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

PLAINTIFFS' OPPOSITION TO STATE DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON JURISDICTION

Table of Contents

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

TABLE OF AUTHORITIES
(CONTINUED)

Page(s)

INTRODUCTION

This Court has already held, correctly and over Defendants' comprehensive objections and arguments, that Plaintiffs have standing to pursue their claims.[1] Defendants now move for summary judgment to the contrary, but they offer no new reasons in support, and certainly no better ones. At the very least, genuine issues of material fact preclude a grant of summary judgment, and Defendants urge legal conclusions that are at odds with Eleventh Circuit precedent. The Court should deny Defendants' motion in its entirety.

ARGUMENT

I. Legal Standard for Summary Judgment

The basic issue before the court on a motion for summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury[,] or whether it is so one-sided that one party must prevail as a matter of law." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997). Summary judgment is proper only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

[1] *See GA NAACP, et al v. Raffensperger, et al,* Case No. 1:21-cv-01259-JPB, ECF No. 64 (Order); *New Georgia Project, et al v. Raffensperger, et al, Case No. 1:21-cv-01229 (JPB),* ECF No. 108 (Amended Order); *Sixth District of the African Methodist Episcopal Church, et al., v. Kemp, et al*., No. 1:21-cv-01284, ECF No. 110 (Order); *The Concerned Black Clergy of Metropolitan Atlanta, Inc. et al v. Raffensperger et al.*, 1:21-cv-01728-JPB, ECF No. 76 (Amended Order); *Asian Americans Advancing Justice-Atlanta v. Raffensperger et al*., 1:21-cv-01333-JPB, ECF No. 92 (Amended Order).

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[2] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). As the moving party, Defendants bear the burden of showing the absence of a genuine issue as to any material fact, and in deciding whether the movant has met this burden this Court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the nonmoving party. *Allen v. Tyson Foods, Inc*., 121 F.3d at 646; *see also Celotex Corp.*, 477 U.S. at 322-23.

II. Plaintiffs Have Standing to Bring Their Claims

A party has standing if it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan*, 504 U.S. at 560–61). "At least one plaintiff must have standing to seek each form of relief requested in the complaint." *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017). The record reflects that Plaintiffs have satisfied this requirement.

An organization can establish injury-in-fact "(1) through its own injury by

[2] Defendants argue that "Plaintiffs must sustain their burden of proof with trial-worthy evidence, *Lujan*, 504 U.S. at 561 . . . ." ECF No. 764-1 at 15 (internal citations omitted). That is not the standard. In opposing a motion for summary judgment, Plaintiffs need only "'set forth' by affidavit or other evidence 'specific facts' which for purposes of the summary judgment motion will be taken to be true." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (citation omitted). Plaintiffs have met this standard.

showing a diversion of resources (organizational injury) or (2) through its members (associational standing)." *Ga. Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1114 (11th Cir. 2022). Where an organization seeks to establish injury by showing a diversion of resources, it must also show "that the injury to the identifiable community that the organization seeks to protect is itself a legally cognizable Article III injury that is closely connected to the diversion." *City of S. Miami v. Governor of Florida*, 65 F.4th 631, 638-39 (11th Cir. 2023).

Organizational injury sufficient to confer standing exists "if the defendants' illegal acts impair [the organization's] ability to engage in its projects by forcing . . . [it] to divert resources to counteract those illegal acts." *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009) (quoting *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008)). Even *anticipated* diversions of resources are sufficient to establish organizational standing. *Browning*, 522 F.3d at 1165-66 (holding that plaintiffs sufficiently showed that they will suffer a concrete injury where they "reasonably anticipate that they will have to divert personnel and time to educating volunteers and voters on compliance with [a new law] and to resolving [resulting voter problems] on election day").[3] Acts that frustrate an

[3] Defendants argue that Plaintiffs "must show an injury—in this case diversion of resources—as of the time the [P]laintiffs filed their complaint." ECF No. 764-1 at

organization's mission cause "concrete and demonstrable injury to [its] activities." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *see also Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018) (finding plaintiffs, as organizations, suffer irreparable injury distinct from the injuries of eligible voters when their organizational missions, including registration and mobilization efforts, "will continue to be frustrated").

An injury need be only an "identifiable trifle" to qualify. *Salcedo v. Hanna*, 936 F.3d 1162, 1167 (11th Cir. 2019); *see also United States v. Students Challenging Regul. Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n.14 (1973) (noting that sufficiently concrete injuries have included a fraction of a vote, a $5 fine and costs, and a $1.50 poll tax). "Plaintiffs [] do not need to quantify their diversions of resources to show that such diversions occurred. . . . Testimony identifying the diversion – if that testimony does not *quantify* the diversion – suffices." *Fair Fight Action, Inc. v. Raffensperger*, No. 18-cv-5391-SCJ, 2021 WL 9553855, at *4 (N.D. Ga. Feb. 16, 2021) (plaintiffs diverted resources to focus on educating voters about

15. But this misinterprets prevailing jurisprudence. When the harm alleged is prospective, as Plaintiffs' harms were at the time the lawsuits were filed, a plaintiff can satisfy the injury-in-fact requirement by showing imminent harm. *See A&M Gerber Chiropractic LLC v. Geico Gen. Ins. Co.*, 925 F.3d 1205, 1211 (11th Cir. 2019) (plaintiffs seeking declaratory relief must allege facts from which it appears that there is a "substantial likelihood that he will suffer injury in the future"). Plaintiffs successfully alleged their imminent injuries at the motion to dismiss stage, *see, e.g.,* 21-cv-01259, ECF No. 64 (Dec. 9, 2021), and have since provided evidence of actual injuries that have occurred. *See*, *e.g.*, ECF No. 613 at 7-10.

how to overcome the voter suppression wrought by the challenged law); *see also People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 189 F. Supp. 3d 1327, 1340 (S.D. Fla. 2016), *aff'd* 879 F.3d 1142 (11th Cir. 2018) ("The showing of an actual, concrete injury is a modest requirement for Article III standing, which does not require quantification."); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008) ("The fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury.").

A. Plaintiff Organizations Have Established Organizational Standing

Plaintiff organizations have established cognizable injury. First, Defendants do not contest the connection between the diversion and Plaintiffs' service to their constituencies. Plaintiff organizations serve underrepresented communities, including people of color and/or women, and assist them in participating in voting. *See, e.g.,* SAMF ¶¶ 698-701 (Ex. 12 (AAAJ Dep. 41:9-13, 42:6-18, 42:15-44:4, 46:8-47:10, 49:22-50:17)), 732-34 (Ex. 303 (Mattox 5/11/23 Decl. ¶¶ 4-5, 7-9)), 818 (Ex. 17 (CBC Dep. 56:22-57:4)), 852 (Ex. 282 (Griggs 5/16/23 Decl. ¶¶ 2-3)), 910-912 (Ex. 43 (NGP Dep. 21:6-11, 21:25-22:12, 24:23-25:7)). Plaintiff organizations' core missions include registering and educating voters, working to maximize voter participation, and safeguarding voter rights. *Id.*

Second, as to the diversion of their finite resources, Plaintiff organizations

have detailed the specific ways in which they have diverted and will continue to reallocate resources from other activities to ones that address the challenged requirements of SB 202, including educating members and their communities about SB 202 so they do not violate any of its many (and oftentimes nuanced) restrictions. *See, e.g.*, *id.* ¶¶ 703 (AAAJ Dep. 50:8-11), 739-742 (Mattox 5/11/2023 Decl. ¶¶ 16, 18-20; Ex. 11 (Arc. Dep. (Feb. 28, 2023) at 27:16-28:19)), 810-813 (Ex. 313 (Rev. S. Smith Decl. ¶¶ 6-7)), 853-55 (Ex. 31 (GA NAACP Dep. 58:10-12, 60:22-61:6, 62:9-24, 65:7-18, 77:3-8); Griggs 5/16/23 Decl. ¶ 10), 913 (NGP Dep. 61:4-22, 63:25–64:20, 66:2–6, 120:16–23, 121:9–13, 122:17-20). Plaintiffs have identified specific people who stopped or decreased their traditional work and specific activities they had to ramp down or cease altogether because of the urgent need to educate members about SB 202 and provide specific services to help voters deal with changes in the law. *See, e.g.*, *id.* ¶¶ 711 (AAAJ Dep. 74:13-18), 812 (Rev. S. Smith Decl. ¶ 6), 743 (Mattox 5/11/23 Decl. ¶ 22), 855-57 (NAACP Dep. 60:22-61:6, 62:9-21; Ex. 282 (Griggs 5/16/23 Decl. ¶¶ 10-11), 913 (NGP Dep. 61:4-22, 63:25–64:20, 66:2–6, 120:16–23, 121:9–13, 122:17-20). As this Court already ruled, Plaintiffs Georgia NAACP ("Ga. NAACP") and GAMVP "diverted their limited resources away from their ordinary programs to programs aimed at educating voters about the absentee voting process" and "the injury-in-fact element of the standing analysis is satisfied in this case under a diversion-of-resources theory." ECF No. 613 at 10.

Defendants do not and cannot negate those facts.

Defendants suggest that Plaintiff organizations do not suffer a cognizable injury by diverting resources to educating voters about SB 202 if they provided education on election laws generally in the past. *See, e.g.*, ECF No. 764-1 at 28 (citing SMF ¶¶ 24-25). They cite no support for that proposition, which this Court has already properly rejected. *See* 21-cv-01259-JPB, ECF No. 64 at 4-7; *see also Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1262 (N.D. Ga. 2019) (finding standing where, "[Plaintiffs] each allege that they have had to, or will have to, redistribute resources from existing programs to ones specifically designed to address Defendants' challenged practices."); *see also Martin v. Kemp*, 341 F. Supp. 3d 1326, 1334 (N.D. Ga. 2018) (finding standing even if plaintiffs' actions were a continuation of their "regular voting and voter registration activities"). Several Plaintiff organizations testified that the sheer number of new voting restrictions in SB 202 required them to spend more time and effort educating voters than they have spent in years prior, a diversion of resources that prevented them from pursuing other activities, *see, e.g.*, SAMF ¶¶ 705 (AAAJ Dep. 55:22-56:12, 56:21-57:7), 757 (Ex. 45 (Sixth District AME Dep. 37:2-17)), 865 (Ex. 263 (Butler Decl. ¶¶ 6-7, 10-11)), and that is sufficient to establish standing. *See Browning*, 522 F.3d at 1165-66. At a minimum, genuine disputes of material fact as to organizational standing preclude summary judgment.

