

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

IN RE GEORGIA SENATE BILL 202

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

UNITED STATES OF AMERICA,

Plaintiff

v.

THE STATE OF GEORGIA, *et al.*,

Defendants

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

SIXTH DISTRICT OF THE AFRICAN  
METHODIST EPISCOPAL CHURCH, *et al.*,

Plaintiffs

v.

BRIAN KEMP; *et al.*,

Defendants

Civil Action No.  
1:21-CV-01284-JPB

THE NEW GEORGIA PROJECT, *et al.*,

Plaintiffs

Civil Action No.  
1:21-CV-01229-JPB

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants

GEORGIA STATE CONFERENCE OF  
THE NAACP, *et al.*,

Plaintiffs

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants

Civil Action No.

1:21-CV-01259-JPB

THE CONCERNED BLACK CLERGY OF  
METROPOLITAN ATLANTA, INC., *et al.*,

Plaintiffs

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants

Civil Action No.

1:21-CV-01728-JPB

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR  
MOTION FOR PRELIMINARY INJUNCTION  
REGARDING INTENTIONAL RACIAL DISCRIMINATION**

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Plaintiff United States of America (“United States”) and Private Plaintiffs from four cases<sup>1</sup> respectfully submit this reply memorandum in further support of their motion for preliminary injunction, ECF No. 566, and in response to the opposition briefs of State Defendants (the State), ECF No. 601 (State’s Br.) and Defendant-Intervenors, ECF No. 600 (Interv. Br.) (collectively, the Defendants).

## I. INTRODUCTION

Plaintiffs have demonstrated that they are likely to succeed on their claims that the challenged provisions of Georgia Senate Bill 202 (2021) (SB 202) intentionally discriminate against Black voters in violation of Section 2 of the Voting Rights Act (VRA), 52 U.S.C. § 10301, and the Fourteenth and Fifteenth Amendments. Plaintiffs’ opening brief demonstrates that the Georgia legislature redesigned the State’s voting system as a means to impede Black voting strength because it poses a political threat. Taking away Black voters’ “opportunity because [they] were about to exercise it . . . bears the mark of intentional discrimination.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006) (*LULAC*).

Defendants attempt to convince this Court otherwise by misinterpreting

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<sup>1</sup> The Private Plaintiffs are from *Sixth District of the African Methodist Episcopal Church, et al. v. Kemp, et al.*, 1:21-CV-01284; *The New Georgia Project, et al., v. Raffensperger, et al.*, 1:21-CV-01229; *Georgia State Conference of the NAACP, et al. v. Raffensperger, et al.*, 1:21-CV-01259; and *The Concerned Black Clergy of Metropolitan Atlanta, Inc., et al. v. Raffensperger, et al.*, 1:21-CV-01728.

applicable law and ignoring relevant facts. Because Defendants' arguments are unpersuasive, this Court should grant Plaintiffs' Motion for Preliminary Injunction.

## II. ARGUMENT

### A. Defendants Misconstrue and Misstate the Applicable Legal Standard.<sup>2</sup>

#### 1. Discriminatory Purpose Does Not Require Proof of Racial Animus or That Race-Based Intent is the Sole or Primary Purpose, and Can be Proven by Circumstantial Evidence.

Defendants' repeated insistence that Plaintiffs must show that the actions of the Georgia legislature were "racist" fails as a matter of law. *E.g.*, State's Br. 23, 26, 33, 40. Establishing discriminatory intent only requires an intent to disadvantage minority citizens, *for whatever reason*, and not proof of racial *animus*. *See Ferrill v. Parker Grp., Inc.*, 168 F.3d 468, 472-73 & n.7 (11th Cir. 1999) ("[I]ll will, enmity, or hostility are not prerequisites of intentional discrimination."); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222-23 (4th Cir. 2016). That reason can include a

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<sup>2</sup> Notwithstanding the longstanding consensus that Section 2 encompasses distinct discriminatory purpose and discriminatory results claims, State Defendants contend that the panel decision in *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905 (11th Cir. 2023) (*LWV*), should be read to jettison any statutory prohibition on practices adopted or maintained for a racially discriminatory purpose. State's Br. 24-25. As explained elsewhere by the United States, *see* U.S. 12(c) Opp., ECF No. 573; Pl.s' Prelim. Inj. Br. 31-32, ECF No. 566-1 (PI Br.), such interpretation is foreclosed by Supreme Court and earlier Circuit precedent. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2349 (2021); *Chisom v. Roemer*, 501 U.S. 380, 394 n.21 (1991); *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1553 (11th Cir. 1984).

desire by decision-makers to “entrench themselves” in power. *McCrory*, 831 F.3d at 222;<sup>3</sup> *see also LULAC*, 548 U.S. at 440. That is what the record here shows.

To prove a discriminatory purpose claim under Section 2 or the Constitution, it is enough that the race-based purpose was *a* motivation for the enacted provisions. The evidence need not show “that the challenged action rested solely on racially discriminatory purposes” or that the discriminatory purpose “was the ‘dominant’ or ‘primary’ one.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977); *see also Allen v. Milligan*, 143 S. Ct. 1487, 1514 (2023); *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part). Here, the record shows that Defendants were motivated to enact the challenged provisions, at least in part, to impede Black voting strength as a means to gain political advantage. *See, e.g., PI Br. 4-14.*

Contrary to Intervenor’s assertions, Interv. Br. 8, discriminatory purpose claims can be proven with circumstantial evidence. *Rogers v. Lodge*, 458 U.S. 613, 618 (1982) (“[D]iscriminatory intent need not be proved by direct evidence.”).

Circumstantial evidence is not only sufficient but is often necessary, as a legislature’s

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<sup>3</sup> Intervenor’s spend several pages rejecting the analysis in *McCrory*. Interv. Br. 17-20. In fact, the Eleventh Circuit has cited *McCrory* frequently as a helpful comparator in its voting rights cases. *See, e.g., LWV*, 66 F.4th at 924; *Greater Birmingham Ministries v. Sec’y of State for State of Ala.*, 992 F.3d 1299, 1324 (11th Cir. 2021) (*GBM*).



“true purpose” will frequently be “cloaked in the guise of propriety,” *Lodge v. Buxton*, 639 F.2d 1358, 1363 (5th Cir. 1981), *aff’d sub nom. Rogers*, 458 U.S. 613 (1982); *see also Veasey v. Abbott*, 830 F.3d 216, 235-36 (5th Cir. 2016) (en banc) (“[W]e rarely have legislators announcing an intent to discriminate based on race.”).<sup>4</sup>

## 2. Any Presumption of Legislative Good Faith Is Not Absolute.

Defendants ask this Court to adopt an expansive definition of the “presumption of legislative good faith” that is not supported by *Abbott v. Perez*, 138 S. Ct. 2305 (2018), or *League of Women Voters of Florida Inc. v. Florida Secretary of State*, 66 F.4th 905, 923 (11th Cir. 2023). *E.g.*, State’s Br. 26, 31-36; Interv. Br. 5, 12. A presumption of legislative good faith is not absolute and can be overcome by a showing under *Arlington Heights*, 429 U.S. at 265-66 (“When there is a proof that a discriminatory purpose has been a motivating factor in the decision, this judicial deference is no longer justified.”); *e.g.*, *Jacksonville Branch of NAACP v. City of Jacksonville*, 635 F. Supp. 3d. 1229, 1288-89 (M.D. Fla. 2022), *appeal dismissed*, 2023 WL 2966338 (11th Cir. Jan. 12, 2023) (presumption of good faith overcome

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<sup>4</sup> State Defendants criticize Plaintiffs for not showing “a hint of discriminatory purpose in [the] text” of SB 202. State’s Br. 30; *see also* Interv. Br. 13 (noting the text of SB 202 is “neutral”). A racially discriminatory purpose need not “be express or appear on the face of the statute” to be actionable. *Washington v. Davis*, 426 U.S. 229, 241 (1976); *Veasey*, 830 F.3d at 235-36. That is the point of the *Arlington Heights* analysis. 429 U.S. at 264-66. By Defendants’ logic, even a racially-neutral poll tax with a preamble of “rationales” would not violate Section 2 or the Constitution—despite Congress’ clear contrary view. *See* 52 U.S.C. § 10306(a).

where racial considerations motivated the drawing of districts); *McCrory*, 831 F.3d at 221, 233-34 (holding “judicial deference accorded to legislators” overcome where plaintiffs met their burden under *Arlington Heights*). Plaintiffs have made such a showing here.

Further, case law does not require a district court to assign special credence to particular types of evidence or draw only positive inferences from the actions or statements of state officials. *Contra* State’s Br. 33-34, 36; Interv. Br. 12. *Abbott* found that the district court improperly placed the burden of proof on the State to show that its 2013 redistricting plan was not tainted by the unlawful intent underlying an earlier plan. 138 S. Ct. at 2325. Both *Abbott* and *LWV* make clear that the presumption of legislative good faith means that “past discrimination” does not “flip[] [plaintiffs’] evidentiary burden on its head.” *Id.*; *see LWV*, 66 F.4th at 923. The Supreme Court in *Brnovich v. Democratic National Committee* confirmed that *Abbott*’s discussion of legislative good faith did not change the “familiar approach outlined in *Arlington Heights*.” 141 S. Ct. 2321, 2349 (2021). Under this well-settled framework, there is no heightened presumption of legislative good faith, because Plaintiffs already have the burden to show that racial discrimination was a motivating factor behind the challenged provisions. *See Hunter v. Underwood*, 471 U.S. 222, 228 (1985); *GBM*, 992 F.3d at 1324. If that showing is made, the burden shifts “to the

law’s defenders to demonstrate that the law would have been enacted without this factor.” *Hunter*, 471 U.S. at 228.

**B. Plaintiffs Are Likely to Succeed on the Merits.**

**1. The Evidence Shows That the Legislature Enacted the Challenged Provisions to Entrench Political Power by Targeting Methods of Voting Used by Black Voters.**

**a. The Sequence of Events Leading Up to the Passage of SB 202 Is Legally Significant.**

Defendants appear to agree that the broad context and sequence of events leading up to SB 202 are relevant to the *Arlington Heights* analysis. *E.g.*, State Br. 30; Interv. Br. 6; *see Arlington Heights*, 429 U.S. at 267; *McCrary*, 831 F.3d at 221; *Veasey*, 830 F.3d at 236. Yet, “instead of acknowledging the whole picture,” *McCrary*, 831 F.3d at 228, Defendants’ briefs portray SB 202 as though its passage was uninfluenced by recent events, the political environment, history, and demographics (except where it purportedly supports their arguments).

In the context of elections in Georgia, *Arlington Heights* requires this Court to consider how racially polarized voting, growing Black political mobilization in 2018 and 2020, close elections, racialized allegations of fraud after the 2020 elections, and well-known differences in how Black and white voters use different voting practices—including that, in 2018, Black voters for the first time voted by mail at a higher rate than white voters—led to SB 202’s passage. It further requires this Court

to consider how SB 202's challenged provisions interact together to limit Black voters' power. *See McCrory*, 831 F.3d at 231; *Veasey*, 830 F.3d at 236.

Socioeconomic disparities and racially polarized voting in Georgia also help explain how the legislature could achieve partisan ends by implementing voting changes that disproportionately impact Black Georgians. *See* PI Br. 41-44.<sup>5</sup>

**b. Plaintiffs Have Established That the Impact of SB 202's Challenged Provisions Bears More Heavily on Black Voters Than White Voters.**

Plaintiffs' opening brief presented extensive evidence that the effects of the challenged provisions of SB 202, together and independently, bear more heavily on Black voters in Georgia than white voters. *See, e.g.*, PI Br. 33-44. Defendants do not seriously contest these facts. Instead, Defendants urge this Court to adopt an erroneous legal standard, point to irrelevant facts, mischaracterize the evidence, and present unreliable expert testimony.

**i. This Court Should Reject Defendants' Attempts to Conflate the Discriminatory Results and Discriminatory Purpose Analyses.**

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<sup>5</sup> Contrary to Defendants' contentions, State's Br. 31-32 & n.15, Interv. Br. 5-7, Plaintiffs do not cite to Georgia's history of discrimination to condemn the SB 202 legislature for the State's past actions, but to show how Georgia's recent electoral history provides context for the SB 202 legislature's actions. *See* PI Br. 41-44, 59. *See also Abbott*, 138 S. Ct. at 2325; *Milligan*, 143 S. Ct. at 1506, 1516 ("[H]istory did not stop in 1960."). Nevertheless, Georgia's past instances of official discrimination in voting demonstrate a long pattern of majority-white parties using race to maintain political power in the State. *See Wright v. Sumter Cnty. Bd. of Elections & Reg.*, 979 F.3d 1282, 1307-08 (11th Cir. 2020); *see also* PI Br. 59.

This Court should reject Defendants’ attempts to impose the *Brnovich* “guideposts” for analyzing a Section 2 discriminatory results claim onto this discriminatory purpose claim, *e.g.*, State’s Br. 40-41, 62-66, which *Brnovich* recognized follows the separate analytical framework described in *Arlington Heights*, *see* 141 S. Ct. at 2349.<sup>6</sup> Proof of disproportionate impact is “not the sole touchstone” of a discriminatory purpose claim. *Davis*, 426 U.S. at 242. Instead, “[s]howing disproportionate impact, even if not overwhelming impact, suffices to establish *one* of the circumstances evidencing discriminatory intent.” *McCrory*, 831 F.3d at 231. “[T]he Supreme Court cautioned that it would be rare to find a case involving ‘a clear pattern, unexplainable on grounds other than race’ and that, ‘[a]bsent a pattern as stark as that, . . . impact alone is not determinative, and the Court must look to other evidence.’” *GBM*, 992 F.3d at 1322 (quoting *Arlington Heights*, 429 U.S. at 266).

Of course, discriminatory impact can be powerful circumstantial evidence of discriminatory intent. *See Davis*, 426 U.S. at 242. And some showing of discriminatory impact is required in a purpose case, whether under Section 2 or the Constitution, “to assure that the district court can impose a meaningful remedy.”

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<sup>6</sup> State Defendants frame their opposition in terms of the *Brnovich* results guideposts, including the first guidepost (“usual burdens of voting”), *e.g.*, State’s Br. 41, 64, 66; fourth guidepost (“opportunities provided by a State’s entire system of voting”), *e.g.*, State’s Br. 62-63; and fifth guidepost (“strength of the state interests”), State’s Br. 40-62; *Brnovich*, 141 S. Ct. at 2338-39.

*Garza*, 918 F.2d at 771; *see also, e.g., Burton v. City of Belle Glade*, 178 F.3d 1175, 1188-89 (11th Cir. 1999); *Dillard v. Baldwin Cnty. Bd. of Educ.*, 686 F. Supp. 1459, 1467-68 (M.D. Ala. 1988). “This impact may be met by *any evidence* that the challenged system is having significant adverse impact on black persons today.”

*Dillard*, 686 F. Supp. at 1467-68. Where plaintiffs have shown an intent to discriminate, they need not also offer evidence that would amount to a violation of Section 2’s results test. *See McCrory*, 831 F.3d at 231 n.8; *Dillard*, 686 F. Supp. at 1468 n.10; *Brnovich*, 141 S. Ct. at 2349 (recognizing the purpose test is analytically distinct from the Section 2 results test).

ii. Turnout from a Single Election Does Not Reveal Whether SB 202’s Challenged Provisions Have a Discriminatory Impact.

Defendants’ focus on overall turnout numbers for the 2022 midterm elections is misplaced. State’s Br. 18-20, 38; Interv. Br. 16.<sup>7</sup> First, it is almost impossible to isolate the effect of one law on turnout from a single election cycle. Myriad other factors affect turnout, including demographic changes and political competitiveness. PI Ex. 41 (Burden Sur-Rebuttal 11). Indeed, the State’s own expert does not purport to attribute any change in turnout to SB 202. Ex. 135 (Grimmer Dep. 47:7-49:11).<sup>8</sup>

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<sup>7</sup> State Defendants assert that the 2022 midterm had “record turnout.” State’s Br. 38, 74. However, as the State’s expert acknowledged, the 2018 midterm had higher turnout rates than 2022. *See* State’s Ex. P (Grimmer ¶ 8 & p.22 Tbl. 1).

<sup>8</sup> Exhibits attached to this reply brief are offered to rebut facts and arguments raised in Defendants’ opposition briefs. *See Insituform Techs., Inc. v. Amerik Supplies, Inc.*,

Second, Defendants ignore their own expert's finding that "the Black turnout rate declined in the 2022 midterm election relative to the 2018 midterm election," State's Ex. P (Grimmer ¶ 33), and instead focus on overall turnout, inappropriately comparing a presidential election year to a mid-term election year, *see* State's Br. 19.

Third, turnout is not the same as impact. *See Veasey*, 830 F.3d at 260-61 ("[W]hile evidence of decreased turnout is relevant, it is not required to prove a Section 2 claim of vote denial or abridgement."); *McCrary*, 831 F.3d at 232. When Black voters succeed in overcoming the disparate burdens placed on them by a discriminatory law, those efforts are not revealed by an analysis of aggregate turnout.<sup>9</sup> PI Exs. 41, 44, 45 (Burden Sur-Rebuttal 11-12; Fraga ¶ 49; Fraga Sur-Rebuttal ¶¶ 12-17, 25-27); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 243 (4th Cir. 2014). In the wake of SB 202, Black voters, organizations, churches, and community groups undertook extraordinary efforts to help voters of color mitigate SB 202's discriminatory effects. *E.g.*, PI Exs. 10, 11, 14

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No. 1:08-CV-333, 2010 WL 11493292, at \*5 n.3 (N.D. Ga. Feb. 19, 2010); *Giglio Sub. S.n.c. v. Carnival Corp.*, No. 12-21680, 2012 WL 4477504, at \*2 (S.D. Fla. Sept. 26, 2012). The numbering of these exhibits continues from the exhibits accompanying Plaintiffs' opening brief (identified herein as "PI Ex.>").

<sup>9</sup> Even if the Court were to rely on turnout data in its analysis, the turnout gap between white and Black voters increased markedly between the two most recent midterm elections, from 6.2 percentage points in November 2018 to 9.7 percentage points in November 2022. PI Ex. 45 (Fraga Sur-Rebuttal ¶ 32 Tbl. 1); *see also* State's Ex. P (Grimmer ¶¶ 33-34 & Tbl. 2).

(Calhoun Decl. ¶¶ 29-37 (describing statewide voter outreach efforts in response to SB 202); Cotton Decl. ¶¶ 26-38 (same); Johnson Decl. ¶¶ 25-27 (helping voters obtain ID)). These third-party efforts kept some Black voters from being completely disenfranchised by SB 202. *E.g.*, PI Ex. 12 (Daniel Decl. ¶¶ 11-14 (third-party organization informed voter his absentee ballot was rejected for ID reasons)). Any success of these efforts is not evidence that SB 202 did not cause harm, but rather of the lengths the community will go to overcome burdens imposed on the right to vote. A political system is not “equally open” to all members of the electorate if Black voters must disproportionately deploy exceptional resources simply to participate.<sup>10</sup>

iii. Black Voters Bear the Effects of the Challenged Provisions More Heavily Than White Voters.

Defendants fail to rebut ample evidence that Black voters bear the effects of the challenged provisions of SB 202 more heavily than white voters. *See* State’s Br. 62-68; Interv. Br. 15-17.

**Voter ID for Absentee Voting.** Defendants do not dispute Plaintiffs’ evidence that Black voters disproportionately lack Department of Driver Services (DDS)-issued ID. PI Br. 34-36. Disparities in ID possession rates mean ID requirements will

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<sup>10</sup> Likewise, that a single Black-preferred statewide candidate won reelection in 2022 (while other Black-preferred candidates did not) can be one circumstance that is relevant in the discriminatory purpose analysis, *see* State’s Br. 63, but it is not the sole or most important fact. This is especially true where, as here, the community undertook extraordinary efforts to vote despite SB 202’s burdens.



have a disparate impact on Black voters. *See McCrory*, 831 F.3d at 231. Instead, Defendants contend that focusing on disparate rates of DDS ID possession is “misguided” because voters can submit a copy of an alternative ID with their mail ballot application. State’s Br. 61, 64. Defendants ignore that Black Georgians are less likely to have access to the resources necessary to navigate the process to obtain DDS ID. *See* PI Exs. 14, 42 (Johnson Decl. ¶¶ 9-13, 20-22, 30; Meredith ¶¶ 45-47). These same factors make it less likely that Black voters have access to a computer, printer, scanner, photocopier, or reliable transportation to a county election office to copy acceptable alternative ID to submit each time they request a mail ballot. PI Br. 42-43.

Second, Defendants suggest that the roughly 243,000 voters with no DDS ID number or an incorrect ID number in their voter registration record are insignificant. *See* State’s Br. 64 n.21. Approximately 130,000 (53%) of those voters are Black, even though Black Georgians comprise just 30% of registered voters. PI Br. 34-36.<sup>11</sup> Hundreds of thousands of voters, a majority of whom are Black, are hardly insignificant. If even a fraction of these Black voters is prevented from voting, that number is still several times more than the “11,780 votes” that determined the 2020

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<sup>11</sup> Because State election data do not record voters who did not submit or did not cure a mail ballot application because of an ID-related issue, the data cannot show how many voters were unable to cast a ballot in 2022 because of SB 202’s new voter ID requirement for mail voters. *See* Ex. 134 (Meredith Surrebuttal ¶¶ 2(a)-(b), 8-19); *see also* PI Br. 19 n.9 (describing cure process).

presidential election in Georgia. PI Br. 11. Given pervasive racially polarized voting in Georgia, such numbers provide ample “incentive” for the legislature to enact a new ID requirement. *See McCrory*, 831 F.3d at 222 (discussing *LULAC*, 548 U.S. 399).

**Reduction in Drop Box Availability.** Defendants’ claim that “Black voters in 2020 and 2022 used drop boxes less frequently than white voters” is unsupported by the data. State’s Br. 64.<sup>12</sup> Defense expert Dr. Justin Grimmer relies on two surveys, each containing fewer than 150 total drop box voters in Georgia. Ex. 133 (Burden Supp. Decl. 1-3). For 2022, the dataset he relies on contains only twelve (12) self-reported drop box users in the entire State. *Id.* at 3. These sample sizes are far too small to draw conclusions about Georgia voters as a whole. *Id.* at 2-3.<sup>13</sup>

Furthermore, contrary to State Defendants’ assertion, State’s Br. 64, Plaintiffs’ evidence shows that SB 202’s limitation on the number of drop boxes targets those counties with the largest Black populations for the greatest reductions: Fulton (reduction from 37 drop boxes in 2020 to 8 in 2022), DeKalb (33 to 5), and Gwinnett (24 to 6). PI Ex. 40 (Burden 28-29 & Tbl. 11). SB 202 did not simply mandate

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<sup>12</sup> On August 21, 2023, State Defendants provided “updated” information from Dr. Grimmer indicating that his analysis no longer suggests that white voters used drop boxes more than Black voters in 2022. *See* Ex. 149 (Email dated Aug. 21, 2023).

<sup>13</sup> An analysis of more than 7,000 drop box ballots in Douglas County—the sole county in Georgia that maintained individual-level data on drop box voters—showed that Black voters were more likely to use drop boxes than white voters in both November 2020 and January 2021. PI Ex. 40 (Burden 33-34, 48-50).

“removing a particular dropbox,” State’s Br. 64-65; rather, it eliminated roughly 80% of the drop boxes in the counties with the largest Black populations, limited the days and times drop boxes are available, and moved them indoors. *See* PI Br. 37-38. This burden clearly falls more heavily on Black voters. *Id.*

Finally, Defendants do not attempt to counter Plaintiffs’ evidence that the elimination of drop boxes during the final four days of voting will have a disproportionate effect on Black voters. Prior to SB 202, Black voters were significantly more likely to return absentee ballots during the final four days of an election, *see* PI Br. 37-38, the period when Defendants themselves argue that a mailed ballot may not be received in time to be counted, State’s Br. 8-9.<sup>14</sup>

**Line Relief Ban.** Defendants’ citations to average wait times are irrelevant to the question of whether SB 202’s line relief ban has a disparate impact on Black voters. *See* State’s Br. 20-21, 51-52. The question is not whether *most* voters wait in long lines, but whether voters in predominantly Black precincts are more likely to wait in long lines. The answer is unambiguously yes. Defendants do not dispute Plaintiffs’ evidence that predominantly Black precincts experience longer wait times

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<sup>14</sup> The State’s claim that there was no “express” statutory authority permitting drop boxes pre-SB 202, State’s Br. 4, 72, misleadingly omits that there was no *prohibition* on such use, and that the Secretary of State’s office “guaranteed” that some counties would have continued to use them even absent SB 202. PI Ex. 131 (CDR00070695).

than predominantly white precincts, including in the 2022 runoff elections. PI Br. 23, 38-40.<sup>15</sup> In addition, Defendants' experts' comparisons of wait times between 2020 and 2022 are unreliable, as the data they compare are from two separate studies with substantially different methodologies. *See* PI Ex. 41 (Burden Sur-Rebuttal 9).

Plaintiffs have also provided considerable evidence that third-party line relief activities enabled Black voters facing excessive wait times to remain in line to vote. *Compare* PI Br. 23, 38-40, *with LWV*, 66 F.4th at 937. For example, in November 2020, Tamara Scott, who waited for four hours to vote with her autistic child and contemplated leaving, said, “[G]etting that food and water was one of the reasons that I decided to stay in line.” PI Ex. 18 (Scott Decl. ¶¶ 6-11). Hope Sims Sutton explained that receiving snacks during early voting for the January 2021 runoff sent the message that she should “keep standing in line to make sure [her] voice was heard in the political process.” PI Ex. 19 (Sutton Decl. ¶¶ 5-9); *see also* PI Exs. 10, 11 (Calhoun Decl. ¶ 18; Cotton Decl. ¶ 10).<sup>16</sup>

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<sup>15</sup> Defendants downplay the existence of long lines in the 2022 elections, which received nationwide news coverage. *E.g.*, Neil Vigdor, *Georgia Voters Brace for Long Lines and Wet Weather*, N.Y. Times, Dec. 5, 2022, <https://www.nytimes.com/2022/12/04/us/politics/georgia-runoff-election-day-weather.html>.

<sup>16</sup> Defendants claim that SB 202's other provisions will reduce future wait times, *see* State's Br. 51, 66-67, but the 2022 election cycle showed that long lines persist in Georgia. Defendants concede that about 10% of all Georgia voters—approximately 400,000 voters—waited more than 30 minutes in line in 2022, State Br. 20, 66, and uncontested data shows that when long lines do occur, for whatever reason, they are

**Out-Of-Precinct Provisional (OP) Voting.** Defendants do not dispute that Black voters were more likely to cast OP ballots than white voters prior to SB 202. PI Br. 40-41. Defendants claim there has been a decline in the *total* number of provisional votes after SB 202, *see* State’s Br. 21, 65-66, but that number includes provisional ballots cast for at least six other reasons and provides no evidence about the impact of SB 202’s ban on counting most *OP* ballots. It is inevitable that fewer OP ballots were recorded in 2022, because SB 202 prohibits the counting of *any* OP ballots unless they are cast after 5:00 p.m. PI Ex. 57 (SB 202 § 34). The number of voters who were denied an OP ballot in 2022 and were therefore completely denied a vote is unknown, as there are no records kept of such voters. *See* Ex. 136 (DeKalb 30(b)(6) Dep. Tr. 161:17-162:2). But it is undisputed that Black voters were more likely to cast OP ballots than white voters prior to SB 202 and, thus, are disproportionately impacted by a ban on almost all OP ballots. *See* PI Br. 40-41.

**Earlier Deadline for Submitting Mail Ballot Applications.** Defendants allege for the first time—and without citation to any empirical evidence—that absentee ballot applications submitted during the week before the election (the period now banned by SB 202) resulted in ballots that “were almost never voted.” State’s Br. 53. However, the State’s own election data prove this false. A majority of days of the

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more likely to occur in predominantly Black precincts. *See* PI Br. 39-40.

now-eliminated request period during the November 2020 election, more than half (52%-59%) of each day's requested absentee ballots were cast and counted. Ex. 133 (Burden Supp. Decl. 4-5 & Tbl. 1). Even on the Friday before Election Day, about one-third of requests resulted in mail ballots that were counted. *Id.*

Moreover, Defendants' discussion of the impact of SB 202's absentee ballot application deadline asks the wrong question. State's Br. 65. The question for purposes of disparate impact is "whether [the challenged provision] bears more heavily on one race than another." *Arlington Heights*, 429 U.S. at 266. Dr. Grimmer's conclusions are in line with Dr. Fraga's: Black voters' applications were disproportionately likely to be rejected for arriving too late in 2022. *Compare* State's Ex. P (Grimmer ¶ 89), *with* PI Ex. 44 (Fraga ¶¶ 99-100 & Tbl. 7). Dr. Fraga's analysis also shows that a greater percentage of all applications were rejected post-SB 202 for being "too late" than before SB 202, and the increase was greatest for Black voters. PI Ex. 44 (Fraga ¶¶ 99-100 & Tbl. 7).

iv. The Availability of Different Ways to Vote in Georgia Does Not Mean the Challenged Provisions Have No Disparate Impact.

The State's argument that there is no discriminatory impact because there are different ways to vote in Georgia, *see* State Br. 62-63, is an attempt to divert attention from the *Arlington Heights* standard. The plain language of both Section 2 and the Constitution expressly forbids "abridgment" of the right to vote on the basis of race.

*See* 52 U.S.C. § 10301(a); U.S. Const., amend. XV. Plaintiffs need not prove that the challenged provisions of SB 202 completely deprive Black voters of *all* opportunity to participate in the electoral system. *See, e.g., L WV of N.C.*, 769 F.3d at 243 (“[N]othing in Section 2 requires a showing that voters cannot register or vote under any circumstance.”); *McCrory*, 831 F.3d at 230 (rejecting the argument that “the disproportionate impact of the new legislation ‘depends on the options remaining’ after enactment of the legislation”). Indeed, the challenged provisions work together to burden each of the State’s methods of voting: SB 202’s absentee by-mail and drop box restrictions erect obstacles to absentee voting, likely pushing more Black voters to vote in-person, where they face longer lines than white voters. The prohibition on handing out food and water makes waiting in line less tolerable, and the elimination of most OP voting forces voters who find themselves in the wrong precinct to travel and wait at another precinct or accept disenfranchisement.

\* \* \*

Individually and cumulatively, the evidence demonstrates that the full set of restrictions imposed by SB 202’s challenged provisions disproportionately affect Black voters. In a newly-competitive state marked by stark racial polarization in voting, shaving off a small number of Black votes can have an outsized political impact. *See Clingman v. Beaver*, 544 U.S. 581, 607-08 (2005) (O’Connor, J.,

concurring in part and concurring in the judgment) (“A panoply of regulations, each apparently defensible when considered alone, nevertheless have the combined effect of severely restricting participation . . . .”); *McCrory*, 831 F.3d at 231. Here, SB 202’s challenged provisions work in concert to disproportionately burden Black voters more than white voters. *See* PI Br. 33-44.

**c. Defendants Ignore the Procedural Departures in the SB 202 Legislative Process.**

Defendants’ attempt to characterize the legislative process as ordinary distorts the facts and does not tell the whole story. *See* State’s Br. 15-18, 27-30; Interv. Br. 9-11. Plaintiffs have shown that the legislative process leading up to SB 202 departed from normal practice in meaningful ways, PI Br. 47-50, which can be “evidence that improper purposes are playing a role.” *Arlington Heights*, 429 U.S. at 267.

The sheer quantity of election bills and the rushed speed at which they progressed during the 2021 legislative session—as noted by several legislators and county election officials—shows that SB 202’s legislative process did not comport with the General Assembly’s norms. *See e.g.*, PI Br. 15-18; PI Ex. 1 (Burnough Decl. ¶¶ 29-30); Exs. 140, 141 (Adams Dep. 42:10-43:4; Bailey Dep. 105:9-106:6).

Likewise, the legislative process for the election bills that together became SB 202 (“predecessor bills”) was rife with procedural departures. For example, Chairman Barry Fleming frequently introduced substitute bills for HB 531 during hearings on



the bill; those substitute bills, which often contained significant new provisions, were not made available in a timely manner to Black and other Democratic committee members, making it difficult for these legislators to meaningfully engage in the process. PI Ex. 1 (Burnough Decl. ¶¶ 34-38). In addition, only a handful of election officials testified during the hearings on HB 531, and those officials were selected by the proponents of the bill because they were deemed the “good ones.” *See* PI Br. 48.

Similarly, despite Senator Michael Dugan’s acknowledgment that SB 241 would be the most significant election reform since Georgia’s photo ID requirement in 2005, SB 241’s legislative process was rushed and non-transparent, with the sweeping bill passing after just three hearings. *See* PI Exs. 4, 5 (Harrell Decl. ¶¶ 11-13, Jones Decl. ¶¶ 18-19); Ex. 147 (AME\_000609:19-AME\_000609:25). No election official testified during SB 241’s committee hearings. *See* PI Ex. 5 (Jones Decl. ¶ 18). SB 241 narrowly passed the Senate, and Lieutenant Governor Geoff Duncan (serving as president of the Senate) refused to preside over the debate because SB 241 made “it harder for people to vote.” PI Ex. 117 (Lt. Gov. Geoff Duncan, *GOP 2.0* 112 (2021)). If HB 531 and SB 241 should count as part of the legislative process for SB 202, State’s Br. 27, their deviations from legislative norms should also be considered.

Defendants’ comparisons between SB 202 and HB 316 (2019) are inapt. *See* State’s Br. 13, 18. First, Defendants only compare SB 202 to one other piece of

legislation and provide no evidence that HB 316 represented normal legislative procedure. *See id.* Second, the two bills followed substantially different procedural paths. When HB 316 was passed, the legislative landscape was quite different. There were not around 100 election bills introduced in the same legislative session as HB 316. *See* Ga. Gen. Assemb., *Legislation Search, 2019-2020 Reg. Sess.*, <https://www.legis.ga.gov/search?k=&s=27&t=21&p=1>; PI Br. 48. No special committee, like the Election Integrity Committee (EIC) in 2021, was created to consider election bills in 2019; HB 316 was considered by committees that routinely govern election legislation. *See* PI Ex. 3 (Nguyen Decl. ¶ 38). Substantively, HB 316 was only 39 pages long (compared with SB 202's 90 pages) and did not impose stricter requirements on methods of voting. *See* Ex. 144 (HB 316).

