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

IN RE GEORGIA SENATE BILL 202	Master Case No. 1:21-MI-55555-JPB
SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, *et al.*, *Plaintiffs,* v. BRIAN KEMP, Governor of the State of Georgia, in his official capacity, et al., *Defendants* v. REPUBLICAN NATIONAL COMMITTEE, et al, *Intervenor Defendants*	Civil Action No. 1:21-CV-01284 JPB
GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*, *Plaintiffs*, v. BRAD RAFFENSPERGER, *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

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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Plaintiffs respectfully submit this Reply Memorandum in further support of their Motion for Preliminary Injunction, ECF 574-1 ("PI Br."), and in response to the opposition briefs of State Defendants (the "State"), ECF 610 ("State's Br.") and Defendant-Intervenors, ECF 608 ("Interv. Br.") (collectively, "Defendants").

I. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF

A. Plaintiffs are likely to succeed on the merits.

Defendants fail to rebut Plaintiffs' evidence in support of their constitutional claims. Instead, Defendants' Opposition offers misstated legal standards, irrelevant facts, and conclusory arguments.

1. Defendants misconstrue the applicable legal standards.

Arlington Heights requires a court to consider the entire context around SB 202's enactment, including a holistic analysis of each factor. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-67 (1977); *Greater Birmingham Ministries v. Sec'y of State for Ala.*, 992 F.3d 1299, 1322 (11th Cir. 2021) ("*GBM*").

Defendants ask the Court to ignore the totality of this evidence, chiding Plaintiffs for relying substantially on *circumstantial* evidence of discrimination. Interv. Br. at 5. But it is axiomatic that "discriminatory intent need not be proved by direct evidence." *Rogers v. Lodge*, 458 U.S. 613, 618 (1982). As the Supreme

Court observed in *Arlington Heights*, 429 U.S. at 266-67, a careful analysis and weighting of available circumstantial evidence is required in cases such as this one – because, of course, "direct evidence of discrimination is seldom available," *Hawkins v. Ceco Corp*., 883 F.2d 977, 981 (11th Cir. 1989), and as such, contrary to Intervenors' suggestion, "the absence of direct evidence such as a 'let's discriminate' email cannot be and is not dispositive." *Veasey v. Abbott*, 830 F.3d 216, 241 (5th Cir. 2016).

Defendants then hang their hats on the "presumption of legislative good faith," stating that it somehow makes it "especially impossible" to divine the Legislature's intent here. State's Br. at 14. This claim is illogical; a legal presumption has no bearing on whether Plaintiffs here have established facts sufficient for an intent finding. Regardless, there is no meaningful debate here—Defendants themselves acknowledge, as Plaintiffs do, that this Court should use the binding *Arlington Heights* inquiry to determine whether the Legislature acted with discriminatory intent, and that the presumption of legislative good faith is not absolute. *See Abbott v. Perez,* 138 S. Ct. 2305, 2324-25 (2018). "When there is a proof that a discriminatory purpose has been a motivating factor in the decision, [] judicial deference is no longer justified." *Arlington Heights*, 429 U.S. at 265-66.

Contrary to State Defendants and Intervenors' suggestion, neither *Abbott* nor

League of Women Voters of Fla. Inc. v. Fla. Sec'y of State, 66 F.4th 905, 923 (11th Cir. 2023) ("*LWV*"), requires a court to draw favorable inferences alone from state action. Rather, both cases stand only for the unremarkable proposition that even a history of discrimination does not single-handedly shift the burden to the defendants to disprove discrimination. *Abbott*, 138 S. Ct. at 2325; *LWV*, 66 F.4th at 923. Both parties agree that Plaintiffs have the burden to demonstrate discriminatory intent based on the totality of the circumstances under *Arlington Heights* – and Plaintiffs have met that burden here.

2. Under *Arlington Heights*, the facts and evidence here demonstrate a discriminatory purpose to minimize Black voters' voting power.

Plaintiffs have offered extensive evidence that the Runoff Restrictions bear more heavily on Black voters than on white voters, both individually and taken together. PI Br. at 14-16. Plaintiffs have established that the shorter runoff period eliminates voters' ability to register and vote in the window between a general election and a runoff; that it reduces the early voting period from three weeks to one week; that weekend voting is no longer required during the early voting period; that the shortened early voting period will result in longer lines at polling places; and that each of these restrictions disproportionately affects Black voters. *Id*.

Defendants and Intervenors do not appear to dispute this evidence. Instead, Defendants respond to Plaintiffs' evidence of discriminatory effect by citing turnout numbers of *all* voters from the 2022 U.S. Senate runoff to argue that, based on this data, there is "not evidence of any impact on Black voters." State's Br. at 6-7, 16. In the first place, Defendants' reliance on turnout is misplaced, as turnout is an inappropriate and misleading means of assessing the burden of election laws on voters. *North Carolina State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 232 (4th Cir. 2015) (plaintiffs not required to demonstrate that challenged law prevented voters from voting at same levels they had in the past). Turnout rates and total turnout vary from election to election for a variety of reasons, as the State's own expert, Dr. Grimmer, attests. Ex. 1 (Dep. of Justin Grimmer at 54:21-25); ECF 566-47 (Fraga Sur-Rebuttal at ¶¶ 12-17); ECF 574-37 (Grimmer Report at ¶¶ 37, 43, 46). These may include demographic changes, or political factors such as particularly competitive electoral races in a given cycle, or particularly attractive or polarizing candidates. ECF 566-43 (Burden Sur-Rebuttal at 11-12); ECF 566-47 at ¶¶ 21-27.

Moreover, using turnout data from the 2022 elections fails to account for the full burden of the Runoff Restrictions on Black voters: the fact that many Black voters were able to overcome those burdens to cast their vote in the 2022 runoff elections does not negate that the Runoff Restrictions created those burdens in the

first place. ECF 566-47 at ¶¶ 21-27. Indeed, Black voters and voting rights organizations undertook considerable counter-mobilization efforts to overcome SB 202's discriminatory provisions. ECF 566-12 (Calhoun Decl. at ¶¶ 29-37) (describing statewide voter outreach efforts in response to SB 202); ECF 566-13 (Cotton Decl. at ¶¶ 26-38) (same). Defendants' expert agrees that voters who successfully turn out could still face disproportionate voting burdens compared to other voters. Ex. 1 at 336:19-338:18. Reliance on turnout alone to disprove disparate impact is therefore misplaced.

In any event, the very data from the 2022 runoff elections upon which Defendants and their expert rely demonstrates that Black turnout *decreased* in the 2022 midterm elections and runoff election relative to the 2018 midterm election and 2021 runoff election. ECF 574-37 at ¶¶ 31-35 & Tbl. 2. That Dr. Grimmer's own analysis shows decreased Black turnout even as overall turnout remained historically high – and in a midterm and runoff election in which, as Defendants note, multiple Black candidates were on the ballot including both candidates in the Senate runoff – underscores that SB 202 accomplished its discriminatory goals.

Finally, Defendants seek to downplay the impact of cumulative effects of various provisions of SB 202 on Black voters, including the Runoff Restrictions, by urging this Court to focus on the individual effects of specific provisions.

Defendants baldly assert that Plaintiffs cannot "stack all provisions as a "compounding effect" for purposes of this motion." State's Br. at 16. That proposition lacks any legal support. "A panoply of regulations, each apparently defensible when considered alone, may nevertheless have the combined effect of severely restricting participation and competition." *Clingman v. Beaver*, 544 U.S. 581, 607-08 (2005) (O'Connor, J., concurring in part and concurring in the judgment); *McCrory*, 831 F.3d at 231 (analyzing cumulative effect of various statutory provisions upon disenfranchisement).[1] And it lacks factual support, given that Defendants' own expert acknowledges that voters face many different costs of voting that affect their decision to participate politically. Ex. 1 at 129:13-24.

a) The discriminatory impact was foreseeable to the Legislature.

The discriminatory impact of the Runoff Restrictions was eminently foreseeable. *See* PI Br. at 5-7, 20-21; ECF 574-5 (Burden Report at 11, Tbl. 5) (showing that Black voter usage of absentee ballots had surpassed white voters in 2020 and 2021, but Black voters also experience higher rates of rejection of absentee

[1] The State attempts to distinguish *McCrory* on various grounds, alleging that the Fourth Circuit failed to presume legislative good faith, cited historical socioeconomic disparities, and cited North Carolina's history of race discrimination. State's Br. at 16 & n.4. But none of these arguments even purport to help it the State disambiguate SB 202's various discriminatory provisions and to distract from their cumulative effect.

ballots), ECF 574- 31 (Ex. A (Tr. Of Feb. 19, 2021 Hrg. Of Special Committee on Election Integrity 161:1-162:12)) (testifying about foreseeable issues with shorter runoff times in prior elections); ECF 574-33 (CDR00009771-773 (Email from Janine Eveler, Cobb County Director, to House EIC and Senate Ethics Committee, Ryan Germany and Chris Harvey, March 11, 2021)) (outlining concerns with timing of elections under proposed legislation); ECF 574-36 (Harvey Dep.at 117:2-14) (describing shorter election timeline as a "nightmare"); ECF 574-38 (CDR00526646 (Email Chain between Ryan Germany, Barry Fleming, Javier Pico Prats, and Bryan Tyson, March 10, 2021) (outlining concerns with proposed legislation); ECF 574-32 (Sterling Dep. at 185:1-187:24) (noting that election official would have preferred longer election administration time).