B. Plaintiff Organizations Have Established Associational Standing

To establish associational standing, an organization must prove that its members "would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). As the Court has already held, Plaintiffs have met all requirements to establish the basis for associational standing. ECF No. 613 at 10-14.

Contrary to Defendants' argument (*see, e.g.* ECF No. 764-1 at 29), a plaintiff organization need not identify a specific member to show that its members would have standing to sue in their own right: "probable danger is sufficient to satisfy the injury prong." *Democratic Party of Ga. Inc., v. Crittenden.*, 347 F. Supp. 3d 1324, 1337 (N.D. Ga. 2018) (where the plaintiff organization had "tens of thousands of members who are active voters in the state," it had associational standing because it was "extremely unlikely" that the law at issue would not affect a single member); *see also* ECF No. 613 at 10-13. By comparison, in *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1249 (11th Cir. 2020), on which Defendants rely (ECF No. 764-1 at 14, 16), the only plaintiff organization with any members was the Democratic National Committee, which had just a few members from Florida and had demonstrated no probability of injury to those few members from voting restrictions.

The Ga. NAACP has around 10,000 members statewide, and evidence shows that hundreds (likely thousands) of absentee ballots were rejected pursuant to SB 202's birthdate requirement, such that "it is highly unlikely that not a single member will have their ballot rejected due to this requirement." ECF No. 613 at 12-13 (internal quotations omitted). Accordingly, as the Court has already found, the Ga. NAACP has "satisf[ied] the injury prong for associational standing." *Id*. This analysis applies equally to the other member organizations, each of which has thousands of members,[4] and to the other challenged provisions.[5]

[4] *See infra* at 25, n.8.

[5] For instance, the share of mail-in ballots cast after the implementation of SB 202's absentee voting restrictions drastically decreased from 26.1% and 23.9% in the November 2020 and January 2021 elections to 6.2% in the November 2022 election. SAMF ¶ 369 (Ex. 113 (Grimmer Rep. ¶¶ 54-55)). Absentee ballots cast post-SB 202 also had much greater rejection rates: the share of absentee ballots rejected for arriving after the deadline or for missing ID information increased from 0.2% in the 2020 general election to 0.84% in the 2022 general election (a rate of rejection five times greater than the previous pre-SB 202 runoff election rate), *id*. ¶¶ 230-31 (Ex. 96 (Fraga Rep. ¶ 133 & Tbl 14); Grimmer Rep. ¶ 101 & Tbl. 17), and the rate of absentee ballot application rejections in 2022 was almost three times higher than the highest pre-SB 202 rate, *id*. ¶ 223 (Fraga Rep. ¶ 100-01 & Tbl. 7). Likewise, to date SB 202's unlimited voter challenges have impacted more than 37,000 voters in Gwinnett County alone. *Id*. ¶ 510 (Ex. 247 (Sept. 21, 2022 Gwinnett County Board of Registrations and Elections Meeting Minutes)).
On top of that, at least 1.1 million Georgian registered voters faced increased barriers to voting as a result of SB 202's drop box limitations: these voters had access to drop boxes within their counties pre-SB 202 but had to travel farther than the statewide average of 4.8 miles to use the nearest drop box post-SB 202. *Id*. ¶ 339 (Fraga Rep. ¶ 179 & Tbl. 21). Experts have also found that SB 202's absentee voting, drop box, and compressed voting period restrictions increase waiting times for early in-person and Election Day voters. *Id*. ¶ 447 (Ex. 107 (Pettigrew Rep. 38-45)). During the

To be sure, members of Plaintiff organizations have also unquestionably been harmed by SB 202. *See, e.g.*, SAMF ¶ 885 (Ex. 277 (Gammon Decl. ¶ 6)) (Plaintiff Common Cause member whose absentee ballot was initially rejected pursuant to SB 202's immaterial date of birth requirement); *id.* at 868 (Ex. 25 (GCPA Battles Dep. 88:10-89:5)) (Plaintiff GCPA member's voter registration called into question by mass voter challenge pursuant to SB 202); *id.* at 882 (Ex. 271 (Dennis Line Relief Decl. ¶ 15)) (Plaintiff Common Cause members stopped providing line relief to voters on account of SB 202).

Defendants do not dispute, and this Court has already found, that Plaintiff organizations meet the other requirements for associational standing: that the interests at stake are germane to Plaintiff organizations' purposes, and that the claims and relief sought do not require the participation of individual members in the lawsuit. *See, e.g.*, ECF No. 613 at 13-14; *see also Browning*, 522 F.3d at 1160 (recognizing that when the relief sought is injunctive, individual participation of the organization's members is not normally necessary).

C. The Record Evidence Conclusively Establishes Plaintiffs' Injury-in-Fact

2022 early runoff period, 658,690 early voters waited on average 61 minutes—twice as long as in 2020—to cast their ballots in Clayton, Cobb, DeKalb, Fulton, and Gwinnett counties alone. *Id.* ¶ 446 (Pettigrew Rep. 20, 44-45 & Tbls. 2.2, 43).

1. NGP Plaintiffs[6]

a. New Georgia Project

New Georgia Project ("NGP") was founded in 2014 to build the grassroots political power of "high opportunity voters," a constituency comprised of Black, brown, young, LGBTQ+, and rural Georgians. SAMF ¶ 910 (NGP Dep. 21:6–11, 21:25–22:12); Ex. 269 (Cotton Decl. ¶ 3)). The organization empowers its constituents in two stages. First, NGP pursues issue- and constituent-specific initiatives aimed at engaging high-opportunity voters about topics they care deeply about, such as public safety, employment, healthcare, and family life. SAMF ¶ 911 (Cotton Decl. ¶ 6; NGP Dep. 24:23–25:7). Then, NGP focuses its efforts on mobilizing its constituents to vote through voter registration, organizing, and advocacy efforts centered around these high-priority issues. SAMF ¶ 912 (Cotton Decl. ¶ 4–5; NGP Dep. 25:8–11).

But SB 202 has impaired NGP's ability to execute its core mission. As State Defendants concede, ECF No. 764-1 at 23, in direct response to SB 202 in 2021, NGP was forced to shift funds, three staffers, and nearly all of the organization's volunteers from its Party at the Polls program, which focused on cultivating a positive atmosphere around polling locations to encourage voting, to its Rides to the

[6] At the Court's direction, this brief compiles all arguments asserted by all private Plaintiffs. For clarity, not all Plaintiffs necessarily agree or join in the arguments of all other Plaintiffs in the sections relating to specific Plaintiffs.

Polls program, which saw demands for rides double during early voting and election day voting for the 2022 general election. *See* SAMF ¶ 913 (NGP Dep. 61:4–22, 63:25–64:20, 66:2–6, 120:16–23, 121:9–13, 122:17–20). As a result of these changes, Party at the Polls has been "whittled down almost entirely" and now operates in only a small number of precinct locations. SAMF ¶ 914 (NGP Dep. 61:14–16, 122:6–8, 124:10–22).

Contrary to the State Defendants' suggestion, *see* ECF No. 764-1 at 23, this is not NGP's only example of resource diversion. In response to SB 202, NGP had to devote resources to providing specialized aid to its constituents in navigating the complex web of legal changes stemming from the new law. SAMF ¶ 915 (NGP Dep. 57:15–19). As part of this effort, NGP established its Voter Protection ("VoPro") program. SAMF ¶ 916 (NGP Dep. 55:17–22, 57:20–58:2). To staff the VoPro program, NGP reassigned one full-time staff member and approximately 200 volunteers from its Poll Chaplains program, which had organized faith-based partners to provide food, water, and other items to encourage and support voters waiting in long lines to cast their ballot. SAMF ¶ 917 (NGP Dep. 57:4–19, 58:7–25, 59:22–60:2). NGP also spent additional resources to hire a director and a C-Suite officer to launch and manage VoPro. SAMF ¶ 918 (NGP Dep. 60:2–5, 60:17–61:3). Consequently, NGP's Poll Chaplains program—which served 40 precincts in 2018 and 120 precincts in 2020—has decreased significantly in size and capacity. In

2022, the program served only a dozen precincts, and it is now limited to thanking and encouraging voters in line without distributing support items. SAMF ¶ 920 (NGP Dep. 58:4–6, 59:6–16).

Relatedly, because SB 202 significantly altered the legal landscape for voting in Georgia, NGP had to reconfigure its congregational organizing efforts by reallocating two staff from existing faith programs to new efforts to educate congregational constituents about how to successfully vote under the new law. SAMF ¶ 921 (NGP Dep. 61:23–62:7).

State Defendants conveniently ignore all this evidence. Instead, they argue that NGP cannot be injured because their funding increased after SB 202 was enacted. *See* ECF No. 764-1 at 23–24. But Plaintiffs can—and have—shown that NGP has diverted resources from several of its existing programs to new efforts aimed specifically at counteracting the impact of SB 202 on NGP's activities and mission. *See Common Cause/Georgia*, 554 F.3d at 1350. That is sufficient. The precise amount of (or changes to) NGP's aggregate funding is irrelevant. Diverting resources to assist voters in navigating SB 202 will invariably reduce the amount of resources available for other organizational priorities. SAMF ¶ 922 (NGP Dep. 65:13–18); *see also Common Cause/Ga.*, 554 F.3d at 1350–51 (finding that organizations "cannot bring to bear limitless resources" and have standing when diversions of resources are needed to address when the organization's "noneconomic

goals . . . suffer.") (quoting *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1166 (11th Cir. 2008)). In any event, NGP has also been forced to divert non-monetary resources—including staff and volunteer time—none of which can be measured by the amount of funding the organization NGP may or may not have received.