Finally, Defendants incorrectly imply that SB 202 had some level of bipartisan support, based only on the limited input of the nonpartisan Association of County Commissioners of Georgia (ACCG) and out-of-context statements of Democratic legislators regarding procedural matters. *See* State's Br. 15-16. The ACCG's Deputy Director of Governmental Affairs admitted that only some counties supported his proposed 10-day absentee ballot request deadline. *See* Ex. 146 (SOS0003186:4-SOS0003187:4). In fact, several county election officials noted to the legislature they opposed a 10- or 11-day deadline. *See* PI Br. 26, 49; PI Exs. 126, 30 (USA-Adams-

000026.0001-000027.0016; Adams Dep. 146:13-147:10). And these bills received zero votes from Black or other Democratic legislators. *See* PI Br. 16-18, 50; PI Ex. 1 (Burnough Decl. ¶¶ 42, 50); Ex. 145 (USA-04065 (Senate Floor Vote for SB 241)). Democratic legislators asked multiple times for the process to slow down so that enough consideration could be given to this magnitude of a change. *See, e.g.*, State’s Ex. B at Ex. 5 (SOS0003080:2-SOS0003083:3). Instead, they were effectively shut out of the process. *See, e.g.*, PI Br. 15-16, 47-48 (describing private meetings between Republican members of the EIC but not Democratic members (all of whom are Black)); PI Exs. 1, 5 (Burnough Decl. ¶¶ 36-38, 46, 49; Jones Decl. ¶¶ 19-21).

**d. SB 202’s Legislative History, Including Contemporaneous Statements by Decisionmakers, Is Evidence of an Intent to Make the Political Process Less Open to Black Voters.**

Defendants do not engage with Plaintiffs’ main argument that a primary motivation for SB 202 was to protect the majority party in the legislature by impairing Black voting strength. In the words of the former Lieutenant Governor, the supporters of SB 202 “got scared” following the outcome of the 2020 election cycle and became “too focused on making voting more difficult.” PI Ex. 117 (Lt. Gov. Geoff Duncan, *GOP 2.0* 112). Targeting minority voters to achieve partisan ends violates Section 2 and the Constitution. *LULAC*, 548 U.S. at 440; *see also LWV*, 66 F.4th at 924; *McCrory*, 831 F.3d at 222 (“[I]ntentionally targeting a particular race’s access to the franchise because its members vote for a particular party, in a

predictable manner, constitutes discriminatory purpose.”). *See infra* II.B.1.f.

Individual statements by SB 202’s supporters reinforce this point. *See* PI Br. 15, 32-33, 50-51 & n.21. While statements from a single legislator are not dispositive of the intent of the whole, *see GBM*, 992 F.3d at 1324; State’s Br. 34, statements from select legislators can be highly probative of discriminatory intent, especially where those legislators played an outsized role in the legislation, *see, e.g., Hunter*, 471 U.S. at 229; *Carrollton Branch of the NAACP v. Stallings*, 829 F.2d 1547, 1552 (11th Cir. 1987); *Veasey*, 830 F.3d at 236-37; *Busbee v. Smith*, 549 F. Supp. 494, 500, 509 (D.D.C. 1982) (three-judge court). Likewise, contrary to Defendants’ assertions, statements need not directly talk about race to be indicative of racially discriminatory intent. *See* State’s Br. 33-35; Interv. Br. 10-12. Coded language and statements with discriminatory inferences are clearly relevant under *Arlington Heights*, because legislators rarely say on the record “that they are pursuing a particular course of action because of their desire to discriminate against a racial minority.” *Smith v. Town of Clarkton*, 682 F.2d 1055, 1064 (4th Cir. 1982); *see also Hunt v. Cromartie*, 526 U.S. 541, 553 (1999).

Take, for example, then-Speaker David Ralston saying that sending unsolicited absentee applications would “drive up turnout” and therefore be detrimental to his party in the November 2020 election, PI Br. 8-9, and Chairman Barry Fleming’s

impugning of absentee voting as “always suspect” and “shady.” PI Br. 15. These statements—made in an environment of enduring racially polarized elections, recent Black voter mobilization around absentee voting, and Black voters’ resulting electoral successes—betray an intent to preserve political power by limiting Black absentee voting. This is not partisanship “conflated with racial discrimination,” *LWV*, 66 F.4th at 925; *see* State’s Br. 35, but instead evidence of legislators understanding that lower turnout and lower absentee turnout, particularly among Black voters, helps the majority party achieve electoral success, *see infra* II.B.1.f. Speaker Ralston’s fears came to pass when Black voters turned out in historic numbers in the 2020 election, resulting in his party losing both U.S. Senate seats and the presidential contest. Targeting the ways that Black voters had mobilized and participated was the obvious next step for the Speaker and his legislature in order to limit Black voters’ growing political participation.

The statements of non-legislator witnesses are likewise relevant. *Contra* State’s Br. 34 n.17; Interv. Br. 9-10. The “views and associated lobbying efforts” of non-legislators can “be circumstantial evidence of the Legislature’s intent.” Order on Carver Dep. 5-6, ECF No. 544; *see also I.L. v. Alabama*, 739 F.3d 1273, 1287 (11th Cir. 2014); *Fla. State Conf. of Branches & Youth Units of the NAACP v. Lee*, 568 F. Supp. 3d 1301, 1305 (S.D. Fla. 2021). These include the numerous racialized

statements made by witnesses invited by the legislature to testify in the December 2020 hearings—the same hearings where several election law changes that were ultimately incorporated into SB 202 were initially proposed. *See* PI Br. 11-14. Here, those who played a primary role in lobbying for the challenged provisions “translate[d] their grassroots effort into official action.” *Stout by Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1008 (11th Cir. 2018).

**e. Defendants’ *Post-Hoc* and Tenuous Justifications for SB 202 Should Be Rejected.**

Defendants rely on *post hoc* and tenuous rationalizations to argue that race was not a motivating factor behind SB 202. *See* State’s Br. 40-62; Interv. Br. 13-16.

1. *Post hoc* rationalizations offer no evidence as to the actual purpose of the legislature—the heart of the matter in a discriminatory purpose case. *See United States v. Virginia*, 518 U.S. 515, 533 (1996) (“The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.”); *Singleton v. Merrill*, 582 F. Supp. 3d 924, 944 (N.D. Ala. 2022), *aff’d sub nom. Allen v. Milligan*, 143 S. Ct. 1487 (2023).

Defendants fail to present evidence establishing that many of the justifications they proffer were in fact considered by the SB 202 legislature. State Defendants’ proffered justifications are supported almost exclusively by paragraphs 65-128 of the declaration of Ryan Germany, *see* State’s Br. 40-62, a non-legislator who has

conceded that he did not know the actual legislative rationale for various provisions of SB 202, *see, e.g.*, Ex. 138 (Germany Dep. 159:10-21 (noting he could not speak to the legislature's rationales), 174:16-22 (same)). These paragraphs of Mr. Germany's declaration do not include any citations to the legislative record or other evidence that these rationales were actually considered by the legislature, let alone that they were the sole motivation. *See* State's Ex. B (Germany Decl. ¶¶ 65-128). Such conjecture is irrelevant to the discriminatory purpose analysis and should not be credited by this Court. *Cf. Singleton*, 582 F. Supp. 3d at 944.

2. Furthermore, the tenuousness between the rationales offered in support of SB 202 and the challenged provisions reinforces the conclusion that those rationales are pretext to target Black voters. *See* PI Br. 18-26, 54-58.

Defendants' arguments that SB 202's challenged provisions serve Georgia's interests in preventing fraud and increasing voter confidence, *see, e.g.*, State's Br. 45-47, 57, 60; Interv. Br. 13, are pretextual, as evidenced by the lack of evidence of widespread fraud in 2020, and the Secretary of State's repeated assurances to the legislature that the election was secure, *see* PI Br. 10-11; PI Ex. 117 (Lt. Gov. Geoff Duncan, *GOP 2.0* 110). States' legitimate interest in preventing voter fraud is not a blank check to enact restrictions that bear more heavily on minority voters in order to serve partisan ends. *See infra* II.B.1.f. Throughout late 2020 and early 2021, the

Secretary of State's office confirmed to the legislature numerous times that widespread voter fraud did not exist in the 2020 election. *See* PI Br. 10-11. The evidence of an "appearance" of fraud, *see, e.g.*, State's Br. 12, 57, 60-61, that before the legislature at the time was based on racialized stereotypes about fraud and criminality in the Black community, *see* PI Br. 44-47, 56, or misunderstandings about Georgia election procedures, *e.g.*, Ex. 139 (Mashburn Dep. 175:25-178:1); PI Ex. 7 (Parent Decl. ¶ 23). Defendants admit there were no substantiated incidents of fraud involving Georgia's drop boxes, State's Br. 5-6 & n.1, and Georgia law pre-SB 202 already prohibited ballot harvesting and campaigning at polling places, *see* PI Br. 22 & n.11. The "perception" of intimidation and undue influence outside polling places, State's Br. 48-53, was directed at line relief efforts in areas with significant Black populations. PI Br. 56-57. At least one prominent allegation of intimidation was advanced by an accuser who the State's own witness described as "full-on racist." *See* Ex. 139 (Mashburn Dep. 161:7-164:4). That some county election officials *encouraged* line relief efforts in their counties belies Defendants' characterizations of these efforts. *E.g.*, PI Exs. 35, 10 (Kidd Dep. 131:2-135:10; Calhoun Decl. ¶ 18). Moreover, Defendants provide no evidence of the reliability of any voter complaints allegedly received by the State, nor evidence that these complaints were before the legislature. *See, e.g.*, State's Br. 47, 54, 59-60; State's Ex. B (Germany Decl. ¶¶ 18-



19, 68, 80, 104) (failing to include the complaints themselves, details about the complaints, or evidence they were known by the legislature).

State Defendants also claim that limiting the number of drop boxes permitted in each county furthers the State's interest in "uniformity in voting." State's Br. 31. Yet, they fail to explain how systematically decreasing the number of drop boxes available in counties with high Black populations creates "uniformity." *See* PI. Br. 37; PI Ex. 40 (Burden 26-29).

Defendants point to no evidence that an 11-day absentee ballot request deadline was required to meet the State's interests, instead of the less discriminatory alternative of a 7- or 8-day deadline that was requested by county election officials. *See* PI Br. 49, 57; *see also* State's Ex. H (Germany Dep. 130:10-20). In fact, county election officials spoke in opposition to many provisions in SB 202, HB 531, and SB 241, including the 11-day deadline. *See* PI Br. 48-50; *cf.* *LWV*, 66 F.4th at 919.

The record also lends no support for State Defendants' *post-hoc* justifications regarding why SB 202 did not allow voters to verify their identity using the last four digits of their Social Security number (SSN4) on an absentee ballot application. State's Br. 61-62. To the contrary, during the 2021 legislative session, legislators admitted SSN4 would be sufficient to verify a voter's identity and had committed to including this provision for absentee ballot applications but failed to do so. *See* PI Ex.

83 (AME 001042:4-13); *see also* Ex. 139 (Mashburn Dep. 171:20-172:10).

State Defendants make the completely counterintuitive claim that eliminating OP provisional voting helps ensure that voters will not be disenfranchised. State’s Br. 57-58. In fact, where previously several thousand voters had their ballots counted for statewide offices when they cast OP provisional ballots, under SB 202 most OP voters are denied this opportunity unless they have the time and resources to travel to another polling location. *See* PI Br. 41. The legislature’s main justification for limiting OP ballots was based on wildly inaccurate data. *See* PI Br. 57-58. Defendants provide no evidence that any election official testified that processing OP ballots was a burden. *See* State’s Br. 10-11; State’s Ex. B (Germany Decl. ¶¶ 108-114). Georgia has counted OP ballots for almost two decades without incident. *See* PI Br. 24.<sup>17</sup> It was not until Black voters began exercising their political power in large enough numbers that the legislature decided to target these means of voting, which were used

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<sup>17</sup> Defendants cite *Brnovich*, 141 S. Ct. at 2345, 2350, for the proposition that Georgia could have banned counting all OP ballots. *E.g.*, State’s Br. 55. The facts surrounding SB 202 are fundamentally different than the facts in *Brnovich*. Arizona had never permitted OP voting, while Georgia had allowed it for almost two decades. *See* PI Br. 24. Further, the share of OP votes cast in Georgia was not consistently “diminishing,” 141 S. Ct. at 2344, but remained relatively steady from 2016-2020. *See* PI Br. 24-25. In addition, unlike in *Brnovich*, SB 202’s near-ban on counting OP ballots was coupled with a host of other restrictions targeting practices used disproportionately by Black voters. *See McCrory*, 831 F.3d at 232 (“The sheer number of restrictive provisions in [the challenged law] distinguishes this case from others.”).

disproportionately by Black voters. *See* PI Br. 24, 40-41; *McCrory*, 831 F.3d at 232.

**f. Evidence Under the Remaining *Arlington Heights* Factors Demonstrates That an Intent to Disenfranchise Black Voters Motivated SB 202’s Challenged Provisions.**

Cumulatively, the facts in this case demonstrate that SB 202 was enacted “because of,” not merely “in spite of,” its effect on Black voters, *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979); PI Br. 27-61; that the legislature targeted Black voters precisely because Black voters overwhelmingly vote against the majority party in the legislature, PI Br. 60; and that the harm to Black voters was foreseeable, *see* PI Br. 17, 51-52.

1. Defendants ignore that using race to achieve partisan ends violates Section 2 and the Constitution. *See* State’s Br. 35; Interv. Br. 14. In Georgia, race can be a reliable predictor of voting preference precisely because voting is so highly polarized in the State. *See* PI Br. 60; PI Exs. 1, 5 (Burnough Decl. ¶ 15; Jones Decl. ¶ 12). Georgia’s stark racial polarization in voting allows the legislative majority to achieve its ends most easily by fashioning voting changes, even small changes, that impact Black voters disproportionately. Indeed, when a legislative majority acts to achieve partisan ends by targeting voters by race because those voters are unlikely to vote for the majority party, that “constitute[s] racial discrimination.” *McCrory*, 831 F.3d at 233; *see also LULAC*, 548 U.S. at 427-28, 440; *Hunter*, 471 U.S. at 233.

2. Second, considerable record evidence demonstrates that SB 202’s disparate

effects were foreseeable. *Contra* State’s Br. 36-38; *see* PI Br. 51-52; PI Exs. 1, 5 (Burnough Decl. ¶ 30 (“[W]e [legislators], alongside many organizations that represent voters of color, continued to point out the disparate impact posed by many of the bills.”); Jones Decl. ¶ 26 (“ . . . I knew the disproportionate harm both bills posed to African-American voters and that the bills’ disparate impact was the ultimate intent of the bill.”)). The legislative record makes clear that evidence of the foreseeable impact of the challenged provisions was provided by several nonpartisan county election officials, *see* PI Br. 48-50, and members of the public, *see* PI Br. 17, 52 (collecting cites); PI Exs. 1, 5 (Burnough Decl. ¶¶ 39, 47; Jones Decl. ¶ 18); not just “legislative opponents,” State’s Br. 36-37.

Defendants also criticize Plaintiffs for lacking evidence about whether the legislature affirmatively considered demographic information, State’s Br. 38, ignoring that Plaintiffs were denied legislative discovery of just this type of evidence. Order on Leg. Disc., ECF No. 539. The State cannot use the assertion of legislative privilege “as both a sword and a shield.” *Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1126 (D. Neb. 2012). Nevertheless, legislators are familiar with the demographics of their supporters and opponents, as well as with the different methods of voting preferred by different groups of voters. *See* PI Br. 7; PI Exs. 1, 5 (Burnough Decl. ¶¶ 15-16; Jones Decl. ¶¶ 12, 20). Finally, Defendants assert that the foreseeable

“disparate impact . . . fail[ed] to materialize.” State’s Br. 38. Plaintiffs’ evidence demonstrates otherwise. *See* PI Br. 34-44; *supra* II.B.1.b.

## **2. Defendants Fail to Meet Their Burden to Prove that the Challenged Provisions Would Have Been Passed Absent a Racially Discriminatory Purpose.**

Because Plaintiffs are likely to prove that racial discrimination was a motivating factor behind the challenged provisions, “the burden shifts to the law’s defenders to demonstrate that the law would have been enacted without this factor.” *Hunter*, 471 U.S. at 228; *see also Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). Although Defendants do not explicitly address their burden shifting, they dedicate large portions of their oppositions to potential justifications for SB 202. *See* State’s Br. 40-62; Interv. Br. 13-15. However, the standard is not whether *any potential* objective reason exists to justify the law; at this step, “courts must scrutinize the legislature’s *actual* nonracial motivations to determine whether they *alone* can justify the legislature’s choices.” *McCrory*, 831 F.3d at 221 (emphasis added); *see, e.g., Stanley v. City of Dalton*, 219 F.3d 1280, 1293 (11th Cir. 2000); *DeKalb Cnty. v. U.S. Dep’t of Labor*, 812 F.3d 1015, 1021 (11th Cir. 2016) (“It is not enough that the evidence prove[s] that the [employer] *could* have in retrospect made its employment decision on legitimate grounds.”).

As set forth in Section II.B.1.e, *supra*, Defendants’ alleged justifications are *post hoc*, tenuous, or pretextual. Under a fair reading of the facts, the Georgia

legislature would not have imposed the new burdens on absentee voting, including dramatically limiting drop boxes, had Black voters not begun to use absentee voting disproportionately starting in 2018 and used it to achieve historic electoral successes in 2020. The legislature would not have prohibited line relief activities if such activities had not encouraged Black voters to stay in long lines to vote. And the legislature would not have prohibited counting most OP ballots but for its desire to shave off Black votes. The record shows the Georgia legislature would not have made these changes if these provisions did not make voting more difficult for Black voters.

**C. Plaintiffs Are Entitled to Injunctive Relief.**

**1. Irreparable Harm Has Already Occurred and Will Continue to Occur If the Challenged Provisions are Not Enjoined.**

Defendants ignore abundant evidence of harms that occurred during the 2022 elections. *Compare* State's Br. 63-69 and Interv. Br. 15-17, with PI Br. 34-44. This includes, but is not limited to, the testimony of several Black voters who were disenfranchised by SB 202. For example, Helen Lockette's absentee ballots for the 2022 elections did not count because her voter registration file contained an incorrect driver's license number. PI Exs. 16, 43 (Lockette Decl. ¶¶ 13-15; Meredith Supp. Decl. ¶ 5). Donald Jumper and Sebastian Mason were disenfranchised in the December 2022 runoff election because they mistakenly appeared to vote at the wrong precinct before 5:00 p.m. and did not have time to travel to and wait in line

again at their assigned precincts. PI Exs. 15, 17 (Jumper Decl. ¶¶ 4-8; Mason Decl. ¶¶ 4-8). “[O]nce the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law.” *LWV of N.C.*, 769 F.3d at 247; *see also* Order on Prelim. Inj. 31, ECF No. 613.

Abridging the right to vote, and not just outright denial, is itself an irreparable injury. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 555 (1964); *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1272 (11th Cir. 2020); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1320 (N.D. Ga. 2022). In addition, where Congress has provided for governmental enforcement of a statute through injunctive relief—as with the Voting Rights Act, 52 U.S.C. § 10308(d)—irreparable harm is presumed. *See Harris v. Graddick*, 593 F. Supp. 128, 135 (M.D. Ala. 1984); *United States v. Berks Cnty., Penn.*, 277 F. Supp. 2d 570, 578 (E.D. Pa. 2003). SB 202’s challenged provisions disproportionately harm Black voters, and that injury will continue in 2024 if the challenged provisions are not enjoined.

**a. Plaintiffs’ Timing of Filing the Motion Does Not Prevent Finding Irreparable Harm.**

Defendants’ arguments that Plaintiffs unreasonably delayed in filing this Motion are unfounded and disregard the unique nature of voting rights cases. *See* State’s Br. 69-70; Interv. Br. 20-23.

1. Plaintiffs timely filed this Motion to remedy harms in advance of the 2024

election cycle. Injury in voting cases is cyclical and recurring, as voters' rights are violated anew each time an election is held. *See League of Women Voters of Fla., Inc., v. Detzner*, 314 F. Supp. 3d 1205, 1223 (N.D. Fla. 2018); *LWV of N.C.*, 769 F.3d at 247. The only cases State Defendants cite in support of their undue-delay argument are trademark cases, which are factually distinct because the harm of trademark violations compounds daily. *See State's Br. 70* (citing *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016); *Romanick v. Mitchell*, No. 2:21-CV-0065, 2021 WL 5034369, at \*5 (N.D. Ga. July 13, 2021)). Plaintiffs have litigated this case expeditiously. When the prospect of a trial this year became unlikely, *see* Revised Sched. Order, ECF Nos. 400; Order Mot. to Extend Disc., ECF No. 496, Plaintiffs filed their motion about two months later. "Had Plaintiffs filed their motion[] earlier, their prospective harms would not have been imminent, but had they filed any later, their relief may have been barred by *Purcell* [*v. Gonzalez*, 549 U.S. 1 (2006)]." Order on Line Relief Prelim. Inj. 33-34, ECF 614. Without a trial date, preliminary injunction is the only means to prevent irreparable harm during the 2024 elections.

2. That Plaintiffs did not move for an injunction before the 2022 election does not weigh against a finding of harm. As in many voting cases seeking prospective relief, Plaintiffs needed substantial data in the control of Defendants to prosecute their claims, some of which Defendants refused to produce until ordered to do so by



this Court and which took considerable time to analyze. *See Ga. Coalition for the People's Agenda v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018); *Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 560-61 (6th Cir. 2014). Plaintiffs' Motion relies on substantial information not available to them until late 2022 and early 2023, including documents and deposition testimony. *Cf. Wreal*, 840 F.3d at 1248-49 (denying PI motion that relied solely on evidence plaintiff had when complaint was filed). Plaintiffs here promptly filed this motion only four weeks after the Court denied their motion on legislative discovery, Order, ECF No. 539, and only two weeks after the close of all discovery, *see* Order, ECF No. 496; *e.g., LWV of N.C.*, 769 F.3d 224 (PI filed after discovery was conducted). Plaintiffs' timing of this Motion is reasonable in light of the nature of the claim, necessary discovery, and imminent harm that accompanies violations of the right to vote.

**2. Any Burden to the State in Granting an Injunction is Outweighed by SB 202's Burden on Voters and the Public Interest in Protecting the Right to Vote.**

Defendants have failed to show a substantial risk of harm, confusion, or disruption in the upcoming 2024 elections if Plaintiffs' injunction is granted. *See, e.g., Jacksonville Branch of NAACP*, 635 F. Supp. 3d. at 1300-01.

Defendants do not present any evidence that implementing an injunction at this time would result in voter confusion or administrative challenges beyond those ordinarily experienced due to regular changes in election procedures. *See State's Br.*

72-73; Interv. Br. 25-26. The State acknowledges it regularly changes election laws between election cycles. *See* State's Br. 73 (describing changes in election laws in 2020 and 2022). "Administrative convenience" cannot justify a set of procedures that impinge upon a fundamental right. *Taylor v. Louisiana*, 419 U.S. 522, 535 (1975); *LWW of N.C.*, 769 F.3d at 244 ("Section 2 does not prescribe a balancing test under which the State can pit its desire for administrative ease against its minority citizens' right to vote."). Nor can Defendants' unsupported claims of public confusion. *See Jacksonville Branch of NAACP*, 635 F. Supp. 3d. at 1301. Under Defendants' theory, a court could never enjoin an election law because it would change policies from one election to the next, thereby completely defeating Congress' intent when it authorized lawsuits to prevent racial discrimination in voting.

To the contrary, State and county election officials have testified that there is sufficient time before the 2024 elections to implement the necessary changes without causing significant voter confusion or administrative burden. As to the ID requirements for absentee ballot applications, a preliminary injunction would merely require Georgia to utilize the same ID requirements currently used for returning absentee ballots. *See* PI Ex. 27 (SOS 30(b)(6) Dep. 276:25-278:2). That system imposes no hardship on the State. *See, e.g., Martin v. Kemp*, 341 F. Supp. 3d 1326, 1339-40 (N.D. Ga. 2018). Based on the Defendants' own testimony, the Secretary of

State's office could complete changes to the absentee ballot applications in 2023 and still meet all printing deadlines. *See* Ex. 137 (SOS 30(b)(6) Dep. 289:6-291:23).

As to drop boxes, line relief, OP ballots, and the absentee ballot request period, a preliminary injunction will simply require Georgia to continue using an election system *the State itself* developed and used successfully in the years preceding the enactment of SB 202. State Defendants would have a minimal role if the Court ordered changes to these provisions. Exs. 142, 148 (Evans Dep. 226:15-229:1; SEB 30(b)(6) Dep. 149:19-25). County election officials have stated that an injunction returning to the previous rules for these provisions could be implemented quickly and without significant administrative burden or voter confusion. *See, e.g.*, Exs. 143, 136 (Kidd Dep. 156:15-20 (reverting to pre-SB 202 OP ballot rules would not cause voter confusion), *id.* at 121:13-122:13 (reverting to pre-SB 202 drop box rules); DeKalb Cnty. 30(b)(6) Dep. 169:22-170:14 (noting that only poll worker training would be necessary to return to previous OP ballot rules)).

Neither the State nor the public has a legitimate interest in enforcing an intentionally discriminatory statute. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019); *United States v. Metro. Dade Cnty.*, 815 F. Supp. 1475, 1478 (S.D. Fla. 1993); *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986). As the Plaintiffs are likely to show that Section 2 and

constitutional violations exist, delaying a remedy would only increase the voter confusion, burdens, and costs Defendants argue would result from granting a preliminary injunction. *See NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*, 858 F. Supp. 2d 516, 526 (M.D.N.C. 2012).

**D. *Purcell* Does Not Preclude the Requested Relief.**

Plaintiffs filed this motion nearly 10 months before the next scheduled federal election in March 2024. *Purcell* does not apply where, as here, the next federal election is not imminent and Georgia’s “election machinery” for that election is not “already in progress.” *Reynolds*, 377 U.S. at 585; *see also Jacksonville Branch of NAACP v. City of Jacksonville*, No. 22-13544, 2022 WL 16754389, at \*2 (11th Cir. Nov. 7, 2022) (noting that applying *Purcell* even “five months prior to the elections” would unreasonably “extend the ‘eve of an election’ farther than we have before.”); *cf. Purcell*, 549 U.S. at 4-5 (weeks before an election); *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022) (less than four months before voting began).<sup>18</sup> As this Court has found, and as set forth above,

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<sup>18</sup> Intervenors erroneously apply the test from Justice Kavanaugh’s concurrence in the stay order in *Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring), *stay vacated sub nom. Allen v. Milligan*, 143 S. Ct. 2607 (2023). Interv. Br. 23-26. In staying the initial preliminary injunction in *Milligan*, the Supreme Court was concerned with “Alabama’s congressional districts be[ing] completely redrawn within a few short weeks” of the primary elections. *Milligan*, 142 S. Ct. at 879. We are not “in the period close to an election” such that this analysis applies, and this case does not involve the complex process of redrawing district lines statewide. *Id.* at

arguments that we are too close in time to the 2024 elections are unfounded. *See* Order, ECF 614 at 36-39.

**E. This Court Has the Power to Fashion Equitable Relief in the Interests of Justice.**

Finally, this Court is not limited to striking the challenged provisions of SB 202 altogether, *see* State’s Br. 72, but instead has the power to fashion whatever remedy the interests of justice so require. *See, e.g., Martin*, 341 F. Supp. 3d at 1341-42 (creating new procedures for an absentee ballot cure process); *Salazar v. Buono*, 559 U.S. 700, 722 (2010). This Court also has the power to grant relief on some, rather than all, of the challenged provisions. *See Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 506 (1985). Likewise, if this Court determines relief is not appropriate for the March 2024 presidential primary elections, this Court has the power to grant relief for the May 2024 primary and November 2024 general elections. *E.g., Martin*, 341 F. Supp. 3d at 1339-40 (entering relief in October of an election year).

**III. CONCLUSION**

The totality of relevant facts demonstrates that the challenged provisions of SB 202 were enacted “because of,” not merely “in spite of,” their racially disparate impacts. *Feeney*, 442 U.S. at 279. Accordingly, Plaintiffs respectfully request that their Motion for a Preliminary Injunction be granted.

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880; *see* Order, ECF No. 614 at 37-39.

Date: August 24, 2023

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(D)**

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

/s/ Rachel R. Evans

Rachel R. Evans  
Attorney, Voting Section  
Civil Rights Division  
U.S. Department of Justice

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### **CERTIFICATE OF SERVICE**

I hereby certify that on August 24, 2023, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Rachel R. Evans

Rachel R. Evans

Attorney, Voting Section

Civil Rights Division

U.S. Department of Justice

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

IN RE GEORGIA SENATE BILL 202

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF GEORGIA; *et al.*,

Defendants,

THE REPUBLICAN NATIONAL  
COMMITTEE; *et al.*,

Intervenor-Defendants.

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

**DECLARATION OF RACHEL EVANS**  
**IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF**  
**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Rachel R. Evans, 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 United States Department of Justice, Civil Rights Division, Voting Section and am serving as counsel for the United States in this matter.

3. Attached hereto is an Index of supplemental exhibits attached to Plaintiffs' Reply Brief in Support of Their Motion for Preliminary Injunction Regarding Intentional Racial Discrimination. These exhibits are offered to rebut facts and arguments raised in the opposition briefs filed by State Defendants (ECF No. 601) and Defendant-Intervenors (ECF No. 600).

4. Each exhibit is a true and correct copy of the document, which is submitted in support of this reply brief in support of plaintiffs' motion for preliminary injunction.

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

Dated: August 24, 2023

  
Rachel R. Evans



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# EXHIBIT

# 133

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

**SUPPLEMENTAL DECLARATION OF DR. BARRY BURDEN**

Pursuant to 28 U.S.C. § 1746, I, Dr. Barry Burden, make the following declaration:

The United States asked me to examine two claims made by the State Defendants in a July 27, 2023 brief (ECF No. 601). The first assertion is that Black voters have been less likely than white voters to return absentee ballots via drop boxes. The second assertion is that, under the pre-SB 202 regime, a large majority of absentee ballot requests submitted during the last week of early voting did not result in ballots actually being cast by voters. I believe that the available empirical evidence does not support either claim.

**I. The State Does Not Have Sufficient Evidence to Support Its Claim That Black Voters Used Drop Boxes Less Than White Voters**

The State's July 27, 2023 brief cites to the report of Dr. Grimmer for the proposition that Black voters used drop boxes less than white voters during the 2020 and 2022 elections (ECF No. 601 at 64). The evidence Dr. Grimmer cites, however, does not reliably support the conclusion that he draws.

In his February 14, 2023 report, Dr. Grimmer states that he "used the [2020] SPAE [dataset] to predict drop box use in Georgia" and found that, "among mail-in absentee voters, that *Black*

*voters were slightly less likely than white voters to report returning their ballots via drop box...*" (p. 125-6, emphasis added) (ECF No. 601-17).<sup>1</sup> No details about the analysis were provided in the report to facilitate evaluation of Dr. Grimmer's conclusion. However, the statistical computer code provided later by Dr. Grimmer reveals his methodology. The methodology differs from what is stated in his report in crucial ways. The methodology also suffers from other serious problems that render it unreliable.

First, Grimmer incorrectly categorizes any absentee voter who returned their ballot using a method other than the mail as being a drop box user. His definition includes people who reported that they brought their ballots to neighborhood polling places or voting centers.<sup>2</sup> This is obviously quite different from an analysis of drop box usage per se.

Second, even using Dr. Grimmer's overly broad categorization of what constitutes drop box usage, the SPAE dataset includes only 122 people in Georgia who were drop box users. Of these, only 33 are Black. These small sample sizes are not reliable bases on which to make comparisons between racial groups, let alone to estimate a multivariate regression model as Grimmer does.<sup>3</sup>

When drop box users are more accurately identified as only those individuals who reported that they returned ballots via a "drop box used only for ballots,"<sup>4</sup> the number is reduced to 45 respondents. Of these drop box users, a mere 16 respondents identify as Black. With such a small number of observations, a reliable comparison of drop box usage rates by race is not possible. This is because the tiny samples make the statistical uncertainty unreasonably high. The 95% confidence intervals – indicating where the true values likely lie – range from 36.3% to 57.4% among white voters who cast absentee ballots and range from 24.2% to 55.5% among Black voters who cast absentee ballots.<sup>5</sup> Given these wide regions of uncertainty, no reliable determination can be made from the SPAE data about whether Black or white absentee voters were more likely to return ballots via drop boxes.

Finally, the analysis Dr. Grimmer conducts answers the wrong question. He estimates a multivariate regression model, using numerous control variables that are not mentioned in his report. Thus, rather than asking whether Black voters were more or less likely than white voters

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<sup>1</sup> The Survey of the Performance of American Elections (SPAE) is a national survey of registered voters conducted after each federal general election.

<sup>2</sup> Line 1976 of his replication R code shows that the drop box variable he created is comprised of people who used a ballot drop box but also those who returned absentee ballots at a main election office, a neighborhood polling place, and a voting center (categories 4, 5, 6, and 7 of Q29).

<sup>3</sup> The more appropriate approach would apply the sample weights provided as part of the SPAE dataset. Applying these weights reduces the sample of people who say they used drop boxes further to 112 (27 of whom are Black). Dr. Grimmer does not explain why he neglects to apply the sample weights in this analysis despite applying them in other analyses within the same R code file.

<sup>4</sup> This is category 4 of Q29. Even this category may be problematic because the full text is a "Drop box used for ballots, not located at an election office or polling place." Because some drop boxes were installed outside of or near to election offices and polling places, it is not clear how a respondent would answer if they used such boxes. The survey question does not include a response category for drop boxes not at such locations, so it seems that respondents who used drop boxes would be more likely to select this category than any of the others, which are even less appropriate. Regardless, this ambiguity raises more doubts about Dr. Grimmer's analysis of drop box usage.

<sup>5</sup> These calculations are based on the unweighted data that Dr. Grimmer analyzed.

to use drop boxes in Georgia – a question that the SPAE unfortunately cannot answer in a reliable fashion for reasons I have documented – Dr. Grimmer instead estimates a different quantity: whether Black individuals were more likely to do so *after eliminating differences between the races in terms of partisanship and demographic characteristics*. This ignores a key point of my report, namely that white and Black voters use different voting methods in part because of demographic differences. His analysis imagines an alternative version of Georgia in which white and non-white residents have equivalent partisan preferences, employment statuses, levels of formal education, disabilities, and counties of residence.

Additional analysis conducted by Dr. Grimmer since his initial report and deposition do not resolve these problems. In a May 1, 2023 deposition, Dr. Grimmer testified that he has replicated the result from the SPAE dataset using data from another academic data source, the Cooperative Election Study (CES). That survey also includes respondents from Georgia and asks them whether and how they received and returned ballots in the most recent federal elections. In the deposition Dr. Grimmer reported that he had “completed” his CES analysis. He stated that it showed that “White voters were more likely to use drop boxes than Black voters in Georgia in 2020” and that “in 2022, White voters continued to be more likely to use drop boxes than Black voters” (p. 184 of deposition transcript).

The CES datasets suffer from most of the same problems as the SPAE and thus provides unreliable evidence about the relative rates of usage of drop boxes by Black and white voters in Georgia elections. The 2020 CES dataset includes only 142 total individuals who report returning ballots to drop boxes in Georgia. Of those, 99 are white and 31 are Black (with the remaining 12 respondents belonging to other racial and ethnic groups).

