 7 of Mr. Germany's declaration, he claims that in Georgia the average wait time on Election Day in the November 2020 general election was three minutes. Mr. Germany explains in paragraph 8 that this estimate was derived from "a geolocation tool. . . that allowed an individual at each polling place to report the wait time at that location in real time."

This is a dramatically different estimate of average wait time than I provided in my declaration. Appendix Table A3 of my original declaration shows that the average Georgian waited 15.4 minutes to vote on Election Day in November of 2020.

There are multiple reasons to believe that my estimate of 15.4 minutes is much more

accurate estimate of the average wait time than Mr. Germany's estimate of 3 minutes.

First, the 3 minute estimate is very inconsistent with the estimates of other studies of wait times in Georgia and elsewhere. As an example, the Elections Performance Index, which is a project that evaluates election administration efforts in each state, estimates that only seven out of 51 states (including the District of Columbia) had average wait times that were 3 minutes or shorter in November 2020.[1] Five of those seven states conducted the 2020 general election almost exclusively by mail, so virtually nobody in the state even had a chance to wait in line to vote in-person. In fact, the EPI estimates that the average Georgia voter (including those casting a ballot on Election Day or early in-person) waited 23.2 minutes. Georgia was the fifth worst state in 2020 on this EPI metric.

While I have not been provided with the data that underlies Mr. Germany's estimate, I suspect that his estimate is flawed because of multiple sources of un-addressed selection bias and other methodological flaws. First, it is not clear from Mr. Germany's declaration how many precincts utilized this new technology. If it was not available in every precinct in the state, then the data could have selection bias if randomly sampling was not used to determine which precincts would receive it. If the technology was rolled-out in every precinct statewide, there could also selection bias resulting from poll workers at busy precincts not having the bandwidth to record this information in a timely or accurate manner.

It is common for new election innovations to be first deployed and used in places that tend to have a smooth-running election operation. Because of this, it is likely that polling places with short lines are over-represented in the data from this line-reporting program. Precincts with long lines may be less likely to consistently report the wait time. These factors would lead to a statewide estimate of wait times that is too low.

Another source of selection bias comes from when and how often the wait times were being reported. Exhibit G of Mr. Germany's declaration indicates that wait times should be "recorded at least three times on Election day (Morning/Midday/Before the Polls Close)."

[1]The EPI began as a project run by the Pew Research Center, and since 2018 has been run by the MIT Election Data and Science Lab. See: https://elections.mit.edu/#/data/indicators

The vagueness of these instructions make the task of exacting an accurate estimate of average wait time very difficult. For a poll worker, this task of data collection is likely to be secondary to the task getting voters through the line. As a result, in precincts with long lines, the recorded wait time is almost certainly not taken during a time when the poll workers were overwhelmed by the volume of voters. This biases the estimate of wait times from the data toward being too small.

It also seems possible that some precincts–most likely those with short lines and higher poll worker bandwidth–maybe have reported more than three times throughout the day. Unless this was properly accounted for by weighting or some other technique, this could result in precincts with short lines being over-represented in the data. Mr. Germany's declaration makes no mention of how this was handled methodologically, and because his estimate of average wait time is so different from the estimates of other methodologically-sound methods, I suspect that his data did not properly account for this.

Even if precincts were randomly sampled across the state or the technology was used everywhere, and every precinct reported their line length at exactly the same times throughout the day, there is another explanation for why his estimate is too small. Imagine a precinct that had no lines throughout the day, where a poll worker reported at 2pm that the wait time was zero minutes. Now imagine a different precinct where the poll worker reported a 60-minute wait time at 2pm. The zero-minute wait time in the first precinct may reflect the experience that a few dozen voters had during the mid-day hours. But at the precinct with the 60-minute wait, there may have been hundreds or thousands of voters waiting in a very long line during mid-day. Mr. Germany's declaration makes no mention of weighting the data to account for this imbalance. Without properly weighting the data, I would expect to come up with an estimate similar to Mr. Germany's–one that is as much as ten times smaller than the true average wait time experienced by voters.