In addition to organizational standing, NGP also has third-party standing to enforce the rights of their constituents in Georgia. A plaintiff can establish third-party standing if they demonstrate: (1) an injury-in-fact to itself, (2) a close relationship to the third-party and (3) a hindrance to the third-party's ability to assert its own interests. *Young Apartments, Inc. v. Town of Jupiter*, 529 F.3d 1027, 1042 (11th Cir. 2008); *see also June Med. Servs. v. Russo*, 140 S. Ct. 2103, 2118–19 (2020) (third-party standing is permissible where "enforcement of the challenged restriction against the litigant would result indirectly in the violation of third parties' rights.").

As discussed above, NGP has demonstrated an injury-in-fact to itself. NGP satisfies the second part of the test because it has a close relationship with its constituents—high opportunity voters across Georgia—who benefit from the organization's voter registration, organizing, and advocacy activities. SAMF ¶ 910 (NGP Dep. 21:6–11, 21:25–22:12; Cotton Decl. ¶ 3). This element of the test "is satisfied by a commonality of interests when that commonality demonstrates that a

plaintiff is 'fully, or very nearly, as effective a proponent of the rights' of the third-parties." *Fla. State Conf. of NAACP v. Browning*, No. 07-cv-402-SPM/WCS, 2007 WL 9697660, at *3 (N.D. Fla. Dec. 18, 2007), *aff'd sub nom. Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153 (11th Cir. 2008) (quoting *Harris v. Evans*, 20 F.3d 1118, 1123 (11th Cir. 1994)). Here, NGP shares with its constituents a core interest in ensuring that minority and overlooked voters in Georgia are able to build their own political power and become civically active. SAMF ¶ 910 (NGP Dep. 21:6–11, 21:25–22:12; Cotton Decl. ¶ 3). NGP thus has a sufficiently close relationship with their constituent voters and are consequently well-suited to represent their interests in challenging SB 202. *Fla. State Conf. of NAACP*, 2007 WL 9697660, at *3 (concluding plaintiffs who conducted voter registration activities to increase political participation among minority voters satisfied this "close relationship" prong of the third-party standing test where the plaintiff organizations and voters they served share an interest in having their votes counted); *see also Vote.org v. Callanen*, No. 22-50536, 2023 WL 8664636, at *5 (5th Cir. Dec. 15, 2023) (finding that where a third party can ensure that issues will be concrete and sharply presented, prudential concerns relating to the sufficiency of the relationship between the third party and voters are less salient).

NGP satisfies the third element of this test too, as its constituents are hindered from protecting their own interests. For instance, SB 202 imposes a ten-day deadline

to resolve voter challenges, which gives the challenged voter little to no time to receive notice of the challenge and make arrangements to appear before a government board in defense of their voting qualifications, much less adequate time to seek and obtain relief from a court to eliminate the burdens imposed on the voter before he or she is removed from the voter rolls. *See* O.C.G.A. § 21-2-229(b). Similarly, it is virtually impossible to predict—before a voter registers—which voters will receive absentee ballot application rejections because their voter file does not contain the correct ID number. *See* O.C.G.A. § 21-2-381(a)(1)(C)(i) (requiring voters to provide the number of his Georgia driver's license or identification card on absentee registration applications). Many of the provisions NGP has challenged impose burdens that voters may not become aware of until it is too late to obtain relief. When such burdens arise, "the election clock may not permit" voters injured by SB 202 "to assert their rights in time to protect their right to vote." *Fla. State Conf. of NAACP*, 2007 WL 9697660, at *3. "These are legitimate reasons for recognizing [NGP's] standing to sue on behalf of non-member [voters]." *Id.*

b. Black Voters Matter Fund

Black Voters Matter Fund ("BVMF") is a Georgia-based organization founded in 2016 that operates in nine states and is dedicated to building power within marginalized, predominantly Black communities by engaging voters in conversations about issues of importance, increasing voter registration and turnout,

and converting "nonvoters into voters." SAMF ¶ 923 (Ex. 265 (Calhoun Decl. ¶ 2); Ex. 14 (BVMF Dep. 21:14–17, 29:21–25)). BVMF accomplishes this goal by communicating with the community it serves through text messaging, phone calls, emails, and public events such as concerts and town hall meetings. SAMF ¶ 924 (BVMF Dep. 42:12–25). BVMF also provides grants to its "partners," which are oftentimes smaller groups with deep roots in the communities they serve; most of BVMF's events, like town halls, are hosted by BVMF partners. SAMF ¶ 925 (BVMF Dep. 42:20–25; Calhoun Decl. ¶ 22).

In response to SB 202, BVMF has had to divert "time, energy, and resources" away from its core mission toward assisting voters in navigating the increasingly complex voting process in Georgia. SAMF ¶ 926 (BVMF Dep. 50:18–21). BVMF diverted several of its staff members, as well as funds allocated for partnership grants, out of its South Carolina and Tennessee programs to increase funding and bolster the operations of its Georgia-focused grant-giving programs, virtual town halls, and press events. SAMF ¶ 927 (BVMF Dep. 82:9–23). BVMF shifted its issue-based communications to the community through texts, phone calls, and email campaigns, as well as public events and meetings, away from messaging about Medicaid expansion and toward educating Georgian voters about overcoming obstacles to vote under SB 202, such as navigating the law's new ID requirements, limitations on drop boxes, and bans on supporting voters in line with food and water.

SAMF ¶ 928 (BVMF Dep. 42:12–18, 82:24–83:4). Because the nature of these communications concerning voting laws is more complex than issue advocacy related to healthcare education, BVMF has had to increase spending on printing and larger operational costs associated with more frequent literature drops, phone banking, canvassing, and texting earlier in the election cycle. SAMF ¶ 929 (Calhoun Decl. ¶ 35).

Similarly, BVMF was forced to wind down its partner training programs on communications, fundraising, and voter outreach, and instead funneled those resources into trainings to educate voters and volunteers about subjects like when and how ID must be provided to avoid a ballot being rejected, and the risk of criminal prosecution for offering food or water to voters waiting in line. SAMF ¶ 929 (BVMF Dep. 50:12–21; 68:10–69:2; 72:22–73:11). Contrary to State Defendants' suggestion that BVMF's efforts to support voters standing in line were unaffected by SB 202, *see* ECF No. 764-1 at 24, the line relief ban forced the organization to abandon its practice of handing food and water to voters in line and instead spend additional personnel time and money setting up large, attention-grabbing aid stations far from the polling lines that make food and water available for voters who are able to leave their spot in line. SAMF ¶ 930 (BVMF Dep. 84:3–86:5).

Defendants make no meaningful effort to confront this evidence, but instead argue that BVMF has not completely "eliminated" any programs. *See* ECF No. 764-

1 at 24. But Plaintiffs need prove only "impairment" of its activities, not "elimination" to support standing. *See Hispanic Int'l. Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1243–44 (11th Cir. 2012); *Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1255–60 (11th Cir. 2012); *Ga. Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1114–15 (11th Cir. 2022). In any event, BMVF *has* in fact wound down its operations in South Carolina and Tennessee and redirected those resources to aiding voters in Georgia—a fact which by itself establishes injury sufficient for standing. SAMF ¶ 927 (BVMF Dep. 82:9–23). Finally, that BVMF has continued to engage in organizational development, training, and voter education programs is not evidence of lack of injury caused by SB 202. ECF No. 764-1 at 24. In no way do the existence of these programs ameliorate BVMF's concrete and cognizable organizational injuries. *See Common Cause/Ga.*, 554 F.3d at 1350.

c. Rise, Inc.

Rise also has standing to pursue its claims in this case. Rise's mission is to advocate for free higher education by eliminating tuition and other fees at public colleges and universities, ending college student housing and food insecurity, and increasing voting access for college students. SAMF ¶ 931 (Ex. 286 (Hector Decl. ¶ 4)). In support of these goals, Rise operates student-led advocacy campaigns, training programs, and volunteer networks across Georgia. SAMF ¶ 932 (Ex. 44

(Rise Dep. 37:12–16); Hector Decl. ¶ 4). Rise's student organizers and volunteers engage in grassroots voter registration, education, and turnout activities, including on-campus get-out-the-vote drives and canvasses, and the organization also helps students and young people vote absentee by informing them about services offering free and discounted transportation to polling locations. SAMF ¶ 933 (Hector Decl. ¶ 6).

However, in response to SB 202, Rise was forced to abandon several of these initiatives including: a fellowship for students attending historically Black colleges and universities, SAMF ¶ 934 (Rise Dep. 37:22–5, 59:15–19, 60:4–8; Hector Decl. ¶ 25), advocacy around the on-campus housing crises (along with ongoing support for Rise Fellows attending Spelman College who were engaged in protests for better student housing), food insecurity, and student debt issues, *id.* (Rise Dep. 38:7–14; 60:21–61:8; Hector Decl. ¶ 26–27); and efforts to educate Georgia's lawmakers about scholarship programs that are critical for access to higher education in Georgia; *id.* (Rise Dep. 59:21–60:8). Resources from these efforts, as well as funds initially allocated to Rise's programming in Pennsylvania, New Mexico, and Arizona, were moved into Georgia to support Rise's get-out-the-vote and student training programs to increase awareness and education around SB 202's restrictions and the resulting barriers to voting. SAMF ¶ 935 (Rise Dep. 37:25–38:5; 38:15–19; 38:23–39:24; 60:4–8, 124:3–24). More specifically, Rise hosted seven "Black the

Vote" training sessions in Georgia in response to SB 202, and between 2020 and 2022 Rise increased by four- or five-fold the number of paid fellows and canvassers devoted specifically to assisting young voters in Georgia overcome the burdens imposed by SB 202. SAMF ¶ 936 (Rise Dep. 47:8–14; 127:18–128:2).