The CES does have a benefit over the SPAE in that it includes a weight that not only accounts for distortions in the sample but also draws on objective information from state voter files to determine which respondents actually voted in the election. Comparing the official State of Georgia data on each voter’s method of voting to the self-reports in the CES shows that some survey respondents apparently misreported how they returned their ballots. When employing this post-election weight provided in the dataset, there are 62 white and 37 Black voters who report using drop boxes in 2020. Although these sample sizes are larger than in the SPAE dataset that Dr. Grimmer chose to analyze in his report, they nonetheless result in confidence intervals that are too wide to yield reliable conclusions about which racial group used drop boxes at higher rates, particularly when using the weights provided in the CES dataset.

Dr. Grimmer notes that he also analyzed the 2022 CES. The survey is less reliable than the 2020 version of the CES for estimating drop box usage rates for two reasons. First, the dataset is still preliminary and does not yet contain a weight that also uses objective information about whether respondents actually voted. Second, the number of self-reported drop box users is much lower than in 2020. Only 12 respondents – nine of them white and three of them Black – report using drop boxes in Georgia in 2022. It is difficult to imagine how Dr. Grimmer could analyze such sparse data in an informative way.

On August 21, 2023, counsel for the United States forwarded to me a message from counsel for the State of Georgia about an error in Dr. Grimmer’s CES analysis. According to the email from

counsel for the State, when the computer code is corrected, “[Dr. Grimmer] finds that 1.8% of white voters and 1.9% of Black voters used drop boxes in the 2022 election,” which the email indicated is not a statistically significant difference. Based on this email, Dr. Grimmer’s analysis no longer supports his claim that white voters were more likely than Black voters to use absentee ballot drop boxes in the 2022 election. However, because of the problem of small sample sizes described above, neither this new conclusion nor his previous conclusion are reliable evidence about racial differences in drop box usage in Georgia.

## **II. It is False That Absentee Ballots Requested in the Final Week Were Usually Not Voted**

Under SB 202, absentee ballot applications must be submitted at least 11 days before Election Day, rather than the prior deadline of four days before Election Day. The State contends that most absentee ballots issued during the now-eliminated days of the request period were never cast. See State’s July 27, 2023 brief (ECF 601 at 9, 53) citing July 27, 2023 Ryan Germany declaration at paragraph 99 (ECF 601-3).

The United States asked me to evaluate a paragraph in Ryan Germany’s declaration in which Mr. Germany claims that under the pre-SB 202 regime, ballots associated with mail ballot applications submitted during the final week of early voting “were almost certain not to be cast” (Germany Declaration paragraph 99). There is no evidence cited in Mr. Germany’s declaration for the claim that a large majority of voters who submitted absentee ballot requests in the final week did not actually return ballots in time for counting. To my knowledge, none of the expert witnesses for the State provides such evidence.

To evaluate this assertion, I draw upon publicly available data in the Georgia Secretary of State’s “Voter Absentee File” from the November 2020 election. This file records the application date of each absentee ballot request and the status of each ballot that was returned by a voter. This allows me to determine what share of absentee ballot requests on each day resulted in absentee ballots that were accepted for counting.

There are four status codes in the “Voter Absentee File.” A code of main relevance here is the “A” code that indicates an absentee ballot was accepted. Three other codes indicate cases where ballots were cancelled, spoiled, or rejected. Cases where no codes are provided appear to indicate ballots were not returned, so I treat that as a fifth ballot status category. To focus on dispositions only of absentee ballots, I limit the analysis to ballots whose “style” is defined in the dataset as “mailed” rather than “electronic” or “in person.”

Table 1 reports the ballot statuses connected to absentee ballot applications submitted on each of the last seven days permitted for such requests in the November 2020 election. Voters would not have been permitted to submit applications during these days if SB 202 had been in effect. I have calculated the percentages of applications submitted each day that resulted in:

- (1) ballots that were not returned for counting,
- (2) ballots that were returned and accepted for counting, and
- (3) ballots that were cancelled, rejected, or spoiled.

**Table 1. Statuses of Absentee Ballot Requests by Application Date  
in the November 2020 Election (Last Seven Days)**

Date	Applications Submitted	Ballots Unreturned		Ballots Returned and Accepted		Ballots Cancelled, Rejected, or Spoiled	
10/24	4,180	1,046	25.0%	2,451	58.6%	683	16.3%
10/25	2,340	631	27.0%	1,287	55.0%	422	18.0%
10/26	7,537	1,947	25.8%	4,333	57.5%	1,257	16.7%
10/27	6,174	1,896	30.7%	3,216	52.1%	1,062	17.2%
10/28	4,958	1,912	38.6%	2,235	45.1%	811	16.4%
10/29	3,596	1,520	42.3%	1,537	42.7%	539	15.0%
10/30	3,163	1,541	48.7%	1,088	34.4%	534	16.9%

The first column of percentages shows that the rate at which applications failed to materialize as returned ballots never reached a majority. Although applications submitted on later dates closer to election day were less likely to result in ballots that were returned and counted, even on the very final day that such applications were allowed more than one third of applications led to ballots that were accepted. The table shows that anywhere between 34% and 59% of applications resulted in ballots that were submitted on time and accepted for counting. *Mr. Germany's claim that such ballots requested during the final week "were almost certain not to be cast" is not true on any day during the final week they were allowed.*

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of August, 2023.



Dr. Barry Burden

# EXHIBIT

# 134

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
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IN RE GEORGIA SENATE BILL 202

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UNITED STATES OF AMERICA,

Plaintiff,

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Intervenor-Defendants.

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

**SURREBUTTAL DECLARATION OF DR. MARC MEREDITH**

Pursuant to 28 U.S.C. § 1746, I, Dr. Marc Meredith, make the following declaration:

**I. Executive Summary**

1. This declaration addresses two points. First, it responds to the report of Dr. Justin Grimmer, which was offered by defendants in this case. I establish that a substantial number of Georgia registrants affected by SB 202's ID requirement for mail ballots in the 2022 general and runoff elections did not generate a record of a rejected mail ballot or rejected mail ballot application. As such, Dr. Grimmer's analysis of rejected mail ballots and mail ballot applications undercounts the true number of Georgia registrants burdened by SB 202's ID requirement. Second, I show that my substantive conclusion that Black registrants are particularly burdened by SB 202's

ID requirement is not changed when using corrected race and ethnicity data provided by the Georgia Department of Drivers Services (DDS) in January 2023.

2. The declaration is organized as follows:
  - a. Part II.A establishes that Dr. Grimmer's analysis of mail ballot rejection rates does not account for how SB 202 deters the submission of mail ballots, which Dr. Grimmer's own published work establishes is necessary to understand the total effect of an ID requirement.
  - b. Part II.B shows why the data that Dr. Grimmer relies upon to analyze mail ballot application rejections is incomplete and does not account for many cases in which registrants submitted mail ballot applications that did not satisfy SB 202's ID requirement.
  - c. Part II.C highlights that Dr. Grimmer's comparison of mail ballot rejection rates before and after the passage of SB 202 does not account for how the pre-SB 202 signature-verification regime and the post-SB 202 ID-match regime differentially deter the submission of mail ballots, or account for other changes in election procedures that affected mail ballot rejection rates.
  - d. Part III documents that although Georgia previously over-estimated the number of White registered voters, correcting this error using data recently provided by Georgia DDS in no way changes my substantive conclusion that the registrants who are particularly burdened by SB 202's ID requirement for mail voting are disproportionately Black registrants.

## **II. What can and cannot be learned from Dr Grimmer's analysis of rejected mail ballot applications and mail ballots?**

3. The analysis that Dr. Grimmer presents on pages 139 – 146 of his declaration attempts to quantify the share of the mail ballot applications submitted in recent Georgia elections that ended with the mail ballot application or mail ballot being rejected for ID-related reasons. This section highlights several reasons why this exercise produces an undercount of the number of Georgia registrants burdened by SB 202's ID requirement. Section II.A describes how Dr. Grimmer's analysis of mail ballot rejection rates does not account for burdens that SB 202 places on registrants who were deterred by SB 202's ID requirement from submitting mail ballots. Section II.B discusses how Dr. Grimmer's analysis of mail ballot application rejection rates does not account for many of the registrants who submitted mail ballot applications that did not comply with SB 202's ID requirement. Finally, Section II.C explains the limitations of Dr. Grimmer's comparison of mail ballot rejection rates before and after the passage of SB 202, given that it does not account for how the pre-SB 202 signature-verification regime and the post-SB 202 ID-match regime differentially deter the submission of mail ballots, or account for other changes in election procedures that affected mail ballot rejection rates.

### **A. Dr. Grimmer's analysis of rejected mail ballots does not account for mail ballots that are not submitted because of SB 202's ID requirement**

4. Political science research highlights two pathways through which an ID requirement can reduce turnout. The first is what Grimmer and Yoder (2021) label a mechanical effect. The mechanical effect refers to ballots cast that get rejected because the voter did not provide necessary ID. The second is what Grimmer and Yoder label a deterrent effect. The deterrent effect refers to ballots that are never cast because voters did not believe that they could provide necessary ID. Grimmer and Yoder's study highlights the importance of considering both pathways when quantifying the total effect of a voter ID law on turnout. They found that the total

effect of North Carolina's ID law on turnout in a 2016 North Carolina primary was about 46 percent mechanical and 54 percent deterrence.<sup>1</sup>

5. Dr. Grimmer relies upon data that might document Georgia registrants who are burdened by the mechanical effect of SB 202's ID requirements. The analysis on pages 139 – 146 of Dr. Grimmer's report is based on data that Georgia election officials generate on the final disposition of the absentee ballot applications that they receive. These data note whether applications were accepted or rejected. When mail ballots were issued, the data also note when voters returned mail ballots that were rejected and the reason they were rejected. The reason for rejection of a mail ballot is documented by one of seven different codes: (1) "Ballot Received after Deadline," (2) "Incorrect ID Information," (3) "Ineligible Elector," (4) "Invalid Signature," (5) "MIDR - ID not Provided," (6) "Missing ID Information," and (7) "Missing Signature."

6. Dr. Grimmer reports an estimate of the share of submitted mail ballot applications with a final disposition indicating that the voters were issued a mail ballot, returned it, and had their mail ballots rejected because they failed to satisfy SB 202's ID requirement in the 2022 general (Table 24) and 2022 runoff (Table 25) by race and ethnicity. To do this, Dr. Grimmer identifies what share of submitted mail ballot applications conclude with: a) the mail ballot being returned, b) the mail ballot being rejected, and c) the reason for rejection is noted as code 2, 5, or 6 from the previous paragraph. If election officials are documenting all rejected mail ballots in these data, this could provide a reliable accounting of the mechanical effect of SB 202's ID requirement.

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<sup>1</sup> Grimmer and Yoder (2021) focus on an in-person ID law and so define the mechanical effect as when "a voter shows up to the polls intending to cast a ballot, but does not have their vote counted because they do not meet the requirements of the new ID law (p. 457)." With respect to mail balloting, it is unclear whether the equivalent to showing up to the polls is submitting a mail ballot application or submitting a mail ballot. I define it as submitting a mail ballot because I assess that is more consistent with Grimmer and Yoder's use of provisional ballots rejected for lack of ID to measure the mechanical effect. This means that I count rejected mail ballot applications as part of the deterrent effect, Part II.B below.

7. Because Table 24 and Table 25 in Dr. Grimmer's report only capture the mechanical effect of SB 202's ID requirement, and not the deterrent effect, both tables undercount the total effect of the ID requirement and do not provide a reliable accounting of how the burdens imposed by the requirement vary by race and ethnicity. Differences in the rejection rates of returned mail ballots by race and ethnicity only serve as a proxy for the differential burdens of an ID requirement by race and ethnicity if the mechanical effect contributes equally to the total effect of this ID requirement for all racial and ethnic groups. Dr. Grimmer's own work suggests that this is not always the case. In Table 7 of Grimmer and Yoder's (2021) study of the 2016 North Carolina primary, they find that the mechanical effect contributes less to the total effect of North Carolina's voter ID law for Black registrants (44 percent) than for White registrants (48 percent). If this were also the case with respect to SB 202's ID requirement in Georgia, Table 24 and Table 25 would understate how SB 202's ID requirement burdens Black registrants relative to White registrants.

**B. Most mail ballots that SB 202's ID requirement deterred from being submitted are not accounted for by the rejected mail ballot applications identified by Dr. Grimmer**

8. There are three different forms of deterrence that SB 202's ID requirements potentially generate. First, registrants may decide not to submit mail ballot applications because of the burdens that they know they will face providing necessary ID. Second, registrants may submit mail ballot applications that get rejected because they do not provide necessary ID. Third, registrants may get sent provisional mail ballots that they do not return because of the burdens that they face providing necessary ID.

9. Dr. Grimmer's analysis of registrants who had their mail ballot applications rejected for ID-related reasons documents only a fraction of the Georgia registrants who were deterred from casting a mail ballot in the 2022 general election because of SB 202's ID requirement. Registrants only enter the data that Dr. Grimmer is relying on when they submit mail

ballot applications. Thus, he is unable to account for any registrants in the first category described above—those who are deterred from submitting mail ballot applications because of the burdens they know they will face providing necessary ID. Moreover, this section establishes that many of the registrants who submitted mail ballot applications that did not satisfy SB 202’s ID requirement are not documented by Dr. Grimmer as having their mail ballot applications rejected for ID-related reasons. First, Section B.i demonstrates that Dr. Grimmer’s coding choices cause him to undercount the number of mail ballot applications that were rejected because the application did not satisfy SB 202’s ID requirement. Next, Section B.ii highlights that while it is not possible to identify the specific cases, Dr. Grimmer’s data contains a significant number of cases in which registrants failed to return provisional mail ballots that counties issued because the mail ballot applications did not satisfy SB 202’s ID requirement.

*i. Dr. Grimmer undercounts the number of mail ballot applications rejected because of SB 202’s ID requirement*

10. Dr. Grimmer’s coding choices cause him to not count some cases in which registrants likely had their mail ballot applications rejected because of SB 202’s ID requirement. Unlike with rejected absentee ballots, there is no small set of pre-determined codes that Georgia election officials used to describe why absentee ballot applications were rejected. Rather, election officials entered text manually to explain why they rejected absentee ballot applications, with over 500 different explanations entered. Dr. Grimmer’s replication code identifies 45 ways that election officials represented that an application was missing the necessary ID information (e.g., “DL # MISSING,” “MISSING DRIVER’S LICENSE,” “NO ID NUMBER”) and 19 ways that election officials represented that an application had mismatched ID information (e.g., “DL MISMATCH,” “ID NUMBER DOES NOT MATCH,” “UPDATE DL”).<sup>2</sup> Dr. Grimmer’s process for identifying

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<sup>2</sup> These are included in the file named CodedAppReject\_22.csv.

mail ballot applications rejected because of SB 202's ID requirement is to look for cases in the data in which three conditions are met. First, the column named Application.Status is equal to "R," indicating the mail ballot application was rejected. Second, the column named Ballot.Style is equal to "MAILED," indicating that the applicant was requesting a mail ballot. Third, the column named Status.Reason contains one of the 64 explanations that Dr. Grimmer identified as indicating that an application was rejected for missing or mismatched ID information. Dr. Grimmer's analysis in Table 26 is based on 161 rejected absentee ballots that he identifies meet all three conditions.

11. There are two reasons why Dr. Grimmer's process fails to identify many cases in which registrants' mail ballot applications were likely rejected because of SB 202's ID requirement. First, the Ballot.Style field is blank in a majority of the cases in which absentee ballot applications were rejected. Many of these blanks represent cases in which registrants were requesting mail ballots. Second, Dr. Grimmer codes mail ballot applications as not being rejected for ID related reasons when election officials entered a reason that was too generic to determine why exactly an absentee ballot application was rejected. The next two paragraphs describe each of these problems in more detail.

12. Dr. Grimmer's focus exclusively on rejected absentee ballot applications with "MAILED" in the Ballot.Style field causes him to miss cases that likely represent mail ballot applications that were rejected because of SB 202's ID requirement. 2,822 of the 5,444 cases in which absentee ballot applications were rejected have no entry in the Ballot.Style field.<sup>3</sup> In 72 of these cases, the Status.Reason column contains one of the 64 reasons Dr. Grimmer identified as representing an application that was rejected because of missing or mismatched ID information.

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<sup>3</sup> The options for populating the Ballot.Style field are MAILED, IN PERSON, ELECTRONIC, or blank. Of rejected absentee ballots with an entry in the Ballot.Style field, 2,487 have "MAILED," 104 have "IN PERSON," and 31 have "ELECTRONIC" in the Ballot.Style field.

Moreover, I found 96 additional cases where the reason in the Status.Reason column was not on Dr. Grimmer's list as being ID-related, but clearly indicated that an absentee ballot application was rejected for missing or mismatched ID information.<sup>4</sup> Thus, there are more absentee applications rejected for ID reasons among cases with no entry in the Ballot.Style field than among cases with "MAILED" in the Ballot.Style field. While some of these cases may not be rejections of mail ballot applications, I suspect nearly all are. First, the Status.Reason field never references ID as the reason for rejection in any of the cases for which the Ballot.Style field contains "IN PERSON." Second, the most common reason for rejection listed in the Status.Reason field when the Ballot.Style field is blank is that the application was received before August 22, 2022, which was the first day that registrants could request mail ballots for the November 2022 election. Third, 93 of the 96 cases that I identified had an application date between August 23, 2022 and September 29, 2022, meaning that these applications pre-dated the start of in-person absentee balloting on October 17, 2022.<sup>5</sup>

<sup>4</sup> These were all explanations that Dr. Grimmer did not identify as being ID-related because they never applied to a case in which the Ballot.Style field equaled "MAILED." There were 11 cases of "GA ID # INCORRECT ON APP," 5 cases each of "GA ID INCORRECT ON APP" and "NO GA ID # ON APP," 4 cases of "PROPER ID NOT PROVIDED," 3 cases each of "DL/SID MISSING," "INCORRECT ID NUMBER," "MISSING ACCEPTABLE ID," "MISSING DL/SID," 2 cases each of "DIFFERENT ID# IN ENET," "GA ID # DON'T MATCH ENET," "GA ID # DONT MATCH ENET," "GA ID # NOT ON APP," "MISSING ID AND ADDRESS," "MISSING ID# AND DOB," "WRONG ID NUMBER," and 1 case each of "DL DOES NOT MATCH," "DL# ON APP DOES NOT MATCH," "DL/SID NUMBER MISSING," "DOB & GA ID INCORRECT," "DOB NOT ON APP & GA ID INCORRECT," "DRIVERS LICENSE # DID NOT MATCH," "GA ID # INCORRECT," "GA ID MISSING ON APP," "GADL DID NOT MATCH," "ID DOES NOT MATCH VR. CURE SENT," "ID DOES NOT MATCH. CURE SENT," "ID ERROR ( OUT OF STATE)," "ID NOT MATCHING, SIGNATURE ON FILE," "ID NUMBER DONT MATCH," "INCORRECT GA ID # ON APP," "INCORRECT ID NO.," "INVALID ID," "MISSING GA ID # ON APP," "MISSING I D NUMBER," "MISSING ADDRESS ON APP & GA ID #," "MISSING D.L NUMBER," "MISSING DL OR SID," "MISSING DOB & GA ID#," "MISSING DOB AND ID#," "MISSING ID AND SIGNATURE," "MISSING ID INFORMATION," "MISSING ID NUMBER," "MISSING ID NUMBER/ IDENTIFICATION," "MISSING ID, ADDRESS, SIGNATURE," "MISSING IDENTIFICATION NUMBER," "MISSING NAME,ADDRESS,DOB,ID#," "MISSING REQUIRED ID INFO.," "MISSING VOTER ID INFORMATION," "NO DOB AND WRONG ID #," "NO DOB AND WRONG ID#," "NO DOB OR ID#," "NO GA. I.D.," "NO GEORGIA ID # ON APP," "NO ID," "NO ID WITH APP," "NO ID # OR ACCEPTABLE ID," "NO ID ATTACHED," "NO ID ON APP," "NO MATCH FOR DRIVER'S LICENSE," "NO MATCH FOR DRIVERS LICENSE," "UNVERIFIED DL NUMBER," and "UNVERIFIED DL NUNBER".

<sup>5</sup> Likewise, 66 of the 72 cases that matched to reasons that Dr. Grimmer previously coded as being ID-related had an application date of October 14, 2022 or earlier.



13. Dr. Grimmer also potentially misses cases in which mail ballot applications are rejected because of missing or mismatched ID, but the denial reason does not make that clear. For example, there are cases in which the Status.Reason is listed as “INCOMPLETE APPLICATION” or “PROVISIONAL.” While missing or mismatched ID are reasons why mail ballot applications would be incomplete or provisional, Dr. Grimmer assumes that none of these applications were rejected for missing or mismatched ID.

*ii. Dr. Grimmer cannot account for provisional mail ballots that were not returned because of SB 202’s ID requirement*

14. In addition to undercounting the number of mail ballot applications that were rejected because of missing or mismatched ID, Dr. Grimmer also cannot account for the unknown number of registrants who were issued provisional mail ballots rather than having their mail ballot applications rejected when their applications did not satisfy SB 202’s ID requirement (see paragraph 24 of my initial declaration).

15. The deposition of State Elections Director Blake Evans provided to me by counsel for the United States indicates that county election officials would issue provisional mail ballots to registrants who submitted mail ballot applications that did not satisfy SB 202’s ID requirement. When county officials received such a mail ballot application before the period for issuing mail ballots (i.e., more than 29 days before the election for most voters) they would issue the registrant a cure form but no ballot.<sup>6</sup> Then, once counties could issue mail ballots, the counties would send these registrants provisional mail ballots, even if these cure forms had not been returned.<sup>7</sup> Similarly, when county election officials received a mail ballot application with missing or mismatched ID information after the time for issuing ballots had begun (i.e., 29 or fewer days

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<sup>6</sup> See Evans Deposition Rough Transcript p. 148, line 14 – p. 149, line 15 (Feb. 23, 2023).

<sup>7</sup> Ibid.

before the election) they would simultaneously send the applicant a provisional mail ballot and a cure form.<sup>8</sup> Mr. Evans noted that mail ballots could not be issued to someone whose mail ballot application was rejected, so no one issued a provisional mail ballot could appear in Dr. Grimmer's data showing registrants who had their mail ballot application rejected.<sup>9</sup> And while the data do contain a field labeled "challengedprovisional" that some counties may have used to denote when a voter was sent a provisional mail ballot, Evans testified that counties did so inconsistently.<sup>10</sup> Dr. Grimmer does not attempt to identify how many provisional mail ballots were issued, in part because there is no variable contained in the data that Dr. Grimmer relies upon that consistently denotes which registrants were sent provisional mail ballots.<sup>11</sup> As such, Dr. Grimmer cannot account for how often registrants were issued provisional mail ballots. Nor can he account for how often these provisional ballots went unreturned.

16. The responses by some county election officials to discovery requests highlighted that they processed mail ballot applications with missing or mismatched ID information largely using the procedure that Elections Director Evans laid out. For example, both the Clarke County Board of Election and Voter Registrations<sup>12</sup> and the Columbia County Board of Elections<sup>13</sup>

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid p. 151, line 1 – line 4.

<sup>10</sup> Ibid p. 151, line 11 – line 15.

<sup>11</sup> The data that Dr. Grimmer used contains the field labeled "challengedprovisional" that some counties used to denote when a voter was sent a provisional mail ballot. But consistent with Blake Evans' deposition testimony, it was not used by all counties. And counties also used this field to denote issues other than the issuance of provisional mail ballots. So even in the counties that did use this field, these data could only be used to document how many registrants were sent provisional mail ballots if counties provided information about how to isolate the provisional mail ballots from other issues.

<sup>12</sup> "For November 8th, 2022, Absentee Ballot Applications that were missing information or had mismatched information resulted in the Absentee Ballot Team contacting the voter via phone, email, or mail to resolve the error with a new application or additional information. Absentee Ballot Cures were only issued for the few voters who could not be reached by the mailing deadline for absentee ballots, and were issued a provisional ballot and cure affidavit simultaneously. Therefore, there is no record in ElectionNet of any applications received that were missing information or had mismatched information, as steps were taken to "Cure" the applications without use of an affidavit or an application rejection (pp. 7 – 8)."

<sup>13</sup> "...when Columbia County BOE receives a deficient absentee ballot application, it notifies the applicant of the deficiency and also issues a Provisional Ballot to the applicant. If the applicant fails to correct the deficiency, then the absentee ballot is considered "rejected/cancelled (p. 6)."

highlight that provisional mail ballots and cure forms were issued when mail ballot applications with missing or mismatched ID could not be corrected through some other way. Neither county had any mail ballot applications rejected for missing or mismatched ID in Dr. Grimmer's data. While I do not know how many other counties were following a similar protocol, Dr. Grimmer only identified mail ballot applications rejected for missing or mismatched ID in 19 of Georgia's 159 counties.

17. Even in the 19 counties in which Dr. Grimmer does identify rejected mail ballot applications for ID reasons, it is not necessarily the case that all mail ballot applications that did not satisfy SB 202's ID requirement were rejected. Data from DeKalb County shows that only a subset of registrants who submitted mail ballot applications that did not satisfy all necessary requirements in that county had their mail ballot applications rejected. Dr. Grimmer's analysis identifies 27 mail ballot applications in DeKalb County that were rejected for having missing or mismatched ID, all of which had an application date between August 31, 2022 and October 7, 2022. DeKalb County rejected an additional 29 absentee ballot applications for having missing or mismatched ID that Grimmer does not count because the Ballot.Style field is blank (see paragraph 12), which had an application date between August 28, 2022 and September 28, 2022. Thus, it is either the case that none of the mail ballot applications submitted in the month before the election had issues with missing or mismatched ID or that these applicants were being sent provisional mail ballots rather than having their mail ballot applications rejected. Figure 1 shows a table that DeKalb County provided through a discovery request, which suggests that they were indeed issuing a substantial number of provisional mail ballots, many of which were never returned. While it is not obvious to me how to interpret the information being conveyed in this table, my best guess is that it shows that DeKalb County was more likely to distribute provisional mail ballots ( $n = 276$ ) than

reject mail ballot applications (n = 110) when it received mail ballot applications that didn't satisfy all necessary requirements. And I read this table to say that between about 100 and 170 of these provisional mail ballots did not get returned.

**Figure 1: Rejected and Cured Mail Ballot Applications in DeKalb County in the 2022 General and Runoff Elections**

INTERROGATORY #2 - 2022 General Election	
Rejection Reason - ABM Applications	Number of Voters
Received Too Early	0
Received After the Deadline	8
Missing DOB	0
Signature Mismatch (Electronic Signature)	21
Missing Signature	47
Didn't Meet ID Requirements (Missing ID)	19
No ID Match	7
<b>Totals</b>	
ABM Applications Received	28,212
ABM Applications Accepted	28,102
ABM Applications Rejected	110
Cancelled	0
<b>Cured Applications</b>	
Applications Rejected Initially - Cures Sent	276
Total Cures Received	172
Total Accepted	104
Total Rejected	2

18. Cobb County is another county that may have only been rejecting some of the mail ballot applications that did not satisfy SB 202's ID requirement. 73 of the 161 mail ballot applications that Dr. Grimmer identifies as rejected for ID-related reasons were submitted in Cobb County. Of the 73 rejections, 72 were for missing ID and 1 was for mismatched ID. The skew may have been because Cobb County generally treated mail ballot applications submitted without ID

information differently than mail ballot applications submitted with mismatched ID information. According to Cobb County Elections and Voter Registration Director Janine Eveler, Cobb County election officials rejected mail ballot applications that did not include ID information but issued provisional mail ballots to applicants who included ID information that did not match the ID in their voter registration record.<sup>14</sup>

19. The findings presented in this subsection affect the interpretation of Table 26 in Dr. Grimmer's declaration. This table measures the share of mail-ballot applications that were marked explicitly as mail ballots that were rejected for a reason that is clearly described as relating to ID. This section demonstrates why such applications are only a share, and potentially a small share, of the total number of submitted mail ballot applications that did not satisfy SB 202's ID requirement: not all rejected mail ballot applications are explicitly marked as mail ballots, the reason for mail ballot rejection is sometimes described too generically to know whether it was because of the ID requirement, and some counties issued provisional mail ballots instead of rejecting mail ballot applications that did not satisfy SB 202's ID requirement. As such, Table 26 of Dr. Grimmer's declaration should not be interpreted as showing that only a small share of registrants submitted mail ballot applications that failed to comply with SB 202's ID requirement. Moreover, Table 26 contains no information at all about registrants who were deterred from submitting mail ballot applications because of SB 202's ID requirement. Thus, it would be even more inappropriate to interpret Table 26 as showing that only a small number of registrants were burdened by SB 202's ID requirement for mail ballot applications.

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<sup>14</sup> Janine Eveler Deposition p. 249, line 24 –p. 251, line 22 (Nov 29, 2022).

**C. Comparing the deterrent effect of the pre-SB 202 signature verification requirement to the post-SB 202 ID number requirement**

20. Table 27, Table 28, and Table 29 of Dr. Grimmer's declaration compare the number and share of returned mail ballots that were rejected in general and federal runoff elections between 2018 and 2022 because either information, including ID information, was missing from the oath envelope or election officials concluded that the signature on the oath envelope did not match the signature on file. As discussed in Section II.A, these tables are only capturing the mechanical effect of Georgia's ID requirement before SB 202 (signature verification) and after SB 202 (ID number verification). There are two reasons why a comparison of the mechanical effect over time is not informative about changes in the burdens of satisfying Georgia's ID requirement for mail ballots. First, the deterrent effect of SB 202's ID requirement is likely greater than the deterrent effect of the signature-verification requirement in place prior to SB 202. Second, there were other changes in policy that went into place between the 2018 and 2020 general elections that reduced the number of rejected mail ballots independent of SB 202. The next two paragraphs describe each of these issues in more detail. As such, it is inappropriate to interpret Table 27, Table 28, and Table 29 as evidence that SB 202 did not increase the burdens of satisfying Georgia's method for validating mail ballots.

21. The deterrent effect of SB 202's ID requirement on mail ballots is likely greater than the deterrent effect of the pre-SB 202 signature-verification requirement. Some registrants will not initiate mail ballot applications because they are aware of SB 202's ID requirement and foresee that it would be burdensome to satisfy it. Other registrants will learn about SB 202's ID requirement after submitting their mail ballot applications and stop taking steps to cast their mail ballots after being informed what ID is necessary to satisfy it. I do not expect that voters would similarly anticipate when their signatures would fail to verify on their returned mail ballots, and

thus I expect signature verification would have more of a mechanical effect on turnout than SB's 202 ID requirement. As such, I expect that Dr. Grimmer's Table 27 and Table 28 capture more of the cases in which voters were burdened by Georgia's signature verification requirement (columns 2-4) than the cases in which voters were burdened by the new ID number requirement (columns 5-6).

22. Dr. Grimmer also fails to acknowledge that changes in policy would have caused a reduction in the number of rejected mail ballots after 2018 absent the passage of SB 202. In 2019, HB 316 established the provisional mail balloting process referenced above and codified the ability of voters to cure otherwise disqualifying errors on timely received mail ballots through the close of the period for verifying provisional ballots. While I am not aware of any data on the rates at which ballots have been cured in Georgia since this policy went into place, research that I conducted on ballot curing in North Carolina's 2020 election found that voters cured about 80 percent of ballots that would have otherwise been rejected.<sup>15</sup> Additionally, media reports highlight in 2020 that at least some counties enacted more thorough procedures before election officials could reject ballots because of discrepancies in voters' signatures.<sup>16</sup> Because of these changing policies, I conclude there would have been a substantial drop in the number of rejected mail ballots in Georgia between 2018 and 2022 had SB 202 not changed Georgia's ID requirement. Thus, nothing is learned about the effect of SB 202's ID requirement by comparing 2018 to 2022 in Table 29 of Dr. Grimmer's declaration.

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<sup>15</sup> Marc Meredith and Lucy Kronenberg, *Who Cures Ballots: Evidence from North Carolina's 2020 General Election*, Presented at the 2022 Election Science, Reform, and Administration Conference (Jul. 27-29, 2023), available at <https://drive.google.com/file/d/1sNpOAErZeh1024u1R74J6YmAsapGOM10/view?usp=sharing> (last accessed on Feb. 27 2023).

<sup>16</sup> Mark Niesse, *Lawsuit Settled, Giving Georgia Voters Time to Fix Rejected Ballots*, Atlanta Journal-Constitution (Mar. 7, 2020), available at <https://www.ajc.com/news/state--regional-govt--politics/lawsuit-settled-giving-georgia-voters-time-fix-rejected-ballots/oJcZ4eCXf8J197AEdGfsSM/> (last accessed on Feb. 27, 2023).

#### D. Conclusion

23. In summary, Dr. Grimmer's analysis of rejected mail ballots and rejected mail ballot applications on pages 139 – 146 of his declaration has little to say about the burdens of SB 202's ID requirement on mail balloting. Dr. Grimmer's own research establishes the need to account for both mechanical effects and deterrent effects when estimating the effect of ID laws on turnout. And his analysis does not account for registrants who were deterred from submitting mail ballot applications because of SB 202's ID requirement. Nor does it account for many of the registrants who were deterred from submitting mail ballots after submitting mail ballot applications that did not satisfy SB 202's ID requirement. Without doing so, Dr. Grimmer cannot reach meaningful conclusions using these data about how various racial and ethnic groups are differentially burdened by SB 202. Nor can he reach meaningful conclusions about how SB 202 changed the burdens of Georgia's ID requirements, especially given that he did not account for the effects of other policies that would be expected to change the share of mail ballots that are rejected.

24. What Dr. Grimmer's analysis on pages 139 – 146 of his declaration does do is put a lower bound on the share of Georgia registrants who ran into problems with their mail ballots or mail ballot applications because of SB 202's ID requirement. He shows that at least 1 in every 182 registrants who were not deterred from submitting mail ballot applications in the 2022 general election either had their mail ballot application or mail ballot rejected because of SB 202's ID requirement.<sup>17</sup> And among Black registrants, this rate increases to 1 in every 135 registrants. Further, Dr. Grimmer shows that in the 2022 runoff at least 1 in every 122 registrants who were not deterred from submitting mail ballot applications had their mail ballots rejected because of SB 202's ID requirement. Among Black registrants, the rate was nearly identical as among all

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<sup>17</sup> Calculated by combining data in Table 24 and Table 26.



registrants in the December 2022 runoff. Considering all of the additional registrants affected by SB 202's ID requirements that Dr. Grimmer is not capturing in his analysis, Dr. Grimmer's analysis highlights the potential for SB 202's ID requirement to burden a significant number of voters. And the analysis in my initial declaration provides numerous indications that the registrants most at risk of being burdened are disproportionately Black registrants.