The 15.4 minute average Election Day wait time estimate that I provided in Appendix Table A3 of my declaration is based on data from a well-regarded and academically rigorous

study that has been used to analyze wait times since 2006. That survey data is based on random samples of voters, and the methodology underlying the data collection is based on the most recent and cutting edge approaches to survey research. When discussing my analysis of wait times, the defendant's own expert, Dr. Shaw, concedes in paragraph 15 that, "The data mostly support these claims and the attendant analysis appears reasonable." In essence, Dr. Shaw's declaration, which does not provide its own estimate of the average Election Day wait time, supports my claim that Georgia had among the longest wait times in the country, not some of the shortest, as Mr. Germany's declaration suggests. It is also worth noting that neither of their declarations provide an estimate of the average wait time during the early voting period. Table A3 of my declaration estimates that during early voting, Georgians waited an average of 32.2 minutes–more than 11 minutes longer than early voters in all other states.

Methodological questions about estimating wait times

In Section B of Dr. Shaw's testimony, he makes several arguments about why the methodology I employed in my analysis may not be sound. There are several reasons to discount Dr. Shaw's concerns.

First, his declaration contradicts itself. As mentioned before, in paragraph 15, in discussing my estimates of average wait times for voters in Georgia, he states that, "The data mostly support these claims, and the attendant analysis appears reasonable." Yet throughout the rest of section B (beginning with paragraph 16), he raises concerns about the methodological decisions I made when analyzing Georgia voters by race. In analyzing the data by race, I used the exact same techniques that he endorsed as reasonable when I looked at all Georgia voters. The only thing that differed in the subsequent analysis was that I was looking at white Georgians or Black Georgians instead of all Georgians.

Second, paragraph 19 of Dr. Shaw's declaration casts doubt on whether the methodological choices I made were common practice. In my declaration I cite several studies by both

academics and think tanks like the Pew Research Center that employ this same methodology.[2] In fact, Dr. Shaw has published co-authored work with at least two of the authors whose work I cite.

Additionally, Dr. Shaw's own peer-reviewed and published work has not only cited research that employs these methods, but his research actually uses these methods. On the first page of a 2016 article, Dr. Shaw states "survey data from the 2008 election indicate that the average wait time to vote was 16.7 min."[3] The footnote at the end of that quoted sentence indicates that he and his co-author used the 2008 Cooperative Congressional Election Study (CCES)6 to arrive at this estimate. This is the same data source that I used throughout section 3 of my declaration. While his article does not explicitly lay out the methodology for estimating this 16.7 minute figure, Dr. Shaw's co-author on the paper, Dr. Stephen Ansolabehere, has published other research about wait times that uses the same methodology–such as imputing the mid-points of the answer ranges or the approach to estimating margins of error–as the one used in my declaration. I know of no other methodological approach that researchers have used to estimate average wait times using the CCES data.

Later in that same article, Dr. Shaw cites a report that Dr. Ansolabehere and Dr. Charles Stewart prepared for the Presidential Commission on Election Administration.[4] In that report they analyze the CCES data using the same methodology as my declaration. Their report also analyzes the data by voters' race and provides estimates of the margin of error. In every instance of using the CCES data to estimate the average wait time or the margin of error around that average, Dr. Stewart and Dr. Ansolabehere's employ the same methodology as my declaration.

One of Dr. Shaw's specific critiques is that (paragraphs 17 and 18) survey respondents tend to over-report whether or not they voted, resulting in turnout rate estimates from

[2]See footnotes 4, 9, 11, 13, 15, 16, 17, 27, and 35 in my original declaration

[3]Daron Shaw and Stephen Ansolabehere. 2016. "Assessing (and fixing?) Election Day lines: Evidence from a survey of local election officials." *Electoral Studies* 41.

[4]Charles Stewart III and Stephen Ansolabehere. 2013. "Waiting in Line to Vote". https://dspace.mit.edu /bitstream/handle/1721.1/96640/WP%20114.pdf

survey data that tend to be too high. He does not, however, provide a specific reason for why this would be an issue for studying wait times. For it to be a problem, the people who mis-reported having voted would also have to have wait time reporting patterns that differ dramatically from those who did actually vote. For Dr. Shaw's point to affect the conclusions of my analysis, non-white voters who mis-reported having voted would have to indicate that they waited longer to vote than their non-white neighbors who did actually vote. Dr. Shaw does not provide any evidence to support this possibility, and I know of no research on this point.

In Figure 4 of his declaration, Dr. Shaw claims that there is no significant difference in the proportion of white and Black Georgians who waited more than one hour to vote. I believe he reached his conclusion looking for racial differences using as difficult a test as possible.

Detecting a statistically significant difference in wait times experienced by two groups requires having a sufficient number of data points from people in each group. His decision to analyze each year's data separately keeps sample sizes small and the margin of error estimates large, making it less likely to find a significant difference between white and Black respondents.