Even though it's not required for standing, *see* ECF No. 764-1 at 23–25, Rise has also identified cuts to its programmatic budget as a result of SB 202. *See* SAMF ¶ 934 (Rise Dep. 37:22–38:5, 59:15–19, 60:4–8, 38:7–14; 60:21–61:8, 59:21–60:8; Hector Decl. ¶¶ 25–27). And while Rise has not quantified the amount of funds it has diverted as a result of the challenged law, *see* ECF No. 764-1 at 25, this data point is irrelevant: Rise does not need to quantify SB 202's impact on the organization's budget in order to have standing. *See PETA*, 189 F. Supp. 3d at 1340 *aff'd*, 879 F.3d 1142 (11th Cir. 2018); *Crawford*, 472 F.3d at 951, *aff'd*, 553 U.S. 181 (2008). Finally, the fact that Rise continues to conduct training offered before SB 202 was enacted is immaterial to the standing analysis, which focuses on the injury caused by Rise's diversion of resources in response to the challenged law.

2. GA NAACP Plaintiffs

a. Georgia NAACP

Ga. NAACP's organizational mission is to "eliminat[e] racial discrimination through democratic processes . . . and thus ensur[e] the equal political, educational, social, and economic rights of all persons, in particular African Americans." SAMF

¶ 852 (Griggs 5/16/23 Decl. ¶ 2). Ga. NAACP commits resources to voting rights by investing in voter education, registration, and mobilization. *Id.* (Griggs 5/16/23 Decl. ¶ 3). After the passage of SB 202, Ga. NAACP had to dedicate substantially more time to educating voters and mitigating the effects of the law, including addressing its onerous absentee voting requirements, drop box limitations, compressed voting periods, unlimited voter challenges, and disenfranchisement of out-of-precinct voters. *Id.* ¶ 854 (GA NAACP Dep. 65:7-18, 56:1-17, 60-62, 66:2-67:12, 82:15-83:3, 137:12-138:19, 151:11-25, 166:7-19, 175; Griggs 5/16/23 Decl. ¶¶ 7-10). This required diverting staff attention from existing areas of focus, which included reducing the scope of its voter registration and Get-Out-The-Vote activities and curtailing preexisting projects focused on climate justice, environmental issues, and housing discrimination (*Id.* ¶ 853 (GA NAACP Dep. 58:10-12, 77:3-8, 62:13-24); *cf.* ECF No. 764-1 at 27) so that it could significantly expand its Get-Out-The-Vote coverage (SAMF ¶ 857 (Griggs 5/16/23 Decl. ¶ 11)).[7] Ga. NAACP was forced to organize a statewide 22-city voter education campaign. *Id.* ¶ 853 (Griggs 5/16/23 Decl. ¶ 9). It also had to expand its transportation programs, *id.* ¶ 862 (GA NAACP Dep. 56:1-17), and hire two paid attorneys and a paid State Director in response to

[7] SB 202 further frustrated Ga. NAACP's mission of maximizing voter participation by forcing it to cease proactively mailing ballot applications and providing free food, water, and PPE to voters standing in line. SAMF ¶¶ 859-61 (GA NAACP Dep. 73-75, 106:9-22; Griggs 5/16/23 Decl. ¶¶ 10-17). These prohibitions constitute concrete and demonstrable organizational injury. *See supra* at 3-4.

heightened voter needs resulting from SB 202. *Id.* ¶ 858 (GA NAACP Dep. 37:5-17; Griggs 5/16/23 Decl. ¶ 8).

Ga. NAACP's response to SB 202's provisions caused several committee chairs and members to shift their focus from projects related to their committees. *Id.* ¶ 854 (GA NAACP Dep. 65:7-18; Griggs 5/16/23 Decl. ¶ 10). Contrary to Defendants' claim that "none of the Ga. NAACP's staff members' responsibilities changed as a result of SB 202," ECF No. 764-1 at 27, Housing Chair Penny Poole's responsibilities shifted from managing housing discrimination issues to addressing voter challenges in Gwinnett County, attending Board of Registrations and Elections meetings, discussing SB 202 voter issues with local elected officials, advocating to keep polling precincts open, and educating voters about SB 202. SAMF ¶ 855 (GA NAACP Dep. 60:22-61:6, 62:9-21; Griggs 5/16/23 Decl. ¶ 10); *see also id.* at ¶ 856 (Griggs 5/16/23 Decl. ¶ 10) (detailing how Veterans Affairs Committee and Education Committee members had to shift focus away from normal activities to SB 202).

Defendants also contend Ga. NAACP "is unable to quantify the amount of time any volunteers spent on other activities as a result of SB 202." ECF No. 764-1 at 27. As noted, showing injury does not require quantification, *see supra* at 4-5, but, moreover, Ga. NAACP explained that many of its volunteers diverted the majority—or, in the case of Housing Chair Penny Poole, *all*—of their time to SB

202 activities. SAMF ¶¶ 854-55 (GA NAACP Dep. 65:7-18, 60:22-61:6, 62:9-21; Griggs 5/16/23 Decl. ¶ 10). That Ga. NAACP did not identify specific members affected by SB 202 does not suggest no members were disenfranchised. ECF No. 764-1 at 27-28.[8] As the Court ruled in its Order on materiality, "it is highly unlikely 'that not a single [Ga. NAACP] member will have his or her [ballot] rejected'" due to SB 202's provisions.[9] SAMF ¶¶ 210-11, 863 (Ex. 308 (Pulgram Decl. ¶¶ 3-16, 20-27); GA NAACP Dep. 137:12-138:19, 151:11-25); ECF No. 613 at 12-13.

b. Georgia Coalition for the People's Agenda ("GCPA")

GCPA focuses on the protection of voting rights but also performs substantial work on issues outside of the voting process. SAMF ¶¶ 864, 867 (Ex. 263 (Butler 5/14/23 Decl. ¶¶ 2, 8). The enactment of SB 202 caused GCPA to invest significantly more time and resources into voter education than ever before, including by leading virtual and in-person SB 202-education tours across multiple Georgia counties (*Id.*

[8] Defendants make this same argument with respect to Plaintiffs Georgia Coalition for the People's Agenda (GCPA), League of Women Voters of Georgia (LWV), GALEO Latino Community Development Fund (GALEO), Common Cause, and Lower Muskogee Creek Tribe (LMCT). ECF No. 764-1 at 28-32.

[9] This analysis equally applies to the GCPA, LWV, GALEO, Common Cause, and LMCT Plaintiffs, who have approximately 5,000, 624, 225, 24,000, and 2,700 members respectively across the State of Georgia. SAMF ¶¶ 864, 897, 891, 878, 903 (Butler 5/14/23 Decl. ¶ 3; Ex. 311 (S. Scott Decl. ¶ 3); Ex. 279 (Gonzalez Decl. ¶ 4); Ex. 272 (Dennis 5/16/23 Decl. ¶ 3); Ex. 41 (LMCT Dep. 37-38)). It is "highly unlikely" none of those members will have their ballot rejected due to SB 202's provisions. ECF No. 613 at 12-13.

¶ 865 (Butler 5/14/23 Decl. ¶¶ 6-7)), educating attendees on new rules regarding absentee voting, out of precinct voting, drop box availability, compressed voting periods, unlimited voter challenge procedures (*Id.* ¶ 867 (Butler 5/14/23 Decl. ¶¶ 5, 7, 10-11; Ex. 26 (GCPA Butler Dep. 90, 105-06, 179:17-23); Ex. 25 (GCPA Battles Dep. 53, 55, 87:4-15); Ex. 264 (Butler Authentication Decl. at 43)), and engaging extensively with government officials and legislatures regarding SB 202's requirements. *Id.* ¶ 865 (Butler 5/14/23 Decl. ¶¶ 10-11). Defendants argue GCPA's efforts do not constitute an injury because "[GCPA] always provides education when laws related to voting change," ECF No.764-1 at 28, but this is legally incorrect, *see supra* at 7, and, further, the scale of the GCPA's SB 202-education activities was unprecedented given all the changes in SB 202. SAMF ¶ 865-66, 868-69 (Butler 5/14/23 Decl. ¶¶ 6-7, 10-11; GCPA Butler Dep. 105-06, 179:17-23; GCPA Battles Dep. 37-38, 75, 86, 87:4-15).

Various GCPA personnel had to cease other activities to engage in SB 202-related work. Cindy Battles, for instance, could no longer engage in the very tasks for which GCPA hired her. *Id.* ¶ 870 (Butler 5/14/23 Decl. ¶ 9; GCPA Butler Dep. 105:23-106:14). Likewise, Helen Butler could no longer fulfill her directorial duties due to the substantial time she had to dedicate to SB 202-related activities. *Id.* ¶ 871 (Butler 5/14/23 Decl. ¶ 11). After SB 202's changes to out-of-precinct provisions caused hundreds of voters to not have their votes counted in the 2022 elections,

GCPA staff requested and analyzed thousands of pages of records about rejected out-of-precinct provisional ballots to assist voters. *Id.* ¶ 869 (GCPA Battles Dep. 37-38); *see also id.* ¶ 877 (GCPA Battles Dep. 55-57) (GCPA assisted voters when out of precinct provisional issue arose). GCPA expanded its "Rides to the Polls" initiative after many members and voters—including elderly citizens and those with disabilities—requested assistance traveling to polling places because they could not meet SB 202's new absentee ballot application requirements (and could therefore not vote by mail). *Id.* ¶ 866, 876 (Butler 5/14/23 Decl. ¶¶ 10-11; GCPA Butler Dep. 91:17-22, 105-06, 113:13-15). GCPA staff diverted substantial time to identifying members and voters subject to voter challenges and helped them navigate the challenge process. *Id.* ¶ 868 (GCPA Butler Dep. 179:17-23; GCPA Battles Dep. 87:4-15). Additionally, a GCPA member had to attend a hearing to ensure she was not removed from the voter roll after a stranger challenged her eligibility to vote. *Id.* (GCPA Battles Dep. 88:10-89:5; GCPA Butler Dep. 133:11-134:24); *cf.* ECF No.764-1 at 28-29 (Defendants claiming GCPA unable to identify members impacted by SB 202).