### **III. Accounting for corrected DDS race and ethnicity data**

25. As I referenced in footnote 46 of my initial declaration, DDS informed counsel for the United States shortly before I submitted that declaration of an error in some of the data on customer race that DDS had been sending to the Secretary of State. DDS subsequently provided me with information on the DDS-issued ID numbers and the corrected race and ethnicity information for these customers. I merged this information into the November 2022 voter registration database that I relied upon in my initial declaration. Table 1 below compares the race and ethnicity of registrants when using the original information (Column 1) and the corrected information (Column 2). Consistent with how the error was described, the share of White registrants declined by 0.4 percentage points, with corresponding gains among Black registrants (0.2 percentage points), registrants with unknown race and ethnicity (0.1 percentage points), Asian and Pacific Islander registrants (0.1 percentage points), and registrants with an unlisted race and ethnicity (0.1 percentage points).<sup>18</sup>

26. Table 2 replicates Table VI.F.1 from my initial declaration using the corrected race and ethnicity data. It is not surprising that very few of the cases documented in this table show up in the corrected DDS race and ethnicity data, given that the miscoding of race was happening because of an error in how recent DDS transactions were being processed. As such, Table 2 looks

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<sup>18</sup> The percentage point decline in White registrants does not add up to the percentage point increase in non-White registrants in this paragraph because of rounding error.

nearly identical to Table VI.F.1. Thus, as I predicted in footnote 46 of my initial declaration, accounting for these data does not change my conclusion that Black registrants are overrepresented in the set of registrants who have a problem documented with the DDS-issued ID field in the November voter registration database.

**Table 1: Consequences of correcting race and ethnicity of registrants in November 2022 voter registration database**

Which race and ethnicity	(1) Original	(2) Corrected
(1) White not of Hispanic origin	4,049,501 [51.7%]	4,021,090 [51.3%]
(2) Black not of Hispanic origin	2,312,403 [29.5%]	2,329,761 [29.7%]
(3) Unknown	770,117 <sup>19</sup> [9.8%]	773,781 [9.9%]
(4) Hispanic	305,865 [3.9%]	309,457 [3.9%]
(5) Asian or Pacific Islander	214,603 [2.7%]	215,861 [2.8%]
(6) Other	150,738 [1.9%]	153,136 [2.0%]
(7) American Indian or Alaskan Native	36,658 [0.5%]	36,799 [0.5%]
Total	7,839,885	7,839,885

Note: Number in brackets is the share of the column total that is of that race and ethnicity

<sup>19</sup> This number was initially misreported as 770,177 instead of 770,117 because of an arithmetic error adding together 9,971 and 760,146.

**Table 2: Corrected race and ethnicity of registrants in November 2022 voter registration database with missing, out-of-date, or inaccurate DDS-issued ID numbers**

Problem with DDS-Issued ID Number	(1) Missing	(2) Out-of- Date	(3) Inaccurate	(4) All
(1) Black not of Hispanic Origin	105,216 [61.3%]	15,394 [28.2%]	9,109 [54.9%]	129,719 [53.4%]
(2) White not of Hispanic Origin	39,597 [23.1%]	35,576 [65.1%]	5,295 [31.9%]	80,468 [33.1%]
(3) Unknown	9,971 [5.8%]	2,190 [4.0%]	828 [5.0%]	12,989 [5.3%]
(4) Hispanic	6,617 [3.9%]	527 [1.0%]	547 [3.3%]	7,691 [3.2%]
(5) Other	5,100 [3.0%]	466 [0.9%]	398 [2.4%]	5,964 [2.5%]
(6) Asian or Pacific Islander	4,477 [2.6%]	473 [0.9%]	350 [2.1%]	5,300 [2.2%]
(7) American Indian or Alaskan Native	738 [0.4%]	59 [0.1%]	62 [0.4%]	859 [0.4%]
Total	171,716	54,685	16,589	242,990

Note: Number in brackets is the share of the column total that is of that race and ethnicity

### Works Relied Upon

Justin Grimmer & Jesse Yoder, *The Durable Differential Deterrent Effects of Strict Photo Identification Laws*, 10 Pol. Sci. Res. & Methods 453 (2022).

Marc Meredith and Lucy Kronenberg, *Who Cures Ballots: Evidence from North Carolina's 2020 General Election*, Presented at the 2022 Election Science, Reform, and Administration Conference (Jul. 27-29, 2023), available at <https://drive.google.com/file/d/1sNpOAErZeh1024u1R74J6YmAsapGOM10/view?usp=sharing> (last accessed on Feb. 27 2023).

Mark Niese, *Lawsuit Settled, Giving Georgia Voters Time to Fix Rejected Ballots*, Atlanta Journal-Constitution (Mar. 7, 2020), available at <https://www.ajc.com/news/state--regional-govt-politics/lawsuit-settled-giving-georgia-voters-time-fix-rejected-ballots/oJcZ4eCXf8J197AEdGfsSM/> (last accessed on Feb. 27, 2023).

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of March, 2023.

A handwritten signature in blue ink that reads "Marc Meredith". The signature is written in a cursive style with a large, stylized "M" and "H".

---

Dr. Marc Meredith

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# EXHIBIT

# 135

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

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IN RE GEORGIA SENATE BILL 202 ) Master Case No.  
 ) 1:21-MI-55555-JPB  
 )  
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VIDEOTAPED DEPOSITION OF JUSTIN GRIMMER, Ph.D  
Mountain View, California  
Monday, May 1, 2023  
Volume I

Reported by:

CATHERINE A. RYAN, RMR, CRR, B.S.

CSR No. 8239

Job No. 5893014

PAGES 1 - 360

Page 1

1 A I don't see a specific proposal here. 09:40:58

2 Q Well, assuming that he was a sponsor of  
3 SB202.

4 A I don't know what he wrote and did not  
5 write about SB202. 09:41:04

6 Q Well, assuming that this was written about  
7 SB202, that this --

8 A But I don't know what laws or components  
9 of SB202 that he wrote or how that ended up in the  
10 final law; so I can't reach that conclusion. 09:41:15

11 Q Okay. Let's turn back to the discussion  
12 of turnout.

13 What issues do you understand turnout is  
14 related to in this case, if any?

15 A Certainly the turnout is important for 09:41:38  
16 understanding the administration of elections in  
17 Georgia, and it's important for understanding any  
18 number of analyses that I conduct later in my  
19 reports, whether it's about the number of absentee  
20 ballots that are canceled and then subsequently 09:41:54  
21 people vote in person.

22 So my understanding there was to provide  
23 context for subsequent analyses.

24 Q Is it your understanding that Plaintiffs  
25 have the burden in this case of actually proving 09:42:05



1 that SB202 affected turnout? 09:42:08

2 A My understanding -- I -- I'm sorry. I  
3 don't know the legal claims.

4 So as a social scientist, I was evaluating  
5 the changes in turnout and the conditions under 09:42:24  
6 which we would say that SB202 caused those changes.

7 Q So your testimony is that you looked at  
8 turnout in order to see whether SB202 causes  
9 changes?

10 A That is not what I said. 09:42:40

11 Q Okay. And I don't -- I really --

12 A Yeah, okay.

13 Q -- do not mean to misstate --

14 A Okay.

15 Q -- what you said. 09:42:44

16 A Yeah.

17 My understanding was that I analyzed  
18 turnout in Georgia -- first off, it provides the  
19 context for all of the subsequent election

20 administration stuff. So if turnout is high and 09:42:56  
21 absentee voting is high, for example, there's going  
22 to be issues in processing absentee ballots, or it  
23 could be an -- important issues that come up.

24 And, second, it's interesting to under- --

25 important to understand how turnout occurs over time 09:43:10

Page 47

1 within the state of Georgia. 09:43:14

2 And -- and, finally, my analysis also was  
3 to show that it would be exceedingly difficult to  
4 understand whether SB202 caused any of these  
5 changes. 09:43:28

6 Q Okay. You said it was important to  
7 understand why turnout occurs over time.

8 What did you mean by that?

9 A Yeah.

10 Q And why is it important? 09:43:39

11 Let me ask it that way.

12 A Again, so the report deals with various  
13 components of election administration. Those  
14 components will be related to turnout rates. And so  
15 providing context -- for example, midterm election 09:43:52

16 turnout is lower than general elections, providing  
17 that basic context.

18 Q Did you draw any conclusions from there  
19 being no changes in overall turnout at any point in  
20 your analyses between pre-SB202 and post-SB202? 09:44:13

21 A No.

22 Q Did you draw any conclusions in any  
23 instance from there being an increase in overall  
24 turnout between SB202 -- pre-SB202 and post-SB202?

25 A No. 09:44:45

1 Q And did you draw any conclusions from 09:44:45  
2 there being any decreases in turnout between  
3 pre-SB202 and post-SB202?

4 A The only conclusions in this area that I  
5 make is, you know, comparing Georgia to other 09:45:03  
6 states; and, there, just to say that Georgia remains  
7 a high turnout state relative to its previous  
8 trajectory, relative to the comparable turnout  
9 rates -- to turnout rates among other  
10 self-identified racial groups in those states, but I 09:45:21  
11 don't attribute any of that to SB202 as a cause.

12 Q Do you agree that there can be a burden on  
13 the right to vote that does not affect turnout?

14 A Can you define what you mean by "burden"?

15 Q Sure. 09:45:45

16 That it is more difficult for people to  
17 vote.

18 A Do you have a specific example in mind?

19 Q Any -- let's say a change in polling place  
20 location, but people somehow manage to vote anyway. 09:46:00

21 Is it still a burden on them?

22 A I -- to understand, in this specific  
23 instance, a change in polling place location, we'd  
24 obviously want to know how that changed individuals'  
25 distance to the point and place of the location. So 09:46:19

# EXHIBIT

# 136

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**In the Matter Of:**

**IN RE GEORGIA SENATE BILL 202**

1:21-MI-55555-JPB

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**KEISHA SMITH**

*April 05, 2023*

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KEISHA SMITH  
IN RE GEORGIA SENATE BILL 202

April 05, 2023  
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1 county that have insisted on casting a pro-  
2 visional ballot before 5:00 p.m.?

3 A. Yes.

4 Q. Do you have a sense of how many  
5 voters?

6 A. It's a -- it's an insignificant  
7 amount but -- and I don't know, you know, how  
8 many but it was -- but we did have, you know  
9 -- we did have that occur but not, you know  
10 -- it wasn't a significant amount.

11 Q. Do you have a sense of how many  
12 people were told to go to their actual pre-  
13 cinct for -- before 5:00 p.m.?

14 A. How many were told or how -- I  
15 don't know -- no, I don't have a sense of how  
16 many were told or how many actually went.

17 Q. Put a different way, do you have  
18 any numbers on requests for provisional bal-  
19 lots before and after 5:00 p.m. in the most  
20 recent elections?

21 A. Yes. We -- we collect that infor-  
22 mation.

23 Q. So, for everyone who was out of

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1 precinct and showed up before or after 5:00

2 p.m., you would have data on that?

3 A. Oh, yes. Yes, but I don't know  
4 that number.

5 Q. What information do you track?

6 A. So we track -- we track how many  
7 individuals voted out of precinct before 5:00  
8 and how many voted out of precinct between  
9 5:00 and 7:00.

10 Q. If a voter was -- tried to vote  
11 out of precinct before 5:00 but was told to  
12 go to their own precinct and left, would that  
13 be recorded?

14 A. If they didn't, you know, start  
15 filling out any paperwork, no, that wouldn't  
16 be recorded.

17 Q. Now, for the process after 5:00  
18 p.m., what is the process for a voter who  
19 shows up out of precinct and -- and seeks to  
20 vote provisionally after 5:00 p.m.?

21 A. If they request a -- a provisional  
22 ballot, they are provided the ballot and they  
23 have to sign an affidavit stating that they

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1 are not -- you know, were not able to make it  
2 to their precinct and the time is documented.

3 Q. How is the time documented?

4 A. It is written on the -- I believe  
5 it's on the affidavit, on the -- I can't -- I  
6 mean we know what time they voted but I think  
7 there's -- because of the system but I also  
8 believe it's written but I -- I don't know.  
9 I can't say 100 percent.

10 Q. Is there a timestamp on the --

11 A. Yes, there is a --

12 Q. -- provisional ballot envelope?

13 A. Yes, there is a timestamp.

14 Q. On the envelope?

15 A. Yes, there is a timestamp on the  
16 envelope.

17 Q. Is it on the ballot as well or  
18 just on the envelope?

19 A. I think it's just on the envelope  
20 but let me -- yes. I can confirm that.

21 Q. Are voters who arrive after 5:00  
22 p.m. who are out of precinct instructed to go  
23 to their precinct first or are they --



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1           A.     No, they -- if they are arrive  
2 between 5:00 and 7:00, they are able to be  
3 processed.

4           Q.     Okay.

5           A.     They're not turned -- they're not  
6 instructed to go to their precinct.

7           Q.     Are they encouraged to go to their  
8 precinct or --

9           A.     So the poll workers inform them if  
10 they're not at the right precinct, you know,  
11 that they know they're voting provisionally.  
12 So I don't -- I'm not sure if they -- I need  
13 to look at the training on that to -- to see  
14 if they're encouraging them even at -- during  
15 that time to go to their home precinct or not  
16 I'm not sure.

17          Q.     So you said just a minute ago that  
18 before 5:00 p.m., if a -- a voter who is out  
19 of precinct arrives and leaves without cast-  
20 ing a ballot, there's no -- you're not track-  
21 ing that; correct?

22          A.     Correct, if we -- if they have not  
23 started a check-in process or, you know, any

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1 -- completed any paperwork, we're not track-  
2 ing that.

3 Q. Is that -- is the same true for  
4 voters who arrive after 5:00 p.m. and decide  
5 not to cast a ballot and to leave?

6 A. Yes.

7 Q. In the -- you might have answered  
8 this already but, in the '22 -- 2022 general  
9 election, do you know how many voters had at-  
10 tempted to vote at the wrong precinct before  
11 5:00 p.m. in the county?

12 A. I don't have that exact number,  
13 no; but we -- I don't -- I don't -- I can't  
14 recall the number but we do have that infor-  
15 mation if you need it.

16 Q. Under SB 202, if a voter shows up  
17 to vote at an early voting site, what is the  
18 process the County follows for providing them  
19 with the correct ballot?

20 MS. VANDER ELS: Object to the  
21 form of the question.

22 A. Could you repeat that?

23 Q. (By Mr. Wardenski) Yeah. Let me

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1 A. For one?

2 Q. For one, yeah.

3 A. It's -- it's a couple minutes, you  
4 know.

5 Q. Typically?

6 A. Uh-huh.

7 Q. Okay.

8 A. It is.

9 Q. To your knowledge, are there any  
10 differences between how your office processed  
11 out-of-precinct provisional ballots before SB  
12 202 compared to current practice?

13 A. I mean, just the verification, you  
14 know, of -- I believe it's my -- you know, to  
15 my knowledge, the only difference is just the  
16 verification of the affidavit and the time-  
17 stamp. So that's a -- you know, there's an  
18 extra step there.

19 Q. But, otherwise, the process was  
20 basically the same?

21 A. To my knowledge, yes.

22 Q. If the SB 202 provisions regarding  
23 out-of-precinct provisional ballot were over-

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1 turned and the law went back to how it was  
2 before SB 202, would your office have to  
3 undertake any changes?

4 A. Just training, you know, the poll  
5 workers and then the, you know, the absentee  
6 ballot -- absentee technicians on the -- the  
7 new process.

8 I think that would be the -- those  
9 would be the major, you know, changes, just  
10 training.

11 Q. When would that training happen?

12 A. As -- I mean, if that -- as soon  
13 as we -- I mean, training occurs all, you  
14 know, year -- year round.

15 So it depends on, you know -- if  
16 that happened, it would be a part of the poll  
17 worker training for the poll workers and then  
18 the training for the seasonal absentee, you  
19 know, staff would be an additional, separate.

20 Q. Now I just want to ask you just a  
21 couple of questions about provisional votes  
22 generally not just those for out-of-precinct  
23 voters.

# EXHIBIT 137

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**In the Matter Of:**

IN RE GEORGIA SENATE BILL 202

1:21-MI-55555-JPB

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**C. RYAN GERMANY**

*April 13, 2023*

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*30(b)(6)*



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1 know, people in Georgia, you know, third party groups  
2 are allowed to send out an absentee ballot  
3 application and so we'd want to make -- have that  
4 available well before that so they can kind of see  
5 that and utilize that and prepare it.

6 Q Yeah. How -- so how far before that  
7 78-day mark do you think you would need to make  
8 those -- those applications available?

9 A Well, then -- and as I'm talking, you  
10 know, HAVA voters can still request a ballot 180 days  
11 before the election, I believe. And they can use a  
12 Federal form, but we'd want to have really the State  
13 form ready for that, too.

14 So I mean, I think you'd want -- you'd  
15 want any changes to that done, you know, really, I  
16 guess, just as far in advance as possible.

17 Q So could you -- could you be any more  
18 specific than as far in advance as possible, do you  
19 think? And I realize -- I could break it down a  
20 little bit more just in terms of how I've been  
21 thinking about it.

22 A Sure.

23 Q There's -- I hear what you're saying,  
24 that ideally that form would be available sometime  
25 before the day when a voter can first submit it. So

1 that's one question. And if we said, let's make sure  
2 that form is available two weeks before a voter can  
3 first submit it.

4 Do you have any sense of how far in  
5 advance of that date on which you would want the form  
6 to be available the form itself would have to go to  
7 the printer to be printed for the counties, for paper  
8 ballot -- paper applications?

9 MR. FIELD: Object to form.

10 THE WITNESS: This is for the  
11 absentee ballot application? Okay.  
12 That's what I thought we were talking  
13 about. I mean, I would even back it up  
14 further than that 78 days because of that  
15 UOCAVA allowance, which is still 180  
16 days, I believe.

17 And then, you know, I've learned a  
18 little bit about the third party groups  
19 that send out applications and the kind  
20 of lead time they need to do that. And I  
21 know that's something that I think they  
22 would want to have, too, and I think not  
23 having that would probably subject the  
24 State to eventually litigation on that  
25 side.



1                   So we would have to basically -- I  
2                   mean, I -- I would want to have it  
3                   ready -- I mean, I really can't say, but  
4                   I would -- it would want to be, I  
5                   think -- I think the 78-day mark is not  
6                   really the time to be thinking of. Like  
7                   that's sort of the bottom of the cliff,  
8                   basically. Whereas, you know, it needs  
9                   to be done well before you reach the top  
10                  of the cliff.

11 BY MS. RYAN:

12               Q       Uh-huh. But it's hard for you to say  
13               what well before -- like putting a time frame around  
14               well before the 78 days?

15               A       If it was me, I would want any of that  
16               done -- if it was up to me, I would say that needs to  
17               be completely done in the year 2023. So that --  
18               because your voting starts -- like actual voting  
19               starts for -- primary is probably going to be  
20               sometime in March. You know, three weeks before that  
21               for in-person voting, 30 days before that for  
22               absentee and, really, 49 days before that for  
23               overseas absentee.

24               Q       Uh-huh. That makes sense. The Secretary  
25               of State's Office does maintain the absentee ballot

# EXHIBIT

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**In the Matter Of:**

**IN RE: GEORGIA SENATE BILL 202**

1:21:MI-55555-JPB

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**C. RYAN GERMANY**

*March 07, 2023*

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1 Do you remember when you first reviewed  
2 that document?

3 A I remember that it came up at some point  
4 in the 2021 legislative session, and I remember  
5 thinking at the time, well, this is late, like this  
6 -- we've already been working on the, the election  
7 bills for this session, and this is -- that wasn't  
8 part of what we had been -- of what we were  
9 considering, but I don't recall when exactly it came  
10 up during that session.

11 (Whereupon, Plaintiffs' Exhibit-223 was  
12 marked for identification.)

13 BY MS. RICHARDSON:

14 Q I'm showing you what has been marked as  
15 Plaintiffs Exhibit No. 223, Bates No. CDR00519838  
16 through CDR00519839.

17 Take a look at that.

18 (Witness reviews exhibit.)

19 BY MS. RICHARDSON:

20 Q Do you recall receiving this email from  
21 Representative Barry Fleming?

22 A I do not.

23 Q To your knowledge, was the provision of  
24 House Bill 531 that required drop boxes to be placed  
25 inside early voting locations that limited their use

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1 to advance voting hours modeled after similar  
2 Florida law?

3 A I don't know that I recall that  
4 specifically, but I guess I can say it's not unusual  
5 I think to look at other state laws to see what they  
6 have.

7 Not -- I don't know that I can say I now  
8 remember this, but -- yes, this may very well be  
9 where it came from.

10 Q Do you recall that House Bill 531 also  
11 required each county to provide at least one drop  
12 box but limited additional drop boxes to the lesser  
13 of either one drop box for every 100,000 active  
14 registered voters in the county, or the number of  
15 advance locating -- advance voting locations in the  
16 county?

17 A Yes.

18 Q What was your understanding of the  
19 rationale for that election law change?

20 A I don't know that I can speak to the  
21 legislators' rationale.

22 Q Did you discuss this election law change  
23 with Representative Barry Fleming?

24 A I think we would have discussed it. I  
25 can't recall specific discussions.

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1 might be some type of unfairness in how they're  
2 allocated.

3 Q Okay. Who are these complaints coming  
4 from, generally?

5 A I don't recall.

6 Q How many complaints did you receive?  
7 About how many complaints did you receive?

8 A I don't recall.

9 Q Do you recall if any of these complaints  
10 came from legislators?

11 A I try -- I don't know. I don't know that  
12 I can say that.

13 Q Did you ever speak to former director Rick  
14 Barron about these complaints?

15 A I don't recall doing that.

16 Q Do you have any reason to believe that  
17 House Bill 531's proposal to eliminate mobile voting  
18 units was about Fulton County?

19 A Fulton County, to my knowledge, was the  
20 only one that had used mobile voting units  
21 previously. I think that -- I can't really speak I  
22 think to the legislators' rationale.

23 Q Do you recall earlier in the deposition  
24 when we were looking at two versions of SB 241, one  
25 version with no excuse absentee voting and one

# EXHIBIT 139

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**In the Matter Of:**

**IN RE GEORGIA SENATE BILL 202**

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**T. MATTHEW MASHBURN**

*March 14, 2023*

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1 perception that SB 202 is having a disparate impact 15:01:43  
2 on Black voters in Georgia? 15:01:48

3 A. Yeah, I don't know. 15:01:49

4 Q. Have you taken any steps to investigate or 15:01:50  
5 determine whether that's a reasonable perception? 15:01:52

6 A. Not -- not that I can recall. 15:01:55

7 Q. I think I just have one other thing I 15:02:02  
8 wanted to ask you about that came up, which was: In 15:02:05  
9 your prior testimony you mentioned there was -- I 15:02:09  
10 think you said it was a lady who had complained. 15:02:12  
11 There was a complaint about her I think having a gun 15:02:14  
12 in a polling station, and she raised complaints. Do 15:02:18  
13 you remember the incident I'm talking about? 15:02:20

14 A. Oh, yeah. Oh, my. 15:02:22

15 Q. Okay. 15:02:22

16 A. We handled that case in Macon. Oh, my 15:02:23  
17 goodness. 15:02:26

18 Q. Can you go -- can you just briefly 15:02:27  
19 describe what happened in that case? 15:02:29

20 A. Yeah. There were two cases that all 15:02:30  
21 happened on the same day, and one was a distribution 15:02:32  
22 of food and water case. 15:02:37

23 And then this other one is this lady is 15:02:41  
24 alleged to have had a gun at the precinct, and she 15:02:44  
25 said all kinds of wild stuff. And then I said: "You 15:02:48

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1 need to direct your attention to 'I had a gun, I  
2 didn't have a gun.' That's what you need to talk  
3 about."

4 And then she just -- she just, whew. Oh,  
5 my goodness. She was just off the rails.

6 Q. What was some of the wild stuff that she  
7 was saying?

8 A. Well, communism is fun until you eat --  
9 eat your puppy. Just wild stuff.

10 Q. Was she accusing anyone, either in line or  
11 around the line, of engaging in inappropriate  
12 behavior at the poll?

13 A. Her -- her thing was that she felt  
14 threatened was what she was talking about, is what I  
15 remember that she was talking about, is that she felt  
16 like her life was in danger or something.

17 Q. Did she describe why she felt threatened?

18 A. I'm sure in all the -- in all the  
19 foolishness, she did, but that was just -- she was  
20 just a mess.

21 Q. It's true, isn't it, that she mentioned  
22 specifically there were a group of people listening  
23 to hip-hop music there that made her feel threatened,  
24 correct?

25 A. I think -- that refreshes my recollection.

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1 I think that was -- I think that was part of it, 15:04:09  
2 yeah. I think that's right. 15:04:10  
3 Q. We called it a -- 15:04:10  
4 A. I don't disagree with you if you represent 15:04:12  
5 that that was what she said. 15:04:14  
6 Q. Well, I'm just repeating what I thought 15:04:16  
7 that you'd said previously. 15:04:18  
8 A. Yeah. 15:04:19  
9 Q. And was this -- what was the race of this 15:04:20  
10 lady? 15:04:22  
11 A. She was white, Caucasian. 15:04:23  
12 Q. Did she mention the race of anybody else 15:04:25  
13 when she was talking about issues that she observed? 15:04:28  
14 A. I don't -- I don't recall, but I would 15:04:32  
15 suspect she probably did. 15:04:36  
16 Q. And I'm just going to infer a little bit 15:04:38  
17 here. Would she -- was she feeling -- did she 15:04:41  
18 express that she felt threatened by people who were 15:04:44  
19 listening to hip-hop music who were Black? 15:04:49  
20 A. Yeah, I don't recall that exact phrase, 15:04:53  
21 but if somebody said that that's what she said, I 15:04:55  
22 would believe that that was right because she -- she 15:04:59  
23 was spouting off a lot of nonsense; just foolishness. 15:05:00  
24 Q. In your mind, was that nonsense or 15:05:05  
25 foolishness perhaps based in some implicit bias or 15:05:07

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1 some racism that she might have been harboring? 15:05:10

2 A. I pegged her -- I pegged her as a racist. 15:05:14

3 Q. Okay. 15:05:14

4 A. In my mind she's a racist; full-on racist. 15:05:17

5 Q. I think that I'm just about done, so just 15:05:22  
6 to kind of summarize, you know, a lot of the things 15:05:25  
7 we talked about are the different sort of -- I called 15:05:26  
8 it universe or sources of information that you heard 15:05:28  
9 in the last few years relating to these issues, and I 15:05:30  
10 think we covered that quite extensively. 15:05:33

11 We talked about voters who've approached 15:05:33  
12 you. We talked about things you've heard at the 15:05:36  
13 political breakfasts. You mentioned some things 15:05:38  
14 you've heard in church, some things you've heard from 15:05:41  
15 your sort of circle of professional and personal 15:05:43  
16 colleagues and, of course, in your role at State 15:05:47  
17 Election Board. 15:05:47

18 I kind of want to just summarize, and is 15:05:50  
19 there any source that we haven't covered in that list 15:05:53  
20 that was -- that provided you with information about 15:05:57  
21 issues at the Georgia polls specifically related to 15:06:01  
22 the issues addressed by SB 202? 15:06:04

23 A. I read the Atlanta Journal Constitution a 15:06:09  
24 lot and follow their -- follow them. They have 15:06:12  
25 online, and they update pretty well. So I look at 15:06:18

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1 I'm a little bit closer?

2 THE REPORTER: It does. You said: "I'll  
3 try and keep it brief. When you were talking  
4 to" -- and I could not hear what you were  
5 saying. I apologize.

6 MS. JHAVERI: Sure. I said when you were 15:14:17  
7 talking to Mr. Jedreski and you discussed the 15:14:18  
8 absentee ballot application, and I just was 15:14:23  
9 going to follow up on that. 15:14:25

10 THE WITNESS: Okay. 15:14:28

11 Q. (By Ms. Jhaveri) So when you were talking 15:14:29  
12 to him, you discussed that the goal of the changes in 15:14:31  
13 SB 202, specifically the identification provision, 15:14:34  
14 was to confirm that the real voter filed this 15:14:38  
15 application; is that correct? 15:14:44

16 A. Yes. I think we -- I think it does away 15:14:44  
17 with signature matching and replaces it with I.D. 15:14:48

18 Q. And I.D. includes writing down the number 15:14:52  
19 of your driver's license or state I.D. number, 15:14:58  
20 correct? 15:15:02

21 A. Correct. Or the other forms of 15:15:03  
22 identification you can use at the precinct, correct. 15:15:05

23 Q. And would this goal of confirming that the 15:15:09  
24 real voter filed an absentee ballot application, 15:15:12  
25 would that also be served -- wouldn't that also be 15:15:15

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1 served by allowing a voter to put down their Social  
2 Security number, for example?

3 A. Yeah, but there was -- there was a concern  
4 about the Social Security numbers. People are very  
5 wary of that. So they don't like putting their full  
6 Social Security number down.

7 Q. And that concern, how do you know about  
8 that concern?

9 A. As a real estate lawyer, I'm in closings,  
10 and every single closing I have to ask people to sign  
11 a form that has their taxpayer I.D. on it, and for  
12 individuals, that'd be a Social Security number, and  
13 just people don't like it.

14 Q. So you're taking your response from your  
15 experience as a real estate lawyer?

16 A. Vast majority; that's correct.

17 Q. So it's not based on conversations with  
18 voters.

19 A. Not that I can recall.

20 Q. And to go back to my point, my initial  
21 point, Social Security number would also determine  
22 that a voter is the person who filed the application,  
23 the same voter.

24 A. Assuming -- yeah, assuming somebody --  
25 yeah, assuming somebody doesn't have their Social

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1 Security number through identity theft or something 15:16:40  
2 like that, yeah, that would be one of the ways we 15:16:42  
3 identify people, uh-huh. 15:16:44

4 Q. That's right. So outside of that 15:16:46  
5 circumstance, it would be a way to properly identify 15:16:50  
6 the voter. 15:16:53

7 A. Yeah, I think, since almost everybody 15:16:54  
8 seems to have a Social Security number in these 15:16:59  
9 modern times, that seems to be a good way to identify 15:17:01  
10 people; yes, I agree. 15:17:06

11 Q. Now -- 15:17:07

12 A. Sorry, but people just don't -- I just 15:17:09  
13 remember when we were considering absentee ballot 15:17:16  
14 applications with a Social Security number on it, 15:17:21  
15 they created this special mechanism and flap in the 15:17:23  
16 envelope, and people were like -- there was something 15:17:28  
17 about putting your Social Security number on it. And 15:17:31  
18 people were like: "Well, how are you going to do 15:17:33  
19 that? I don't want my Social Security number going 15:17:35  
20 through the mail." 15:17:38

21 And we were like: "No. Look at this. 15:17:38  
22 We've created this special envelope that your Social 15:17:40  
23 Security number is covered, and the county pulls it 15:17:43  
24 off," and it was a really innovative envelope that 15:17:45  
25 was pretty cool, but I don't remember how that 15:17:49



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1 (Plaintiffs' Exhibit 201 was marked for 15:20:46  
2 identification.) 15:20:46  
3 MS. JHAVERI: I apologize. One moment. 15:21:11  
4 I think you should see it. 15:21:20  
5 MR. PRINCE: Not yet. 15:21:26  
6 MS. JHAVERI: No? Okay. You know, I can 15:21:27  
7 do this a little more simply. Let's do this. 15:21:28  
8 Q. (By Ms. Jhaveri) Are you able to see my 15:21:35  
9 screen? 15:21:37  
10 A. Yeah. It's real small. Let's see if we 15:21:37  
11 can make it bigger. 15:21:42  
12 Q. I can try and -- 15:21:42  
13 A. Oh, you're making it bigger. Okay, I see 15:21:44  
14 it. 15:21:45  
15 Q. Yes. Is that any better? 15:21:45  
16 A. Let me see if I can make this -- oh, I 15:21:48  
17 can't click on yours. It's still very -- I can't 15:21:48  
18 make it out. If you can make it a full screen; can 15:21:50  
19 you make it like -- that's better. 15:21:54  
20 Yeah, there you go. That's better. 15:21:56  
21 Q. Okay. Is this the -- and so this is the 15:22:02  
22 State Election Board regulation. And, just for the 15:22:04  
23 record, it is Bates stamped USA-04339 to 04340. 15:22:07  
24 A. It sure looks like it, uh-huh. 15:22:23  
25 Q. Okay, great. Now, this -- when you were 15:22:26



T. MATTHEW MASHBURN  
IN RE GEORGIA SENATE BILL 202

March 14, 2023  
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1 talking to Mr. Jedreski earlier and you noted that 15:22:33  
2 some folks were concerned about drop boxes but many 15:22:39  
3 of their concerns stemmed from the fact that they 15:22:44  
4 didn't realize that these drop boxes had to be video 15:22:47  
5 monitored, or that was one of the concerns. Correct? 15:22:52

6 A. I agree. 15:22:54

7 Q. And we're going to look at number 5 here. 15:22:55  
8 Do you see number 5 on your screen? 15:23:01

9 A. Yes. 15:23:04

10 Q. And does that say: "Video recordings of 15:23:04  
11 the drop box locations must be retained by the county 15:23:07  
12 registrars for 30 days after the final certification 15:23:07  
13 of the election, or until conclusion of any contest 15:23:12  
14 involving an election on the ballot in the county 15:23:16  
15 jurisdiction, whichever is later, and shall be made 15:23:18  
16 available to Secretary of State investigators upon 15:23:21  
17 request or to the public, upon request, as soon as 15:23:25  
18 possible or at a charge that is not cost prohibitive 15:23:26  
19 to the public, if there is a charge"? 15:23:29

20 A. I agree. 15:23:31

21 Q. And you mentioned another thing that 15:23:33  
22 voters were confused about or those who raised 15:23:39  
23 concerns about drop boxes was the procedure for 15:23:43  
24 collecting the drop boxes, correct? 15:23:45

25 A. Yes. 15:23:47

T. MATTHEW MASHBURN  
IN RE GEORGIA SENATE BILL 202

March 14, 2023  
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1 Q. Let me clean that up; for collecting the 15:23:48  
2 ballots from the drop boxes. 15:23:52

3 A. Yeah, when we were -- when we were just 15:23:54  
4 looking at this regulation and creating it, we 15:23:56  
5 created a daily log-in so that if a drop box went ten 15:23:58  
6 votes, ten votes, ten votes, ten votes, a thousand 15:24:03  
7 votes, ten votes, we could go pull up the video and 15:24:06  
8 see what happened that day. 15:24:10

9 Q. Right. And you also include in that 15:24:11  
10 regulation number 10 which describes -- and I'm not 15:24:14  
11 going to read the whole thing -- the procedure for 15:24:18  
12 collecting the absentee ballots from the drop boxes, 15:24:21  
13 correct? 15:24:25

14 A. Yeah, the regulation was originally every 15:24:25  
15 24 hours, and then Bartow County came to us and said: 15:24:29  
16 "Hey, we're going broke paying mileage to our people, 15:24:33  
17 so can we pick it up once every three days instead of 15:24:37  
18 every 24 hours," and so we made that change. 15:24:41

19 Q. And so individuals who would have read the 15:24:44  
20 emergency regulation would have known that the drop 15:24:49  
21 boxes were subject to video monitoring, correct? 15:24:54

22 A. I would hope so, yes. 15:24:59

23 Q. And those who have read this regulation 15:25:01  
24 would know that there was a procedure for removing 15:25:04  
25 the absentee ballots from the drop boxes, correct? 15:25:08

T. MATTHEW MASHBURN  
IN RE GEORGIA SENATE BILL 202

March 14, 2023  
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1 A. I agree, yes. We would hope so, yes. 15:25:12

2 Q. I think that's all -- I'm going to take 15:25:17  
3 this off the screen. I think that's all we need 15:25:22  
4 here. 15:25:26

5 Now, I want to talk a little bit about 15:25:31  
6 out-of-precinct (inaudible) ballots. 15:25:31

7 A. Okay. 15:25:42

8 THE REPORTER: I'm sorry, ma'am, your 15:25:42  
9 voice dropped again. Talk about ... 15:25:42

10 MS. JHAVERI: Out-of-precinct provisional 15:25:44  
11 ballots. 15:25:44

12 THE REPORTER: Thank you. 15:25:44

13 MS. JHAVERI: Apologies. 15:25:52

14 Q. (By Ms. Jhaveri) So, Mr. Mashburn, I know 15:25:53  
15 we talked about this last week too. I just want to 15:25:56  
16 get the timeline a little bit clearer. You said 15:25:59  
17 there was a period in time when Georgia was not -- 15:26:02  
18 did not allow any out-of-precinct provisional 15:26:04  
19 ballots, and then that changed at some point. 15:26:09

20 Do you have a better recollection today of 15:26:11  
21 when that changed? 15:26:13

22 A. No, I do not. 15:26:14

23 Q. Last week when we discussed this, you 15:26:17  
24 noted that you thought it was about 2018. Is that 15:26:21  
25 correct? 15:26:25

# EXHIBIT

# 140

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**In the Matter Of:**  
**GEORGIA SENATE BILL 202**

1:21:MI-55555-JPB

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**CHARLES TONNIE ADAMS**

*December 12, 2022*

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1 GRAVEO has been divided up into 14 regions, for lack  
2 of a better word, and I'm also the regional  
3 coordinator for Region 4, which includes 11  
4 counties. So they're the ones that I converse with  
5 more often than not on anything, and they'll ask me  
6 questions, too.