Similarly, he chose to respond to my analysis of white versus non-white voters in Figure A9 of my declaration by comparing white respondents to only Black respondents. By leaving out respondents who are neither white nor Black, Dr. Shaw's analysis keeps sample sizes smaller, making it more difficult to find a racial difference in wait times.

Additionally, Dr. Shaw's analysis neglects the differences in wait times between people who vote on Election Day and those who vote early in-person, as is the convention in research on wait times.[5] White and non-white voters utilize these methods of voting at different rates, and by grouping them all together, as in Dr. Shaw's analysis, it can mask racial differences that exist when making the appropriate comparisons.

In Appendix Figure A9 of my declaration, I follow Dr. Shaw's advice that, "a better

[5]See, for example, Charles Stewart and Stephen Ansolabehere. 2015. "Waiting to Vote." *Election Law Journal: Rules, Politics, and Policy.* 14(1).

comparison would be to take the actual percentage choosing a particular category, and to compare differences by race using appropriate confidence intervals" (paragraph 27 of Dr. Shaw's declaration). In doing this analysis, I chose to follow the recommendation of the President's Commission on Election Administration, and look at the rates of people waiting longer than 30 minutes, rather than Dr. Shaw's unjustified choice of using a 60-minute threshold.

In that figure, I also avoid the small sample size pitfall of Dr. Shaw's analysis by grouping together years of data based on whether they come from a presidential or midterm election year. Lastly, I separated out Election Day and early in-person voters–recognizing that there are differences in the rates that white and non-white voters use these methods.

The results of this analysis are clear. Non-white voters consistently have a higher rate of experiencing a wait of more than 30 minutes. In presidential elections, non-white Georgians who vote early are significantly more likely to experience a long wait (30.2%) than white Georgians. (23.0%). And among those who voted on Election Day in presidential elections, Georgians of color have a 21.0% chance of encountering a long line, compared to 15.7% of white Georgians.

Figure A10 of my declaration shows that even when taking Dr. Shaw's approach of not grouping together people of color, white Georgians are consistently less likely to encounter a 30-minute line than voters of other racial and ethnic groups. But, as is clear with this figure and with Figure 4 of Dr. Shaw's declaration, small sample sizes of each racial group makes it much more difficult to detect a statistically significant pattern. Yet even though there are large confidence intervals for these small groups, our best estimate at the proportion of Black, Hispanic, and Georgians of other races who waited at least 30 minutes is never smaller, and almost always bigger than our best estimate at that proportion for white Georgians.

In paragraphs 28 and 29 of his declaration, Dr. Shaw also critiqued the county-by-county analysis of wait times that appears in Figure 3.9 of my declaration. This figure can be thought of as an additional analysis that confirms what was seen in the earlier sections of my

declaration. Just like Dr. Shaw's Figure 4, the small sample sizes in my county-by-county analysis make it more difficult to identify a pattern in the data. When sample sizes are small, the "randomness" created from any single survey respondens makes it more likely that we would see about half of counties having white voters experiencing more longer lines and non-white voters, and half with the opposite result. Small sample sizes create statistical noise, making it more difficult to detect a signal. In the case of my analysis in Figure 3.9, I do find that in almost two-thirds of Georgia counties, voters of color experienced longer wait times than white voters within the same county. Small sample sizes make this result less likely to have occurred, if in fact there are no differences in the waiting-to-vote experience of different racial groups in Georgia.

Impact of long lines

Sections C and D of Dr. Shaw's declaration focus on the relationship between waiting in a long line and voter turnout. His declaration attempts to cast doubt on whether waiting in a long line impacts turnout. He points to survey data showing that a very small percentage of people state that they did not vote because of a long line. To my knowledge, this finding does not appear in any published academic work. Research on public opinion and voter behavior has long shown that voters are very inconsistent and unreliable in providing explicit reasons for why they did or did not vote. For this reason, his claim that lines do not impact turnout, is not based on sound research.

More importantly, I believe Dr. Shaw's declaration has mis-characterized the contents of mine. My declaration establishes that Georgians, particularly those who are not white, experience some of the worst voting lines in the country, which makes line relief activities necessary, especially in precincts that primarily serve non-white Georgians. As I explained in my original declaration, I was not asked to assess the impact that line relief would have on future turnout. My declaration does not claim that the presence or absence of those line relief efforts provides a causal link between waiting in a long line and diminished turnout in

subsequent elections.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 12, 2022.

Stephen Pettigrew, PhD