These unanticipated voter outreach and education activities diverted resources from projects central to GCPA's mission, forcing GCPA to entirely cease work on its citizen review board, community school board, same-day-voter-registration, utility processing, and contract facilitation initiatives. SAMF ¶ 872 (GCPA Butler Dep.

98-99, 101:7-15, 107:15-19; Butler 5/14/23 Decl. ¶ 9; GCPA Battles Dep. 33-34). Further, GCPA's mission was thwarted as it had to discontinue its extensive line relief and ballot application mailing efforts due to SB 202 criminalizing those activities. *Id.* ¶¶ 873-75 (GCPA Butler Dep. 40:5-22, 95:12-96:2, 118:6-10, 181; Butler Authentication Decl. at 4-19, 21-41).

c. League of Women Voters of Georgia ("LVW")

LWV's organizational mission includes advocating for and educating citizens about public policy issues and the voting process. SAMF ¶ 897 (S. Scott Decl. ¶ 2). After SB 202 went into effect, LWV had to substantially increase its voter access advocacy efforts. *Id.* ¶¶ 898-99 (S. Scott Decl. ¶¶ 6-9; Ex. 40 (LWV Dep. 51-52, 67:10-17, 69:8-20)). LWV traditionally performs work on a voluntary basis; however, the increased time and effort required to combat the effects of SB 202 forced it to hire paid interns. *Id.* ¶¶ 897, 899 (Scott Decl. ¶ 4; LWV Dep. 69:8-20). Due to SB 202's extensive changes to Georgia's election laws, LWV had to entirely rework the voting materials and online voter guide it provides, circulate e-mails, postcards, and social media posts about SB 202, attend media interviews and candidate forums, and host town halls, information sessions, and trainings for local leaders. *Id.* ¶¶ 898-99 (S. Scott Decl. ¶ 6; Vote411.org; LWV Dep. 51-52, 67:10-17). The reworked voting materials include guidance on SB 202's changes to the absentee and out-of-precinct voting process, compressed voting timeline, and availability of

drop boxes. *Id.*

Defendants concede that LWV "increased its work in advocacy as a result of SB 202," but misleadingly argue that "decreased activity of its local league partners" caused LWV's injury. ECF No. 764-1 at 29. Not so. LWV was forced to scale down or end various initiatives because of SB 202, including limiting its redistricting work, scaling down its candidate survey program, reducing voter registration drives, discontinuing certain voter registration work, and ending line relief efforts. SAMF ¶¶ 900-01 (LWV Dep. 62-63, 64:9-22, 70-71; S. Scott Decl. ¶ 8).

Additionally, LWV testified about several voters who were unable to meet SB 202's shortened deadline for returning absentee ballots and is aware of hundreds of voters whose ballots were not counted because they failed to include immaterial information required by SB 202. *Id.* ¶¶ 210-11, 902 (Pulgram Decl. ¶¶ 3-16, 20-27, 30-32; LWV Dep. 76:2-12); *cf.* ECF No. 764-1 at 29 (Defendants arguing LWV has no knowledge of anyone impacted by SB 202's provisions).

d. GALEO

GALEO aims to increase civic engagement and leadership development of the Latino/Hispanic community across Georgia. SAMF ¶ 889 (Gonzalez Decl. ¶ 2). To further this mission, GALEO has traditionally focused its voter education efforts on motivating and teaching citizens to vote. *Id.* ¶ 890 (Ex. 27 (GALEO Dep. 102:13-22)). Because of the enactment of SB 202, however, GALEO had to instead focus

on explaining the substance of SB 202's provisions, with particular emphasis on new absentee voting restrictions. *Id.* ¶¶ 890-91 (GALEO Dep. 99:8-23, 103:10-25; Gonzalez Decl. ¶¶ 4-5, 7-8). Educating members and voters about SB 202's complex ballot application and completion requirements is particularly critical to Latino voters because many of them are not proficient in English, and all Georgia counties except one only provide ballot applications, instructions, and ballots in English. *Id.* ¶ 894 (GALEO Dep. 100, 123:17-23; Gonzalez Decl. ¶ 6). GALEO diverted resources from its core Get-Out-The-Vote, naturalization paperwork training, and voting walkthrough activities. *Id.* ¶ 892 (GALEO Dep. 94-98). Contrary to Defendants' argument, ECF No.764-1 at 30, GALEO need not show elimination of activities to support standing. *See supra* at 4-5. GALEO's activities have been limited due to the time and resources diverted to addressing SB 202's changes. SAMF ¶¶ 891-92 (GALEO Dep. 94-98; Gonzalez Decl. ¶¶ 4, 7-8).

e. Common Cause

To further its social justice mission, Common Cause traditionally leads campaigns focused on voter protection and education, gerrymandering and representation, ethics and accountability, and the democratic process. SAMF ¶ 878 (Dennis 5/16/23 Decl. ¶ 2). Because of SB 202's restrictions however, Common Cause has had to divert time and resources in mass education campaigns such as townhalls and community engagement panels, regarding new rules about absentee

and out of precinct voting, drop box availability, unlimited voter challenge procedures, and punishments for officials who defend voters' rights. *Id.* ¶ 879 (Dennis 5/16/23 Decl. ¶¶ 7-8; Ex. 16 (Common Cause Dep. 102-03, 119, 163-65, 166-67)). Common Cause has had to vastly expand its provisional ballot curing program to address the sharp increase in provisional votes brought by SB 202. *Id.* ¶¶ 879-80 (Dennis 5/16/23 Decl. ¶ 7; Common Cause Dep. 98, 117-18). Applying its limited resources to these initiatives has forced Common Cause to terminate its sheriff accountability program, abandon its goal of building an advisory board, and discontinue its procurement and real estate activities in all but one local jurisdiction. *Id.* ¶ 881 (Common Cause Dep. 107:13-108:21, 116:1-5; Dennis 5/16/23 Decl. ¶ 8). And Common Cause has had to entirely cease its line relief activities because of SB 202. *Id.* ¶ 882 (Common Cause Dep. 168-69; Dennis Line Relief Decl. ¶¶ 6-8, 15).

Contrary to Defendants' argument that that Common Cause "simply chose to prioritize election projects" over its sheriff accountability program, and that any cuts to Common Cause's programs resulted from lack of funding from its national organization, rather than SB 202's implementation, ECF No. 764-1 at 31, Common Cause made clear that it only discontinued activities because it lacked staff capacity after diverting resources to address SB 202's provisions. SAMF ¶ 881 (Common Cause Dep. 107:13-108:21, 116:1-5; Dennis 5/16/23 Decl. ¶ 8). Common Cause

would have continued to engage in the discontinued activities if not for SB 202. *Id.* (Common Cause Dep. 108:19-21, 113:14-16; Dennis 5/16/23 Decl. ¶ 8).

Common Cause also testified about numerous members impacted by SB 202: some had to spend considerable time and effort reinstating their ability to vote due to a groundless eligibility challenge (*Id.* ¶ 884 (Common Cause Dep. 166-67)); others experienced difficulty voting in the 2022 elections due to reduced weekend and drop box voting opportunities (*Id.* ¶¶ 886-88 (Common Cause Dep. 30-31, 153:15-22, 155, 201-02)); and at least one member had her absentee ballot initially rejected for purportedly lacking a correct birthdate. *Id.* ¶ 885 (Gammon Decl. ¶ 6).

f. Lower Muskogee Creek Tribe ("LMCT")

The LMCT did not devote any resources to voter education before 2021. SAMF ¶ 903 (LMCT Dep. 41:16-19). After SB 202 went into effect, LMCT Chief Marian McCormick began devoting approximately 25% of her time to voter education efforts. *Id.* (LMCT Dep. 41-43). Chief McCormick engaged in these efforts because SB 202's provisions are particularly harmful to LMCT members. Many LMCT members lack access to computers, printers, and/or scanners now required to submit absentee ballot applications and cannot meet shorter absentee mailing deadlines as they work out of state. *Id.* ¶¶ 904, 907 (LMCT Dep. 61:24-62:4, 63:8-16). Members who do work locally are restricted by SB 202's early voting and weekend voting limitations because they work six or seven days a week.

Id. ¶ 906 (LMCT Dep. 64:4-10). The reduction in drop boxes resulting from SB 202 further impairs members' ability to vote because polling places are located far from the Tribe and many members do not have access to a vehicle. *Id.* ¶ 908 (LMCT Dep. 40, 43:22-44:9, 59:12-16, 64). Indeed, an increased number of members sought transportation to the more limited drop boxes and polling places, and three members had their tribal IDs improperly rejected by poll workers when they attempted to verify their identity to vote in the 2022 elections.[10] *Id.* ¶¶ 908-09 (LMCT Dep. 40, 43:22-44:9, 39:18-24, 45:14-46:20, 47).