7 Q And now I want to shift to your role in  
8 the Legislative Committee for GAVREO.

9 I think you mentioned that you are the  
10 chair of the Legislative Committee, is that correct?

11 A That's correct. I was chair for one year,  
12 and then someone else was chair, and I have been  
13 named chair once again this year.

14 Q And what year were you originally chair?

15 A It was the year that Senate Bill 202 came  
16 up.

17 Q So that's the --

18 A 2021.

19 Q And then who was chair next?

20 A Her name is Nina Crawford. She's an  
21 elections official board member in Catoosa County.

22 Q And that was for 2022?

23 A Correct. It starts from -- it goes from  
24 conference to conference. So we had conference in  
25 August of last year -- hold on. Let me think about

1 that.

2 It was a period -- it was not quite a year  
3 that she was chair. It was after -- but it was well  
4 after 202 had been passed was when I was replaced  
5 for a year.

6 GRAVEO typically does not maintain --  
7 certain committees are not maintained chairman for  
8 every year. It gives everyone a shot, a chance to  
9 be a part of that.

10 Q So what were some of your roles as chair  
11 when you did it the first time around?

12 A Well, the main thing was keeping everyone  
13 informed about the progress of the bills themselves.

14 The way that it turned out, it went  
15 through the process, it seemed like every day a new  
16 bill was being dropped and they were incorporating  
17 bills from other parts of the -- they were  
18 incorporating other bills that had been introduced  
19 and we were trying to figure out where everything  
20 was coming from; and just doing that alone,  
21 searching through the bills -- they took this part  
22 of this bill and put it here, took this part of this  
23 bill and put it here -- that was a task in and of  
24 itself.

25 But eventually what we wound up doing was

1     testifying to the Election Integrity Committee and  
2     the Ethics Committee about the bills themselves, and  
3     the parts of the bills that concerned us as far as  
4     election administration was concerned.

5           Q     You were just talking about your  
6     responsibility to keep folks informed. Were you  
7     doing that by just reviewing the bills, or were  
8     there other steps you were taking?

9           A     I would post things like that on the Buzz.  
10    That would be the main thing that we would do, is  
11    when a bill would come through, I would post a  
12    Legislative Committee update to the Buzz letting  
13    everyone know, please engage your local legislator,  
14    let them know we're paying attention to this and let  
15    your legislator know our concerns about what's being  
16    proposed in the bills.

17          Q     And when you posted it on the Buzz, that  
18    was for all members of GAVREO, or just the  
19    Legislative Committee?

20          A     All members of GAVREO.

21          Q     And going back to the Legislative  
22    Committee, about how many members are on the  
23    Legislative Committee?

24          A     When I started, we had 10, but I lost one  
25    member. He was fired, unfortunately.



# EXHIBIT

# 141

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**In the Matter Of:**

**UNITED STATES vs THE STATE OF GEORGIA**

1:21:MI-55555-JPB

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**LYNN BAILEY**

*October 06, 2022*

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LYNN BAILEY  
UNITED STATES vs THE STATE OF GEORGIA

October 06, 2022  
105

1 let me know, please."

2 Do you believe that Senate Bill 202 was  
3 afforded sufficient consideration by legislators  
4 given how long it was?

5 MR. TYSON: Object to form.

6 You can answer it.

7 MR. KAUFMAN: Object to form.

8 A Would you ask your question again?

9 Q Based on input that you had received in  
10 the 2021 legislative session as well as input on  
11 election bills and in prior legislative sessions, do  
12 you believe that enough time or sufficient time was  
13 given to this bill given the length?

14 MR. TYSON: Object to form.

15 A I can only assume that it was, but the  
16 thing about this particular piece of legislation was  
17 the length and the breadth of what was contained in  
18 it. It touched so many different facets of Georgia  
19 law, and so to really fully understand the overall  
20 impact of it all took study and time. And so I do  
21 remember there being a general feeling that we were  
22 -- that input time was drawing short and that there  
23 was a rush on our part to make comment on the bill  
24 and be able to have it heard.

25 Q Do you believe some sort of study

LYNN BAILEY  
UNITED STATES vs THE STATE OF GEORGIA

October 06, 2022  
106

1 committee should have been convened to consider this  
2 bill's impact?

3 A That was always my opinion.

4 Q Did you share that opinion with any  
5 legislators?

6 A Likely.

7 Q If you know, who were the primary drafters  
8 of Senate Bill 202?

9 A Well, I only know that it was sponsored by  
10 Senator Burns, and outside of that there are a lot  
11 of similarities in Senate Bill 202 and the former  
12 House Bill 531, so I assume that some of the people  
13 that drafted that legislation had some type of a  
14 hand in 202, but I am not exactly sure. I was not  
15 involved in those conversations.

16 Q Do you know if Ryan Germany was involved  
17 in the drafting of Senate Bill 202?

18 A Not with any firsthand knowledge.

19 Q Do you know if any other non-legislators  
20 were involved in the drafting of Senate Bill 202?

21 A Not with any firsthand knowledge.

22 Q Did you participate in any meetings,  
23 formal or informal, regarding Senate Bill 202?

24 A You know, I know that we had obviously the  
25 email chains going around discussing different

# EXHIBIT 142

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JOSEPH BLAKE EVANS  
GEORGIA SENATE BILL 202

February 23, 2023

1

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

IN RE: )  
 )  
GEORGIA SENATE BILL 202 )  
 )  
Plaintiff, )  
vs. ) Civil Action No.  
 ) 1:21:MI-55555-JPB  
 )  
Defendants. )  
 )  
----- )

DEPOSITION OF  
JOSEPH BLAKE EVANS

Thursday, February 23, 2023, 9:02 a.m. (EST)

HELD AT:

Taylor English Duma LLP  
1600 Parkwood Circle, Suite 200  
Atlanta, Georgia 30339

-----  
WANDA L. ROBINSON, CRR, CCR, No. B-1973  
Certified Shorthand Reporter/Notary Public

JOSEPH BLAKE EVANS  
GEORGIA SENATE BILL 202

February 23, 2023  
226

1 placed, you get it printed, you get it shipped, 60  
2 days.

3 Q Switching gears to drop boxes. SB 202  
4 puts in place several requirements as far as drop  
5 boxes, ballot drop boxes, correct?

6 A Yes.

7 Q One of those portions deals with the  
8 number of drop boxes that counties must and are  
9 allowed to have. Is that correct?

10 A Yes.

11 Q And other provisions deal with the  
12 location and hours of operation of those drop boxes;  
13 is that correct?

14 A Yes.

15 Q If the limitations on number of drop boxes  
16 per county were lifted, that portion alone, is it  
17 your understanding that it would be up to counties  
18 whether or not to add additional drop boxes?

19 MR. TYSON: Object to form.

20 A So the question is not if the language  
21 regarding drop boxes is repealed; it's if the  
22 language regarding the number of drop boxes that a  
23 county can have.

24 I'd have to get with our attorneys, figure  
25 out -- we also have the State Elections Board to

JOSEPH BLAKE EVANS  
GEORGIA SENATE BILL 202

February 23, 2023  
227

1 consider whether or not they could write rules that  
2 could -- it depends on if they would want to write  
3 rules. But I mean in theory, if that were taken  
4 out, counties would be able to adjust the number of  
5 drop boxes they had, hypothetically.

6 Q And is the same true with regards to the  
7 physical location of the drop boxes, if that portion  
8 specifically of SB 202 were eliminated, that it  
9 would be up to counties whether to change the  
10 location of those drop boxes or not?

11 MR. TYSON: Object to form.

12 A Again, depends on if the State Elections  
13 Board took any action, that kind of thing.  
14 Theoretically, if nothing else and the law changed,  
15 then it seems like they could move the location.

16 Q Regarding the provisions on what I'll  
17 refer to as line relief, in other words, the ban on  
18 providing food and water and other items of value to  
19 voters who are waiting in line, do you know the  
20 provision of SB 202 to which I'm referring?

21 A Yes.

22 Q Okay. If a ban on providing food or water  
23 to outside groups were lifted, any changes would  
24 primarily be implemented by counties, correct?

25 MR. TYSON: Object to form.



JOSEPH BLAKE EVANS  
GEORGIA SENATE BILL 202

February 23, 2023  
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1           A     I'm not sure there's anything there for a  
2 county to implement.

3           Q     Fair enough.

4                     And in terms of -- are you aware of the  
5 provision in SB 202 which imposed new criminal  
6 penalties for ballot collection?

7           A     Yes.

8           Q     If those penalties were struck down, in  
9 your experience is there anything your office would  
10 need to do, apart from issuing guidance to counties?

11                     MR. TYSON: Object to form.

12           A     Not that I'm aware.

13           Q     And you're aware of the provision in SB  
14 202 which changed the rules regarding the acceptance  
15 of out-of-precinct provisional ballots; is that  
16 right?

17           A     Yes.

18           Q     If a court were to strike down the changes  
19 that SB 202 made to those provisions, based on your  
20 experience what would your office need to do to  
21 implement those?

22                     MR. TYSON: Object to form.

23           A     We would -- going back to the original  
24 answer, I would speak with our counsel, with our  
25 attorneys, and then based on their guidance we could

JOSEPH BLAKE EVANS  
GEORGIA SENATE BILL 202

February 23, 2023  
229

1 potentially issue guidance to counties.

2 MR. ROSBOROUGH: I appreciate you-all's  
3 patience. I have no further questions. Thank  
4 you.

5 MR. TYSON: Thank you. No questions here.

6 (Whereupon, the deposition concluded at  
7 5:38 p.m.)  
8  
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# EXHIBIT 143

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**In the Matter Of:**

**IN RE GEORGIA SENATE BILL 202**

1:21:MI-55555-JPB

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**MILTON D. KIDD**

*May 05, 2022*

---

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MILTON D. KIDD  
IN RE GEORGIA SENATE BILL 202

May 05, 2022  
120

1 Q And what days of the week is it available  
2 to voters?

3 A We have voting Monday through Friday, and  
4 then the elections office has Saturday voting from  
5 9:00 to 5:00, to which the box will be available as  
6 well.

7 Q If Douglas County weren't limited to the  
8 one drop box, how many drop boxes would your county  
9 use?

10 A Ten.

11 MR. KAUFMAN: Object to form.

12 MS. LaROSS: Objection as to form.

13 A Ten.

14 Q Let me just start over.

15 If there were -- the limitation of SB-202  
16 on drop boxes were not in place, how many drop boxes  
17 would Douglas County use for the 2022 election  
18 cycle?

19 MR. KAUFMAN: Object to the form.

20 MS. LaROSS: Objection.

21 A Ten.

22 Q Why?

23 MR. KAUFMAN: Object to form.

24 MS. LaROSS: Object as to form.

25 A We thought that the drop boxes were a

MILTON D. KIDD  
IN RE GEORGIA SENATE BILL 202

May 05, 2022  
121

1 great mechanism by which to have a direct way for  
2 voters to transmit information to us, so much so  
3 that we went through the process of permanently  
4 installing our drop boxes and permanently installing  
5 camera systems on the drop boxes, to which those  
6 drop boxes, although they're locked with signage  
7 indicating that we can no longer use them currently  
8 based on election law, we left them in place.

9 Q Are all 10 of the drop boxes that Douglas  
10 County used in the 2020 election cycle still in  
11 place?

12 A Yes.

13 Q If the limitation of the one drop box and  
14 that it needs to be inside were lifted, would  
15 Douglas County use those permanent drop boxes that  
16 are still installed outside?

17 A Yes.

18 MS. LaROSS: Objection as to form.

19 Q What hours would you make them available?

20 MS. LaROSS: Objection as to form.

21 A If we had legally -- if we were legally  
22 able to do it, we would leave them in place for a  
23 24-hour period.

24 Q If the rules regarding drop boxes in  
25 SB-202 reverted to what was in place during the 2020

MILTON D. KIDD  
IN RE GEORGIA SENATE BILL 202

May 05, 2022  
155

1 Assembly, did you speak with Mr. Harvey or anyone  
2 else in the Secretary of State's Office --

3 A Yes.

4 Q -- about your view on this particular  
5 provision?

6 A Yes.

7 Q And what did you tell Mr. Harvey?

8 A I've articulated the same understanding  
9 that I have articulated in this meeting today of my  
10 non-understanding of why this nonissue is an issue.  
11 And trying to get an understanding of what the  
12 perceived problem was.

13 Q Prior to the passage of SB-202, did you  
14 consider the process that your office had to  
15 undertake after the polls closed to process OP  
16 ballots to be burdensome?

17 A No.

18 MR. KAUFMAN: Object to form.

19 MS. LaROSS: Objection.

20 Q If the provisions of SB-202 regarding  
21 out-of-precinct provisional ballots were overturned  
22 and the law reverted to the status prior to SB-202,  
23 would your office need to undertake any changes  
24 because of that change?

25 MS. LaROSS: Objection.

MILTON D. KIDD  
IN RE GEORGIA SENATE BILL 202

May 05, 2022  
156

1 MR. KAUFMAN: Object to the form.

2 A No.

3 Q If this provision of SB-202 regarding  
4 out-of-precinct provisional ballots were overturned  
5 and the law returned to what it was prior to SB-202,  
6 do you think it would result in voter confusion in  
7 Douglas County?

8 MS. LaROSS: Objection as to form.

9 MR. KAUFMAN: Object to form.

10 A I'm sorry, could you please --

11 MS. SUSON: Hold on. Put it on mute.

12 (Discussion ensued off the record.)

13 BY MS. O'CONNOR:

14 Q I'm going to ask my question again.

15 If the provision of SB-202 regarding  
16 out-of-precinct provisional ballots were overturned  
17 and the law reverted to what it was prior to the  
18 passage of SB-202, do you think that change would  
19 result in voter confusion in Douglas County?

20 A No.

21 MR. KAUFMAN: Object to form.

22 MS. LaROSS: Objection.

23 Q Why not?

24 MS. LaROSS: Object as to form.

25 A Most people are unaware of the passage in



MILTON D. KIDD  
IN RE GEORGIA SENATE BILL 202

May 05, 2022  
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1 the provision that disallows the voting of using the  
2 code section of OP even with the current passage,  
3 which is why we still had voters that have attempted  
4 to utilize these features and they're informed at  
5 the time that they cannot do that.

6 So it would simply be instructing them now  
7 that they would have that option again, which we  
8 would have to do it anyway.

9 MS. O'CONNOR: So I'd like to take just a  
10 five-minute break to see if I have a couple  
11 more questions, and then I will be done with my  
12 questioning, and I think there are some other  
13 folks on the phone who might have a couple of  
14 questions they want to ask.

15 (A recess was taken at 3:46 p.m. until  
16 3:54 p.m.)

17 BY MS. O'CONNOR:

18 Q Mr. Kidd, earlier you answered some  
19 questions about line warming activities in Douglas  
20 County. Do you remember what groups were involved  
21 in line warming activities in Douglas County during  
22 the 2020 election cycle?

23 A It was a bunch of different organizations.  
24 This is not the entirety of the list. These are  
25 just some I remember offhand.

# EXHIBIT

# 144

RETRIEVED FROM DEMOCRACYDOCKET.COM

House Bill 316 (AS PASSED HOUSE AND SENATE)

By: Representatives Fleming of the 121<sup>st</sup>, Jones of the 47<sup>th</sup>, Burns of the 159<sup>th</sup>, Rynders of the 152<sup>nd</sup>, Watson of the 172<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to  
2 primaries and elections generally, so as to provide for definitions; to provide for uniform  
3 election equipment in this state; to provide for ballot marking devices and standards and  
4 procedures for such devices; to provide for the manner of qualifying presidential elector  
5 candidates for independent candidates for the offices of President and Vice President of the  
6 United States; to provide for the time for filing evidence of nomination by political body  
7 candidates; to clarify the age for voting; to provide for audits of election results and  
8 procedures therefor; to revise and clarify procedures for voter registration and list  
9 maintenance activities; to authorize the Secretary of State to become a member of a  
10 nongovernmental entity for purposes of maintaining electors lists under certain conditions;  
11 to provide for minimum requirements and form of information on electronic ballot markers;  
12 to provide for confidentiality of certain records and documents; to extend the time period  
13 allowing for public comment on precinct realignments; to place time limits on relocation of  
14 polling places; to provide for additional sites for a registrar's office or place of registration  
15 for absentee ballots; to provide for the delivery of absentee ballots to certain persons in  
16 custody; to provide for the manner of processing absentee ballot applications and absentee  
17 ballots; to provide a cure for an elector whose absentee ballot was rejected; to provide for the  
18 form of absentee ballot oath envelopes; to provide for the time for advance voting and  
19 manner and location of advance voting; to provide for assistance in voting; to provide for  
20 ease of reading ballots; to provide that a voter identification card is valid until an elector  
21 moves out of the county in which it was issued or is no longer eligible to vote; to provide for  
22 notification procedures for status of provisional ballots; to provide for the time for certifying  
23 elections; to provide for precertification audits; to provide for entitlement to and methods for  
24 recounts; to provide for conforming changes; to provide for related matters; to provide for  
25 an effective date; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 **SECTION 1.**

28 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to primaries and  
 29 elections generally, is amended by revising paragraphs (2), (4.1), and (18) of Code  
 30 Section 21-2-2, relating to definitions, and adding new paragraphs to read as follows:

31 "(2) 'Ballot marking device' means the cards, paper, or other material placed on the  
 32 front of a voting machine containing the names of offices and candidates and statements  
 33 of questions to be voted on a pen, pencil, or similar writing tool, or an electronic device  
 34 designed for use in marking paper ballots in a manner that is detected as a vote so cast  
 35 and then counted by ballot scanners.

36 (2.1) 'Ballot scanner' means an electronic recording device which receives an elector's  
 37 ballot and tabulates the votes on the ballot by its own devices; also known as a 'tabulating  
 38 machine.'

39 "(4.1) 'Direct recording electronic' or 'DRE' voting equipment means a computer driven  
 40 unit for casting and counting votes on which an elector touches a video screen or a button  
 41 adjacent to a video screen to cast his or her vote. Such term shall not encompass ballot  
 42 marking devices or electronic ballot markers."

43 "(7.1) 'Electronic ballot marker' means an electronic device that does not compute or  
 44 retain votes; may integrate components such as a ballot scanner, printer, touch screen  
 45 monitor, audio output, and a navigational keypad; and uses electronic technology to  
 46 independently and privately mark a paper ballot at the direction of an elector, interpret  
 47 ballot selections, communicate such interpretation for elector verification, and print an  
 48 elector verifiable paper ballot."

49 "(18) 'Official ballot' means a ballot, whether paper, mechanical, or electronic, which is  
 50 furnished by the superintendent or governing authority in accordance with Code  
 51 Section 21-2-280, including paper ballots read by optical scanning tabulators that are read  
 52 by ballot scanners."

53 "(19.1) 'Optical scanning voting system' means a system employing paper ballots on  
 54 which electors cast votes with a ballot marking device or electronic ballot marker after  
 55 which votes are counted by ballot scanners."

56 "(32.1) 'Scanning ballot' means a printed paper ballot designed to be marked by an  
 57 elector with a ballot marking device or electronic ballot marker or a blank sheet of paper  
 58 designed to be used in a ballot marking device or electronic ballot marker, which is then  
 59 inserted for casting into a ballot scanner."

**SECTION 2.**

Said chapter is further amended by revising paragraph (15) of subsection (a) of Code Section 21-2-50, relating to the powers and duties of the Secretary of State and prohibition against serving in a fiduciary capacity, as follows:

"(15) To develop, program, build, and review ballots for use by counties and municipalities on ~~direct recording electronic (DRE)~~ voting systems in use in the state."

**SECTION 3.**

Said chapter is further amended by adding a new Code section to read as follows:

"21-2-132.1.

(a) An independent candidate for the office of President or Vice President of the United States shall file with the Secretary of State not later than the Friday before the opening of qualifying for such office as provided in subsection (d) of Code Section 21-2-132 a slate of candidates for the office of presidential elector which such independent candidate has certified as being the presidential electors for such independent candidate.

(b) The candidates for presidential electors certified by an independent candidate for the office of President or Vice President of the United States shall then qualify for election to such office in accordance with Code Section 21-2-132.

(c) An independent candidate for the office of President or Vice President of the United States may certify a number of candidates for the office of presidential elector that is equal to or less than the number of presidential electors who may be elected from the State of Georgia."

**SECTION 4.**

Said chapter is further amended by revising paragraph (5) of subsection (c) of Code Section 21-2-172, relating to nomination of presidential electors and candidates of political bodies by convention, as follows:

"(5) That a certified copy of the minutes of the convention, attested to by the chairperson and secretary of the convention, must be filed by the nominee with his or her ~~notice of candidacy~~ nomination petition."

**SECTION 5.**

Said chapter is further amended by revising subsections (a) and (c) of Code Section 21-2-216, relating to qualifications of electors generally, reregistration of electors purged from list, eligibility of nonresidents who vote in presidential elections, retention of qualification for standing as elector, evidence of citizenship, and check of convicted felons and deceased persons databases, as follows:

"(a) No person shall vote in any primary or election held in this state unless such person shall be:

(1) Registered as an elector in the manner prescribed by law;

(2) A citizen of this state and of the United States;

(3) At least 18 years of age on or before the date of the primary or election in which such person seeks to vote;

(4) A resident of this state and of the county or municipality in which he or she seeks to vote; and

(5) Possessed of all other qualifications prescribed by law."

"(c) Any person who possesses the qualifications of an elector except that concerning age shall be permitted to register to vote if such person will acquire such qualification within six months after the day of registration; provided, however, that such person shall not be permitted to vote in a primary or election ~~until the acquisition of all specified qualifications~~ unless such person shall be at least 18 years of age on or before the date of the primary or election in which such person seeks to vote."

## SECTION 6.

Said chapter is further amended by revising subsections (b), (c), and (d) of Code Section 21-2-220.1, relating to required documentation for voter registration, as follows:

~~"(b) For those voter registration applicants who have a Georgia driver's license number or identification card number for an identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or the last four digits of a social security number, a voter registration application may be accepted as valid only after the board of registrars has verified the authenticity of the Georgia driver's license number, the identification card number of an identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or the last four digits of the social security number provided by the applicant~~ In the event that the name, driver's license number, social security number, or date of birth provided by the person registering to vote on the voter registration form does not match information about the applicant on file at the Department of Driver Services or the federal Social Security Administration, the applicant shall nevertheless be registered to vote but shall be required to produce proof of his or her identity to a county registrar, a deputy county registrar, a poll manager, or a poll worker at or before the time that such applicant requests a ballot for the first time in any federal, state, or local election.

~~(c) The authenticity of an applicant's Georgia driver's license number, identification card number of an identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or the last four digits of the social security number may be verified by:~~

(1) The board of registrars matching the Georgia driver's license number, identification card number of an identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or the last four digits of the social security number provided by the applicant with the applicant's record on file with the Department of Driver Services or the federal Social Security Administration; or

(2) The applicant providing sufficient evidence to the board of registrars to verify the applicant's identity, which sufficient evidence includes, but is not limited to, providing one of the forms of identification listed in subsection (a) of Code Section 21-2-417 Proof of the applicant's identity as set forth in subsection (b) of this Code section shall be the forms of identification listed in subsection (c) of Code Section 21-2-417.

(d)(1) If a completed voter registration application has been received by the registration deadline set by Code Section 21-2-224 but the Georgia driver's license number, the identification card number of an identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or the last four digits of the social security number provided by the applicant cannot be verified, the applicant shall be notified that the number cannot be verified and that the applicant must provide sufficient evidence to the board of registrars to verify the applicant's identity in order to have his or her application processed by the board of registrars.

(2) If the applicant provides such sufficient evidence on or before the date of a primary or election, and if the applicant is found eligible to vote, the applicant shall be added to the list of electors and shall be permitted to vote in the primary or election and any runoff resulting therefrom and subsequent primaries and elections.

(3) If the applicant has not provided such sufficient evidence or such number has not otherwise been verified on or before the date of a primary or election, the applicant presenting himself or herself to vote shall be provided a provisional ballot. The provisional ballot shall be counted only if such number is verified by the end of the time period set forth in subsection (c) of Code Section 21-2-419 or if the applicant presents sufficient evidence to the board of registrars to verify the applicant's identity, by the end of the time period set forth in subsection (c) of Code Section 21-2-419.

(4) The voter application shall be rejected if the Georgia driver's license number, identification card number of an identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or last four digits of the social security number provided by the applicant is not verified and the applicant fails to present sufficient evidence to the board of registrars to verify the applicant's identity within 26 months following the date of the application.

(5) This subsection shall not apply to an electronic voter registration application submitted pursuant to Code Section 21-2-221.2."



**SECTION 7.**

Said chapter is further amended by revising Code Section 21-2-225, relating to confidentiality of original registration applications, limitations on registration data available for public inspection, and data made available by Secretary of State, by adding a new subsection to read as follows:

"(d)(1) The Secretary of State may become a member of a nongovernmental entity whose purpose is to share and exchange information in order to improve the accuracy and efficiency of voter registration systems. The membership of the nongovernmental entity shall be composed solely of election officials of state and territorial governments of the United States, except that such membership may also include election officials of the District of Columbia.

(2) Notwithstanding any provision of law to the contrary, the Secretary of State may share confidential and exempt information after becoming a member of such nongovernmental entity as provided in paragraph (1) of this subsection.

(3) The Secretary of State may become a member of such nongovernmental entity only if such entity is controlled and operated by the participating jurisdictions. The entity shall not be operated or controlled by the federal government or any other entity acting on behalf of the federal government. The Secretary of State must be able to withdraw at any time from any such membership in such nongovernmental entity.

(4) If the Secretary of State becomes a member of such nongovernmental entity, the Department of Driver Services shall, pursuant to an agreement with the Secretary of State, provide driver's license or identification card information related to voter eligibility to the Secretary of State for the purpose of sharing and exchanging voter registration information with such nongovernmental entity.

(5) Notwithstanding any law to the contrary, upon the Secretary of State becoming a member of a nongovernmental entity as provided in this subsection, information received by the Secretary of State from the nongovernmental entity is exempt from disclosure under Article 4 of Chapter 18 of Title 50 and any other provision of law. However, the Secretary of State may provide such information to the boards of registrars to conduct voter registration list maintenance activities."

**SECTION 8.**

Said chapter is further amended by revising subsection (a) of Code Section 21-2-230, relating to challenge of persons on list of electors by other electors, procedure, hearing, and right of appeal, as follows:

"(a) Any elector of the county or municipality may challenge the right of any other elector of the county or municipality, whose name appears on the list of electors, to vote in an



election. Such challenge shall be in writing and specify distinctly the grounds of such challenge. Such challenge may be made at any time prior to the elector whose right to vote is being challenged voting at the elector's polling place or, if such elector cast an absentee ballot, prior to 5:00 P.M. on the day before the election; provided, however, that challenges to persons voting by absentee ballot in person at the office of the registrars or the absentee ballot clerk ~~whose vote is cast on a DRE unit must~~ shall be made prior to such person's voting."

## SECTION 9.

Said chapter is further amended by revising subsection (c) of Code Section 21-2-231, relating to lists of persons convicted of felonies, persons identified as noncitizens, persons declared mentally incompetent, and deceased persons provided to Secretary of State and Council of Superior Court Clerks, removal of names from list of electors, obtain information about persons who died, timing, and list of inactive voters provided to Council of Superior Court Clerks, as follows:

"(c)(1) Upon receipt of the lists described in subsections ~~(a)~~ (a.1), and (b) of this Code section ~~and the lists of persons convicted of felonies in federal courts received pursuant to 42 U.S.C. Section 1973gg-6(g)~~, the Secretary of State shall transmit the names of such persons whose names appear on the list of electors to the appropriate county board of registrars who shall remove all such names from the list of electors and shall mail a notice of such action and the reason therefor to the last known address of such persons by first-class mail.

(2) Upon receipt of the list described in subsection (a) of this Code section and the lists of persons convicted of felonies in federal courts received pursuant to 52 U.S.C. Section 20507(g), the Secretary of State shall transmit the names of such persons whose names appear on the lists of electors to the appropriate county board of registrars who shall mail a notice to the last known address of each such person by first-class mail, stating that the board of registrars has received information that such person has been convicted of a felony and will be removed from the list of electors 30 days after the date of the notice unless such person requests a hearing before the board of registrars on such removal."

## SECTION 10.

Said chapter is further amended by revising subsection (b) of Code Section 21-2-232, relating to removal of elector's name from list of electors, as follows:

"(b)(1) ~~When an elector of this state moves to another county or state and registers to vote and the registration officials send a notice of cancellation reflecting the registration~~

of the elector in the other county or state, the Secretary of State or the board of registrars, as the case may be, shall remove such elector's name from the list of electors. It shall not be necessary to send a confirmation notice to the elector in such circumstances. When an elector of this state moves to another state and registers to vote and the registration officials in such state send a notice of cancellation reflecting the registration of the elector in the other state, which includes a copy of such elector's voter registration application bearing the elector's signature, the Secretary of State or the board of registrars, as the case may be, shall remove such elector's name from the list of electors. It shall not be necessary to send a confirmation notice to the elector in such circumstances.

(2) When an elector of this state moves to another state and the registration officials in such other state or a nongovernmental entity as described in subsection (d) of Code Section 21-2-225 sends a notice of cancellation or other information indicating that the elector has moved to such state but such notice or information does not include a copy of such elector's voter registration application in such other state bearing the elector's signature, the Secretary of State or the board of registrars, as the case may be, shall send a confirmation notice to the elector as provided in Code Section 21-2-234."

## SECTION 11.

Said chapter is further amended by revising subsection (a) of Code Section 21-2-234, relating to electors who have failed to vote and with whom there has been no contact in three years, confirmation notice requirements and procedure, and time for completion of list maintenance activities, as follows:

"(a)(1) As used in this Code section and Code Section 21-2-235, the term 'no contact' shall mean that the elector has not filed an updated voter registration card, has not filed a change of name or address, has not signed a petition which is required by law to be verified by the election superintendent of a county or municipality or the Secretary of State, has not signed a voter's certificate, has not submitted an absentee ballot application or voted an absentee ballot, and has not confirmed the elector's continuation at the same address during the preceding ~~three~~ five calendar years.

(2) In the first six months of each odd-numbered year, the Secretary of State shall identify all electors whose names appear on the list of electors with whom there has been no contact during the preceding ~~three~~ five calendar years and who were not identified as changing addresses under Code Section 21-2-233. The confirmation notice described in this Code section shall be sent to each such elector during each odd-numbered year. Such notices shall be sent by forwardable, first-class mail."

**SECTION 12.**

Said chapter is further amended by revising subsection (b) of Code Section 21-2-235, relating to inactive list of electors, as follows:

"(b) An elector placed on the inactive list of electors shall remain on such list until the day after the second November general election held after the elector is placed on the inactive list of electors. If the elector makes no contact, as defined in Code Section 21-2-234, during that period, the elector shall be removed from the inactive list of electors. Not less than 30 nor more than 60 days prior to the date on which the elector is to be removed from the inactive list of electors, the board of registrars shall mail a notice to the address on the elector's registration record."

**SECTION 13.**

Said chapter is further amended by revising subsection (c) of Code Section 21-2-262, relating to investigation as to division, redivision, alteration, formation, or consolidation of precincts and petition of electors or board of registrars, as follows:

"(c) Upon the presentation of any such petition by the board of registrars or upon the filing by the board of its report and recommendations as to any investigation presented under subsection (a) of this Code section, the superintendent may make such order for the division, redivision, alteration, formation, or consolidation of precincts as will, in the superintendent's opinion, promote the convenience of electors and the public interests; provided, however, that the superintendent shall not make any final order for the division, redivision, alteration, formation, or consolidation of precincts until at least ~~ten~~ 30 days after notice of such change shall have been advertised in the legal organ of the county. A copy of such notice shall be immediately submitted to the Secretary of State. Such notice shall state briefly the division, redivision, alteration, formation, or consolidation of precincts recommended by the board of registrars and the date upon which the same will be considered by the superintendent and shall contain a warning that any person objecting thereto must file his or her objections with the superintendent prior to such date. Upon the making of any such final order by the superintendent, a copy thereof shall be certified by the superintendent to the board of registrars."

**SECTION 14.**

Said chapter is further amended by revising Code Section 21-2-265, relating to duty of superintendent to select polling places, change, petition objecting to proposed change, space for political parties holding primaries, facilities for disabled voters, and selection of polling place outside precinct to better serve voters, by adding a new subsection to read as follows:

305 "(f) A polling place shall not be changed on a day in which a primary, election, or runoff  
306 is held, or during the 60 day period prior to any general primary or general election or  
307 runoff from such primary or election, nor shall a polling place be changed in the 30 day  
308 period prior to any special primary or special election or runoff from such special primary  
309 or special election, except, in the discretion of the superintendent, when an emergency or  
310 event occurs during such time period which renders the polling place unavailable for use  
311 at such general primary, general election, special primary, special election, or runoff."