Defendants do not meaningfully address this plethora of evidence before the Legislature and in the public domain. Instead, they argue that imputing knowledge to legislators, notwithstanding that evidence, is speculative. State's Br. at 19-20. Yet Plaintiffs' evidence remains uncontroverted: the key architects of SB 202 were directly alerted, by public and private statements including legislative testimony about the likely effects of SB 202 on both voters and election administrators. *See* ECF 574-33 at CDR00009773 ("[A]llowing only 28 days will not work for a runoff with federal races. You are eliminating all but a few days of early voting [in runoffs]

which will mean that lines on election day will be untenable" in major urban and suburban counties with significant Black populations."); ECF 574-31 (Bailey Report, Ex. A at 162:10-162:9) (warning that four-week runoff period could result in only three days of early voting, and "even if we just did five weeks after the election, it is a very big rush for all of us to prepare for an election in three weeks or in two-and-a-half weeks depending on how quickly we get databases for the runoff."). Defendants' position is also directly controverted by the case law. *See United States v. Texas Ed. Agency (Austin Indep. Sch. Dist.)*, 564 F.2d 162, 167 (5th Cir. 1977)[2] (applying "the ordinary rule of tort law that a person intends the natural and foreseeable consequences of his actions" into the test for ascertaining discriminatory intent) (collecting cases).

Defendants emphasize that Plaintiffs have limited direct evidence regarding whether the Legislature actually considered the racial impact as applied to the Runoff Restrictions. State's Br. at 20-21. But Defendants doggedly resisted legislative discovery of just this type of evidence, relying on legislative privilege. ECF 539 (Order Granting Defs. Motion to Quash). That privilege cannot serve as both a sword and shield. *Singleton v. Merrill*, 576 F. Supp. 3d 931, 940 (N.D. Ala.

[2] This case is adopted as binding Eleventh Circuit precedent. *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206 (11th Cir. 1981).

2021) ("The Legislators seek to use their unique position as HB1's principal drafters as a sword to defend the law on its merits, but intermittently seek to retreat behind the shield of legislative privilege when it suits them."); *Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1126 (D. Neb. 2012).[3]

Intervenors allow that "[a]t most, Plaintiffs' evidence of statistical disparities shows partisan motive, not racial motive." But the Constitution forbids racial discrimination for the purpose of obtaining a partisan advantage; that race discrimination may be in service of an underlying partisan motive is irrelevant. *McCrory*, 831 F.3d at 233; *cf. League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 427-28, 440 (2006). "To be sure…intentionally targeting a particular race's access to the franchise because its members vote for a particular party is impermissible." *LWV*, 66 F.4th at 924 (cleaned up).[4]

[3] Indeed, Defendants' argument is particularly curious given that their Opposition relies almost entirely upon the declaration of Ryan Germany, who himself is not a member of the Legislature and certainly cannot speak to the intent of any legislator, much less the entire legislature.

[4] Intervenors acknowledge the Eleventh Circuit's observation that "it might be suspicious if partisan reasons were the only consideration or justification for the law," *GBM*, 992 F.3d at 1326, but nevertheless assert that the "suspicion" may be overcome where the state "has provided valid neutral justifications (combatting voter fraud, increasing confidence in elections, and modernizing [the State's] elections procedures) for the law's passage." *Id*. at 1327. But Intervenors assert none of those justifications here, instead citing the "exhausting" effect of a nine-week runoff. Interv. Br. at 10-11.

b) The history of discrimination and sequence of events leading to the Runoff Restrictions' enactment are relevant and contextualize a racially discriminatory purpose.

Arlington Heights further instructs this Court to look to any history of discrimination and to the sequence of events leading to SB 202's enactment to place the law in appropriate context. Plaintiffs have provided a full recounting of both the historical background and the sequence of events leading to SB 202's passage to demonstrate that the Runoff Restrictions did not arrive in a vacuum but against a historical backdrop that informed both the actions of legislators and politicians and the burdens upon voters, advocates, and election officials.

Defendants misconstrue the purpose of this extensive history of discrimination and the import of the sequence of events leading to SB 202's enactment. Plaintiffs do not, contrary to Defendants' suggestion, offer this history as *proof positive* of discriminatory intent. PI Br. at 22-23. Instead, it is appropriate context for political decisions, regarding recent events, the political environment, history, and changing demographics—precisely the context required by the second and third *Arlington Heights* factors. Defendants' attempt to read this unfavorable context out of the *Arlington Heights* analysis should be rejected.

As set forth in the opening brief, that history is relevant here. State Defendants offer only a paragraph contending that Plaintiffs have identified no evidence

concerning a history of discrimination relating to *runoff elections specifically*, which is inaccurate. *See, e.g.*, ECF 574-6 (Anderson Report at 53) (outlining historical racial discrimination in runoff elections); State's Br. at 22-23.

c) Defendants ignore the substantive and procedural departures from legislative norms.

Defendants ignore the considerable evidence offered by Plaintiffs regarding the substantive and procedural deviations from normal legislative process leading to SB 202's enactment: SB 202 was passed amid an overwhelming flurry of election-related bills, in a hurried fashion and excluding Black legislators from the process. PI Br. at 20-21. Defendants contend that the lack of transparency and rushed legislative process are "part and parcel" of the legislative process – citing to *GBM*, which says nothing of the kind. 992 F.3d at 1326-27; Interv. Br. at 12-13. Moreover, Defendants ignore the extensive evidence demonstrating that SB 202's passage was anything but normal. See ECF 574-18 (Burnough Decl. at ¶¶ 29-37, 43-54); Ex. 2 (Dep. of Charles Tonnie Adams at 42:14-43:4); ECF 574-17 (Bailey Dep. at 105:9-106:6). SB 202 arrived amid an almost unprecedented flood of election-related bills, as Defendants' expert testified. *Id.* at 62:11- 63:2 ("[T]he volume of bills coming through, there were more than usual, more than I can recall in a long time, if perhaps ever.") Only three hearings were held on this sweeping legislation. ECF 574-18 at ¶ 49. And both Black legislators and others from the minority party were shut out

of the process. ECF 574-20 (Germany Dep. at 36:14-38:13); 574-18 at ¶¶ 36-38, 46, 49; ECF 574-21 (Jones Decl. at ¶¶ 19-21).[5]

State Defendants respond with a cursory, self-serving statement from SB 202 itself that it was "the product of 'hours of testimony,' finalized after 'significant modifications through the legislative process,' that were the result of weighing 'the various interests involved.'" State's Br. at 18, citing SB 202 at 6:139-143. They also cite, without elaboration, to several paragraphs of a declaration from Ryan Germany in which Mr. Germany discusses the legislative process behind SB 202 and another election-related bill from 2019, HB 316. That comparison is inapposite. There is no basis to conclude that HB 316 itself reflected a normal legislative process, nor does Mr. Germany even state that the legislative processes for the two

[5] The State tries to discount the record evidence showing a flawed and non-transparent legislative process by claiming that Dr. Anderson is not qualified to opine on Georgia legislative processes. State's Br. at 8-9. The State misrepresents Dr. Anderson's report and conclusions; she is not offering an expert opinion on Georgia's procedural rules. ECF 574-6 at 169-70. Instead, she offers expertise as a trained historian who reviewed all the relevant legislative hearings. Her testimony, consistent with the *Arlington Heights* factors, sheds light on the sequence of events and legislative history, including contemporary statements made, among other evidence. ECF 574-6 at 19. This type of expert evidence is highly relevant to assess discriminatory intent, and courts frequently find it valuable in making such assessments. *See Hunter v. Underwood,* 471 U.S. 222, 229-30 (1985); *McCrory*, 831 F.3d at 220 (noting that "the key evidence" was "primarily … expert testimony"); *Veasey*, 830 F.3d at 237, 259 & n.30 (citing an expert historian's testimony on a photo ID law's discriminatory intent and effect).

bills were similar, or in what way they were similar (e.g., a similar number of hearings, similar exclusion of Black legislators, or a similar time frame for passage).

d) Defendants continue to cloak the Legislature's discriminatory intent in tenuous justifications.

Plaintiffs have also offered evidence regarding the alleged justifications of SB 202, focusing on the supposed reduction of administrative burdens with a four-week runoff. Defendants' Oppositions confirm, rather than rebut, Plaintiffs' contention that these justifications are tenuous at best.

State Defendants rely almost entirely upon the declaration of Ryan Germany, a member of the Secretary of State's front office staff, to argue that the true motivations behind SB 202 were "increasing voter confidence, reducing the burden on election officials, streamlining the process of elections, and promoting uniformity." State's Br. at 22. Mr. Germany is himself not a member of the Legislature and cannot speak for the entire Legislature or its intent. And in any event, with respect to *runoffs* specifically, neither Mr. Germany nor State Defendants identify any relationship between a shorter runoff period and voter confidence, only that more political ads during the nine-week runoff was "not popular with voters" and that SB 202's Runoff Restrictions were passed to "[s]ave Christmas." ECF 610-3 (Germany Decl. at ¶¶ 13, 30).

With respect to the "burden on election officials," the evidence indicates that a four-week runoff will *increase* the burden on election officials. PI Br. at 20-21. Moreover, Intervenors deny, at some length, that reducing administrative burdens was a goal of the legislation at all. Interv. Br. at 10-12. That Defendants cannot even agree as to whether those burdens were an animating purpose behind the enactment of SB 202 underscores its weakness as an alleged justification.