3. AME Plaintiffs

a. The Arc of the United States ("The Arc Georgia")

The Arc Georgia is a nonpartisan, non-profit membership organization that serves people with intellectual and/or developmental disabilities ("IDD") statewide. SAMF ¶ 732 (Ex. 303 (Mattox Decl. ¶¶ 4-5)). The Arc Georgia's mission is to promote and protect the human rights of people with IDD and actively support their full inclusion and participation in the community throughout their lifetimes. SAMF ¶ 733 (Mattox Decl. ¶ 7). The Arc Georgia engages in public policy advocacy and develops programs to support people with IDD. SAMF ¶ 734 (Mattox Decl. ¶ 8). The Arc Georgia has prioritized protecting the rights of voters with IDD through

[10] The Georgia Secretary of State has agreed to recognize tribal identity documents for voting purposes. SAMF ¶ 909 (LMCT Dep. 61).

voter outreach, education, and registration. SAMF ¶ 734 (Mattox Decl. ¶ 9).

i. *Diversion of Resources*

Before the passage of SB 202, The Arc Georgia engaged in public policy advocacy and implemented programs to support the inclusion of people with IDD in the community, such as hosting training programs, providing education and outreach, and convening a group of "Grassroots Connectors" to support and advocate for voters with IDD. SAMF ¶¶ 736-738 (Mattox Decl. ¶¶ 13-14). Due to the passage of SB 202, The Arc Georgia has had to engage in new work and activities, forcing it to divert and continue to divert non-financial resources, including employee time, effort, and attention, from other programming and core organizational goals. SAMF ¶ 735 (Mattox Decl. ¶¶ 13-23). Specifically, The Arc Georgia has spent significant time and resources studying the implications of SB 202 to ensure its activities comply with the changes in the law and had to train its volunteers and partners on the legislation to ensure that they are providing accurate information. SAMF ¶ 739 (Mattox Decl. ¶ 16). It also has spent time and resources developing new and costly training materials, educational programs, and a documentary about SB 202 to help educate its members who are burdened by these changes in the law. SAMF ¶ 740 (Mattox Decl. ¶ 18; Ex. 11 (Arc Dep. 27:16-28:19). Additionally, The Arc Georgia has responded to an increased number of calls from its members with questions about voting and SB 202, which detracts from the time

its employees can spend on other activities. SAMF ¶ 741 (Mattox Decl. ¶ 18; Arc Dep. 27:16-28:19). Due to the Felony Assistance Provision, The Arc Georgia has had to divert resources to educate people about the consequences for a person who is not a "caregiver" or family member returning a ballot for a person with a disability. SAMF ¶ 742 (Mattox Decl. ¶ 19). Its outreach and educational programming on SB 202 rose to levels that well exceeded its typical work on voting pre-SB 202. SAMF ¶ 740 (Mattox Decl. ¶¶ 18, 20; Arc Dep. 27:16-28:19).

Since SB 202 passed, The Arc Georgia has been unable to devote necessary resources to many of its other priorities. For example, The Arc Georgia has not been able to conduct robust outreach and advocacy to help the almost 10,000 Georgians with IDD who are on the waitlist for Medicaid home and community-based services; to implement programs to help families advocate for children with IDD in special education; or to provide more support and leadership to its ten local chapters on issues other than voting. SAMF ¶ 743 (Mattox Decl. ¶ 22). If the challenged provisions of SB 202 were enjoined, The Arc Georgia would have more capacity to return to its work of ensuring that Georgians with IDD can be fully included in all aspects of their community. SAMF ¶ 744 (Mattox Decl. ¶ 23).

ii. *Associational Standing*

The Arc Georgia also has associational standing because its members who would otherwise have standing have been harmed by SB 202's provisions and those

members' interests in voting are germane to The Arc Georgia's purpose in ensuring their full inclusion and participation in the community. Defendants argue that The Arc Georgia could not identify members affected by SB 202. ECF No. 764-1 at 37. However, The Arc Georgia has presented evidence of members that have been burdened by and prevented from voting due to SB 202. For example, members who require assistance from neighbors, friends, or direct support staff to submit their ballots will be unable to vote because SB 202 makes it unclear whether these assistors are authorized to assist as "caregivers" under the law's Felony Assistance Provision. SAMF ¶ 745 (Mattox Decl. ¶ 21). Specifically, at least one member of The Arc Georgia, who has cerebral palsy and glaucoma, lives in a nursing facility, and needs assistance with many activities of daily living, including voting. SAMF ¶ 745 (Mattox Decl. ¶ 21). In the past, this member has typically received assistance from the nursing facility staff in completing, sealing, and mailing an absentee ballot. SAMF ¶ 611 (Ex. 306 (Papadopoulous Decl. ¶¶ 9, 11-14); Mattox Decl. ¶ 21). Since the enactment of SB 202, the nursing facility staff and member have been confused whether the staff can provide assistance, and without their assistance the member is unable to vote. SAMF ¶ 611 (Papadopoulous Decl. ¶¶ 9, 11-14; Mattox Decl. ¶ 21). Other members have had difficulty complying with the SB 202 identification requirements, as well as accessing drop boxes which have been the only reliable way for them to vote in the past. SAMF ¶ 745 (Mattox Decl. ¶ 21).

b. Sixth District of the African Methodist Episcopal Church ("Sixth District")

The Sixth District has been engaged in voter registration, voter education, voter mobilization, and voter organization for many elections. SAMF ¶ 922 (Ex. 45 (AME Dep.23:8-21, 24:6-20)). Encouraging and supporting civic participation among its members as well as the broader community is a core aspect of the Sixth District's work. SAMF ¶ 923 (Ex. 289 (Jackson Decl. ¶ 8)). Advocating for the right to vote, regardless of candidate or party, and encouraging the Sixth District's eligible members to vote have been priorities of the church. *Id*. These goals are especially important to the church because of the persistent discrimination that Black Americans have historically faced when trying to exercise their fundamental right to vote. *Id*.

One of the Sixth District's civic engagement programs is called Operation Voter Turnout. SAMF ¶ 925 (Jackson Decl. ¶ 10). Operation Voter Turnout is a voter mobilization program organized by the church to educate, register, and mobilize its members to vote. *Id*. One of the many activities Sixth District organizes as part of Operation Voter Turnout is "Souls to the Polls." SAMF ¶ 926 (Jackson Decl. ¶ 10). This initiative is an effort to transport churchgoers to polling locations during advance voting periods after they have attended worship services. SAMF ¶ 927 (Jackson Decl. ¶ 10). Sixth District also holds Get-Out-The-Vote efforts to increase voter participation. SAMF ¶ 928 (Jackson Decl. ¶ 10). Another activity

Sixth District member churches have pursued through Operation Voter Turnout is handing out food, water, chairs, and other provisions to voters standing in lines at polls (also known as "line warming" or "line relief"). SAMF ¶ 930 (Jackson Decl. ¶ 11). Member churches have been engaged in line relief activities for decades across the state of Georgia, mostly in predominantly Black neighborhoods. *Id*. Because of SB 202, member churches across the state have halted plans to engage in any line relief activities in all upcoming elections. SAMF ¶ 932 (AME Dep. 27:5-29:13).

Defendants contend (ECF No. 764-1 at 29) that the Sixth District cannot establish standing because it lacks control over member churches and has not diverted resources related to actual harm. Defendants are incorrect. The Sixth District has over 500 member-churches and approximately 96,000 individual church members. SAMF ¶ 932 (AME Dep. 22:1-7). All of the ministers of member churches fall under the authority of the Sixth District. *Id*. For example, regarding Operation Voter Turnout, local churches implement Get-Out-The-Vote efforts using instructions provided by the Sixth District. *Id*.

Further, although Defendants contend that Sixth District has not expended resources related to the actual harm, the evidence shows that Defendants are incorrect. Sixth District has had to divert a greater amount of its resources on voting issues in order to combat the impact of the new legislation. SAMF ¶ 934 (AME

Dep. 38:23-41:3). Prior to SB 202, a large number of black voters used ballot drop boxes to cast their ballot. Many of these drop boxes were reduced by SB 202 (for example, in Fulton County the number of drop boxes dropped from thirty-two to eight). SAMF ¶ 936 (AME Dep. 29:9-13). Sixth District has had to spend significant resources to re-educate its members to be familiar with these, and other changes created by SB 202. SAMF ¶ 937 (AME Dep. 27:5-29:13).

c. Women Watch Afrika ("WWA")

WWA is a nonprofit organization providing comprehensive social adjustment services to African refugees and immigrants, both men and women, who have left their country to make the United States their newfound home. SAMF ¶ 766 (Ex. 46 (WWA Dep. 78:11-22)). Although Defendants contend (ECF No. 764-1 at 35) that WWA cannot establish standing because it lacks members and has not diverted resources related to actual harm, Defendants are incorrect. As this Court previously recognized, at least one of the Plaintiffs have demonstrated standing and the Court "need not parse" the standing of each plaintiff, including WWA. *See* ECF No. 613 at 6 n.7, 10 (determining that Ga. NAACP and GAMVP established standing) (quoting *Ga. Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1113–14 (11th Cir. 2022). As to diversion of resources, the evidence is clear that WWA diverted resources as a result of SB 202. After the passage of SB 202, WWA's voting-related work increased. SAMF ¶ 767 (WWA

Dep. 16:4-12). For example, WWA had to divert staff time to reading and understanding the changes in SB 202, voter education around the changes in SB 202 in multiple languages, and assist new citizens with obtaining voter ID. SAMF ¶ 768 (WWA Dep. 18:14-21:11, 74:5-75:12). To ensure voters understood these changes, WWA increased the amount of time it spent talking to voters. *Id.* Prior to SB 202, WWA's advocates were instructed to disseminate information to at least seven families per shift. *Id.* But after SB 202, WWA had to limit the number of family contacts to three per shift in order to give the families enough time to ask questions about SB 202. *Id.* WWA also diverted resources from preparing people for citizenship exams and with English language classes and resource-mapping to learn more about the needs of the community it serves and how to address those needs. SAMF ¶ 769 (WWA Dep. 88:25-91:20). WWA's increased voter education efforts resulting from SB 202 included updated information about drop boxes, absentee voting, and early voting. SAMF ¶ 770 (WWA Dep. 32:10-33:20, 119:12-121:9). Some of this information was disseminated through announcements on the radio. *Id.* WWA did not previously do voter education announcements on the radio or did not do such announcements with such frequency prior to SB 202. *Id.* WWA also moved three volunteers involved in WWA's program with DeKalb County Schools and re-allocated their volunteer time to work on WWA's SB 202 community outreach work. SAMF ¶ 771 (WWA Dep. 91:21-93:11; 119:21-121:9).

d. Latino Community Fund Georgia ("LCF")