## 312 SECTION 15.

313 Said chapter is further amended by revising subsection (a) of Code Section 21-2-267, relating  
314 to equipment, arrangement, and storage at polling places, as follows:

315 "(a) The governing authority of each county and municipality shall provide and the  
316 superintendent shall cause all rooms used as polling places to be provided with suitable  
317 heat and light and, in precincts in which ballots are used, with a sufficient number of voting  
318 compartments or booths with proper supplies in which the electors may conveniently mark  
319 their ballots, with a curtain, screen, or door in the upper part of the front of each  
320 compartment or booth so that in the marking thereof they may be screened from the  
321 observation of others. A curtain, screen, or door shall not be required, however, for the  
322 self-contained units used as voting booths in which direct recording electronic (DRE)  
323 voting units or electronic ballot markers are located if such booths have been designed so  
324 as to ensure the privacy of the elector. When practicable, every polling place shall consist  
325 of a single room, every part of which is within the unobstructed view of those present  
326 therein and shall be furnished with a guardrail or barrier closing the inner portion of such  
327 room, which guardrail or barrier shall be so constructed and placed that only such persons  
328 as are inside such rail or barrier can approach within six feet of the ballot box and voting  
329 compartments, or booths, or voting machines, as the case may be. The ballot box and  
330 voting compartments or booths shall be so arranged in the voting room within the enclosed  
331 space as to be in full view of those persons in the room outside the guardrail or barrier.  
332 The voting machine or machines shall be placed in the voting rooms within the enclosed  
333 space so that, unless its construction shall otherwise require, the ballot labels on the face  
334 of the machine can be plainly seen by the poll officers when the machine is not occupied  
335 by an elector. In the case of direct recording electronic (DRE) voting units or electronic  
336 ballot markers, the ~~units~~ devices shall be arranged in such a manner as to ensure the privacy  
337 of the elector while voting on such ~~units~~ devices, to allow monitoring of the ~~units~~ devices  
338 by the poll officers while the polls are open, and to permit the public to observe the voting  
339 without affecting the privacy of the electors as they vote."

**SECTION 16.**

Said chapter is further amended in subsection (b) of Code Section 21-2-286, relating to printing specifications, numbering, and binding of ballots, by adding a new paragraph to read as follows:

"(3) Ballots printed by an electronic ballot marker shall be designed as prescribed by the Secretary of State to ensure ease of reading by electors."

**SECTION 17.**

Said chapter is further amended by revising Code Section 21-2-293, relating to correction of mistakes and omissions on ballots, as follows:

"21-2-293.

(a) If the election superintendent discovers that a mistake or omission has occurred in the printing of official ballots or in the programming of the display of the official ballot on DRE voting equipment or electronic ballot markers for any primary or election, the superintendent is authorized on his or her own motion to take such steps as necessary to correct such mistake or omission if the superintendent determines that such correction is feasible and practicable under the circumstances; provided, however, that the superintendent gives at least 24 ~~hours~~ hours' notice to the Secretary of State and any affected candidates of the mistake or omission prior to making such correction.

(b) When it is shown by affidavit that a mistake or omission has occurred in the printing of official ballots or in the programming of the display of the official ballot on DRE voting equipment or electronic ballot markers for any primary or election, the superior court of the proper county may, upon the application of any elector of the county or municipality, require the superintendent to correct the mistake or omission or to show cause why he or she should not do so."

**SECTION 18.**

Said chapter is further amended by revising subsection (a) of Code Section 21-2-300, relating to provision of new voting equipment by state, contingent upon appropriations, county responsibilities, education, and county and municipal contracts for equipment, as follows:

~~"(a)(1) The Provided that the General Assembly specifically appropriates funding to the Secretary of State to implement this subsection, the equipment used for casting and counting votes in county, state, and federal elections shall, by the July, 2004, primary election and afterwards, be the same in each county in this state and shall be provided to each county by the state, as determined by the Secretary of State.~~

(2) As soon as possible, once such equipment is certified by the Secretary of State as safe and practicable for use, all federal, state, and county general primaries and general

elections as well as special primaries and special elections in the State of Georgia shall be conducted with the use of scanning ballots marked by electronic ballot markers and tabulated by using ballot scanners for voting at the polls and for absentee ballots cast in person, unless otherwise authorized by law; provided, however, that such electronic ballot markers shall produce paper ballots which are marked with the elector's choices in a format readable by the elector.

(3) The state shall furnish a uniform system of electronic ballot markers and ballot scanners for use in each county as soon as possible. Such equipment shall be certified by the United States Election Assistance Commission prior to purchase, lease, or acquisition. At its own expense, the governing authority of a county may purchase, lease, or otherwise acquire additional electronic ballot markers and ballot scanners of the type furnished by the state, if the governing authority so desires. Additionally, at its own expense, the governing authority of a municipality may choose to acquire its own electronic ballot markers and ballot scanners by purchase, lease, or other procurement process.

(4) Notwithstanding any provision of law to the contrary, the Secretary of State is authorized to conduct pilot programs to test and evaluate the use of electronic ballot markers and ballot scanners in primaries and elections in this state."

#### **SECTION 19.**

Said chapter is further amended by revising paragraph (5) of Code Section 21-2-365, relating to requirements for use of optical scanning voting systems, as follows:

"(5) An optical scanning tabulator A ballot scanner shall preclude the counting of votes for any candidate or upon any question for whom or upon which an elector is not entitled to vote; shall preclude the counting of votes for more persons for any office than he or she is entitled to vote for; and shall preclude the counting of votes for any candidate for the same office or upon any question more than once;".

#### **SECTION 20.**

Said chapter is further amended by revising Code Section 21-2-367, relating to installation of systems, number of systems, and good working order, as follows:

"21-2-367.

(a) When the use of optical scanning voting systems has been authorized in the manner prescribed in this part, such optical scanning voting systems shall be installed, either simultaneously or gradually, within the county or municipality. ~~Upon the installation of optical scanning voting systems in any precinct, the use of paper ballots or other voting~~



409 ~~machines or apparatus therein shall be discontinued, except as otherwise provided by this~~  
 410 ~~chapter.~~

411 (b) In each precinct in which optical scanning voting systems are used, the county or  
 412 municipal governing authority, as appropriate, shall provide at least one voting booth or  
 413 enclosure for each ~~200~~ 250 electors therein, or fraction thereof.

414 ~~(c) Optical scanning voting systems of different kinds may be used for different precincts~~  
 415 ~~in the same county or municipality~~ Reserved.

416 (d) The county or municipal governing authority, as appropriate, shall provide optical  
 417 scanning voting systems in good working order and of sufficient capacity to accommodate  
 418 the names of a reasonable number of candidates for all party offices and nominations and  
 419 public offices which, under the provisions of existing laws and party rules, are likely to be  
 420 voted for at any future primary or election."

#### 421 **SECTION 21.**

422 Said chapter is further amended by revising subsection (a) of Code Section 21-2-369, relating  
 423 to printing of ballots and arrangement, as follows:

424 "(a) The ballots shall be printed in black ink upon clear, white, or colored material, of such  
 425 size and arrangement as will suit the construction of the optical ballot scanner, and in plain,  
 426 clear type so as to be easily readable by persons with normal vision; provided, however,  
 427 that red material shall not be used except that all ovals appearing on the ballot to indicate  
 428 where a voter should mark to cast a vote may be printed in red ink."

#### 429 **SECTION 22.**

430 Said chapter is further amended by revising Code Section 21-2-372, relating to ballot  
 431 description, as follows:

432 "21-2-372.

433 Ballots shall be of suitable design, size, and stock to permit processing by a tabulating  
 434 machine ballot scanner and shall be printed in black ink on clear, white, or colored  
 435 material. ~~In counties using a central count tabulating system, a serially numbered strip~~  
 436 ~~shall be attached to each ballot in a manner and form similar to that prescribed in this~~  
 437 ~~chapter for paper ballots."~~

#### 438 **SECTION 23.**

439 Said chapter is further amended by revising subsections (a) and (b) of Code  
 440 Section 21-2-374, relating to proper programming, proper order, testing, and supplies, as  
 441 follows:

"21-2-374.

(a) The superintendent of each county or municipality shall order the proper programming to be placed in each ~~tabulator~~ ballot scanner used in any precinct or central tabulating location.

(b) On or before the third day preceding a primary or election, including special primaries, special elections, and referendum elections, the superintendent shall have the ~~optical scanning tabulators~~ ballot scanners tested to ascertain that they will correctly count the votes cast for all offices and on all questions. Public notice of the time and place of the test shall be made at least five days prior thereto; provided, however, that, in the case of a runoff, the public notice shall be made at least three days prior thereto. Representatives of political parties and bodies, candidates, news media, and the public shall be permitted to observe such tests. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each question and shall include for each office one or more ballots which are improperly marked and one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the ~~optical scanning tabulator~~ ballot scanner to reject such votes. The ~~optical scanning tabulator~~ ballot scanner shall not be approved unless it produces an errorless count. If any error is detected, the cause therefor shall be ascertained and corrected; and an errorless count shall be made before the ~~tabulator~~ ballot scanner is approved. The superintendent shall cause the pretested ~~tabulators~~ ballot scanners to be placed at the various polling places to be used in the primary or election. The superintendent shall require that each ~~optical scanning tabulator~~ ballot scanner be thoroughly tested and inspected prior to each primary and election in which it is used and shall keep such tested material as certification of an errorless count on each ~~tabulator~~ ballot scanner. In counties using central count ~~optical scanning tabulators~~ ballot scanners, the same test shall be repeated immediately before the start of the official count of the ballots and at the conclusion of such count. Precinct ~~tabulators~~ ballot scanners shall produce a zero tape prior to any ballots being inserted on the day of any primary or election."

#### SECTION 24.

Said chapter is further amended by revising Code Section 21-2-375, relating to delivery of equipment to polling places, protection for equipment, and required accessories, as follows:

"21-2-375.

(a) In counties using precinct count ~~optical scanning tabulators~~ ballot scanners, the superintendent shall deliver the proper ~~optical scanning tabulator~~ ballot scanner to the polling places at least one hour before the time set for opening of the polls at each primary or election and shall cause each to be set up in the proper manner for use in voting.



(b) The superintendent shall provide ample protection against molestation of and injury to the ~~optical scanning tabulator~~ ballot scanner and, for that purpose, shall call upon any law enforcement officer to furnish such assistance as may be necessary; and it shall be the duty of the law enforcement officer to furnish such assistance when so requested by the superintendent.

(c) The superintendent shall at least one hour before the opening of the polls:

(1) Provide sufficient lighting to enable electors, while in the voting booth, to read the ballot, which lighting shall be suitable for the use of poll officers in examining the booth; and such lighting shall be in good working order before the opening of the polls;

(2) Prominently post directions for voting ~~on the optical scanning ballot~~ within the voting booth and post within the enclosed space signs reminding electors to verify their ballot choices prior to inserting the scanning ballot into the ballot scanner and stating that sample ballots are available for review upon request; at least two sample ballots in use

for the primary or election shall be posted prominently outside the enclosed space within the polling place and additional sample ballots shall be available upon request;

(3) Ensure that the precinct count ~~optical scanning tabulator~~ ballot scanner shall have a seal securing the memory pack in use throughout the election day; such seal shall not be broken unless the ~~tabulator~~ ballot scanner is replaced due to malfunction; and

(4) Provide such other materials and supplies as may be necessary or as may be required by law."

## SECTION 25.

Said chapter is further amended by revising Code Section 21-2-377, relating to custody and storage when not in use, as follows:

"21-2-377.

(a) The superintendent shall designate a person or persons who shall have custody of the ~~optical scanning tabulators~~ ballot scanners of the county or municipality when they are not in use at a primary or election and shall provide for his or her compensation and for the safe storage and care of the ~~optical scanning tabulators~~ ballot scanners.

(b) All ~~optical scanning tabulators~~ ballot scanners, when not in use, shall be properly covered and stored in a suitable place or places."

## SECTION 26.

Said chapter is further amended in Article 9, relating to voting machines and vote recorders generally, by adding a new part to read as follows:

"Part 621-2-379.21.

Each polling place in this state utilizing optical scanning voting systems shall be equipped with at least one electronic ballot marker that meets the requirements as set forth in this part that is accessible to individuals with disabilities.

21-2-379.22.

No electronic ballot marker shall be adopted or used in primaries or elections in this state unless it shall, at the time, satisfy the following requirements:

(1) Provide facilities for marking ballots for all candidates and for all referendums or questions for which the elector shall be entitled to vote in a primary or election;

(2) Permit each elector, in one operation, to mark a vote for presidential electors for all the candidates of one party or body for the office of presidential elector;

(3) Permit each elector to mark votes, at any election, for any person and for any office for whom and for which he or she is lawfully entitled to vote, whether or not the name of such person or persons appears as a candidate for election; to mark votes for as many persons for an office as he or she is entitled to vote for; and to mark votes for or against any question upon which he or she is entitled to vote;

(4) Preclude the marking of votes for any candidate or upon any question for whom or upon which an elector is not entitled to vote; preclude the marking of votes for more persons for any office than the elector is entitled to vote for; and preclude the marking of votes for any candidate for the same office or upon any question more than once;

(5) Permit voting in absolute secrecy so that no person can see or know any other elector's votes, except when he or she has assisted the elector in voting, as prescribed by law;

(6) Produce a paper ballot which is marked with the elector's choices in a format readable by the elector;

(7) Be constructed of good quality material in a neat and workmanlike manner;

(8) When properly operated, mark correctly and accurately every vote cast;

(9) Be so constructed that an elector may readily learn the method of operating it; and

(10) Be safely transportable.

21-2-379.23.

(a) The ballot display information and appearance on an electronic ballot marker shall conform as nearly as practicable to Code Sections 21-2-379.4 and 21-2-379.5.

(b) The form and arrangement of ballots marked and printed by an electronic ballot marker shall be prescribed by the Secretary of State.

(c) Notwithstanding any other law to the contrary, ballots marked and printed by an electronic ballot marker shall, at a minimum, contain:

(1) The words 'OFFICIAL BALLOT';

(2) The name and date of the election;

(3) The titles of the respective offices for which the elector is eligible to vote;

(4) Words identifying the proposed constitutional amendments or other questions for which the elector is eligible to vote;

(5) The name of the candidate and, for partisan offices, indication of the candidate's political party or political body affiliation, or the answer to the proposed constitutional amendment or other question for which the elector intends to vote; and

(6) Clear indication that the elector has not marked a vote for any particular office, constitutional amendment, or other question.

(d) The paper ballot marked and printed by the electronic ballot marker shall constitute the official ballot and shall be used for, and govern the result in, any recount conducted pursuant to Code Section 21-2-495 and any audit conducted pursuant to Code Section 21-2-498.

21-2-379.24.

(a) Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any electronic ballot marker may request that the Secretary of State examine the device. Any ten or more electors of this state may, at any time, request that the Secretary of State reexamine any such device previously examined and approved by him or her. Before any such examination or reexamination, the person, persons, or organization requesting such examination or reexamination shall pay to the Secretary of State the reasonable expenses of such examination or reexamination. The Secretary of State shall publish and maintain on his or her website the cost of such examination or reexamination. The Secretary of State may, at any time, in his or her discretion, reexamine any such device.

(b) The Secretary of State shall thereupon examine or reexamine such device and shall make and file in his or her office a report, attested by his or her signature and the seal of his or her office, stating whether, in his or her opinion, the kind of device so examined can be safely and accurately used by electors at primaries and elections as provided in this chapter. If this report states that the device can be so used, the device shall be deemed approved, and devices of its kind may be adopted for use at primaries and elections as provided in this chapter.

(c) Any device that is not so approved shall not be used at any primary or election and if, upon reexamination, a previously approved device appears to be no longer safe or accurate for use by electors at primaries or elections as provided in this chapter because of an inability to accurately record votes, the approval of the same shall immediately be revoked by the Secretary of State, and no such device shall thereafter be used or purchased for use in this state.

(d) Any vendor who completes a sale of an electronic ballot marker that has not been certified by the Secretary of State to a governmental body in this state shall be subject to a penalty of \$100,000.00, payable to the State of Georgia, plus reimbursement of all costs and expenses incurred by the governmental body in connection with the sale. The State Election Board shall have the authority to impose such penalty upon a finding that such a sale has occurred.

(e) When a device has been so approved, no improvement or change that does not impair its accuracy, efficiency, or capacity shall render necessary a reexamination or reapproval of such device, or of its kind.

(f) Neither the Secretary of State, nor any custodian, nor the governing authority of any county or municipality or a member of such governing authority nor any other person involved in the examination process shall have any pecuniary interest in any device or in the manufacture or sale thereof.

(g) Documents or information that, if made public, would endanger the security of any voting system used or being considered for use in this state, or any component thereof, including, but not limited to, electronic ballot markers, DREs, ballot scanners, pollbooks, and software or databases used for voter registration, shall not be open for public inspection except upon order of a court of competent jurisdiction.

21-2-379.25.

(a) The superintendent of each county or municipality shall cause the proper ballot design and style to be programmed for each electronic ballot marker which is to be used in any precinct within such county or municipality, shall cause each such device to be placed in proper order for voting, and shall examine each device before it is sent to a polling place for use in a primary or election, to verify that each device is properly recording votes and producing proper ballots.

(b) The superintendent may appoint, with the approval of the county or municipal governing authority, as appropriate, a custodian of the electronic ballot markers, and deputy custodians as may be necessary, whose duty shall be to prepare the devices to be used in the county or municipality at the primaries and elections to be held therein. Each custodian and deputy custodian shall receive from the county or municipality such compensation as

shall be fixed by the governing authority of such county or municipality. Such custodian shall, under the direction of the superintendent, have charge of and represent the superintendent during the preparation of the devices as required by this chapter. The custodian and deputy custodians shall serve at the pleasure of the superintendent and each shall take an oath of office prepared by the Secretary of State before each primary or election, which shall be filed with the superintendent.

(c) On or before the third day preceding a primary or election, including special primaries, special elections, and referendum elections, the superintendent shall have each electronic ballot marker tested to ascertain that it will correctly record the votes cast for all offices and on all questions and produce a ballot reflecting such choices of the elector in a manner that the State Election Board shall prescribe by rule or regulation. Public notice of the time and place of the test shall be made at least five days prior thereto; provided, however, that, in the case of a runoff, the public notice shall be made at least three days prior thereto. Representatives of political parties and bodies, news media, and the public shall be permitted to observe such tests.

21-2-379.26.

(a) All electronic ballot markers and related equipment, when not in use, shall be properly stored and secured under conditions as shall be specified by the Secretary of State.

(b) The superintendent shall store the devices and related equipment under his or her supervision or shall designate another person or entity to provide secure storage of such devices and related equipment when it is not in use at a primary or election. The superintendent shall provide compensation for the safe storage and care of such devices and related equipment if the devices and related equipment are stored by another person or entity."

## **SECTION 27.**

Said chapter is further amended by revising subparagraph (a)(1)(D) and subsection (b) of Code Section 21-2-381, relating to making of application for absentee ballot, determination of eligibility by ballot clerk, furnishing of applications to colleges and universities, and persons entitled to make application, as follows:

"(D) Except in the case of physically disabled electors residing in the county or municipality or electors in custody in a jail or other detention facility in the county or municipality, no absentee ballot shall be mailed to an address other than the permanent mailing address of the elector as recorded on the elector's voter registration record or a temporary out-of-county or out-of-municipality address."

"(b)(1) Upon receipt of a timely application for an absentee ballot, a registrar or absentee ballot clerk shall enter thereon the date received. The registrar or absentee ballot clerk shall determine, in accordance with the provisions of this chapter, if the applicant is eligible to vote in the primary or election involved. In order to be found eligible to vote an absentee ballot by mail, the registrar or absentee ballot clerk shall compare the identifying information on the application with the information on file in the registrar's office and, if the application is signed by the elector, compare the signature or mark of the elector on the application with the signature or mark of the elector on the elector's voter registration card. In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 and the registrar or absentee ballot clerk shall compare the identifying information on the application with the information on file in the registrar's office.

(2) If found eligible, the registrar or absentee ballot clerk shall certify by signing in the proper place on the application and then:

(A) Shall mail the ballot as provided in this Code section;

(B) If the application is made in person, shall issue the ballot to the elector ~~to be voted on a direct recording electronic (DRE) voting system~~ within the confines of the registrar's or absentee ballot clerk's office as required by Code Section 21-2-383 if the ballot is issued during the advance voting period established pursuant to subsection (d) of Code Section 21-2-385; or

(C) May deliver the ballot in person to the elector if such elector is confined to a hospital.

(3) If found ineligible, the clerk or the board of registrars shall deny the application by writing the reason for rejection in the proper space on the application and shall promptly notify the applicant in writing of the ground of ineligibility, a copy of which notification should be retained on file in the office of the board of registrars or absentee ballot clerk for at least one year. However, an absentee ballot application shall not be rejected due to an apparent mismatch between the signature of the elector on the application and the signature of the elector on file with the board of registrars. In such cases, the board of registrars or absentee ballot clerk shall send the elector a provisional absentee ballot with the designation 'Provisional Ballot' on the outer oath envelope and information prepared by the Secretary of State as to the process to be followed to cure the signature discrepancy. If such ballot is returned to the board of registrars or absentee ballot clerk prior to the closing of the polls on the day of the primary or election, the elector may cure the signature discrepancy by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of one of the forms of identification enumerated in



subsection (c) of Code Section 21-2-417 before the close of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be counted as other absentee ballots. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be insufficient, then the procedure contained in Code Section 21-2-386 shall be followed for rejected absentee ballots.

(4) If the registrar or clerk is unable to determine the identity of the elector from information given on the application, the registrar or clerk should promptly write to request additional information.

(5) In the case of an unregistered applicant who is eligible to register to vote, the clerk or the board shall immediately mail a blank registration card as provided by Code Section 21-2-223, and such applicant, if otherwise qualified, shall be deemed eligible to vote by absentee ballot in such primary or election, if the registration card, properly completed, is returned to the clerk or the board on or before the last day for registering to vote in such primary or election. If the closing date for registration in the primary or election concerned has not passed, the clerk or registrar shall also mail a ballot to the applicant, as soon as it is prepared and available; and the ballot shall be cast in such primary or election if returned to the clerk or board not later than the close of the polls on the day of the primary or election concerned."

## SECTION 28.

Said chapter is further amended by revising subsection (a) of Code Section 21-2-382, relating to additional sites as additional registrar's office or place of registration for absentee ballots, as follows:

"(a) Any other provisions of this chapter to the contrary notwithstanding, the board of registrars may establish additional sites as additional registrar's offices or places of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of voting absentee ballots under Code Section 21-2-385, provided that any such site is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, ~~or~~ another government building generally accessible to the public, or a location that is used as an election day polling place, notwithstanding that such location is not a government building."

**SECTION 29.**

Said chapter is further amended in Code Section 21-2-383, relating to preparation and delivery of ballots, form of ballots, and casting ballot in person using DRE unit, by adding a subsection to read as follows:

"(c) Notwithstanding any other provision of this Code section to the contrary, in jurisdictions in which electronic ballot markers are used in the polling places on election day, such electronic ballot markers shall be used for casting absentee ballots in person at a registrar's or absentee ballot clerk's office or in accordance with Code Section 21-2-382, providing for additional sites."

**SECTION 30.**

Said chapter is further amended by revising subsections (b) and (e) and paragraph (1) of subsection (c) of Code Section 21-2-384, relating to preparation and delivery of supplies, mailing of ballots, oath of absentee electors and persons assisting absentee electors, master list of ballots sent, challenges, and electronic transmission of ballots, as follows:

"(b) Except for ballots voted within the confines of the registrar's or absentee ballot clerk's office, in addition to the mailing envelope addressed to the elector, the superintendent, board of registrars, or absentee ballot clerk shall provide two envelopes for each official absentee ballot, of such size and shape as shall be determined by the Secretary of State, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed the words 'Official Absentee Ballot' and nothing else. On the back of the larger of the two envelopes to be enclosed within the mailing envelope shall be printed the form of oath of the elector and the oath for persons assisting electors, as provided for in Code Section 21-2-409, and the penalties provided for in Code Sections 21-2-568, 21-2-573, 21-2-579, and 21-2-599 for violations of oaths; and on the face of such envelope shall be printed the name and address of the board of registrars or absentee ballot clerk. The larger of the two envelopes shall also display the elector's name and voter registration number.

The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, the uniform instructions for the manner of preparing and returning the ballot, in form and substance as provided by the Secretary of State, provisional absentee ballot information, if necessary, and a notice in the form provided by the Secretary of State of all withdrawn, deceased, and disqualified candidates and any substitute candidates pursuant to Code Sections 21-2-134 and 21-2-155 and nothing else. The uniform instructions shall include information specific to the voting system used for absentee voting concerning the effect of overvoting or voting for more candidates than one is authorized to vote for a particular office and information concerning how the elector may correct



errors in voting the ballot before it is cast including information on how to obtain a replacement ballot if the elector is unable to change the ballot or correct the error.

(c)(1) The oaths referred to in subsection (b) of this Code section shall be in substantially the following form:

I, the undersigned, do swear (or affirm) that I am a citizen of the United States and of the State of Georgia; ~~that my residence address, for voting purposes, is \_\_\_\_\_~~  
~~County, Georgia~~; that I possess the qualifications of an elector required by the laws of the State of Georgia; that I am entitled to vote in the precinct containing my residence in the primary or election in which this ballot is to be cast; that I am eligible to vote by absentee ballot; that I have not marked or mailed any other absentee ballot, nor will I mark or mail another absentee ballot for voting in such primary or election; nor shall I vote therein in person; and that I have read and understand the instructions accompanying this ballot; and that I have carefully complied with such instructions in completing this ballot. I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.

\_\_\_\_\_  
\_\_\_\_\_  
Elector's Residence Address  
\_\_\_\_\_  
\_\_\_\_\_  
Year of Elector's Birth

\_\_\_\_\_  
Signature or Mark of Elector  
\_\_\_\_\_  
Printed Name of Elector

Oath of Person Assisting Elector (if any):  
I, the undersigned, do swear (or affirm) that I assisted the above-named elector in marking such elector's absentee ballot as such elector personally communicated such elector's preference to me; and that such elector is entitled to receive assistance in voting under provisions of subsection (a) of Code Section 21-2-409.  
This, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Person Assisting  
Elector —Relationship  
\_\_\_\_\_

790 Printed Name of Person  
 791 Assisting Elector

792 Reason for assistance (Check appropriate square):

793 ☐ Elector is unable to read the English language.

794 ☐ Elector requires assistance due to physical disability.

795 The forms upon which such oaths are printed shall contain the following information:

796 ~~Georgia law provides, in subsection (b) of Code Section 21-2-409, that no person~~  
 797 ~~shall assist more than ten electors in any primary, election, or runoff in which there~~  
 798 ~~is no federal candidate on the ballot.~~

799 Georgia law further provides that any person who knowingly falsifies information so  
 800 as to vote illegally by absentee ballot or who illegally gives or receives assistance in  
 801 voting, as specified in Code Section 21-2-568 or 21-2-573, shall be guilty of a felony."

802 "(e) The State Election Board shall by rule or regulation establish procedures for the  
 803 transmission of blank absentee ballots by mail and by electronic transmission for all  
 804 electors who are entitled to vote by absentee ballot under the federal Uniformed and  
 805 Overseas Citizens Absentee Voting Act, ~~42 U.S.C. Section 1973ff~~ 52 U.S.C.  
 806 Section 20302, et seq., as amended, and by which such electors may designate whether the  
 807 elector prefers the transmission of such ballots by mail or electronically, for use in county,  
 808 state, and federal primaries, elections, and runoffs in this state and, if the Secretary of State  
 809 finds it to be feasible, for use in municipal primaries, elections, and runoffs. If no  
 810 preference is stated, the ballot shall be transmitted by mail. The State Election Board shall  
 811 by rule or regulation establish procedures to ensure to the extent practicable that the  
 812 procedures for transmitting such ballots shall protect the security and integrity of such  
 813 ballots and shall ensure that the privacy of the identity and other personal data of such  
 814 electors who are entitled to vote by absentee ballot under the federal Uniformed and  
 815 Overseas Citizens Absentee Voting Act, ~~42 U.S.C. Section 1973ff~~ 52 U.S.C.  
 816 Section 20302, et seq., as amended, to whom a blank absentee ballot is transmitted under  
 817 this Code section is protected throughout the process of such transmission."

# 818 **SECTION 31.**

819 Said chapter is further amended by revising Code Section 21-2-385, relating to procedure for  
 820 voting by absentee ballot and advance voting, as follows:

821 "21-2-385.

822 (a) At any time after receiving an official absentee ballot, but before the day of the primary  
 823 or election, except electors who are confined to a hospital on the day of the primary or  
 824 election, the elector shall vote his or her absentee ballot, then fold the ballot and enclose

and securely seal the same in the envelope on which is printed 'Official Absentee Ballot.' This envelope shall then be placed in the second one, on which is printed the form of the oath of the elector, the name, relationship, and oath of the person assisting, if any, and other required identifying information. The elector shall then fill out, subscribe, and swear to the oath printed on such envelope. Such envelope shall then be securely sealed and the elector shall then personally mail or personally deliver same to the board of registrars or absentee ballot clerk, provided that mailing or delivery by a physically disabled elector may be made by any adult person upon satisfactory proof that such adult person is such the elector's mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or an individual residing in the household of such ~~disabled~~ elector. The absentee ballot of a disabled elector may be mailed or delivered by the caregiver of such disabled elector, regardless of whether such caregiver resides in such disabled elector's household. The absentee ballot of an elector who is in custody in a jail or other detention facility may be mailed or delivered by any employee of such jail or facility having custody of such elector. An elector who is confined to a hospital on a primary or election day to whom an absentee ballot is delivered by the registrar or absentee ballot clerk shall then and there vote the ballot, seal it properly, and return it to the registrar or absentee ballot clerk. If the elector registered to vote for the first time in this state by mail and has not previously provided the identification required by Code Section 21-2-220 and votes for the first time by absentee ballot and fails to provide the identification required by Code Section 21-2-220 with such absentee ballot, such absentee ballot shall be treated as a provisional ballot and shall be counted only if the registrars are able to verify the identification and registration of the elector during the time provided pursuant to Code Section 21-2-419.

(b) A physically disabled or illiterate elector may receive assistance in preparing his or her ballot from ~~one of the following: any elector who is qualified to vote in the same county or municipality as the disabled or illiterate elector; an attendant care provider or a person providing attendant care; or the mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of the disabled or illiterate elector~~ any person of the elector's choice other than such elector's employer or the agent of such employer or an officer or agent of such elector's union; provided, however, that no person whose name appears on the ballot as a candidate at a particular primary, election, or runoff nor the mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of such candidate shall offer assistance

during such primary, election, or runoff under the provisions of this Code section to any elector who is not related to such candidate. For the purposes of this subsection, the term 'related to such candidate' shall mean such candidate's mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law. The person rendering assistance to the elector in preparing the ballot shall sign the oath printed on the same envelope as the oath to be signed by the elector. ~~If the disabled or illiterate elector is sojourning outside his or her own county or municipality, a notary public of the jurisdiction may give such assistance and shall sign the oath printed on the same envelope as the oath to be signed by the elector. No person shall assist more than ten such electors in any primary, election, or runoff in which there is no federal candidate on the ballot.~~ Any person who willfully violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both, for each such violation.

(c) When an elector applies in person for an absentee ballot, after the absentee ballots have been printed, the absentee ballot may be issued to the elector at the time of the application therefor within the confines of the registrar's or absentee ballot clerk's office if such application is made during the advance voting period as provided in subsection (d) of this Code section or may be mailed to the elector, depending upon the elector's request. If the ballot is issued to the elector at the time of application, the elector shall then and there within the confines of the registrar's or absentee ballot clerk's office vote and return the absentee ballot as provided in subsections (a) and (b) of this Code section. In the case of persons voting in accordance with subsection (d) of this Code section, the board of registrars or absentee ballot clerk shall furnish accommodations to the elector to ensure the privacy of the elector while voting his or her absentee ballot.

(d)(1) There shall be a period of advance voting that shall commence:

- (A) On the fourth Monday immediately prior to each primary or election;
- (B) On the fourth Monday immediately prior to a runoff from a general primary;
- (C) On the fourth Monday immediately prior to a runoff from a general election in which there are candidates for a federal office on the ballot in the runoff; and
- (D) As soon as possible prior to a runoff from any other general election in which there are only state or county candidates on the ballot in the runoff but no later than the second Monday immediately prior to such runoff

and shall end on the Friday immediately prior to each primary, election, or runoff. Voting shall be conducted during normal business hours on weekdays during such period and shall be conducted on the second Saturday prior to a primary or election during the hours of 9:00 A.M. through 4:00 P.M.; provided, however, that in primaries and elections

in which there are no federal or state candidates on the ballot, no Saturday voting hours shall be required; and provided, further, that, if such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, such advance voting shall not be held on such second Saturday but shall be held on the third Saturday prior to such primary or election. Except as otherwise provided in this paragraph, counties and municipalities may extend the hours for voting beyond regular business hours and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option.

(2) The registrars or absentee ballot clerk, as appropriate, shall provide reasonable notice to the electors of their jurisdiction of the availability of advance voting as well as the times, dates, and locations at which advance voting will be conducted. In addition, the registrars or absentee ballot clerk shall notify the Secretary of State in the manner prescribed by the Secretary of State of the times, dates, and locations at which advance voting will be conducted."

### SECTION 32.

Said chapter is further amended by revising subparagraphs (a)(1)(C) and (a)(1)(D) of Code Section 21-2-386, relating to safekeeping, certification, and validation of absentee ballots, rejection of ballot, delivery of ballots to manager, duties of managers, precinct returns, and notification of challenged elector, as follows:

"(C) If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope 'Rejected,' giving the reason therefor. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years. Such elector shall have until the end of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419 to cure the problem resulting in the rejection of the ballot. The elector may cure a failure to sign the oath, an invalid signature, or missing information by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of one of the forms of identification enumerated in subsection (c) of Code Section 21-2-417 before the close of such period. The affidavit shall affirm that the ballot was submitted by the



elector, is the elector's ballot, and that the elector is registered and qualified to vote in the primary, election, or runoff in question. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be counted.

(D) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state by absentee ballot shall include with his or her application for an absentee ballot or in the outer oath envelope of his or her absentee ballot either one of the forms of identification listed in subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not provide any of the forms of identification listed in this subparagraph with his or her application for an absentee ballot or with the absentee ballot, such absentee ballot shall be deemed to be a provisional ballot and such ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subparagraph within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. The board of registrars or absentee ballot clerk shall promptly notify the elector that such ballot is deemed a provisional ballot and shall provide information on the types of identification needed and how and when such identification is to be submitted to the board of registrars or absentee ballot clerk to verify the ballot."

### SECTION 33.

Said chapter is further amended by revising Code Section 21-2-388, relating to cancellation of absentee ballots of electors who are present in election precinct during primaries and elections, as follows:

"21-2-388.