Beyond administrative burden, State Defendants and Intervenors both emphasize that voters were "exhausted" after the 2021 runoff and that the nine-week runoff was not popular with voters. That supposed justification flies in the face of actual record-breaking voter turnout in the 2021 runoff. Defendants make much of the probative value of total turnout when they think it suits them; it defies credulity that those same Defendants would look at turnout data and conclude that voters were unhappy with the arrangement.[6]

[6] Defendants argue that statements from "political opponents" are not probative to whether SB 202's disparate impact was foreseeable and known by the legislature. State's Br. at 19, Interv. Br. at 2, 8, 10-11. But as Plaintiffs' opening brief demonstrates, the evidence of tenuous justifications came not only from opponents of the bill but from legislative witnesses, including nonpartisan election officials, including supporters of the bill. PI Br. at 8-9, 17-18, 20-21; 574-32 at 152:20-152:1; 153:6-18. Although the Defendants are evidently unbothered by the concerns of their political opponents, that is not evidence that those concerns were invalid, as the evidence supplied by Plaintiffs makes clear. Br. at 17-18.

In the absence of non-pretextual justifications for SB 202's Runoff Restrictions, State Defendants point to voting laws in *other* states, which are not at issue in this litigation, and sarcastically remark that "it is curious why Plaintiffs have not sued those states." State's Br. at 21. Plaintiffs and the individuals they represent do not live or vote in *other* states, and have not been burdened in their exercise of the franchise by other states' laws: they live and vote in Georgia, and it is SB 202's Runoff Restrictions and not some other law that abridged their right to vote. State Defendants' Opposition not only fails to address Plaintiffs' evidence, it speaks volumes regarding the State of Georgia's cavalier attitude toward the rights of Black voters within its borders.

> e) Even assuming Defendants had some reasonable interests, they could have still achieved those with less discriminatory alternatives.

Finally, even if the State identified some reasonable interests behind the Runoff Restrictions, those interests could have been achieved with less discriminatory alternatives, including a five-, six-, or seven-week runoff. *See* PI Br. at 20-21. For example, the goal of "harmonizing" state and federal runoffs, ECF 610-3 at ¶¶ 29-30, could have been achieved just as easily by standardizing both runoffs at a period longer than four weeks. Similarly, a five- to seven-week runoff would both have had a lesser discriminatory impact on Black voters, and would have

enabled the election cycle to conclude in advance of the Christmas holiday. Finally, a runoff period between four and nine weeks would have enabled federal officials elected in the runoff to take office upon the swearing-in of a new Congress on January 3. *Cf.* ECF 610-3 at ¶ 70. And as Plaintiffs have emphasized, a longer runoff period of even a few weeks would have reduced the administrative burden on election officials. PI Br. at 20-21.

B. **Defendants fail to meet their burden to prove that the challenged Runoff Restrictions would have passed absent a racially discriminatory purpose.**

Once Plaintiffs have made an initial showing that race was a substantial or motivating factor behind the enactment of a law, "the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." *Hunter v. Underwood*, 471 U.S. at 228. As set forth above and in Plaintiffs' opening brief, Plaintiffs have made such a showing. *See* supra Sec. 2A; PI Br. at 14-23; Defendants fail to meet their burden in response. Defendants devote just two paragraphs to potential justifications for SB 202, including "increasing voter confidence, reducing the burden on election officials, streamlining the process of elections, and promoting uniformity." State's Br. at 22.[7] But the relevant question

[7] Again, this rationale is in tension with Intervenor Defendants' contention that Plaintiffs were mistaken in assuming administrative burden as the justification for SB 202.

for this Court is not whether any plausible legitimate justification for the law existed; rather, "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). As set forth in Section 2Ad, *supra*, the Defendants' alleged justifications are *post hoc*, tenuous, and pretextual.

C. **Plaintiffs have suffered and will continue to suffer irreparable harm.**

Remarkably, after repeatedly moving to extend discovery, Defendants now contend that Plaintiffs unreasonably delayed in filing this motion. Interv. Br. at 14-17; State's Br. at 23-24. These arguments are baseless.

Defendants' arguments on delay are essentially identical to the ones this Court rejected in a recent decision in this case. *See* ECF 613 at 32-34 ("Had Plaintiffs filed their motions earlier, their prospective harms would not have been imminent, but had they filed any later, their relief may have been barred by *Purcell*."). There is no reason for the Court to depart from that analysis, which applies with equal force here.

The facts demonstrate that Plaintiffs timely filed this Motion shortly after the end of discovery to preclude injuries in the 2024 election cycle, with the knowledge that a 2023 trial would be unlikely. *See* ECF 400 (Order Granting in Part Motion for Extension of Time to Complete Discovery and Motion for Status Conference).

Given the likelihood that trial will take place in 2024 or beyond, preliminary injunctive relief is the only way Plaintiffs could plausibly obtain relief before the 2024 general election and any resulting runoff elections. *Cf. Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam). Notably, this Court has recently considered and granted other motions for preliminary injunctive relief in this litigation. *See, e.g.*, ECF 613, 614.

Plaintiffs filed following extensive discovery necessary to establish a full factual record on a key issue of legislative intent. Defendants repeatedly sought to prolong discovery, seeking extensions of the discovery schedule until spring 2023, *see, e.g.*, ECF 453 (Def's. Motion to Extend Discovery), and declining to make key witnesses available for deposition until spring of 2023. Plaintiffs could not have reasonably obtained the information and data necessary for this motion more quickly, particularly given Defendants' own dilatory tactics. *See Georgia 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).

Defendants' contention that Plaintiffs will not suffer irreparable harm if relief is denied is equally spurious. As elections occur at regular intervals, so too do injuries arising out of denial of equal access to the franchise; they are repeated and recurring injuries occurring with every election. *See League of Women Voters of*

Fla., Inc., v. Detzner, 314 F. Supp. 3d 1205, 1223 (N.D. Fla. 2018); *League of Woman Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). State Defendants and Intervenors' reliance on a trademark case, *Wreal, LLC v. Amazon.com*, 840 F.3d 1244, 1248 (11th Cir. 2016), is therefore inapposite—not only because the denial of the fundamental right to vote is not comparable to trademark infringement, but also because injuries from misuse or appropriation of intellectual property are generally not recurring but continuous. Plaintiffs' filing of this Motion within weeks of the close of discovery is consistent with precedent in similar voting rights cases. *See LWV of N.C.*, 769 F.3d at 230, 232 (PI filed after discovery was conducted). Similarly, Defendants' argument that the harm wrought by SB 202 cannot be "irreparable" because an election cycle and runoff have come and gone in 2022 is absurd. The harm Plaintiffs will suffer absent an injunction will be repeated every election cycle until relief is granted. *See* ECF 613, 614.

D. **The balance of equities weigh in Plaintiffs' favor.**

The balance of equities also weigh in favor of granting an injunction. The burden on Plaintiffs if an injunction is not granted would be an unconstitutional impingement on Black voters' access to the franchise, far outweighing any limited administrative burden the State may face in extending the runoff period or reverting to the nine-week period. *See Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d

1349, 1355 (11th Cir. 2005); ECF 566-1 (Plaintiffs' Motion in Support of Preliminary Injunction at 61-62). There is more than a year until the 2024 general election and any subsequent runoffs, giving the State ample time to adhere seamlessly to an injunction from this Court. *See* PI Br. at 24-25. As the State's witnesses have testified, Georgia election officials have conducted recent elections effectively notwithstanding the impact of new laws such as HB 316 and SB 202, the impact of a global pandemic, and the promulgation of emergency rules in response. *See* ECF 566-1 at 7-9.[8] There is no reason that they could not do so now.

Finally, Intervenors assert that *Purcell* forecloses relief. This Court recently rejected the application of the *Purcell* principle here, with the earliest elections in Georgia more than six months away. *See* ECF 614 at 36-39. The same *Purcell* analysis applies with equal force here.

II. PLAINTIFFS HAVE STANDING

The State's claim that Plaintiffs "provide no evidence whatsoever of any organizational injury or associational activities related to the runoff provisions they challenge" is wrong and contradicted by record evidence. State's Br. at 14.

[8] Contrary to State Defendants' suggestion, the Local Rules for the Northern District of Georgia and this Court have no limitation on incorporation by reference. Plaintiffs cited to the (65-page) Joint Brief, ECF 566, to avoid unnecessary duplication of arguments, and to avoid a request for additional excess pages (to which all parties have repeatedly stipulated), not to "evade" page limits.

Organizational Standing: Plaintiffs have organizational standing because they have diverted resources to respond to the Runoff Restrictions. As set forth in the opening brief, enactment of the Runoff Restrictions erected barriers that have impaired Black voters' access to the ballot box. Plaintiffs have been forced to divert resources to counteract such barriers. *See* PI Br. at 14-18; *Florida State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008) (noting division of resources as grounds for organizational standing). It is false that Common Cause "says nothing about runoffs," State's Br. at 13; Common Cause testified about its voter participation efforts in both the "2020 Primary and *Runoff* election cycles." Doc. 574-9, (Dennis Decl. at ¶ 6) (emphasis added). It is likewise false that Delta Sigma Theta Sorority's testimony related to the runoff election had "no relationship" to organizational activity. State's Br. at 13-14. 30(b)(6) designee Ms. Briggins testified about how the Deltas have diverted resources to combat the fear that SB 202 engendered and to encourage voter engagement in time for the runoff election. ECF 574-14 (Briggins Dep. at 114:21-115:3) ("[T]here was a lot of fear invoked in the organization and outside the organization. So we really had to push … to increase the amount of engagement that we had. Eventually people came around, especially when we moved into the runoff …").