LCF is a nonprofit organization that engages in civic education and civic participation efforts including election protection, training volunteers on Georgia law and Spanish language assistance. SAMF ¶ 772 (Ex. 39 (LCF Dep. 36:1-21)). Defendants offer up the same arguments (ECF No. 764-1 at 35) as it did for WWA regarding associational standing and diversion of resources and those arguments fail for the same reason as described above. At least one Plaintiff has established standing and LCF's diversion of resources is well documented. When SB 202 was enacted, LCF diverted all of its civic participation staff time, its Executive Director's time, and part of its communications team's time to understanding SB 202 and how it would impact the community that LCF serves. SAMF ¶ 773 (LCF Dep. 28:18-30:14). LCF's civic participation program was only one of three programs that LCF operated at the time. *Id.* In 2021, one-third to one-half of LCF's staff prioritized work surrounding SB 202. SAMF ¶ 774 (LCF Dep. 33:13-35:1). In re-allocating resources to address SB 202's changes, LCF's civic participation staff members had to halt or reduce strategy development and outreach to the Portuguese-speaking community LCF serves, reduced community education programs around redistricting, and reduced resources to other initiatives that had been established as organizational priorities prior to SB 202's passage. SAMF ¶ 775 (LCF Dep. 33:13-35:1). As a result of SB 202, LCF redesigned content on its website in both English

and Spanish and redesigned, printed, and redistributed printed community education materials detailing the changes enacted by SB 202. SAMF ¶ 776 (LCF Dep. 60:7-62:6). LCF also devoted resources to new digital campaigns, including time and resources to educate community members through Spanish-speaking media. *Id*.

e. Georgia Muslim Voters Project ("GAMVP")

Despite Defendants' assertions (ECF No. 764-1 at 31-33) to the contrary, for all of the reasons outlined in Section II c (WWA section) *supra*, GAMVP can claim associational standing. Furthermore, GAMVP conducted line relief work before SB 202 was enacted; these efforts have stopped completely since SB 202 passed. SAMF ¶ 763 (Ex. 30 (GAMVP Dep. 110:8-19, 113:3-11)). In addition, GAMVP planned to launch new initiatives to better serve Muslim voters, including translation services and education workshops in languages commonly used by the Muslim community; Get-Out-The-Vote measures aimed specifically at the Muslim community; data and research studies to better address the various Muslim sects that GAMVP serves; and administrative work like cleaning up existing data sets. SAMF ¶ 762 (GAMVP Dep. 57:21-58:8, 98:20-101:21, 102:25-103:7). In the wake of SB 202's passage, however, all of these new areas of support have been paused so that GAMVP can focus its finite resources on existing Get-Out-The-Vote and voter education efforts. *Id*. To further shore up this work, and also as a result of the introduction and passage of SB 202 and other voting laws, GAMVP hired staff who had been working part-

time as full-time employees, focused on voter registration, Get-Out-The-Vote and voter education efforts, and advocacy. SAMF ¶ 764 (GAMVP Dep. 116:9-117:7). GAMVP has therefore reallocated resources as a result of SB 202's passage.

What is more, GAMVP identified members of its community who had difficulty accessing the ballot box following SB 202's passage. SAMF ¶ 765 (GAMVP Dep. 171:4-11, 131:4-6, 131:9-17). GAMVP's Executive Director testified that staff members spoke with community members who faced barriers exercising their right to vote as a result of SB 202's challenged provisions. *Id*.

f. Delta Sigma Theta ("DST")

As part of its efforts to support its members, DST provides voter education and engagement programs and materials during election cycles. SAMF ¶ 87, 88 (Ex. 19 DST Dep. 49:6-21; 50:6-18, 51:2-14)). In addition to allocating resources to this regular work, DST allocated additional resources to help ensure its members understood SB 202 before heading to the polls. SAMF ¶ 779 (DST Dep. 57:8-58:2, 85:1-16). These additional efforts included phone banking, providing transportation, and election protection. *Id*. As a volunteer-led organization, DST relies heavily on contributions from its members. *Id.*

Although Defendants claim that DST did not divert resources as a result of SB 202's passage, the record does not bear this out. DST Co-Chair Rhonda Briggins testified that, following the passage of SB 202, DST volunteers were afraid to

participate in voter education initiatives due to concerns about being criminally prosecuted under the law. SAMF ¶ 780 (DST Dep. 45:2-23, 114:11-16, 114:25). Through a significant expenditure of volunteer outreach and engagement efforts, DST was able to assuage these members' concerns. SAMF ¶ 780 (DST Dep. 45:2-23, 114:11-16, 114:25]). *See also* SAMF ¶ 780 (DST Dep. 51:15-25, 52:20-53:5, 55:12-18) (noting that additional effort was required to ensure voters understood SB 202 provisions, including written communications and zoom education sessions).

g. Georgia ADAPT

Georgia ADAPT is a nonpartisan, statewide disability rights organization, whose mission includes: 1) working to end institutional bias against Georgians with disabilities and 2) encouraging people with disabilities to use their voice and vote, as well as educating candidates about how to reach and serve the disability community. SAMF ¶ 781 (Ex. 317 (Thornton Decl. ¶¶ 4-5); Ex. 22 (ADAPT Vol. I 48:12-23)).

i. Diversion of Resources

Prior to SB 202, Georgia ADAPT spent approximately 20 percent of its time on election-related activities and in a major election cycle would receive about 200 calls and provide about 150 rides. SAMF ¶ 783 (Thornton Decl. ¶ 7; ADAPT Vol. I 23:4-24:1). Following the passage of SB 202, Georgia ADAPT has put more time and energy into offering individuals with disabilities rides to the polls and helping

people drop off absentee ballots such that now about 80 percent of Georgia ADAPT's energy and time goes to election-related activities, which detracts from its other non-voting advocacy work. SAMF ¶ 784 (Thornton Decl. ¶¶ 11, 15-18; ADAPT Vol. I 32:16-33:5). During the 2022 election cycle, Georgia ADAPT received about 2,000 calls and provided about 788 rides. SAMF ¶ 785 (Thornton Decl. ¶ 11; ADAPT Vol. I 27:3-20). Additionally, Georgia ADAPT has needed to educate its staff and its volunteers about SB 202's restrictive new rules. SAMF ¶ 786 (Thornton Decl. ¶ 14).

Defendants claim that "ADAPT was not able to identify specific programs it ceased engaging in" due to SB 202, ECF No. 764-1 at 39; however, Georgia ADAPT testified that but for SB 202 it would be working to remove institutional bias in Medicaid and the services that people with disabilities need to live at home. SAMF ¶ 788 (Thornton Decl. ¶ 25; ADAPT Vol. I 71:1-12). But because of its work related to the passage of SB 202, Georgia ADAPT has not been able to be in Washington, D.C. doing that grassroots lobbying work. SAMF ¶ 788 (Thornton Decl. ¶ 25; ADAPT Vol. I 71:1-12). Georgia ADAPT has also ceased providing line relief and helping people apply for absentee ballots. SAMF ¶ 787 (Thornton Decl. ¶¶ 22-25).

ii. Associational Standing

Defendants also assert that Georgia ADAPT is "unaware of any members who were unable to vote by absentee ballot," ECF No. 764-1 at 39, but Georgia ADAPT

testified that it knew of members who were unable to return their absentee ballot because of a lack of drop boxes or access to the drop box. SAMF ¶ 789 ADAPT Vol. I 109:12-15; ADAPT Vol. II 40:5-23). And those members' interests in voting are germane to Georgia ADAPT's purpose.

h. Georgia Advocacy Office ("GAO")

GAO is a non-profit organization designated by the State of Georgia as the State's protection and advocacy system ("P&A") to protect the legal and human rights of individuals with disabilities in Georgia. SAMF ¶ 790 (Ex. 305 (Orland Decl. ¶¶ 3-4)). P&As are organizations which are mandated and authorized under federal law to protect and advocate for the rights of people with disabilities. P&A agencies receive their authority from federal statutes, such as the Help America Vote Act ("HAVA"), 52 U.S.C. § 21061. GAO is the designated agency in Georgia to receive an annual grant, called Protection and Advocacy for Voting Access ("PAVA") pursuant to HAVA, requiring GAO to promote access and engagement in the electoral process for voters with disabilities. SAMF ¶ 792 (Orland Decl. ¶ 9).

As the designated P&A, GAO is authorized to pursue administrative, legal, and other appropriate remedies to protect and advocate for the legal rights of individuals with disabilities and to redress incidents of discrimination in the state. SAMF ¶ 791 (Orland Decl. ¶ 5). Central to its mission is empowering Georgians with disabilities to participate fully and independently as active and engaged

citizens, including by ensuring and promoting access to voting. SAMF ¶ 791 (Orland Decl.¶¶ 5, 12).

i. Standing as Georgia's Designated P&A

As Georgia's designated P&A, GAO has the authority to prosecute actions in its own name and on behalf of its constituents. SAMF ¶ 791 (Orland Decl. ¶ 5). The Eleventh Circuit has recognized that P&As have standing to sue on behalf of their constituents. *See, e.g.*, *Doe v. Stincer*, 175 F.3d 879, 886 (11th Cir. 1999). Unlike other organizations, (1) membership is not required for a P&A to assert standing; rather, constituents that "have the indicia of membership" are sufficient; and (2) P&As in some cases are not required to demonstrate that the claim or relief requested requires individual member participation. *Id.* at 884-86.