When an absentee ballot which has been voted shall be returned to and received by the board of registrars, it shall be deemed to have been voted then and there; and no other ballot shall be issued to the same elector. If an elector has requested to vote by absentee ballot and has not received such absentee ballot, has such ballot in his or her possession, has not yet returned such ballot, or has returned such ballot but the registrars have not received such ballot, such elector may have the absentee ballot canceled and vote in person on the day of the primary, election, or runoff in one of the following ways:

(1) If the elector is in possession of the ballot, by surrendering the absentee ballot to the poll manager of the precinct in which the elector's name appears on the electors list and then being permitted to vote the regular ballot. The poll manager shall mark 'Canceled' and the date and time across the face of the absentee ballot and shall initial same. The

poll manager shall also make appropriate notations beside the name of the elector on the electors list. All such canceled absentee ballots shall be returned with other ballots to the superintendent; or

(2) If the elector has not received the ballot, has not yet returned the ballot, or if the elector has returned the ballot but the registrars have not received the ballot, by appearing in person before the managers of the elector's precinct, the registrars, or the absentee ballot clerk and requesting in writing that the envelope containing the elector's absentee ballot be marked 'Canceled.' After having satisfied themselves as to the identity of such elector and confirming that the elector's absentee ballot has not yet been received by the board of registrars, the registrars or the absentee ballot clerk shall grant the request and shall notify the managers of the elector's precinct as to such action so as to permit the elector to vote in person in that precinct. If the absentee ballot is in the mail, has not yet been returned, or its exact location is unknown, the registrar or the absentee ballot clerk shall write 'Canceled' beside the elector's name on the master list of absentee voters and shall cancel the ballot itself as soon as it is received. If the location of the requested absentee ballot is known to the elector and it has not been surrendered to the poll manager, the elector shall destroy the absentee ballot after casting his or her vote in person. Canceled absentee ballots shall be disposed of in the same manner as provided in subsection (a) of Code Section 21-2-386 for absentee ballots returned too late to be cast."

#### SECTION 34.

Said chapter is further amended by revising subsection (b) of Code Section 21-2-409, relating to assisting electors who cannot read English or who have disabilities, as follows:

~~"(b)(1) In elections in which there is a federal candidate on the ballot, any~~ Any elector who is entitled to receive assistance in voting under this Code section shall be permitted by the managers to select any person of the elector's choice except such elector's employer or agent of that employer or officer or agent of such elector's union:

~~(2) In all other elections, any elector who is entitled to receive assistance in voting under this Code section shall be permitted by the managers to select:~~

~~(A) Any elector, except a poll officer or poll watcher, who is a resident of the precinct in which the elector requiring assistance is attempting to vote; or~~

~~(B) The mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or attendant care provider of the elector entitled to receive assistance~~

1006 to enter the voting compartment or booth with him or her to assist in voting, such  
 1007 assistance to be rendered inside the voting compartment or booth. ~~No person shall assist~~  
 1008 ~~more than ten such electors in any primary, election, or runoff covered by this paragraph.~~  
 1009 No person whose name appears on the ballot as a candidate at a particular election nor  
 1010 the mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece,  
 1011 nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law,  
 1012 brother-in-law, or sister-in-law of that candidate shall offer assistance during that  
 1013 particular election under the provisions of this Code section to any voter who is not  
 1014 related to such candidate. For the purposes of this paragraph, 'related to such candidate'  
 1015 shall mean the candidate's mother, father, grandparent, aunt, uncle, sister, brother, spouse,  
 1016 son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law,  
 1017 father-in-law, brother-in-law, or sister-in-law. Notice of the availability of such  
 1018 assistance shall be prominently posted at each polling place."

### 1019 SECTION 35.

1020 Said chapter is further amended by revising subsection (e) of Code Section 21-2-413, relating  
 1021 to conduct of voters, campaigners, and others at polling places generally, as follows:

1022 "(e) No person shall use photographic or other electronic monitoring or recording devices,  
 1023 cameras, or cellular telephones while such person is in a polling place while voting is  
 1024 taking place; provided, however, that a poll manager, in his or her discretion, may allow  
 1025 the use of photographic devices in the polling place under such conditions and limitations  
 1026 as the election superintendent finds appropriate, and provided, further, that no photography  
 1027 shall be allowed of a ballot or the face of a voting machine or DRE unit or electronic ballot  
 1028 marker while an elector is voting such ballot or machine or DRE unit or using such  
 1029 electronic ballot marker, and no photography shall be allowed of an electors list, electronic  
 1030 electors list, or the use of an electors list or electronic electors list. This subsection shall  
 1031 not prohibit the use of photographic or other electronic monitoring or recording devices,  
 1032 cameras, or cellular telephones by poll officials for official purposes."

### 1033 SECTION 36.

1034 Said chapter is further amended by revising subsection (f) of Code Section 21-2-417.1,  
 1035 relating to voter identification cards, as follows:

1036 "(f) A Georgia voter identification card shall remain valid so long as a person resides at  
 1037 in the same address county and remains qualified to vote. It shall be the duty of a person  
 1038 who moves his or her residence within the State of Georgia outside of the county in which  
 1039 it was issued to surrender his or her card to the board of registrars of the county of his or  
 1040 her new residence; and such person may after such surrender apply for and receive a new



card if such person is otherwise eligible under this Code section. It shall be the duty of a person who moves his or her residence outside the State of Georgia or who ceases to be qualified to vote to surrender his or her card to the board of registrars by which it was issued."

### SECTION 37.

Said chapter is further amended by revising subsection (e) of Code Section 21-2-418, relating to provisional ballots, as follows:

"(e) The registrars shall establish a free access system, such as a toll-free telephone number or ~~Internet~~ internet website, by which any elector who casts a provisional ballot in a primary or election, or runoff of either, in which federal candidates are on the ballot may ascertain whether such ballot was counted and, if such ballot was not counted, the reason why such ballot was not counted. The registrars shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by such free access system. Access to such information about an individual provisional ballot shall be restricted to the elector who cast such ballot. At the earliest time possible after the casting of a provisional ballot, the election superintendent shall notify the Secretary of State that an elector cast a provisional ballot, whether such ballot was counted, and, if such ballot was not counted, the reason why such ballot was not counted."

### SECTION 38.

Said chapter is further amended by revising Code Section 21-2-419, relating to validation of provisional ballots and reporting to Secretary of State, as follows:

"21-2-419.

(a) A person shall cast a provisional ballot on the same type of ballot that is utilized by the county or municipality ~~for mail-in absentee ballots~~. Such provisional ballot shall be sealed in double envelopes as provided in Code Section 21-2-384 and shall be deposited by the person casting such ballot in a secure, sealed ballot box.

(b) At the earliest time possible after the casting of a provisional ballot, but no later than the day after the primary or election in which such provisional ballot was cast, the board of registrars of the county or municipality, as the case may be, shall be notified by the election superintendent that provisional ballots were cast in the primary or election and the registrars shall be provided with the documents completed by the person casting the provisional ballot as provided in Code Section 21-2-418. Provisional ballots shall be securely maintained by the election superintendent until a determination has been made concerning their status. The board of registrars shall immediately examine the information

contained on such documents and make a good faith effort to determine whether the person casting the provisional ballot was entitled to vote in the primary or election. Such good faith effort shall include a review of all available voter registration documentation, including registration information made available by the electors themselves and documentation of modifications or alterations of registration data showing changes to an elector's registration status. Additional sources of information may include, but are not limited to, information from the Department of Driver Services, Department of Family and Children Services, Department of Natural Resources, public libraries, or any other agency of government including, but not limited to, other county election and registration offices.

(c)(1) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person casting the provisional ballot timely registered to vote and was eligible and entitled to vote in such primary or election, the registrars shall notify the election superintendent and the provisional ballot shall be counted and included in the county's or municipality's certified election results.

(2) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person voting the provisional ballot timely registered and was eligible and entitled to vote in the primary or election but voted in the wrong precinct, then the board of registrars shall notify the election superintendent. The superintendent shall count such person's votes which were cast for candidates in those races for which the person was entitled to vote but shall not count the votes cast for candidates in those races in which such person was not entitled to vote. The superintendent shall order the proper election official at the tabulating center or precinct to prepare an accurate duplicate ballot containing only those votes cast by such person in those races in which such person was entitled to vote for processing at the tabulating center or precinct, which shall be verified in the presence of a witness. Such duplicate ballot shall be clearly labeled with the word 'Duplicate,' shall bear the designation of the polling place, and shall be given the same serial number as the original ballot. The original ballot shall be retained.

(3) If the registrars determine that the person casting the provisional ballot did not timely register to vote or was not eligible or entitled to vote in such primary or election or shall be unable to determine within three days following such primary or election whether such person timely registered to vote and was eligible and entitled to vote in such primary or election, the registrars shall so notify the election superintendent and such ballot shall not be counted. The election superintendent shall mark or otherwise document that such ballot was not counted and shall deliver and store such ballots with all other ballots and election materials as provided in Code Section 21-2-500.

(d)(1) ~~The~~ At the earliest time possible after a determination is made regarding a provisional ballot, the board of registrars shall notify in writing those persons whose provisional ballots were not counted that their ballots were not counted because of the inability of the registrars to verify that the persons timely registered to vote or other proper reason. The registrars shall process the official voter registration form completed by such persons pursuant to Code Section 21-2-418 and shall add such persons to the electors list if found qualified.

(2) ~~The~~ At the earliest time possible after a determination is made regarding a provisional ballot, the board of registrars shall notify in writing those electors who voted in the wrong precinct and whose votes were partially counted of their correct precinct.

(e) The board of registrars shall complete a report in a form designated by the Secretary of State indicating the number of provisional ballots cast and counted in the primary or election."

### SECTION 39.

Said chapter is further amended by revising Code Section 21-2-482, relating to absentee ballots for precincts using optical scanning voting equipment, as follows:

"21-2-482.

Ballots in a precinct using optical scanning voting equipment for ~~use~~ voting by absentee electors shall be prepared sufficiently in advance by the superintendent and shall be delivered to the board of registrars as provided in Code Section 21-2-384. Such ballots shall be marked 'Official Absentee Ballot' and shall be in substantially the form for ballots required by Article 8 of this chapter, except that in counties or municipalities using voting machines, direct recording electronic (DRE) units, or ~~optical~~ ballot scanners, the ballots may be in substantially the form for the ballot labels required by Article 9 of this chapter or in such form as will allow the ballot to be machine tabulated. Every such ballot shall have printed on the face thereof the following:

'I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.'

The form for either ballot shall be determined and prescribed by the Secretary of State."

### SECTION 40.

Said chapter is further amended by revising subsection (k) of Code Section 21-2-493, relating to computation, canvassing, and tabulation of returns, investigation of discrepancies in vote counts, recount procedure, certification of returns, and change in returns, as follows:

1146 "(k) As the returns from each precinct are read, computed, and found to be correct or  
 1147 corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until  
 1148 all the returns from the various precincts which are entitled to be counted shall have been  
 1149 duly recorded; then they shall be added together, announced, and attested by the assistants  
 1150 who made and computed the entries respectively and shall be signed by the superintendent.  
 1151 The consolidated returns shall then be certified by the superintendent in the manner  
 1152 required by this chapter. Such returns shall be certified by the superintendent not later than  
 1153 5:00 P.M. on the ~~Monday~~ second Friday following the date on which such election was  
 1154 held and such returns shall be immediately transmitted to the Secretary of State; provided,  
 1155 however, that such certification date may be extended by the Secretary of State in his or  
 1156 her discretion if necessary to complete a precertification audit as provided in Code  
 1157 Section 21-2-498."

#### 1158 SECTION 41.

1159 Said chapter is further amended by revising subsections (a) and (c) of Code  
 1160 Section 21-2-495, relating to procedure for recount or recanvass of votes and losing  
 1161 candidate's right to a recount, and adding new subsections to read as follows:

1162 "(a) In precincts where paper ballots or scanning ballots have been used, the superintendent  
 1163 may, either of his or her own motion or upon petition of any candidate or political party,  
 1164 order the recount of all the ballots for a particular precinct or precincts for one or more  
 1165 offices in which it shall appear that a discrepancy or error, although not apparent on the  
 1166 face of the returns, has been made. Such recount may be held at any time prior to the  
 1167 certification of the consolidated returns by the superintendent and shall be conducted under  
 1168 the direction of the superintendent. Before making such recount, the superintendent shall  
 1169 give notice in writing to each candidate and to the county or municipal chairperson of each  
 1170 party or body affected by the recount. Each such candidate may be present in person or by  
 1171 representative, and each such party or body may send two representatives to be present at  
 1172 such recount. If upon such recount, it shall appear that the original count by the poll  
 1173 officers was incorrect, such returns and all papers being prepared by the superintendent  
 1174 shall be corrected accordingly."

1175 "(c)(1) Whenever the difference between the number of votes received by a candidate  
 1176 who has been declared nominated for an office in a primary election or who has been  
 1177 declared elected to an office in an election or who has been declared eligible for a run-off  
 1178 primary or election and the number of votes received by any other candidate or  
 1179 candidates not declared so nominated or elected or eligible for a runoff shall be not more  
 1180 than one-half of 1 percent of the total votes which were cast for such office therein, any  
 1181 such candidate or candidates receiving a sufficient number of votes so that the difference

between his or her vote and that of a candidate declared nominated, elected, or eligible for a runoff is not more than one-half of 1 percent of the total votes cast, within a period of two business days following the certification of the election results, shall have the right to a recount of the votes cast, if such request is made in writing by the losing candidate. If the office sought is a federal or state office voted upon by the electors of more than one county, the request shall be made to the Secretary of State who shall direct that the recount be performed in all counties in which electors voted for such office and notify the superintendents of the several counties involved of the request. In all other cases, the request shall be made to the superintendent. The superintendent or superintendents shall order a recount of such votes to be made immediately. If, upon such recount, it is determined that the original count was incorrect, the returns and all papers prepared by the superintendent, the superintendents, or the Secretary of State shall be corrected accordingly and the results recertified.

(2) Whenever the difference between the number of votes for approval or rejection of a constitutional amendment or binding referendum question shall be not more than one-half of 1 percent of the total votes which were cast on such amendment or question therein, within a period of two business days following the certification of the election results, the Constitutional Amendments Publication Board shall be authorized in its discretion to call for a recount of the votes cast with regard to such amendment or question. In the case of a constitutional amendment or state-wide referendum question or a question voted upon by the electors of more than one county, the board shall direct the Secretary of State to cause a recount to be performed with regard to such amendment or question in all counties involved and notify the superintendents of the recount. In the case of questions voted upon by the electors of only one county or municipality, the board shall direct the Secretary of State to cause a recount to be conducted by the county or municipality involved and the Secretary of State shall notify the superintendent involved of the recount. Upon notification, the superintendent or superintendents shall order a recount of such votes to be made immediately. If, upon such recount, it is determined that the original count was incorrect, the returns and all papers prepared by the superintendent, the superintendents, or the Secretary of State shall be corrected accordingly and the results recertified."

"(e) The State Election Board shall be authorized to promulgate rules, regulations, and procedures to implement and administer the provisions of this Code section."

## SECTION 42.

Said chapter is further amended by revising Code Section 21-2-498, which was previously reserved, as follows:



"21-2-498.

~~Reserved~~

(a) As used in this Code section, the term:

(1) 'Incorrect outcome' is when the winner of a contest or the answer to a proposed constitutional amendment or question would be different from the results found in a manual recount of paper official ballots.

(2) 'Risk limit' means the largest statistical probability that an incorrect outcome is not detected or corrected in a risk-limiting audit.

(3) 'Risk-limiting audit' means an audit protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome.

(b) As soon as possible, but no later than the November, 2020, general election, the local election superintendents shall conduct precertification tabulation audits for any federal or state general election in accordance with requirements set forth by rule or regulation of the State Election Board. Audits performed under this Code section shall be conducted by manual inspection of random samples of the paper official ballots.

(c) In conducting each audit, the local election superintendents shall:

(1) Complete the audit prior to final certification of the contest;

(2) Ensure that all types of ballots are included in the audit, whether cast in person, by absentee ballot, advance voting, provisional ballot, or otherwise;

(3) Provide a report of the unofficial final tabulated vote results for the contest to the public prior to conducting the audit;

(4) Complete the audit in public view; and

(5) Provide details of the audit to the public within 48 hours of completion.

(d) The State Election Board shall be authorized to promulgate rules, regulations, and procedures to implement and administer the provisions of this Code section. The procedures prescribed by the State Election Board shall include security procedures to ensure that collection of validly cast ballots is complete, accurate, and trustworthy throughout the audit.

(e) The Secretary of State shall conduct a risk-limiting audit pilot program with a risk limit of not greater than 10 percent in one or more counties by December 31, 2021. The Secretary of State shall review the results of the pilot program and, within 90 days following the election in which such pilot program is used, shall provide the members of the General Assembly with a comprehensive report, including a plan on how to implement risk-limiting audits state wide. If such risk-limiting audit is successful in achieving the specified confidence level within five business days following the election for which it was

1254 conducted, then all audits performed pursuant to this Code section shall be similarly  
1255 conducted, beginning not later than November 1, 2024."

1256 **SECTION 43.**

1257 Said chapter is further amended by revising subsection (b) of Code Section 21-2-499, relating  
1258 to duty of Secretary of State as to tabulation, computation, and canvassing of votes for state  
1259 and federal officers and certification of presidential electors by Governor, as follows:

1260 "(b) The Secretary of State shall also, upon receiving the certified returns for presidential  
1261 electors, proceed to tabulate, compute, and canvass the votes cast for each slate of  
1262 presidential electors and shall immediately lay them before the Governor. Not later than  
1263 5:00 P.M. on the ~~fourteenth~~ seventeenth day following the date on which such election was  
1264 conducted, the Secretary of State shall certify the votes cast for all candidates described in  
1265 subparagraph (a)(4)(A) of Code Section 21-2-497 and upon all questions voted for by the  
1266 electors of more than one county and shall no later than that same time lay the returns for  
1267 presidential electors before the Governor. The Governor shall enumerate and ascertain the  
1268 number of votes for each person so voted and shall certify the slates of presidential electors  
1269 receiving the highest number of votes. The Governor shall certify the slates of presidential  
1270 electors no later than 5:00 P.M. on the ~~fifteenth~~ eighteenth day following the date on which  
1271 such election was conducted. Notwithstanding the deadlines specified in this Code section,  
1272 such times may be altered for just cause by an order of a judge of superior court of this  
1273 state."

1274 **SECTION 44.**

1275 Said chapter is further amended by revising paragraph (8) of Code Section 21-2-566, relating  
1276 to interference with primaries and elections generally, as follows:

1277 "(8) Willfully tampers with any electors list, voter's certificate, numbered list of voters,  
1278 ballot box, voting machine, direct recording electronic (DRE) equipment, electronic  
1279 ballot marker, or tabulating machine."

1280 **SECTION 45.**

1281 Said chapter is further amended by revising paragraph (3) of Code Section 21-2-579, relating  
1282 to fraudulently allowing ballot or voting machine to be seen, casting unofficial ballot, and  
1283 receiving unauthorized assistance in voting, as follows:

1284 "(3) Without having made the affirmation under oath or declaration required by Code  
1285 Section 21-2-409, or when the disability which he or she declared at the time of  
1286 registration no longer exists, permits another to accompany him or her into the voting  
1287 compartment or voting machine booth or to mark his or her ballot or to register his or her

1288 vote on the voting machine or direct recording electronic (DRE) equipment or use an  
 1289 electronic ballot marker; or"

1290 **SECTION 46.**

1291 Said chapter is further amended by revising Code Section 21-2-580, relating to tampering  
 1292 with, damaging, improper preparation of, or prevention of proper operation of voting  
 1293 machines, as follows:

1294 "21-2-580.

1295 Any person who:

1296 (1) Unlawfully opens, tampers with, or damages any voting machine or electronic ballot  
 1297 marker or tabulating machine to be used or being used at any primary or election;

1298 (2) Willfully prepares a voting machine or an electronic ballot marker or tabulating  
 1299 machine for use in a primary or election in improper order for voting; or

1300 (3) Prevents or attempts to prevent the correct operation of such electronic ballot marker  
 1301 or tabulating machine or voting machine

1302 shall be guilty of a felony."

1303 **SECTION 47.**

1304 Said chapter is further amended by revising Code Section 21-2-582, relating to tampering  
 1305 with, damaging, or preventing of proper operation of direct recording electronic equipment  
 1306 or tabulating device, as follows:

1307 "21-2-582.

1308 Any person who tampers with or damages any direct recording electronic (DRE)  
 1309 equipment or electronic ballot marker or tabulating ~~computer~~ machine or device to be used  
 1310 or being used at or in connection with any primary or election or who prevents or attempts  
 1311 to prevent the correct operation of any direct recording electronic (DRE) equipment or  
 1312 electronic ballot marker or tabulating ~~computer~~ machine or device shall be guilty of a  
 1313 felony."

1314 **SECTION 48.**

1315 Said chapter is further amended by revising Code Section 21-2-582.1, relating to penalty for  
 1316 voting equipment modification, as follows:

1317 "21-2-582.1.

1318 (a) For the purposes of this Code section, the term 'voting equipment' shall mean a voting  
 1319 machine, tabulating machine, optical scanning voting system, ~~or~~ direct recording electronic  
 1320 voting system, or electronic ballot marker.



(b) Any person or entity, including, but not limited to, a manufacturer or seller of voting equipment, who alters, modifies, or changes any aspect of such voting equipment without prior approval of the Secretary of State is guilty of a felony."

#### SECTION 49.

Said chapter is further amended by revising Code Section 21-2-587, relating to frauds by poll workers, as follows:

"21-2-587.

Any poll officer who willfully:

- (1) Makes a false return of the votes cast at any primary or election;
  - (2) Deposits fraudulent ballots in the ballot box or certifies as correct a false return of ballots;
  - (3) Registers fraudulent votes upon any voting machine or certifies as correct a return of fraudulent votes cast upon any voting machine;
  - (4) Makes any false entries in the electors list;
  - (5) Destroys or alters any ballot, voter's certificate, or electors list;
  - (6) Tampers with any voting machine, direct recording electronic (DRE) equipment, electronic ballot marker, or tabulating ~~computer~~ machine or device;
  - (7) Prepares or files any false voter's certificate not prepared by or for an elector actually voting at such primary or election; or
  - (8) Fails to return to the officials prescribed by this chapter, following any primary or election, any keys of a voting machine, ballot box, general or duplicate return sheet, tally paper, oaths of poll officers, affidavits of electors and others, record of assisted voters, numbered list of voters, electors list, voter's certificate, spoiled and canceled ballots, ballots deposited, written, or affixed in or upon a voting machine, DRE, electronic ballot marker, or tabulating machine memory cards, or any certificate or any other paper or record required to be returned under this chapter
- shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both."

#### SECTION 50.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### SECTION 51.

All laws and parts of laws in conflict with this Act are repealed.

# EXHIBIT 145

RETRIEVED FROM DEMOCRACYDOCKET.COM

## PASSAGE BY SUBSTITUTE

SB 241

Yea **Y** : 29Nay **N** : 20Not Voting **NV** : 1Excused **E** : 6

**E** ALBERS, 56TH  
**Y** ANAVITARTE, 31ST  
**Y** ANDERSON, 24TH  
**N** ANDERSON, 43RD  
**N** AU, 48TH  
**Y** BEACH, 21ST  
**Y** BRASS, 28TH  
**Y** BURKE, 11TH  
**Y** BURNS, 23RD  
**N** BUTLER, 55TH  
**Y** COWSERT, 46TH  
**N** DAVENPORT, 44TH  
**Y** DIXON, 45TH  
**Y** DOLEZAL, 27TH  
**Y** DUGAN, 30TH  
**Y** GINN, 47TH  
**Y** GOOCH, 51ST  
**Y** GOODMAN, 8TH  
**N** HALPERN, 39TH  
**Y** HARBIN, 16TH  
**N** HARBISON, 15TH  
**Y** HARPER, 7TH  
**N** HARRELL, 40TH  
**Y** HATCHETT, 50TH  
**Y** HICKMAN, 4TH  
**E** HUFSTETLER, 52ND  
**N** JACKSON, 2ND  
**N** JACKSON, 41ST

**E** JAMES, 35TH  
**N** JONES, 10TH  
**Y** JONES, 25TH  
**N** JONES II, 22ND  
**N** JORDAN, 6TH  
**Y** KENNEDY, 18TH  
**E** KIRKPATRICK, 32ND  
**N** LUCAS, 26TH  
**Y** MCNEILL, 3RD  
**N** MERRITT, 9TH  
**NV** MILLER, 49TH (PRS)  
**Y** MULLIS, 53RD  
**N** ORROCK, 36TH  
**N** PARENT, 42ND  
**Y** PAYNE, 54TH  
**N** RAHMAN, 5TH  
**N** RHETT, 33RD  
**Y** ROBERTSON, 29TH  
**N** SEAY, 34TH  
**N** SIMS, 12TH  
**E** STRICKLAND, 17TH  
**Y** SUMMERS, 13TH  
**E** TATE, 38TH  
**Y** THOMPSON, 14TH  
**Y** TILLERY, 19TH  
**Y** TIPPINS, 37TH  
**Y** WALKER, III, 20TH  
**Y** WATSON, 1ST

# EXHIBIT

# 146

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## Georgia Senate Bill 202, In Re

Page 1

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

4 -----|  
5 IN RE GEORGIA SENATE BILL 202 | Master Case No.  
6 | 1:21-MI-55555-JPB  
7 -----|

8 SPECIAL COMMITTEE ON ELECTION INTEGRITY  
9 2021 Full Committee Videos  
10 February 4, 2021  
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## Georgia Senate Bill 202, In Re

Page 25

1     certainty, a greater likelihood that they will  
2     receive that absentee. Because there was a lot  
3     of issues in the last couple elections when  
4     voters didn't receive their absentee, what should  
5     they do? And that in and of itself was one of  
6     the primary reasons we had longer lines.

7             We had folks who had requested an  
8     absentee and had to go through a process in early  
9     voting or day of. I had -- personally and I'm  
10    sure most of us here had constituents who waiting  
11    until election day, didn't get their absentee and  
12    then it made day-of voting or early voting lines  
13    longer because you had a puzzled voter and the  
14    poll workers had to deal with that. And I guess  
15    they cast a provisional.

16            REP. BARRY FLEMING: Okay. Our first  
17    witness is Todd Edwards with the Association of  
18    County Commissioners. Is Todd here or is he  
19    going to --

20            TODD EDWARDS: Here, Mr. Chairman. Can  
21    you hear me?

22            REP. BARRY FLEMING: You're by Zoom,  
23    yes. And so, are we going to have his picture a  
24    little larger, Ms. Aziz? Give us just one  
25    second, Todd. You're the first witness by Zoom,

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1 so we're going to let you be the guinea pig to  
2 work this out for us.

3 TODD EDWARDS: Yes, sir.

4 REP. BARRY FLEMING: House media will  
5 enlarge the screen for us with your picture in  
6 just a second, I think. There you are. Hey,  
7 look at -- that's a great thing you're drinking  
8 out of there. It has a big G on the side of it.  
9 You're already starting off on the right foot.

10 TODD EDWARDS: Thank you, Mr. Chairman.  
11 Ladies and gentlemen --

12 REP. BARRY FLEMING: Please introduce  
13 yourself. We're happy to hear from you.

14 TODD EDWARDS: Yes, sir, Mr. --

15 REP. BARRY FLEMING: Please introduce  
16 yourself. We're happy to hear from you.

17 TODD EDWARDS: You can hear me okay,  
18 right?

19 REP. BARRY FLEMING: Yes, we can hear  
20 you.

21 TODD EDWARDS: Mr. Chairman, thank you.  
22 Members of the committee, my name is Todd  
23 Edwards. I'm the Deputy Legislative Director for  
24 the Association of County Commissioners of  
25 Georgia. I think Chairman Fleming has done a

1 great job of explaining the bill. A little bit  
2 of background on how we've come to address this  
3 and other issues.

4 Following the 2020 primary and the  
5 various challenges that were encountered by  
6 counties, ACCG -- we began meeting with the  
7 election directors in counties across the state  
8 to see how we could better improve the process.  
9 We formed an internal subcommittee here at ACCG  
10 to study it. And now, we have at a -- at least  
11 for this year, a study committee and subcommittee  
12 on our policy council. That's the board of the  
13 ACCG which ultimately makes our policy decisions.

14 We had nine election priorities coming  
15 -- recommendations coming out of the study  
16 committee. This is one of them, HB 270. And we  
17 want to thank Chairman Fleming for introducing  
18 it. It was alluded to before, but as you're  
19 likely aware, one of the largest challenges --  
20 well, by far the largest challenge counties faced  
21 during these past two elections was the  
22 unprecedented increase in absentee ballots.

23 This is primarily due to the Covid  
24 pandemic and also people wanting to social  
25 distance. It posed several challenges to our



1 local election offices. And though it offered  
2 convenience and safety, it posed several  
3 challenges to voters. Our aim at ACCG is to  
4 ensure this process runs smoothly, these ballots  
5 are effectively and efficiently processed and  
6 counted, and how to best administer it at the  
7 local level.

8 As far as the bill itself, Chairman  
9 Fleming is right. Currently, the deadline by  
10 which counties mail out absentee ballots is the  
11 Friday before the election. And that would have  
12 to be processed, mailed out, completed, and then  
13 mailed back in by the voter.

14 In many cases, receiving this ballot  
15 that close to an election is too short of a  
16 turnaround to be mailed out and go through that  
17 process. And the end result is it doesn't get  
18 returned in time and the voter gets mailed a  
19 letter saying that your ballot was not counted.  
20 Those who have followed the rules, they become  
21 discouraged with the current election system.  
22 And I think that is what we're trying to address  
23 here.

24 There have been several points raised.  
25 I think they are legitimate concerns as to what's

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1 the right date. That's certainly -- we're open  
2 for discussion. That's what we trust the policy  
3 -- legislative process. We'll discuss and come  
4 to agreement on. As far as emergency situations,  
5 there still remains in place and unchanged the  
6 earlier advanced voting process in Georgia. And  
7 even if you wanted to look at this bill and look  
8 out for emergencies, that's certainly something  
9 we would like to discuss with you.

10 I think you've described the bill  
11 adequately and we have our elections  
12 superintendent from Houston County that will  
13 speak shortly. And if you have technical  
14 questions, I think she's more than happy to  
15 answer them. So, thank you for that Mr.  
16 Chairman. I'll be happy to answer any questions.

17 REP. BARRY FLEMING: Thank you, Mr.  
18 Edwards. Questions from the committee? Any  
19 questions from the committee for Todd Edwards,  
20 Deputy Legislative Director of the Association of  
21 County Commissioners? You did such a good job,  
22 Todd. There are none. But if you'll stay there,  
23 we might come back to you later if need be.

24 TODD EDWARDS: Yes, sir. Thank you.

25 REP. BARRY FLEMING: Thank you very

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1 much. We appreciate you all's work on these  
2 issues for us. Next, we have Debra Presswood,  
3 Elections Superintendent of Houston County.  
4 Chairman Shaw, do you know where Houston County  
5 is?

6 REP. SHAW BLACKMON: I have a general  
7 idea.

8 REP. BARRY FLEMING: Okay, all right.  
9 Well, we -- I just want to make sure someone  
10 does. That's his county, and he has a very good  
11 elections director and he and I have talked a lot  
12 about their hard work there. So, she's going to  
13 be -- absolutely. Ms. Presswood is with us via  
14 Zoom also, right Ms. Aziz? And there we are.  
15 Ms. Presswood, can you hear us?

16 DEBRA PRESSWOOD: I can. Thank you.

17 REP. BARRY FLEMING: We sure do  
18 appreciate you joining us today. We were just --  
19 your Representative Shaw Blackmon was bragging on  
20 you, talking about what a good job you did.

21 DEBRA PRESSWOOD: Well, I appreciate  
22 that, Mr. Shaw.

23 REP. BARRY FLEMING: Tell us -- go  
24 ahead and introduce yourself. We've called your  
25 name, but you introduce us. Tell us how long

1 you've been with Houston County and obviously,  
2 your position there.

3 DEBRA PRESSWOOD: My name is Debra  
4 Presswood. I am the registration election  
5 supervisor here at Houston County. I've actually  
6 worked at elections since 2005, but the election  
7 supervisor -- really, I came into this right at  
8 2019. And this was a very -- it was surprising,  
9 mainly because of the pandemic, and it changed a  
10 lot of things for me.

11 But mainly, what's in front of us now  
12 is this bill and the amount of time that a voter  
13 actually has to request a ballot. It is correct  
14 that a voter can request a ballot up until 180  
15 days before an election. That's your average  
16 voter.

17 But with your military and your  
18 overseas voters, you actually have an entire  
19 election cycle, which is about a year, before an  
20 election. And it states those are -- those  
21 ballots -- those requests are held, and we can  
22 actually continue to just use that same request.

23 Now, currently, a voter can request a  
24 ballot up until the Friday before the election.  
25 Which, in our opinion, it sets the voter up for

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1 failure of not getting the ballot back in on  
2 time. So, literally, on that Friday before the  
3 election, we are constantly checking the mail,  
4 our fax and our email up until the close of  
5 business, which is Friday. So, even if we get  
6 that request at 4:59, we will get that ballot in  
7 the mail before we leave here. But the chances  
8 of that ballot getting back to us by election day  
9 is pretty much slim to none.

10 And then we're tasked with -- if the  
11 ballot gets back to us and it's after the  
12 deadline of us checking it in, then we have to  
13 reject the ballot. What we're trying to do is  
14 not to even get to the point where we have to  
15 reject the ballot. If the request does not get  
16 to us in time, we're also tasked with putting in  
17 the mail or somehow contacting the voter to let  
18 them know that we received their request too late  
19 and that they would need to go to their polling  
20 location.

21 But if the voter chooses not to put a  
22 phone number on the request or an email address,  
23 even if we send out a letter in the mail, chances  
24 are they're not even going to get the letter to  
25 know which polling location to attend or to cast

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1     their vote. So, these are the things that we're  
2     trying to eliminate.

3             REP. BARRY FLEMING: Thank you, Ms.  
4     Presswood. We appreciate it. If you could hold  
5     on a second, some of the committee members may  
6     have a question for you. But we appreciate your  
7     testimony here today and the job you do in  
8     Houston County. Chairman Martin, you have a  
9     question for Ms. Presswood?

10            REP. CHUCK MARTIN: Yes, ma'am. Thank  
11    you for joining us. This is a friendly question,  
12    I believe, based on the way you run your shop  
13    down there, ma'am. I appreciate the fact that  
14    you said that if you get something in by email at  
15    4:49 or 4:59 that your office is going to get  
16    that ballot back out to the voter for them to do  
17    their best to participate in the elections.

18            My question is, is there -- and it's my  
19    lack of knowledge around it, Mr. Chairman. And I  
20    hope you may know, is there anything in state law  
21    or in the rules by the state election board that  
22    requires your turnaround of that ballot? So, if  
23    we move this back 10 days prior to when you would  
24    be mailing them -- I understand your office, if  
25    you get something in that afternoon, you're going

1 to get it out. And I applaud you for that.

2 Is there anything that you're required  
3 to do to let the voter know that you got it on  
4 Thursday and it's coming back out on Friday? Do  
5 you have a requirement to send that ballot if you  
6 have a big box?