Similarly, the Georgia Muslim Voter Project ("GAMVP") 30(b)(6) designee testified that the Runoff Restrictions required the organization to divert resources to respond and, as a result, GAMVP fell behind on its planning and goals for the following year. Ex. 3 (Dep. of Shafina Khabani at 100:16-22) ("with…the runoff election and just all the work we had to put in towards GOTV with the limited early voting and limited time for the runoffs and really having to rally and put together events and things for our community to get them prepared for the elections and runoffs, we got behind on our planning in 2023."); *see Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) ("organizations can establish standing to challenge election laws by showing that they will have to divert personnel and time to educating potential voters on compliance with the laws").

Moreover, SB 202's shortened early voting period for runoffs has severely reduced the number of senior voters Metropolitan Atlanta Baptist Ministers Union (MABMU)—one of the plaintiffs in the Concerned Black Clergy case—can transport to the polls. Ex. 4 (Decl. of Rev. Stanley Smith at ¶¶ 3-4, 9).[9] The Runoff Restrictions therefore injure MABMU—which has long provided transportation to seniors so they can vote early in-person, including during runoff elections—because

[9] Note that the substance of Rev. Smith's declaration is derived entirely from his February 27, 2023, deposition taken by State Defendants.

it undermines MABMU's mission of empowering members of the Black community through voter engagement. *Id.* ¶ 9. MABMU also has had to divert resources to help educate its membership and their constituent congregations on the numerous obstacles to voting imposed by SB 202. *Id.* ¶ 6. Because of this diversion, MABMU has had less time to dedicate to some of its core activities, including Christian education and Bible study. *Id*. Plaintiffs' past diversion of resources show a substantial likelihood of future harm absent injunctive relief, particularly given the frequency of runoff elections in Georgia. Likewise, the Georgia Coalition for the People's Agenda (GCPA) 30(b)(6) designee testified that the compression of time for the runoff creates burdens for voters and GCPA has had to dedicate time and resources to educate its members and the public about this and the other new restrictions of SB 202. Ex. 5 (Dep. of Helen Butler at 122:5-125:6). And, the Georgia NAACP has presented evidence, which this Court has accepted, that it has had to divert attention and resources away from other programming toward educating members and the public about the changes to the voting laws ushered in by SB 202. *See* ECF 548-12 (Griggs Decl. at ¶¶ 7-11); ECF 613 at 8-10.

Associational standing: Plaintiffs also have associational standing because the Runoff Restrictions harm their members. Indeed, the State's own evidence supports Plaintiffs' associational standing. The State's expert and fact witnesses

confirm that the Runoff Restrictions disproportionately burden Black voters and worsen the long voting lines members of Plaintiffs' organizations already face. *See, e.g.*, ECF 574-36 at 117:2-14; ECF 574-31 at ¶¶ 58-60; PI Br. at 23-24 (discussing likelihood of irreparable harm to Plaintiffs absent relief from Runoff Restrictions). As GAMVP's Rule 30(b)(6) designee, Shafina Khabani, testified:

> I know [a GAMVP member] personally…with having only one week of early voting for the runoffs as a result of SB 202, tried to vote during her lunch break because that's the only time she could go vote. She has kids and had to go take care of them after. She had to go three times. She almost didn't go the third time to go vote because… she had an hour for lunch. The lines were really long. And it was really discouraging to her to have to go through that.

Ex. 3 at 132:20-133:12. Ms. Khabani further testified that this member's injury is representative of that of many other members who faced barriers in exercising their right to vote during the 2022 runoff. *See id.* at 179:20-180:2 (in response to question regarding harm to GAMVP members specifically, stating "…we heard from many community members who said they had struggled during the runoffs to vote early, that the lines were long and some people…walked away or didn't want to stay in those long lines"); *see also* Ex. 5 at 124:10-18) (GCPA designee testifying that "a lot of people [] were not able to vote early because of [the compressed time for runoffs]"). The Court previously found that Plaintiffs had established associational standing as to the Georgia NAACP because it has about 10,000 members in the state, making it extremely unlikely that a single member would not be impacted by SB

202's birthdate requirement. ECF 613 at 10-14. Plaintiffs have shown that the same is true as to the Runoff Restrictions.

The State flippantly dismisses the testimony of the Justice Initiative 30(b)(6) designee, Reverend Malone, as only concerning "how the 'Souls to the Polls' program worked." State Op. at 14. But Reverend Malone explained that before the Runoff Restrictions were enacted, members would vote on Saturdays and Sundays (days congregants had off from work) because this would "relieve[] them of the intimidation because [they were] doing it together as a congregation." *See* ECF 574-15 (Malone Sr. Dep. at 101:9-102:5). The Runoff Restrictions "reduced that drastically," injuring members by stripping them of the protection weekend voting had afforded them. *See id.* at 101:13-101:18; *see also* Ex. 3 at 132:20-133:12; 179:20-180:2 (describing difficulty voters faced in having only one week to vote early in the 2022 runoff, including attempting to vote multiple times due to long lines). As with organizational harm, future harm to Plaintiff members is likely to continue if the Runoff Restrictions remain in place.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction should be granted.

Date: August 24, 2023

Respectfully submitted,

/s/ Pichaya Poy Winichakul
Bradley E. Heard (Bar No. 342209)
bradley.heard@splcenter.org
Pichaya Poy Winichakul (Bar 246858)
poy.winichakul@splcenter.org
Matletha N. Bennette*
matletha.bennette@splcenter.org
SOUTHERN POVERTY
LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, Georgia 30031-1287
Telephone: (404) 521-6700
Facsimile: (404) 221-5857

Jess Unger*
jess.unger@splcenter.org
Sabrina S. Khan*
sabrina.khan@splcenter.org
SOUTHERN POVERTY
LAW CENTER
1101 17th Street NW, Suite 705
Washington, DC 20036
Telephone: (202) 728-9557

/s/ *Adam S. Sieff*
Adam S. Sieff*
adamsieff@dwt.com
Daniel Leigh**
danielleigh@dwt.com
Brittni A. Hamilton*
brittnihamilton@dwt.com
DAVIS WRIGHT TREMAINE LLP

/s/ Leah C. Aden
Leah C. Aden*
laden@naacpldf.org
Alaizah Koorji*
akoorji@naacpldf.org
John S. Cusick*
jcusick@naacpldf.org
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, New York 10006
Telephone: (212) 965-2200
Facsimile: (212) 226-7592

Anuja Thatte*
athatte@naacpldf.org
NAACP LEGAL DEFENSE AND
EDUCATION FUND, INC.
700 14th Street, NW
Washington, DC 20005
Telephone: (202) 682-1300

/s/ Tania C. Faransso
Tania C. Faransso*
tania.faransso@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, D.C. 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363

865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Facsimile: (213) 633-6899

Matthew R. Jedreski*
mjedreski@dwt.com
Grace Thompson*
gracethompson@dwt.com
Danielle E. Kim*
daniellekim@dwt.com
Kate Kennedy*
katekennedy@dwt.com
Shontee Pant*
ShonteePant@dwt.com
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104-1610
Telephone: (206) 622-3150
Facsimile: (206) 757-7700

David M. Gossett*
davidgossett@dwt.com
Courtney DeThomas*
courtneydethomas@dwt.com
DAVIS WRIGHT TREMAINE LLP
1301 K Street NW, Suite 500
Washington, D.C. 20005-7048
Telephone: (202) 973-4288
Facsimile: (202) 973-4499

Attorneys for Plaintiffs Georgia Muslim Voter Project, Women Watch Afrika, Latino Community Fund Georgia, and The Arc of the United States

Debo P. Adegbile*
debo.adegbile@wilmerhale.com
Alexandra Hiatt*
alexandra.hiatt@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
250 Greenwich Street
New York, New York 10007
Telephone: (212) 230-8800
Facsimile: (212) 230-8888

George P. Varghese*
george.varghese@wilmerhale.com
Stephanie Lin*
stephanie.lin@wilmerhale.com
Arjun K. Jaikumar*
arjun.jaikumar@wilmerhale.com
Mikayla C. Foster*
mikayla.foster@wilmerhale.com
Sofia C. Brooks*
sofie.brooks@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, Massachusetts 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

Nana Wilberforce*
nana.wilberforce@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Avenue, Suite 2400
Los Angeles, California 90071
Telephone: (213) 443-5300
Facsimile: (213) 443-5400

**Admitted pro hac vice*

***Application to be admitted pro hac vice forthcoming*

/s/ *Sophia Lin Lakin*
Sophia Lin Lakin*
slakin@aclu.org
Davin M. Rosborough*
drosborough@aclu.org
Jonathan Topaz*
jtopaz@aclu.org
Dayton Campbell-Harris*
dcampbell-harris@aclu.org
ACLU FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Telephone: (212) 519-7836
Facsimile: (212) 549-2539

Susan P. Mizner*
smizner@aclu.org
ACLU FOUNDATION, INC.
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0781

Brian Dimmick*
bdimmick@aclu.org
ACLU FOUNDATION, INC.
915 15th Street NW
Washington, D.C. 20005
Telephone: (202) 731-2395

/s/ *Rahul Garabadu*
Rahul Garabadu (Bar 553777)
rgarabadu@acluga.org
Caitlin May (Bar 602081)
cmay@acluga.org

Cory Isaacson (Bar 983797)
cisaacson@acluga.org
ACLU FOUNDATION OF
GEORGIA, INC.
P.O. Box 570738
Atlanta, Georgia 30357
Telephone: (678) 981-5295
Facsimile: (770) 303-0060

Attorneys for Plaintiffs
Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, Georgia Advocacy Office, and Southern Christian Leadership Conference

/s/ *Bryan L. Sells*
Bryan L. Sells
Georgia Bar No. 635562
The Law Office of Bryan Sells, LLC
PO Box 5493
Atlanta, Georgia 31107
Tel: (404) 480-4212
Email: bryan@bryansellslaw.com

Jon Greenbaum (pro hac vice)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (pro hac vice)
erosenberg@lawyerscommittee.org
Julie M. Houk (pro hac vice)
jhouk@lawyerscommittee.org
Jennifer Nwachukwu (pro hac vice)
jnwachukwu@lawyerscommittee.org
Heather Szilagyi (pro hac vice)
hszilagyi@lawyerscommittee.org
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900

Washington, D.C. 20005
Telephone: (202) 662-8600
Facsimile: (202) 783-0857

Vilia Hayes (pro hac vice)
Neil Oxford (pro hac vice)
Gregory Farrell (pro hac vice)
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004-1482
Telephone: (212) 837-6000
Facsimile: (212) 422-4726

Laurence F. Pulgram (pro hac vice)
lpulgram@fenwick.com
Molly Melcher (pro hac vice)
mmelcher@fenwick.com
Armen Nercessian (pro hac vice)
Anercessian@fenwick.com
Ethan Thomas (pro hac vice)
EThomas@fenwick.com
FENWICK & WEST LLP
555 California Street
San Francisco, CA 94104
Telephone: 415.875.2300

Joseph S. Belichick (pro hac vice)
jbelichick@fenwick.com
FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041-2008
Telephone: 650-988-8500

Catherine McCord (pro hac vice)
cmccord@fenwick.com
FENWICK & WEST LLP
902 Broadway, Suite 14

New York, NY 10010
Telephone: (212) 430-2690

Attorneys for Plaintiffs Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., League of Women Voters of Georgia, Inc., GALEO Latino Community Development Fund, Inc., Common Cause, and Lower Muskogee Creek Tribe

/s/ *Kurt Kastorf*
Kurt Kastorf (GA Bar No. 315315)
KASTORF LAW, LLC
1387 Iverson Street, N.E., Suite 100
Atlanta, GA 30307
Telephone: 404-900-0330
kurt@kastorflaw.com

Judith Browne Dianis*
Matthew A. Fogelson*
Angela Groves*
ADVANCEMENT PROJECT
1220 L Street, N.W., Suite 850
Washington, DC 20005
Telephone: (202) 728-9557
JBrowne@advancementproject.org
MFogelson@advancementproject.org
AGroves@advancementproject.org

Clifford J. Zatz*
Justin D. Kingsolver*
William Tucker*
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

Telephone: (202) 624-2500
CZatz@crowell.com
JKingsolver@crowell.com
WTucker@crowell.com

Jordan Ludwig*
CROWELL & MORING LLP
515 South Flower Street, 40th Floor
Los Angeles, CA 90071
Telephone: (213) 443-5524
JLudwig@crowell.com

*Admitted *pro hac vice*

Attorneys for Plaintiffs The Concerned Black Clergy of Metropolitan Atlanta, Inc., The Justice Initiative, Inc., Metropolitan Atlanta Baptist Ministers Union, Inc., First Congregational Church, United Church of Christ Incorporated, Georgia Latino Alliance for Human Rights, Inc.

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/ Tania Faransso

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/ Tania Faransso

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

IN RE GEORGIA SENATE BILL 202	Master Case No.: 1:21-MI-55555-JPB
SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, *et al.*, *Plaintiffs*, v. BRIAN KEMP, Governor of the State of Georgia, in his official capacity, *et al.,* *Defendants,* REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants.*	Civil Action No.: 1:21-cv-01284-JPB
GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*, *Plaintiffs,* v. BRAD RAFFENSPERGER, in his official capacity as the Secretary of State for the State of Georgia, *et al.*, *Defendants,* REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants.*	Civil Action No.: 1:21-CV-01259-JPB
THE CONCERNED BLACK CLERGY OF METROPOLITAN ATLANTA, INC., *et al.*, *Plaintiffs*, v.	Civil Action No.: 1:21-CV-01728-JPB

BRAD RAFFENSPERGER, in his official capacity as the Secretary of State for the State of Georgia, *et al.*, *Defendants,* REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants.*	

DECLARATION OF TANIA FARANSSO IN SUPPORT OF PLAINTIFFS' REPLY BRIEF TO THEIR MOTION FOR A PRELIMINARY INJUNCTION

I, Tania Faransso, declare as follows:

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 a Partner at Wilmer, Cutler, Pickering, Hale, and Dorr. and represent Plaintiffs Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, and Georgia Advocacy Office in the above-captioned matter.

3. Attached as Exhibit 1 is a true and correct copy of the transcript of the Deposition of Justin Grimmer.

4. Attached as Exhibit 2 is a true and correct copy of the transcript of the Deposition of Charles Tonnie Adams.

5. Attached as Exhibit 3 is a true and correct copy of the transcript of the Deposition of Shafina Khabani.

6. Attached as Exhibit 4 is a true and correct copy of the Declaration of Rev. Stanley Smith.

7. Attached as Exhibit 5 is a true and correct copy of the transcript of the Deposition of Helen Butler.

I, Tania Faransso, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Dated: August 24, 2023

/s/ Tania Faransso

Tania Faransso

Counsel for Plaintiffs

Ex. 1

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

_____

IN RE GEORGIA SENATE BILL 202) Master Case No.

) 1:21-MI-55555-JPB

_____)

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

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

_____)

Videotaped deposition of JUSTIN GRIMMER, Ph.D, Volume I, taken on behalf of Plaintiffs, with the Witness appearing at FENWICK & WEST LLP, 801 California Street, Mountain View, California, beginning at 9:00 a.m. and ending at 6:16 p.m., on Monday, May 1, 2023, before CATHERINE A. RYAN, Certified Shorthand Reporter No. 8239.

APPEARANCES:

For Georgia NAACP Plaintiffs:
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
BY: EZRA D. ROSENBERG
HEATHER SZILAGYI
JULIE M. HOUK (appearing remotely)
Attorneys at Law
1500 K Street N.W., Suite 900
Washington, D.C. 20005
(202) 662-8370
(202) 783-0857 Fax
erosenberg@lawyerscommittee.org
hszilagyi@lawyerscommittee.org
jhouk@lawyerscommittee.org

FENWICK & WEST LLP
BY: LAURENCE F. PULGRAM
Attorney at Law
555 California Street
San Francisco, California 94104
(415) 875-2300
pulgram@fenwick.com

HUGHES HUBBARD & REED LLP
BY: VILIA HAYES (appearing remotely)
Attorney at Law
One Battery Park Plaza
New York, New York 10004-1482
(212) 837-6000
(212) 422-4726 Fax
vilia.hayes@hugheshubbard.com

For Plaintiffs:
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
BY: DAVIN ROSBOROUGH
Attorney at Law
125 Broad Street, 18th Floor
New York, New York 10004
drosborough@aclu.org
//

APPEARANCES (Continued):

For Plaintiffs Advancement Project for The Concerned Black Clergy:
ADVANCEMENT PROJECT
BY: MATTHEW FOGELSON
Attorney at Law
1220 L Street, N.W., Suite 850
Washington, D.C. 20005
(202) 728-9557
mfogelson@advancementproject.com

For Plaintiffs:
ELIAS LAW GROUP LLP
BY: MINDY JOHNSON
Attorney at Law
10 G Street, N.E., Suite 600
Washington, D.C. 20002
(202) 968-4674
mjohnson@elias.law

For Plaintiffs:
U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
BY: M. EILEEN O'CONNOR (appearing remotely)
Attorney at Law
4 Constitution Square
150 M Street, N.E.
Washington, D.C. 20002
(202) 598-5262
eileen.o'connor2@usdoj.gov

//

APPEARANCES (Continued):

For Plaintiffs Asian Americans Advancing Justice:
KEKER VAN NEST & PETERS LLP
BY: ZAINAB O. RAMAHI (appearing remotely)
NIHARIKA S. SACHDEVA (appearing remotely)
Attorneys at Law
633 Battery Street
San Francisco, California 94111-1890
(415) 962-8898
zramahi@keker.com
nsachdeva@keker.com

ASIAN AMERICANS ADVANCING JUSTICE
ASIAN LAW CAUCUS
BY: EILEEN MA (appearing remotely)
NIYATI SHAH (appearing remotely)
Attorneys at Law
55 Columbus Avenue
San Francisco, California 94111
(323) 207-8238 (Ms. Ma)
(415) 896-1701 (Ms. Shah)
(415) 896-1702 Fax
eileenm@advancingjustice-alc.org

For Defendants:
SCHAERR JAFFE LLP
BY: GENE SCHAERR
JOSHUA J. PRINCE
Attorneys at Law
1717 K Street, N.W., Suite 900
Washington, D.C. 20006
(202) 787-1060
(202) 867-4998 Fax
jprince@schaerr-jaffe.com

//

APPEARANCES (Continued):

For Defendant Macon-Bibb County:
NOLAND LAW FIRM
BY: JACOB C. WILSON (appearing remotely)
Attorney at Law
5400 Riverside Drive, Suite 205
Macon, Georgia 31210
(478) 621-4980
jacob@nolandlawfirmllc.com

For Defendant DeKalb County:
DeKALB COUNTY LAW DEPARTMENT
BY: IRENE VANDER ELS (appearing remotely)
Senior Assistant County Attorney
1300 Commerce Drive, Fifth Floor
Decatur, Georgia 30030-3222
(404) 371-3618
ivanderels@dekalbcountyga.gov

For Defendant Fulton County:
FULTON COUNTY ATTORNEY'S OFFICE
BY: DAVID LOWMAN (appearing remotely)
Attorney at Law
141 Pryor Street, Suite 4038
Atlanta, Georgia 30303
(404) 612-0246
david.lowman@fultoncountyga.gov

For State Defendants:
TAYLOR ENGLISH DUMA LLP
BY: BRYAN P. TYSON (appearing remotely)
Attorney at Law
1600 Parkwood Circle, S.E., Suite 200
Atlanta, Georgia 30339
(678) 336-7249
btyson@taylorenglish.com

APPEARANCES (Continued):

ALSO PRESENT:

CARISSA NARCISO, Technical Concierge, Veritext (appearing remotely)

KEIGO PAINTER, Videographer, Veritext

---o0o---

Q You can put it in that basket. That way, we make sure nothing is lost. 09:51:08

And you've, I think, testified that you've reviewed --

MR. SCHAERR: I'm sorry. Just to clarify, this is -- 09:51:17

MR. ROSENBERG: I'm sorry.