7 REP. BARRY FLEMING: If I may, Chairman  
8 Martin, I think I heard a couple questions. And  
9 I think I know where you're heading there. So,  
10 I'll -- and you tell me if I get this right.

11 REP. CHUCK MARTIN: Yes, sir. Please.

12 REP. BARRY FLEMING: Ms. Presswood,  
13 what I think his question is once you receive the  
14 request, how long do you have to get it back out  
15 under state law?

16 DEBRA PRESSWOOD: Under state law, we  
17 currently have three days.

18 REP. BARRY FLEMING: Three days like we  
19 do.

20 DEBRA PRESSWOOD: From the date -- from  
21 the time that we receive the request, we have  
22 three days to process that request. But if we  
23 receive that request on that last day, it is our  
24 practice that we will get that ballot in the  
25 mail. But if a request comes in at 4:59, you're

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1 already dead in the water because the post office  
2 is closed. But we still will drop that ballot at  
3 the U.S. post office before we leave here.

4 REP. CHUCK MARTIN: Thank you. And  
5 thank you, Mr. Chairman, for a much better  
6 articulation of the question. I was just trying  
7 to build a mental timeline --

8 REP. BARRY FLEMING: Absolutely.

9 REP. CHUCK MARTIN: Thank you.

10 REP. BARRY FLEMING: Good question.  
11 Representative DeLoach?

12 REP. BUDDY DELOACH: Would you talk to  
13 us briefly about your reporting to the secretary  
14 of state's office. So that's posted on his voter  
15 website. If you receive a request for an  
16 absentee ballot today, do you at the end of the  
17 day notify the secretary of state's office of all  
18 the requests you've received that day?

19 DEBRA PRESSWOOD: Yes, sir. As soon as  
20 we actually receive -- well, when you're actually  
21 getting ready to process the ballot and you key  
22 it into the state's system, they automatically  
23 know the receipt date. They know the receive  
24 date that we received the application, and they  
25 also know the mail date that it actually got out.



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1 REP. BUDDY DELOACH: Thank you very  
2 much.

3 REP. BARRY FLEMING: And Ms. Presswood,  
4 we do have another question for you. That would  
5 be Representative Shaw Blackmon?

6 REP. SHAW BLACKMON: Thank you, Mr.  
7 Chairman. Ms. Presswood, I would be remiss if I  
8 didn't at least jump in here and say we've had  
9 the occasion to meet multiple times and I thank  
10 you for opening your office. And I know you and  
11 your team put the voters first. And the voters  
12 of Houston County. And thank you again for that.

13 I guess my question may be less for Ms.  
14 Presswood and may be more for the Chairman or Mr.  
15 Edwards. But the number here in this bill 270 is  
16 intended to provide greater level of certainty  
17 for the voter. Is that fair to say?

18 DEBRA PRESSWOOD: It is.

19 REP. SHAW BLACKMON: Thank you very  
20 much.

21 REP. BARRY FLEMING: Thank you, Mr.  
22 Chairman. Ms. Presswood, we don't have any  
23 further questions for you at the moment. But  
24 would you be able to hang around in case we did?

25 DEBRA PRESSWOOD: Yes, sir.

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1 REP. BARRY FLEMING: We need smart  
2 people like you who do this every day to help us.  
3 And we appreciate you being here.

4 DEBRA PRESSWOOD: I appreciate being  
5 called smart. Thank you.

6 REP. BARRY FLEMING: Good enough. All  
7 right. Next, we have Mr. Trey Grayson who is  
8 also with us via Zoom. Mr. Grayson, can you hear  
9 me.

10 TREY GRAYSON: I can hear you, Mr.  
11 Chairman.

12 REP. BARRY FLEMING: There you are.  
13 Mr. Grayson, it's good to have you here today.  
14 Please introduce yourself to our committee and we  
15 would love to hear your thoughts on this bill and  
16 also about your organization.

17 TREY GRAYSON: Thank you, Mr. Chairman,  
18 and members of the committee. It's great to be  
19 with you virtually via Zoom. My name is Trey  
20 Grayson. I'm the former two-term Secretary of  
21 State of the Commonwealth of Kentucky. During  
22 that time, I was the president of the National  
23 Association of Secretary of States and the chair  
24 of the Republican Association of Secretaries of  
25 States.

1           Since leaving office, I continue to  
2 work on election issues with a lot of different  
3 groups on a volunteer and consulting capacity.  
4 And today, I stand before you as the chair of the  
5 Secure Elections Project Advisory Committee.

6           We at the Secure Elections Project work  
7 with states all across the country in helping to  
8 modernize and improve their elections. In the  
9 last year in particular, we helped states try to  
10 figure out how do you conduct an election in a  
11 pandemic. Offering best practice advice,  
12 connecting them to resources and experts so that  
13 they could do just that.

14           This bill before you today, I think, is  
15 a good positive change for a number of reasons.  
16 One, we saw that a lot of voters voted by mail,  
17 maybe for the first time, if they were eligible  
18 to do so because of the pandemic. And in doing  
19 that around the country, we realized some of our  
20 rules involving mail-in voting were outdated --  
21 didn't reflect modern America.

22           One of the realities of modern America  
23 is the postal service isn't what it used to be.  
24 It doesn't process as much mail. It takes longer  
25 to deliver because of some of that consolidation

1 that efficiencies require. And that's just the  
2 way it is. But unfortunately, our laws haven't  
3 adapted.

4 So, many states allow voters to request  
5 an absentee ballot at too close to the election  
6 where, under normal delivery times, they cannot  
7 be expected to get that ballot back. And so,  
8 it's a disservice to the voters.

9 And so, the irony is telling voters you  
10 have to request that ballot a little bit earlier,  
11 such as this law requires, is actually a pro-  
12 voter reform because it's actually empowering  
13 voters to ensure that they have time to get that  
14 request in. The administrators at the local  
15 level at the counties have the ability to process  
16 it and get it back to the voter by mail. And  
17 then the voter can ultimately mail it back.

18 If you have too short of a turnaround  
19 time, it creates problems for voters. They're  
20 going to -- which will then create problems  
21 because they're going to reach out to their  
22 locals. And that'll increase the burden that  
23 they already have at that level. So, I'm not  
24 surprised that Mr. Edwards' group was so  
25 unanimously supporting this reform.

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1           So, I think it's a good best practice.  
2     It will make Georgia elections better. And  
3     fortunately, because you do have the other  
4     methods of voting as you mentioned earlier, Mr.  
5     Chairman, for somebody who just misses out on it,  
6     they'll have other options. And you do allow it  
7     to be requested very early in advance.

8           So, this is a good fix, and I would  
9     encourage the recommendation of the committee to  
10    support this.

11           REP. BARRY FLEMING: Mr. Grayson, we  
12    certainly do appreciate you joining us today.  
13    Let's see if there's any questions from any of  
14    the committee members. I do not see any at this  
15    time. But would you be able to stay with us in  
16    case we had some?

17           TREY GRAYSON: Yeah, I can stay until  
18    about 12:30, so I'll do that. Yes, Mr. Chairman.

19           REP. BARRY FLEMING: That's fine. We  
20    appreciate you coming today and thank you for  
21    your comments on this.

22           TREY GRAYSON: You're welcome.

23           REP. BARRY FLEMING: Okay. Next, we  
24    have Hillary Li, who will also be joining us by  
25    Zoom. Ms. Li, can you hear me?

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1 HILLARY LI: Yes, thank you. Could you  
2 --

3 REP. BARRY FLEMING: Ms. Li, please  
4 introduce yourself to our committee and we'll be  
5 happy to hear from you.

6 HILLARY LI: Great. Thank you. Can  
7 you hear me and see me fine?

8 REP. BARRY FLEMING: Yes, ma'am, we  
9 can. Thank you.

10 HILLARY LI: Thank you. Good morning,  
11 everyone, members of the committee. Thank you  
12 for the opportunity to speak with you. My name  
13 is Hillary Li and I'm a staff attorney with Asian  
14 Americans Advancing Justice Atlanta.

15 I will say first that I have not seen  
16 the most recent version of the bill, so I don't  
17 know exactly how the language has changed besides  
18 what the representatives have mentioned. But HB  
19 270 as I saw it before this meeting was  
20 concerning to our organization for a few reasons.

21 REP. BARRY FLEMING: Ms. Li, hold on a  
22 second. We did send that out to everybody on our  
23 list. I don't know if you were on there. But  
24 let me read to you the pertinent change so you  
25 can operate --

1 HILLARY LI: Sure.

2 REP. BARRY FLEMING: Here's what the  
3 operative sentence now says -- and the purpose of  
4 this was to clarify that although we would be  
5 moving the deadline to mail that absentee ballot  
6 out from the Friday before the election to the  
7 previous Friday before that, we wanted to make it  
8 clear that this would in no way affect the last  
9 week of early voting and people's ability to do  
10 that.

11 So, let me read to you that pertinent  
12 change. Line 27 of the bill now says, "No  
13 absentee by mail ballot shall be mailed or issued  
14 by the registrars or absentee ballot clerk if  
15 there is less than 10 days remaining before a  
16 primary or election provided that nothing in this  
17 paragraph shall prevent an elector from voting at  
18 an advanced voting location pursuant to  
19 subsection D of this code section."

20 The purpose of that was to clarify that  
21 we're not affecting the last week of early  
22 voting. So, did that help you?

23 HILLARY LI: Yes, thank you for reading  
24 that. So, to continue, I think the current  
25 version of the bill still raises a few concerns

1 for us. First, the prohibition on mailing of  
2 absentee ballots within 10 days of the election  
3 creates an arbitrary cut-off date for voters that  
4 is -- with this language -- out of their control  
5 and eliminates any option to vote by mail for  
6 many voters.

7 In recent elections, as Representatives  
8 Burnough and Smyre were discussing, we have  
9 talked to many voters through our work in the  
10 field who requested their absentee ballots weeks  
11 or even months before an election and were still  
12 not issued ballots until closer to the election.  
13 And this is despite the three-day requirement in  
14 the law that has been pointed out. So, we know,  
15 and we completely understand that counties are  
16 facing backlogs and delays in processing absentee  
17 ballot applications in practicality and mailing  
18 out those ballots. But voters should not be  
19 punished for that.

20 The other thing is that email and fax  
21 are also making it easier for absentee ballot  
22 applications to be received by counties quickly.  
23 And absentee ballot drop boxes also now make it  
24 easier for voters -- some voters, at least -- to  
25 submit their ballots soon after receiving them



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1 and that reduces the need to rely on the mail for  
2 both pieces of the process.

3 Therefore, we think that counties  
4 should be permitted to continue to issue absentee  
5 ballots up until closer to the election as long  
6 as voters are requesting them, and voters should  
7 continue to be given the option at least to vote  
8 with these ballots or go in person based on what  
9 they have in front of them.

10 And additionally, as we discussed, the  
11 bill language will no longer prevent counties  
12 from having advanced in person voting within the  
13 10 days, which is great. I just want to quickly  
14 emphasize that it's so important to stay away  
15 from language like that both in this bill and in  
16 future bills. Thank you for your time.

17 REP. BARRY FLEMING: Thank you, Ms. Li.  
18 We appreciate you being here today. Any  
19 questions? Let me ask one question and then  
20 we'll go to Madame Pro Tem. Ms. Li, you  
21 mentioned that word that we attorneys quite often  
22 use in certain situations, "arbitrary". And you  
23 said that the timeframe that we have chosen in  
24 this bill was arbitrary. What's not arbitrary?

25 HILLARY LI: I think the idea of it

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1 being arbitrary in this situation is more that  
2 the deadline is imposed based on what the board  
3 of elections is doing, what the county is doing.  
4 And so, it's arbitrary for voters. Voters aren't  
5 given a deadline to submit their absentee ballot  
6 request. Instead, they have to rely on the  
7 counties to be processing it within a certain  
8 window before the election.

9 And like I mentioned, that's important  
10 because voters are submitting their applications  
11 much earlier than that 10 days in some cases and  
12 then they aren't getting processed for whatever  
13 reason, which is totally understandable like I  
14 mentioned. But we don't think that the voters  
15 should be held accountable for that issue that  
16 the counties are facing for various reason.

17 REP. BARRY FLEMING: And my question  
18 was what date is not arbitrary?

19 HILLARY LI: Well, I think actually a  
20 potential suggestion would be instead of focusing  
21 it on when the county can issue ballots, maybe  
22 thinking about setting a deadline for voters to  
23 submit their requests. And the number can vary,  
24 and I guess people can differ on when that would  
25 be. But like a 10-day to two-week deadline could

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1 be more reasonable if that was the case and  
2 voters were actually given the rules on the front  
3 end so they know when they can -- they have to  
4 submit the ballots by -- or applications.

5 REP. BARRY FLEMING: This bill provides  
6 that you have to submit that by two Fridays  
7 before the election. Why is that not a deadline  
8 for the voters?

9 HILLARY LI: Well, based on how I'm  
10 reading the bill, it's not saying that voters  
11 have to submit by that deadline. It's saying  
12 that after that deadline, the counties cannot  
13 issue the ballots. And that's different because,  
14 like I'm saying, what if a voter submits a couple  
15 weeks before but the ballot isn't issued. And  
16 then the 10-day deadline passes and then the  
17 counties are not allowed to any more under law.  
18 That's the kind of situation we're thinking  
19 about.

20 REP. BARRY FLEMING: And I think that  
21 would revert back to the three-day processing  
22 requirement that we have in our law.

23 HILLARY LI: Right. Right.

24 REP. BARRY FLEMING: Other questions?  
25 Madam Pro Tem, what number are you? Madam Pro

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1 Tem.

2 REP. JAN JONES: Thank you, Ms. Li. I  
3 had a question regarding something you mentioned  
4 earlier in your testimony, that many voters in  
5 the last election had requested their absentee  
6 ballots way in advance of the election and still  
7 didn't receive them. That seems to support this  
8 bill. To actually set a deadline earlier so that  
9 the odds of that failure of a voter receiving  
10 their absentee and then being puzzled as to what  
11 to do, this bill would help address that.

12 HILLARY LI: Thank you, and I  
13 appreciate that comment. I'm not sure if this  
14 bill would directly address that because I -- for  
15 example, I talked to voters who requested their  
16 absentee ballots like a month or two out from the  
17 election, and then they were just waiting. And  
18 they didn't know when it was going to be issued.  
19 And they called the counties, and the counties  
20 said, "Oh, we'll issue it soon. We're dealing  
21 with a lot of backlogs," which we get.

22 But then, I guess, at which point would  
23 the voter then have to request it again? I don't  
24 know. The process was very confusing for these  
25 voters. And so, like I mentioned, potentially

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1 making it just clearer that this is like a  
2 deadline to request, maybe that would be better  
3 for voters.

4 But right now, it seems like it's  
5 unclear whether the voter can still request it  
6 early or late, but then the county is just barred  
7 after that 10 days. So, I feel like it's a  
8 little unclear for how the voter is supposed to  
9 address the issue for themselves.

10 REP. JAN JONES: Thank you.

11 REP. BARRY FLEMING: Chairman Martin?

12 REP. CHUCK MARTIN: Mr. Chairman. Ms.  
13 Li, thank you. I want to go back to your  
14 question. I think you bring up an interesting  
15 point. If we have an issue with requests getting  
16 to counties and counties not abiding by state law  
17 and getting those ballots out in three days, then  
18 that is absolutely something, Mr. Chairman, I  
19 suggest we address on a different day.

20 But for lack of a better term, not  
21 taking action here -- which I believe will  
22 provide some additional predictability for all of  
23 the voters in Georgia -- because of the inability  
24 of counties to react to an obvious, we hope once  
25 in a lifetime situation with the pandemic and so

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1     forth doesn't seem to do it.

2             A suggestion, Mr. Chairman, for another  
3     legislation -- or I don't know if it would work  
4     into here -- is as that time gets closer to the  
5     time which a county -- the 10-day timeframe we're  
6     doing here, that they have to adhere. Because  
7     effectively, we're saying by state law if they  
8     have to issue them 10 days, then we're saying  
9     they have to be in 13 days. That is the deadline  
10    that essentially is there.

11            Now, in Houston County, the applause  
12    goes to her because she gets the same day  
13    turnaround. But I would wonder if we can't  
14    monitor at the Secretary of State's office when  
15    those requests are logged in to be filled. And  
16    we need to support legislatively and otherwise  
17    that counties do their job and get it out and not  
18    fail to act on this bill because counties aren't  
19    abiding by the law in another place.

20            REP. BARRY FLEMING: Understood.

21            REP. CHUCK MARTIN: And I believe that  
22    would take care of Ms. Li's question and provide  
23    some specifics to all of our voters and give them  
24    a better opportunity to participate in the  
25    election process.

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1 REP. BARRY FLEMING: Understood. Okay,  
2 we have another question. Representative  
3 Burnough?

4 REP. RHONDA BURNOUGH: Thank you, Mr.  
5 Chairman. And to her -- to respond to what our  
6 guest was talking about, perhaps if we change  
7 some of the language like in line 33 that might  
8 say, "the registrar absentee ballot clerk shall  
9 mail an absentee by mail ballot to any eligible  
10 voter who requests an absentee by mail ballot 10  
11 or more days before an election."

12 REP. BARRY FLEMING: If you want to  
13 write that up, I'll look at it.

14 REP. RHONDA BURNOUGH: Okay.

15 REP. BARRY FLEMING: And hand it to me.  
16 Thank you.

17 REP. RHONDA BURNOUGH: I will. Thank  
18 you.

19 REP. BARRY FLEMING: Representative  
20 DeLoach? Or Representative Smith, I'm sorry.  
21 Chairwoman Smith.

22 REP. LYNN SMITH: Thank you. I'm  
23 actually the agent of record for Representative  
24 Demetrius Douglas. He cannot get his mic to  
25 work. So, I don't know how we're going to solve

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1 this problem. It might take a bit.

2 REP. BARRY FLEMING: Representative,  
3 what about the one to your right? Try that one.  
4 Well, tell me what the number is on that sheet.  
5 Now, you're on.

6 REP. DEMETRIUS DOUGLAS: Oh, yes, sir.

7 REP. BARRY FLEMING: You get it. You  
8 get it.

9 REP. DEMETRIUS DOUGLAS: I don't have a  
10 button to signal you.

11 REP. BARRY FLEMING: Just say, "Go,  
12 dogs." I always turn around and look.

13 REP. DEMETRIUS DOUGLAS: That's good.  
14 Thank you, Mr. Chair, for the opportunity. I  
15 just wanted to comment on the Chairman's -- I  
16 just want to respond to what he just said about  
17 moving this legislation on and we can address it  
18 in something else.

19 I think we need to get it right first  
20 before we move anything on because we have the  
21 time, we have -- this is not my swim lane, of  
22 course. But I'm sure we have enough people on  
23 the screen and in this room to get it right. So,  
24 why have several pieces of legislation instead of  
25 just taking our time and vetting and going



1 through all of this and get it right on one piece  
2 of legislation?

3 We shouldn't have several pieces of  
4 legislation dealing with the same thing.  
5 Considering that the election has gone well over  
6 the previous years, and all of a sudden, we want  
7 to change it. But those are my comments for  
8 right now, and thank you.

9 REP. BARRY FLEMING: The Chair notes  
10 that Representative appears to want an omnibus  
11 bill. Number six? Representative Williams?

12 REP. RICK WILLIAMS: Thank you, Mr.  
13 Chairman. I think a lot of the confusion that  
14 happened this last election was a lot of us got  
15 absentee ballot application requests from third  
16 parties. I know I got myself probably about six  
17 different pieces of mail encouraging me by the  
18 different political parties and third parties to  
19 apply for an absentee ballot.

20 And what that did was a lot of people  
21 applied multiple times to the counties. So, a  
22 lot of the counties were overwhelmed because the  
23 same person was requesting six different absentee  
24 ballots. And, you know, there's got to be some  
25 way to maybe rein that in to just official

1 absentee ballot requests. Whether it comes from  
2 the Secretary of State or from the county of  
3 residence.

4 But there was mail pieces that were  
5 continually going out encouraging people to  
6 request an absentee ballot. So, I think the  
7 system was probably overloaded. I think a lot of  
8 this -- as I've worked in elections for over 16  
9 years, this is bringing some uniformity statewide  
10 and this is what we have lacked in the past is  
11 certain rules passed down from the Secretary of  
12 State's office to the different counties that you  
13 will perform elections in this manner in these  
14 steps, and these are the hard rules.

15 I want to commend my county, Baldwin  
16 County, and Putnam County. They -- even in their  
17 recounts, the numbers were the exact same. They  
18 just run good elections down there. But I thank  
19 you for your input too. That's all, Mr.  
20 Chairman.

21 REP. BARRY FLEMING: Representative  
22 Smyre, is that you?

23 REP. CALVIN SMYRE: Yes, sir.

24 REP. BARRY FLEMING: Representative --  
25 Dean Smyer?

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1 REP. CALVIN SMYRE: Mr. Chairman, this  
2 may be for you, and it may be for the first  
3 gentleman.

4 REP. BARRY FLEMING: Todd Edwards?  
5 Yeah.

6 REP. CALVIN SMYRE: Todd Edwards with  
7 ACCG. But my committee -- my county is chiming  
8 in now. And their comments were that they were  
9 thinking about the 10 days in its entirety and  
10 how that was maybe too long. And then they were  
11 saying that Friday may be difficult to ensure the  
12 receipt of the absentee ballot. But at the same  
13 time, the deadline of 10 days before -- how would  
14 the 10-day rule apply to the absentee ballot if  
15 it had needed to be reissued or that the voter  
16 has not received an absentee ballot?

17 So, if they were within the 10-day rule  
18 and that the registrar's office has not received  
19 it and it needed to be reissued, then would that  
20 be applicable to what they -- what kind of safety  
21 net, they are asking me, would that voter have?  
22 They're saying that if you establish a 10-day  
23 rule and it needs to be reissued and it's within  
24 the 10-day rule, then how would the voter  
25 ascertain being an eligible voter?

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1 REP. BARRY FLEMING: Yes, sir. I think  
2 what you have is we already have that current  
3 situation in Georgia law. There is a deadline in  
4 Georgia law. It is the Friday before the  
5 Tuesday. And the point of the legislation is  
6 that deadline is unworkable because you are  
7 encouraging, arguably, someone to send in an  
8 application where very likely it may not be  
9 processed.

10 And Georgia law already recognizes the  
11 ability and difficulty of processing that because  
12 we give them, as the board of elections, three  
13 days to do it. So, all we are doing is taking  
14 the deadline that already exists and moving it to  
15 a place, a time -- the Friday before -- which is  
16 much more reasonable for all the reasons you have  
17 heard.

18 So, all the concerns that you currently  
19 raised and what would happen to the voter, the  
20 voter is not going to be able to vote unless they  
21 get there in time. Just like if you show up at  
22 the polls at 7:05 on Tuesday p.m. you have  
23 waited five minutes too late. If you -- under  
24 current Georgia law -- don't get your request in  
25 time, you possibly have waited too late. Yes,

1 sir? Follow-up? Absolutely.

2 REP. CALVIN SMYRE: Mr. Chairman, I'd  
3 like to follow up too on the ACG representative.

4 REP. BARRY FLEMING: Mr. Edwards, did  
5 you understand Dean Smyre's question?

6 TOM EDWARDS: Yes.

7 REP. BARRY FLEMING: Go ahead, Mr.  
8 Edwards.

9 TOM EDWARDS: Can you all hear me okay?

10 REP. BARRY FLEMING: Yes, sir.

11 TOM EDWARDS: Well, as you stated, Mr.  
12 Chairman, it's just -- it's moving up the  
13 deadline now. There obviously are going to be  
14 concerns. And I'm in total agreement. I'll be  
15 honest with you. We have 159 counties. On when  
16 to set that date, I think 10 would be a good day.  
17 I don't know that -- or the Friday -- moving it  
18 up a Friday. To say there's uniformity and  
19 consensus, that's never going to be the case with  
20 159 counties.

21 It's up to the will of the General  
22 Assembly to put provisions in there to stipulate  
23 that if the ballot was somehow rejected or needed  
24 to be cured, we'd certainly be open to that  
25 discussion. Also, if there's some sort of

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1 emergency, etc. But that's the best way. And  
2 again, lastly, the ability to still vote absentee  
3 in person or advanced vote under state law is  
4 still there.

5 REP. CALVIN SMYRE: May I follow up,  
6 Mr. Chairman?

7 REP. BARRY FLEMING: Yes, sir.  
8 Absolutely.

9 REP. CALVIN SMYRE: From an operational  
10 standpoint, did the -- and I'm from a  
11 consolidated government. Were all the counties,  
12 including Muscogee Columbus -- were they all  
13 involved in the study as it relates to this  
14 particular -- from an operational standpoint,  
15 when you say you established a committee and you  
16 saw the advice from all the counties in the  
17 state?

18 TOM EDWARDS: Sure. Not a particular  
19 subcommittee, but I can tell you that our policy  
20 positions went out to all ACCG membership. Every  
21 county got a vote, and they passed. So, yes,  
22 every county member of the Association of County  
23 Commissioners of Georgia did approve our policy  
24 positions. Again, this being one of nine that  
25 were approved.

## Georgia Senate Bill 202, In Re

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1 REP. CALVIN SMYRE: And the last  
2 question is, from a statutory standpoint, how  
3 long has this been in the code of Georgia -- the  
4 annotated code of Georgia? The present law, the  
5 present operational aspect with the Friday being  
6 the deadline, how long has that been operational?

7 TOM EDWARDS: Yes, sir, Dean -- Mr.  
8 Dean. I do not know the answer to that. I know  
9 it became a lot more of an issue because of the  
10 dramatic increase in absentee ballots this year  
11 and processing them.

12 REP. CALVIN SMYRE: Okay. Thank you  
13 for your service. I appreciate that.

14 TOM EDWARDS: Yes, sir. Thank you.

15 REP. BARRY FLEMING: Chairman Martin?

16 REP. CHUCK MARTIN: Mr. Chairman, thank  
17 you. And thank the committee for the indulgence  
18 here. I have not sat on your judiciary  
19 committees before, so -- understand what --

20 REP. BARRY FLEMING: This is as short  
21 meeting so far.

22 REP. CHUCK MARTIN: I understand. I'm  
23 afraid it's the last day of the week and my  
24 committee members, I'm going down in their  
25 popularity by making this one longer. But this

# EXHIBIT 147

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1

2

3 IN THE UNITED STATES DISTRICT COURT

4 FOR THE NORTHERN DISTRICT OF GEORGIA

5 ATLANTA DIVISION

6

7

8 Sixth District of the African Methodist Episcopal Church et al.

9 vs.

10 Brian Kemp et al.

11

12

13 February 25, 2021\_SR62\_SB241\_Senate Ethics

14 Audio Runtime: 0:42:45

15

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1 (Beginning of audio recording.)

2 SENATOR BURNS: We're going to move now to  
3 Senate Bill 241. Majority Leader Dugan, if you  
4 would, please, present this bill from -- from the  
5 dais.

6 MAJORITY LEADER: Thank you, Mr. Chair. I  
7 appreciate that. And I will obviously space  
8 myself so I can take my mask off so I'm easier  
9 heard. I also want to thank the members of the  
10 committee for letting me present Senate Bill 241.

11 Mr. Chair, what I'm going to ask you to  
12 start this is we make today a hearing only. I  
13 have made numerous changes to the documents that  
14 you have in front of you, and it's my  
15 understanding that there are several proposed  
16 amendments that the committee members will request  
17 that I want to make sure that we have them  
18 included as well.

19 I'm also going to ask for a collaborative  
20 effort from our committee. We often talk about  
21 how bills can be perfected during these  
22 discussions, and this one is extremely important.  
23 And what we're doing here hasn't been done really,  
24 significant reform, since 2005, so it's not  
25 something that we ought to take lightly. And I

1 look forward to working with the other members of  
2 the committee to make sure we get this right.

3 I want to go through the entire bill first,  
4 as many sections are interconnected and there have  
5 been many changes. So to avoid confusion later  
6 on, if you could, instead of amendments being  
7 offered during the process, let me just talk it  
8 through.

9 SENATOR BURNS: Without objection?

10 Thank you, Senator.

11 MAJORITY LEADER: Section 1 During the  
12 election process, the Secretary of State has his  
13 hands full with the actual conduct of any given  
14 election. We are fortunate in Georgia where it  
15 seems like every turnout exceeds the previous one,  
16 and this one small change can help him focus his  
17 attentions on the success of the election process.

18 A second thought that I had in this -- with  
19 making the modification in this section is,  
20 there's benefit, even if it's just with public  
21 perception, that the person running the election  
22 be different than the person who's receiving the  
23 complaints and checking into possible issues with  
24 the election. That's why I'm saying that the  
25 hotline go to the Attorney General's office. I

# EXHIBIT

# 148

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**In the Matter Of:**

**IN RE GEORGIA SENATE BILL 202**

1:21-MI-55555-JPB

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**THOMAS MATTHEW MASHBURN**

*March 07, 2023*

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*30(b)(6)*



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THOMAS MATTHEW MASHBURN 30(b)(6)  
IN RE GEORGIA SENATE BILL 202

March 07, 2023  
147

1 Q And when the SEB is working to implement an  
2 election law such as S.B. 202, generally how does the  
3 State Board determine its legal obligations?

4 A The -- the Board members individually might  
5 raise the issue with the Secretary of State's Office  
6 saying, do we need rules on this? But by and large, the  
7 Secretary of State has been very proactive, and they  
8 will -- since they have the staff and the full-time  
9 employees, they will be the ones to bring it up to us.

10 Q And does the SEB rely on the Secretary of  
11 State's Office for its opinions and analysis of election  
12 law issues?

13 A We rely on the Attorney General's Office for  
14 guidance legally of our responsibilities.

15 Q Have -- has the Attorney General's Office  
16 issued any guidance related to the provisions that we  
17 discussed today of S.B. 202?

18 A None that I am aware of, but, I mean, they will  
19 give us -- they have a representative at the meetings,  
20 and so they will -- they will chime in as necessary to  
21 tell us, you can do this; you can't do that.

22 Q Okay. How does the State Board define a  
23 caregiver? Does it define a caregiver?

24 A I don't recall that off the -- I would look  
25 that up, but I don't recall off the top of my head.

1 Q Could you recall any official definition of  
2 "caregiver" from, say, the Secretary of State's Office  
3 that you were provided?

4 A The only one that comes to my mind is there are  
5 some absentee balloting provisions that deal with  
6 caregivers that I -- that I seem to recall.

7 Q Do you --

8 A About who can touch a ballot, who can help  
9 apply for a ballot, things like that.

10 Q And does that have to do with delivery of  
11 absentee ballots?

12 A Applications and delivery, to the best of my  
13 knowledge.

14 Q Does the State Board have a method for  
15 communicating changes in election laws or rules with  
16 county election officials?

17 A We will talk about it on the record, and the  
18 counties listen in on that, so they will hear it there.  
19 But generally, the communication is the Secretary of  
20 State's Office. We don't -- sadly, again, we don't have  
21 a budget or staff to do that, so the Secretary of State's  
22 Office is very proactive.

23 Q Does the State Board engage in training for  
24 county election officials for election changes --

25 A No.

THOMAS MATTHEW MASHBURN 30(b)(6)  
IN RE GEORGIA SENATE BILL 202

March 07, 2023  
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1 Q -- that occur?

2 A No.

3 Q Let's say, if any of the provisions of S.B. 202  
4 that we discussed today were overturned, even  
5 temporarily, and the law reverted to what it was prior to  
6 S.B. 202, would your office have to undertake any changes  
7 at all?

8 A If -- if new rules were needed, we would need  
9 to follow the process with regard to rules and  
10 regulations and public comment and -- and processing.  
11 And that's one of the -- that's one of the main drawbacks  
12 for the Board as a policy maker, is that -- is that it  
13 takes a long time for the Board to do something. You  
14 gotta get the quorum together. You gotta publish it.  
15 You gotta have public comment. You gotta respond to  
16 that. You gotta publish it again. You gotta post it,  
17 you know. You gotta pass it. So it's not something the  
18 Board is really well set up for.

19 Q So let's say there are new -- no new rules,  
20 just rollbacks to the provisions of S.B. 202, or  
21 temporarily pausing them, would it be fair to say that  
22 the State Board wouldn't have to undertake any changes?

23 A To be -- to be painfully candid, if the Board  
24 were enjoined, I'm not sure -- I'm not sure much would  
25 change.



# EXHIBIT 149

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## Message

**From:** Edward Trent <etrent@schaerr-jaffe.com>  
**Sent:** Monday, August 21, 2023 5:14 PM  
**To:** hszilagyi@lawyerscommittee.org; erosenberg@lawyerscommittee.org; jhouk@lawyerscommittee.org; Hayes, Vilia B.; LPulgram@fenwick.com; cmccord@fenwick.com; drosborough@aclu.org; MFogelson@advancementproject.org; mjohnson@elias.law; ZRamahi@keker.com; O'Connor, Eileen (CRT); NSachdeva@keker.com; eileenm@advancingjustice-alc.org; nshah@advancingjustice-aajc.org  
**Cc:** Bryan Tyson; Brian Field; Gene Schaerr  
**Subject:** RE: In Re Georgia SB 202 / Dr. Grimmer Opinions  
**Attachments:** code.R; VoteMethod22.RData

**CAUTION: This email was sent by someone outside of the Firm.**

Heather,

Attached is an updated code and relevant data file to address a small error found in the code Dr. Grimmer previously provided. The code updates lines 298-300, which loads a data object (VoteMethod22.RData, which is attached to this email) and then obtains the relevant absentee voting rates for the calculations. The result of this calculation does not change Dr. Grimmer's conclusions. With the correction, which he can explain during his deposition tomorrow, he finds that 1.8% of white voters and 1.9% of Black voters used drop boxes in the 2022 election. This difference of -0.1 percentage points is not statistically significant (the standard error for the difference is 0.5 percentage points).

Additionally, he still does not have the following spreadsheets referenced in Dr. Burden's code concerning the drop box issue. Can you or perhaps Eileen O'Connor who I believe was working with Dr. Burden on this, provide the following spreadsheet?

Cobb DB.xlsx  
 DeKal00000016.xlsx  
 Carro00000010.xlsx  
 Cowet00000006.xlsx  
 Gilme00000005.xlsx  
 Hart00000006.xlsx  
 Longc00000009.xlsx  
 Talbo00000008.xlsx

If you have any questions, please let me know.

Thanks,

Ed

---

**From:** Edward Trent  
**Sent:** Thursday, August 10, 2023 3:05 PM  
**To:** hszilagyi@lawyerscommittee.org; erosenberg@lawyerscommittee.org; jhouk@lawyerscommittee.org; vilia.hayes@hugheshubbard.com; LPulgram@fenwick.com; cmccord@fenwick.com; drosborough@aclu.org; MFogelson@advancementproject.org; mjohnson@elias.law; ZRamahi@keker.com; eileen.o'connor2@usdoj.gov; NSachdeva@keker.com; eileenm@advancingjustice-alc.org; nshah@advancingjustice-aajc.org