MR. SCHAERR: -- Exhibit 472?

MR. ROSENBERG: This should be 472.

Does it say that? 09:51:21

MS. SZILAGYI: Yeah, it does. We prelabeled things and then went out of order. So that's what's happening, but ...

BY MR. ROSENBERG:

Q And you've reviewed this report; is that correct? 09:51:29

A That's right, yep.

Q And I'd like to turn your attention to paragraph 23 on page 10.

A Mm-hmm. 09:51:46

Q And do you agree or disagree with Dr. Fraga's contention in that paragraph that many factors may influence voter turnout?

A I agree with that. I wrote that in my expert report as well. 09:52:02

distance to drop box affects the propensity of individuals to turn out to vote. 11:46:58

Q And just one for the record, you're talking about the Collingwood 2018, I believe, article? 11:47:10

A I believe that's right, yes.

Q And leaving aside that article, my question to you was: Do you agree or disagree that voting costs are part of a cost-benefit analysis that a voter might take into consideration in deciding whether to vote? 11:47:22

A Costs of voting are a thing that voters consider. Some of that could be things like traveling to a particular location. Other components of it could be how much cognitive effort do they have to do to locate a particular location. Does it require lots of searching, or is it in a prominent location where they can easily find it? But one component of a voter's decision can be the cost of voting. 11:47:34 11:47:50

Q Are you aware of any peer-reviewed literature on the issue of drop boxes that does not use distance from residential address as a standard measure of the burdens on drop box access?

A I -- my understanding of those papers is 11:48:14

So throughout the report, I analyze different components of election administration and how they relate to SB202. 17:31:52

Q Would you agree that an LEP voter that is unable to receive in-language assistance faces a barrier to voting? 17:32:02

A I didn't opine about that in my report.

Q Would you agree with that statement?

A Can you just give me a little bit more context what you mean by -- about -- just restate the question. Give a little bit more context for what you mean. 17:32:22

Q Sure.

So this morning -- I think it was Mr. Rosenberg. I might be incorrect about that -- discussed with you your characterization of a cost voting. 17:32:32

And I think you would agree, but let me know if this is correct, that you would characterize the need for a voter to take additional steps to overcome a barrier to be a cost of voting; is that correct? 17:32:45

A In overcoming a barrier, just sort of as stated, that would be a cost of voting, yes.

Q So, then, would you agree that an LEP 17:32:58

voter who is unable to receive in-language assistance faces a barrier to voting and thus an increased cost? 17:33:01

A How are they planning to cast their ballot? 17:33:17

And so if -- if you don't -- if one -- I guess, logically, someone is not able to read a ballot, then that could be a barrier to voting, yes.

Q Would you agree that a voter who does not possess recognized forms of identification faces a barrier to voting? 17:33:31

A So it would have to be -- in this case, for the -- the relevant forms of identification have to be not only do they have the suite of identification they can use for voting, but they also don't have a utility bill, government check, or bank statement. 17:33:48

In that case, it would -- they're unable to register to vote under that provision. So it wouldn't be SB202 that would cause any sort of increase in barrier. 17:34:07

Q If a voter has access to fewer drop box locations in their county, would this raise the cost of voting for that voter over an election where there were more drop box locations available? 17:34:22

A Not necessarily, no. 17:34:24

Q And could you expand on that answer?

A Sure.

So when we're thinking about where voters might return their ballot, they could be thinking 17:34:33 about centrally located drop boxes.

And so if those centrally located drop boxes are actually easier for voters to identify because there's fewer of them or because they're easier for voters to find because they're in a 17:34:46 central location, where voters will see them as part of their regular day-to-day, that could, in fact, decrease the cost of voting, depending on the constellation.

So there's -- I'm not aware of an academic 17:34:55 literature that says a particular constellation of drop boxes increases or decreases the cost of voting.

Q If a voter has to travel farther to access a drop box in their county, would that raise the 17:35:07 cost of voting for that voter over a previous election where they didn't have to travel that far of a distance?

A So the voter could return their ballot in other ways. So, for example, they could use the 17:35:19

United States Postal Service. 17:35:21

So an increase in the distance traveled to a drop box need not increase the cost to that voter.

Q And, finally, you briefly discussed the concept of countermobilization this morning. 17:35:34

Did you consider the effects of countermobilization in your analysis in this case?

A I'm certainly aware of it and had it in mind while analyzing the data.

Q Did you opine on countermobilization? 17:35:53

A For a variety of reasons.

In my -- as I note in my report, it's difficult to establish the effect of countermobilization, and the -- the literature on countermobilization would suggest the effect could 17:36:11 only be quite small.

Q So did you opine on countermobilization in your analysis in this case?

A I did not offer a specific effect estimate of countermobilization in my report, no. 17:36:25

MS. RAMAHI: All right. Thank you, Dr. Grimmer. That's all for me.

THE REPORTER: Would counsel state for the record if they'd like a copy, if we're done questioning? 17:36:43

I, JUSTIN GRIMMER, Ph.D., do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this _____ day of _____, 2023, at _____, _____.

(City) (State)

_____

JUSTIN GRIMMER, Ph.D.

VOLUME I

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

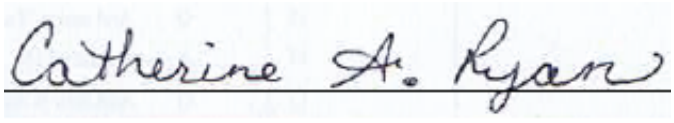
That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [X] was [ ] was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 05/09/2023



Catherine A. Ryan, RMR, CRR, B.S.

CSR No. 8239

Ex. 2

In the Matter Of:

GEORGIA SENATE BILL 202

1:21:MI-55555-JPB

CHARLES TONNIE ADAMS

December 12, 2022

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

IN RE:

GEORGIA SENATE BILL 202

Plaintiff,

vs.

Defendants.

Civil Action No.
1:21:MI-55555-JPB

DEPOSITION OF

CHARLES TONNIE ADAMS

Monday, December 12, 2022, 9:32 a.m.(EST)

HELD AT:

Glover & Davis, P.A.
10 Brown Street
Newnan, Georgia 30264

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

APPEARANCES OF COUNSEL

Appearing on Behalf of the Plaintiff United States:

SEJAL JHAVERI, ESQUIRE
JASMYN RICHARDSON, ESQUIRE
LAUREN PUTNAM, Paralegal
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Room 7273 NWB
Washington, D.C. 20530
T: 202.305.2526 F: 202.307.3961
E-mail: Sejal.Jhaveri@usdoj.gov
Jasmyn. Richardson@usdoj.gov
Lauren.Putnam@usdoj.gov

Appearing on Behalf of the The Witness:

MICHAEL H. HILL, ESQUIRE
Glover & Davis, P.A.
10 Brown Street
Newnan, Georgia 30264
T: 770.683.6000 F: 770.683-6010
E-mail: mhill@gloverdavis.com

APPEARANCES OF COUNSEL (BY ZOOM)

Appearing on Behalf of the AME Plaintiffs:

POY WINICHAKUL, ESQUIRE
Southern Law Poverty Law Center
Poy.Winichakul@splcenter.org

DAVIN ROSBOROUGH, ESQUIRE

ARJUN JAIKUMAR, ESQUIRE
arjun.jaikumar@wilmerhale.com

Appearing on Behalf of the GA NAACP Plaintiffs:

VILIA HAYES, ESQUIRE
Hughes Hubbard & Reed, LLP
vilia.hayes@hugheshubbard.com

JULIE HOUK, ESQUIRE

Appearing on Behalf of the Concerned Black Clergy Plaintiffs:

JORDAN LUDWIG, ESQUIRE
JLudwig@crowell.com

JESS UNGER, ESQUIRE
junger@advancementproject.org

MATT FOGELSON, ESQUIRE

APPEARANCES OF COUNSEL (VIA ZOOM)

Appearing on Behalf of the Defendants Republican National Committee, et al.:

ALEX KAUFMAN, ESQUIRE
Hall Booth Smith P.C.
191 Peachtree Street, Suite 2900
Atlanta, Georgia 30303
T: 404.954.5000 F: 404.954.5020
E-mail: akaufman@hallboothsmith.com

Appearing on Behalf of the State Defendants:

DIANE FESTIN LaROSS, ESQUIRE
Taylor English Duma LLP
1600 Parkwood Circle, Suite 200
Atlanta, Georgia 30339
T: 770.434.6868 F: 770.434.7376
E-mail: dlaross@taylorenglish.com

Appearing on Behalf of Athens-Clarke Defendants:

MAGGIE MARTIN, ESQUIRE
mmartin@jamesbatesllp.com

Appearing on Behalf of DeKalb Defendants:

SHELLEY MOMO, ESQUIRE

Appearing on Behalf of Macon-Bibb Defendants:

GRACE MARTIN, ESQUIRE

Appearing on Behalf of Spalding County Defendants:

DAVID PENLAND, ESQUIRE
dpenland@beckowen.com

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that.

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

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

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

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

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

But eventually what we wound up doing was

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

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

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

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

A All members of GAVREO.

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

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

D I S C L O S U R E

STATE OF GEORGIA) VIDEOTAPE DEPOSITION OF
FULTON COUNTY) CHARLES TONNIE ADAMS - 12/12/22

Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia certified court reporter. I am here as a representative of Esquire Deposition Solutions, LLC, and Esquire Deposition Solutions, LLC was contacted by the offices of U.S. Department of Justice Office to provide court reporter services for this deposition. Esquire Deposition Solutions, LLC will not be taking this deposition under any contract that is prohibited by O.C.G.A. 9-11-28 (c).

Esquire Deposition Solutions, LLC has no contract/agreement to provide court reporter services with any party to the case, or any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition.

Esquire Deposition Solutions, LLC will charge the usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

DEPOSITION ERRATA SHEET

Our Assignment No. J8827207
Case Caption: GEORGIA SENATE BILL 202

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____, 20___.

_____
CHARLES TONNIE ADAMS

Ex. 3

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

IN RE GEORGIA SENATE BILL 202

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

30(b)(6) VIDEO DEPOSITION OF
GEORGIA MUSLIM VOTER PROJECT
(Shafina Kabani)
February 22, 2023
9:30 a.m.
1600 Parkwood Circle, Suite 200
Atlanta, Georgia

Carolyn M. Carboni, RPR, RMR, CCR-B-878
Summer Menkee, Videographer

APPEARANCES OF COUNSEL:

On behalf of the Plaintiffs:

MATLETHA BENNETTE, ESQUIRE
Southern Poverty Law Center
Post Office Box 10788
Tallahassee, Florida 32302-2788
850.408.4840
matletha.bennette@splcenter.org

and

SHONTEE M. PANT, ESQUIRE (Via Zoom)
Davis Wright Tremaine
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104
206.757.8088
shonteepant@dwt.com

On behalf of the State Defendants:

DIANE FESTIN LaROSS, ESQUIRE
Taylor English Duma LLP
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339
770.434.6868

APPEARANCES (Continued):

On behalf of the Intervenor-Defendant RNC:

(Via Zoom)

BAXTER D. DRENNON, ESQUIRE
Hall Booth Smith, PC
200 River Market Avenue, Suite 500
Little Rock, Arkansas 72201
bdrennon@hallboothsmith.com

BRAD CARVER, ESQUIRE
Hall Booth Smith, PC
191 Peachtree Street, Suite 2900
Atlanta, Georgia 30303
bcarver@hallboothsmith.com

On behalf of the United States of America:

(Via Zoom where noted)

ERIC RICH, ESQUIRE
U.S. Department of Justice
eric.rich@usdoj.gov

Also Present:

Sara "SK" Waters
Stephanie Sansom (via Zoom)

major sects, there's other minority sects, and they all have various beliefs and ways they practice and ways that we would want to communicate and work with these communities.

And so we've been wanting to gather data and do data research and data studies and call our lists and clean up our lists and talk to every person on our list and find out more information about them so we can target our work, and we haven't been able to do that.

It's something I've been talking about with my board for two years, and they're asking, when are we going to do this, when are we going to do this, and I haven't been able to get to that.

I think just planning in general, you know, with, like, the runoff election and just all the work that we had to put in towards GOTV with the limited early voting and limited time for the runoffs and really having to rally and put together events and things for our community to get them prepared for elections and the runoffs, we got behind on our planning for 2023.

Normally, in January of 2023, in a normal year, we'd have our plans for the year and be launching and already be doing education workshops

Q And I think you testified then that he did ultimately vote in the next election, correct?
A Yes. After much convincing from my staff member who was his niece, so...
Q And that was the general election --
A Yes.
Q -- in 2020?
A 2022.
Q 2022, okay.
A Yeah.
Q And you're not aware of anyone specifically who was unable to vote because of the same circumstance that you've just described, correct?
A I'm not quite familiar with the specific story. When we're out in the community and we're talking to community members, we hear all the time about, you know, people who had difficulties, waited in long lines.
I know someone personally, you know, during the runoffs, with having only one week of early voting for the runoffs as a result of SB 202, tried to vote during her lunch break because that's the only time she could go vote. She has kids and had to go take care of them after. She had to go

three times. She almost didn't go the third time to go vote because, you know, she had an hour for lunch. The lines were really long. And it was really discouraging to her to have to go through that. So I can only imagine what other community members have faced.

Q And did she ultimately vote?

A She did. But it took her three times and three lunch breaks and three hours of her time to go do that.

Q And that was the runoff in 2022?

A Yes.

Q And that person, do you know what that person's name is or is that just someone that you encountered that relayed the story to you?

A I have their name.

MS. LaROSS: And I would guess counsel would instruct her not to give me the name of that person?

MS. BENNETTE: I will object on the record. Do not provide those names.

MS. LaROSS: Okay. So you're instructing her not to give the name of the person she just described and as well the uncle of the staff member?

Q And how has this provision affected the Georgia MVP members?

A Like I said, I think I had shared stories previously. We had community members who had to wait in lines that were, you know, one, two, three hours long. I, again, had a friend who is Muslim, who is part of the community as well, who had to go try three times and waited an hour each time to be able to early vote because she wasn't sure she was going to be able to vote on election day. And finally, that third time she went to go vote, she was able to. But if she hadn't, if she had to leave again, she may not have voted because she was going to be traveling for work the next week.

Again, I think the absentee ballots with the students with such a shortened time to request an absentee ballot, get it, fill it out, mail it back in and have it counted, I know that we had heard issues of that. My friend who had issues early voting, she wasn't the only one. We had heard stories when we were out in the community, when we were doing Prayer to the Polls events or tabling, you know, we heard from many community members who said that they had struggled during the runoffs to vote early, that the lines were long and

some people, you know, walked away or didn't want to stay in those lines.

Q So are you talking about the 2022 runoff?

A Yes. Is that what you're referring to? Because that would have been after SB 202 was passed.

Q Yeah.

A Yes.

Q Yeah. And you mentioned that you had heard anecdotally about folks who waited in lines one, two and three hours; is that right?

A (Witness nods head.)

Q You'll have to say a verbal --

A Yes. Sorry. It's getting -- it's hours now. I'm forgetting, so...

Q No problem. And I forgot what I was going to ask.

MS. LaROSS: Can you read back my last question.

(Requested portion of the record was read by the court reporter.)

BY MS. LaROSS:

Q Okay. And so is it your testimony that there were folks during the 2022 runoff that waited in lines up to three hours?

Georgia Senate Bill 202, In Re v.

30(b)(6) Shafina Kabani (#5774990)

ACKNOWLEDGEMENT OF DEPONENT

I, 30(b)(6) Shafina Kabani, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____

30(b)(6) Shafina Kabani Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20___.

_____

NOTARY PUBLIC

Ex. 4

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
THE CONCERNED BLACK CLERGYOF METROPOLITAN ATLANTA, INC., *et al.*, *Plaintiffs*, v. BRAD RAFFENSPERGER, in his official capacity as the Secretary of State for the State of Georgia, *et al.*, *Defendants*, REPUBLICAN NATIONAL COMMITTEE, *et al.*, *Intervenor-Defendants.*	Civil Action No.: 1:21-CV-07128-JPB

DECLARATION OF REV. STANLEY SMITH

Pursuant to 28 U.S.C. § 1746, I, Rev. Stanley Smith, declare as follows:

1. I am the President of Plaintiff Metropolitan Atlanta Baptist Ministers Union, Inc. ("MABMU"). I have served in that role since 2020. I am also the Pastor of Greater Fellowship Baptist Church ("Greater Fellowship"), located in Decatur, Georgia. I have served in that role for 33 years. Given my position and job responsibilities, I am familiar with and can attest to the effect that Senate Bill 202 ("SB 202") has had on MABMU's work and mission. I am over 18

years of age and am competent to make this declaration. I have personal knowledge of the facts stated in this declaration and would testify to those facts if called as a witness before this Court.

2. MABMU is a Georgia nonprofit corporation founded in 1917. It is a service organization and network of over 80 clergy of Baptist churches in the greater Atlanta area that minister to largely Black congregants. MABMU's mission is to help make the greater Atlanta area a better place to live religiously, educationally, economically, politically, socially, financially, and in all other areas that impact people's lives. MABMU has no employees; it relies exclusively on volunteers to perform its work.

3. MABMU has various committees that focus on education, civic and social action, and empowerment. MABMU holds weekly meetings of approximately two hours during which, among other things, reports are given on current events, political empowerment, and community members who are sick and in need of visitation. Time is also spent at the weekly meetings in active worship and on Christian education.

4. Voting and social justice ministry have been a component of MABMU's work for decades. MABMU's core voting rights activities in recent years include: providing transportation for seniors during early voting; participating in the Lawyers & Collars Voter Protection Campaign, which places clergy at polling sites in underserved communities to provide a moral presence and support to voters; providing voter education, training, and empowerment; and encouraging voter turnout. MABMU also frequently addresses voting concerns and questions from members of its constituent congregations. MABMU's core voting work has occurred primarily in Fulton and Cobb Counties. MABMU members also have congregations in Dekalb, Troup, Wilkes, Clayton, Oconee, Spaulding, and Polk counties.

5. With SB 202, the Georgia State Legislature, among other things, changed the procedures for requesting and casting absentee ballots, including imposing restrictive new identification requirements and significantly reducing the number, location and hours of ballot drop boxes. SB 202 also criminalized the handing out of water and snacks to voters waiting in line to vote, prohibited the counting of out-of-precinct provisional ballots cast before 5 p.m. on Election Day, shortened the time between a general election and a runoff election from nine weeks to four weeks, reduced the number of early voting days in runoff elections, prohibited the use of mobile voting units except in response to emergencies declared by the Governor, and allowed for the suspension of local election officials, and the appointment of replacement officials, by the State Election Board.

6. As a result of these changes introduced by SB 202, MABMU has had to divert resources to help educate its membership and their constituent congregations on the additional obstacles to voting imposed by SB 202. For example, MABMU has had to divert a significant portion of its weekly meetings to SB 202 so that its membership can be well-informed about the new restrictions on voting imposed by the law and thereby help their respective congregants educate themselves. Prior to SB 202, MABMU's weekly meetings included a 7-minute report on voter encouragement, empowerment, and education. After SB 202, MAMBU dedicated between 45 minutes and one hour every two weeks exclusively to a discussion of SB 202. And because of this added time spent addressing SB 202, MABMU has had less time for its Christian education programming and even less time for worship. Some Bible study items and current event reports have been taken off the agenda as have reports on sick community members in need of visitation.

7. As a result of SB 202, MABMU has been forced to create new materials for its members to share with their respective congregations, including a flyer with a QR code that can

be scanned to provide information related to voting. MABMU had never before produced a similar flyer. In addition, MABMU has engaged more actively in Souls to the Polls events and the Lawyers and Collars program. As a result of SB 202, more members expressed interest in participating in and organizing those events and MABMU was called upon to educate and advise its members as to how to do so.

8. During the 2020 General Election, MABMU encouraged people to vote early by using absentee ballots and ballot drop boxes. Based on my observations at Greater Fellowship and through MABMU, absentee ballots and ballot drop boxes were extremely convenient for working people, especially shift workers. However, because of the new absentee ballot requirements and the changes to ballot drop box availability and procedures brought about by SB 202, MABMU has been forced to change its approach. Following the passage of SB 202, MABMU is no longer recommending the use of absentee ballots and ballot drop boxes due to the confusion and disruption SB 202 has created among its member congregations. MABMU must dedicate additional time and resources to re-educating its membership about these new provisions, explaining why its prior recommendations regarding voting absentee and utilizing drop boxes no longer hold, so that they can inform their respective congregants, who routinely turn to MABMU for this kind of information.

9. As part of its voting and social justice ministry, MABMU provides transportation to seniors so they can vote early in-person, including early voting for runoff elections. I have personally driven seniors to early voting locations on behalf of MABMU. As a result of SB 202's shortening of the early voting period for runoff elections, I was unable to keep the same schedule for the 2022 runoff as I had for the 2020 runoff (held in January, 2021), and therefore could not transport as many seniors to early voting locations in 2022 as I had in January, 2021.

On one occasion in 2022, one woman was in a wheelchair and I did not have a wheelchair lift. I tried to the best of my ability to get her a wheelchair lift on the day that we were transporting residents of this particular senior high-rise to early voting. And I was unable to do so on that day. I told the person that I would continue to try to get someone, but it was the end of the voting period so my assumption is that she didn't vote because she was discouraged and said, "Never mind."

10. Part of MABMU's mission is to empower Black communities and to help folks understand that their vote counts and that it impacts their communities. If outside sources can come in and take over the running of elections from locally-elected officials, it makes people feel un-empowered, as if their vote really doesn't count. Such resignation counteracts MABMU's mission, making it harder to achieve MABMU's goal of community empowerment. MABMU must dedicate additional resources to encourage people to overcome this resignation which may cause them not to participate in elections.

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

Executed this 18 day of August, 2023, at Decatur, Ga.

Stanley Smith

Rev. Stanley Smith

Ex. 5

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

In Re: GEORGIA SENATE BILL 202

Virtual Videotape Deposition of
Helen Butler
April 6, 2023
At 10:38 a.m.

Reported by LeShaunda Cass-Byrd, CSR, RPR

APPEARANCES OF COUNSEL:
On Behalf of State Defendants:
DIANE ELENA LaROSS, Esq.
Taylor English Duma LLP
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339
On Behalf of GA NAACP Plaintiff Group including for the Georgia Coalition for the People's Agenda:

CATHERINE McCORD, Esq.
Fenwick & West LLP
902 Broadway
Suite 14
New York, New York 10010

JULIE HOUK, Esq.
Lawyers Committee For Civil Rights
1500 K Street NW
Suite 900
Washington, DC 20005
Jhouk@lawyerscommittee.org
On Behalf of AME Plaintiffs:
POY WINICHAKUL, Esq.
Southern Poverty Law Center SPLC AME.
400 Washington Avenue
Montgomery, Alabama 36104

On behalf of DOJ Voting Section

MARIA RIOS, Esq.
JOI HYATTE, Esq
US Department of Justice
Civil Rights Division Voting Section
150 M Street NE (4 Con)
Washington, DC 20002
On behalf of Macon-Bibb County Defendants
WILLIAM NOLAND, Esq.
Noland Law Firm
5400 Riverside Drive
Suite 205
Macon, Georgia 31210

On behalf of Dekalb County Defendants
TRISTEN WAITE, Esq.
Dekalb County Law Department
1300 Commerce Drive
5th Floor
Decatur, Georgia 30030
On behalf of Columbia County Georgia:
JORDAN BELL, Esq.
Hull Barrett
1202 Town Park Ln
Suite 209
Evans, Georgia 30809

EXAMINATION OF HELEN BUTLER

DEPOSITION EXHIBITS

Q. And the organization didn't undertake any kind of inquiry to find out whether or not folks had been impacted by that provision?

A. No.

Q. And let's go to paragraph 148, and this discusses the schedule for runoffs.

SB 202 sets all runoffs to be held four weeks after the prior election; is that correct?

A. Correct.

Q. And are you aware that federal runoffs are on that same schedule?

A. Yes.

Q. I'm sorry, what was your answer?

A. Say what now? I'm sorry.

Q. That's okay.

A. I was trying to read.

Q. Sure.

And so are -- are you aware that federal runoffs are on the same schedule as the schedule -- the four-week schedule under SB 202?

A. Yes.

Q. And would you agree that general election runoffs for state offices in Georgia have always been four weeks after the general election?

A. Yes, they were.

Q. And you'd agree that the January 2021 runoff was the only nine-week general election federal runoff held in the last 10 years.

Would you agree with that?

A. I don't know, because I haven't looked back at the last nine years or ten years. But I do know that the 2021 was extended because it was a federal election.

Q. And are you aware of any other runoffs in Georgia that had a nine-week general election, that it was nine weeks?

A. I cannot recall one.

Q. And the complaint in paragraph 148 indicates that the provision will harm lower income or hourly wage black voters because their work schedules will make it more difficult to cast an absentee mail-in ballot.

Do you see where I'm referring there?

A. No. Which paragraph are you on?

Q. Sure. Paragraph 148.

A. Okay.

Q. It's toward the end of the paragraph.

A. Yes.

Q. And how is it that being less able to take time off during a workday would impair a voter's

ability to vote by mail?

A. It would impair, because they couldn't get off from work. And if they -- if the time period is shortened and they didn't meet those deadlines, they would not be able to cast their vote.

Q. So they wouldn't be able to vote in person, is what you're saying if they couldn't get time off from work?

A. Correct. Correct.

Q. And what analysis has the People's Agenda undertaken to determine or support that allegation?

A. I have -- I have not done an analysis of that. I know that the compressed time makes it difficult. We had a lot of people that were not able to get to vote early because of that as well.

So the compression of the time, I believe, creates a problem for those who are not able to get off from work.

Q. So -- and did you receive any reports that any members of the People's Agenda were not able to vote because they could not get off work?

A. No. But again, we try to keep our people educated about what to do so that they are not confronted by this. But there are voters, again, that we get calls on that don't know, and even though we

are still out there trying to educate, and as much more time we devoted to this again, to many voters. So we can't touch everything.

Q. Do you know of any instance in particular where someone was not able to vote because they couldn't get time off from work?

A. I can't recall one.

Q. And let's talk about the hours when early voting is permitted. Let's look at paragraph 149.

And you'd agree that SB 202 allows early voting to open at 7 a.m., closing at 7 p.m., correct?

A. Yes.

Q. And you would agree that SB 202 allows counties to hold early voting on two Sundays; is that right?

A. No, two Saturdays.

Q. Two Saturdays. My mistake. Yes. Okay. Let me ask it again.

All right. You would agree, SB 202 allows counties to hold early voting on two Saturdays?

A. Yes.

Q. Okay. And decisions about voting hours and opening are made by county officials, correct?

A. Correct.

Q. And the complaint alleges that this impairs

WITNESS SIGNATURE:_____

State of _____

County of _____

Subscribed and sworn to before me this _____ day of _____, 2023.

_____

Notary Public

My Commission expires_____

(Seal)

J U R A T

I, , do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on;_____that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this ____ day of _____, 2023, at _____,

_____

SIGNATURE OF WITNESS