GAO's constituents for its voting program include all voters with disabilities throughout Georgia, including people who are in institutions, such as nursing facilities, psychiatric hospitals, group homes, and other congregate settings. SAMF ¶ 793 (Orland Decl.¶ 10; Ex. 24 (GAO Dep. 146:23-147:9)). Defendants assert that "GAO could not definitively identify any injury to GAO's members." ECF No. 764-1 at 41. GAO's constituents are the approximately 1.3 million Georgia voters with disabilities. SAMF ¶ 576 (Ex. 111 (Schur Rep. ¶ 9)). "It is highly unlikely 'that not a single'" Georgia voter with disabilities has had difficulty accessing the ballot due to SB 202's provisions. ECF No. 613 at 12-13; *see also Dem. Party of Ga. Inc. v.*

Critteden, 347 F. Supp. 3d 1324, 1337 (N.D. Ga. 2018). Further, GAO is aware of constituents who have been burdened by SB 202, such as by not being able to access drop boxes. SAMF ¶¶ 665-666 (Orland Decl. ¶ 17).

ii. Diversion of Resources

In addition to its standing as Georgia's designated P&A for the protection of disabled Georgians' rights, GAO also has organizational standing because SB 202 has forced it to divert resources from its other non-election related activities. Defendants contend that GAO "could not explain changes in its voter education-related work after the passage of SB 202." ECF No. 764-1 at 40. Not so. Prior to SB 202, GAO's PAVA work was specifically geared towards protecting the disability vote using a combination of supporting self-advocacy, citizen involvement, staff advocacy, and legal advocacy to protect and advocate for the rights of Georgians with disabilities. SAMF ¶ 796 (Orland Decl. ¶ 14). As a result of SB 202, GAO has modified and expanded its voter education program, including updating a detailed PowerPoint presentation entitled Reminding You to Vote. SAMF ¶ 797 (Orland Decl. ¶ 19; GAO Dep. 169:1-9). GAO has spent additional time during visits to nursing homes, psychiatric facilities, and day programs to educate voters about the burdens imposed by SB 202 and assisted voters in formulating and executing a plan to vote. SAMF ¶ 798 (Orland Decl. ¶ 19; GAO Dep. 153:11-24). GAO has hosted webinars and educational events specifically to

help explain the changes to the voting process for Georgians with disabilities due to S.B. 202, including new ID requirements and limitations and penalties for violations of voter assistance provisions. SAMF ¶ 798 (Orland Decl. ¶ 19). Further, GAO has called nursing facilities to speak with staff about voting access and practices for assisting residents, in light of the changes in SB 202 (including the Felony Provision). SAMF ¶¶ 799, 802 (GAO Decl. ¶¶ 19, 25; GAO Dep. 151:2-152:9, 153:11-24). GAO has also fielded queries and complaints about individuals who have had difficulty getting an assistor to help them vote or get assistance from poll workers to vote due to confusion about the Felony Provision. SAMF ¶¶ 802-804 (Orland Decl. ¶ 25; GAO Dep. 93:18-94:2, 151:2-152:9). Thus, as a result of the passage of SB 202, GAO has had to expend time and resources ensuring that voters are not denied their access to the franchise. SAMF ¶ 806 (Orland Decl. ¶¶ 19(f), 27).

Time spent by GAO's staff on one voting issue, such as assisting people to navigate the changes in voting due to SB 202, directly diminishes the time that GAO can spend on other advocacy work. SAMF ¶ 794 (Orland Decl. ¶ 13). Specifically, GAO's eight staff members have less time to spend advising people in nursing homes about rights outside of accessing the ballot and monitoring conditions in those settings. SAMF ¶ 798 (Orland Decl. ¶ 19). GAO has also had to discontinue informing nursing facility staff about their obligations to assist, or help find a

caregiver to assist, residents in the absentee voting process because of the lack of clarity about the new rules and the potential risks. SAMF ¶ 804 (Orland Decl. ¶ 25; GAO Dep. 151:2-152:9). GAO also no longer takes absentee ballot applications to residents of congregate settings as a result of the inability to facilitate returning or mailing them. SAMF ¶ 805 (Orland Decl. ¶ 25). Thus, due to SB 202, GAO is and will continue to be limited in the resources it can devote to its other core organizational goals. SAMF ¶ 806 (Orland Decl. ¶¶ 19(f), 27).

GAO has also had to divert financial resources due to SB 202. For example, GAO has paid almost $20,000 to rewrite and reshoot a pre-planned educational video and modify and expand a voting forum due to SB 202's significant changes to Georgia's voting processes for people with disabilities. SAMF ¶ 800 (Orland Decl. ¶ 19; GAO Dep. 169:1-9). GAO receives a set amount of funding each year from the federal PAVA grant to conduct voting advocacy, which cannot be spent on other advocacy work. SAMF ¶ 792 (Orland Decl. ¶ 13, GAO 167:13-15).

4. Asian Americans Advancing Justice-Atlanta ("Advancing Justice-Atlanta) Plaintiff

Advancing Justice–Atlanta is a non-partisan, non-profit organization founded in 2010 and located in Norcross, Georgia. The organization's mission is to protect and promote the civil rights of Asian Americans and Pacific Islander ("AAPI") people and other immigrant and refugee communities in Georgia through policy

advocacy, civic engagement and organizing, legal services, and impact litigation, particularly in the areas of immigrant justice and voting rights.

Given that AAPI Georgians use and rely on absentee-by-mail voting at a disproportionately higher rate than the state's voters as a whole, *see* SAMF ¶ 39 (Ex. 96 ("Fraga Rep.") Tbl. 2), SB 202's sweeping limitations on absentee voting forced Advancing Justice–Atlanta to pivot away from other organizational activities in order to assist community members in understanding the impacts of the law. For example, Advancing Justice–Atlanta dedicated significant staff resources to overhaul its voter outreach materials, including Voter FAQ and other educational and training materials (and translate those into four languages beyond English) following the passage of SB 202, to help AAPI voters understand the restrictions the law imposes. *See* SAMF ¶¶ 705–06 (Ex. 12 (AAAJ Dep.) 55:22-56:12, 56:21-57:7, 57:8-58:14; Ex. 294 (Khwaja Decl.) ¶ 21). Given the breadth of SB 202's changes to the voting process, Advancing Justice–Atlanta organized a panel discussion for community-based, voting rights, or civic engagement organizations that routinely interact directly with voters to educate those organizations about some of the law's most harmful provisions. SAMF ¶ 707 (AAAJ Dep. 69:13-70:20). Also, because SB 202 eliminated scores of drop box locations in Georgia's most populous counties, Advancing Justice–Atlanta assigned staff members to stand at polling locations

where drop boxes had existed before SB 202, so they could direct confused voters to other locations. SAMF ¶ 713 (Khwaja Decl. ¶ 23).

In order to respond to SB 202 in myriad ways, Advancing Justice–Atlanta had to direct resources away from its immigrant justice advocacy. SAMF ¶ 714 (AAAJ Dep. 60:7-61:11). For example, because of SB 202, Advancing Justice–Atlanta was unable to lead a process to address the deportation of Vietnamese individuals. SAMF ¶ 716 (AAAJ Dep. 62:21-5). The organization was also forced to discontinue many activities it had previously engaged in, including advocating for voting access policies at the county level and offering line relief to voters. Resp. to SMF ¶ 127 (AAAJ Dep. 93:5-12, 93:24-94:4). And although Defendants complain that there are no organizational documents clearly delineating the shifts in resource allocation, the diversion of resources was explained in the sworn testimony of Advancing Justice–Atlanta's 30(b)(6) designee and in a sworn declaration from Advancing Justice–Atlanta's Executive Director. *See* Exs. 12, 294. There is no basis to grant Defendants summary judgment on this record. *See* Resp. to SMF ¶ 125 (AAAJ Dep. 63:24-64:4, 50:8-11; 60:12-23).

Finally, Defendants argue that Advancing Justice–Atlanta was unable to identify a specific voter who was not able to vote as a result of SB 202. That is false: Advancing Justice–Atlanta testified about its knowledge of individuals who experienced greater difficulty voting following SB 202, and its awareness of a higher

rate of absentee ballot rejections after the law's passage. Resp. to SMF ¶ 128 (AAAJ Dep. 68:2-10; 120:1-8). Moreover, the law is clear that Advancing Justice–Atlanta's standing to sue is based on its own organizational injury—its diversion of resources—and is separate from the injury suffered by individual voters. *See Common Cause/Georgia*, 554 F.3d at 1350. Ample record evidence supports Advancing Justice–Atlanta's cognizable injury.

5. CBC Plaintiffs

a. Concerned Black Clergy of Metropolitan Atlanta, Inc. ("CBC")

The CBC's mission is to serve as a community gathering place for civic leaders, educators, businesses, and elected officials and is centered around issues of concern to the African American church and faith community at large. SAMF ¶ 818 (Ex. 17 (CBC Dep. 56:22-57:4)). The CBC has several committees, including political education, health, housing, and economic development. SAMF ¶ 819 (CBC Dep. 62:2-12). Prior to SB 202's passage, approximately 30 percent of CBC's work related to voting, with the remaining 70 percent devoted to addressing other issues such as health and housing. SAMF ¶ 824 (CBC Dep. 63:5-15; 62:2-24; 100:1-6).

As a result of SB 202, CBC has had to divert internal resources to address concerns expressed by many in the community and to engage in voter education and reeducation. SAMF ¶¶ 823, 828 (CBC Dep. 73:21-74:20; 77:2-11; 94:9-95:5; 101:24-102:12). CBC has now essentially become a voter education organization.

SAMF ¶ 827 (CBC Dep. 64:7-20; 66:8-20; 75:5-17; 93:23-95:5; 100:11-15). Prior to SB 202, approximately 50 percent of phone calls to CBC concerned housing issues; however, following SB 202's passage, nearly all of the calls it received pertained to voting. SAMF ¶ 825 (CBC Dep. 99:19-100:8). Indeed, CBC had to hire two additional interns to assist with this influx of calls. SAMF ¶ 826 (CBC Dep. 100:1-8). Defendants concede that CBC was forced to divert resources away from other issues to voting, arguing that this diversion was "the result of speculative hysteria," ECF No. 764-1 at 50, but ignoring testimony that many community members no longer wished to vote absentee because of SB 202's restrictions on requesting and casting absentee ballots, SAMF ¶ 829 (CBC Dep. 84:13-85:20; 157:10-158:4).

b. Justice Initiative ("JI")

JI's mission is to support and empower citizens to exercise their right to vote and combat injustice. SAMF ¶ 838 (Ex. 38 (JI Dep. 43:16-20; 46:7-20)). In addition to voting-related activities—which focus on registration, voter education, and get-out-the-vote ("GOTV") efforts—JI is involved in policing issues and other issues important to the predominantly Black communities it serves. SAMF ¶¶ 839-841 (JI Dep. 29:12-14; 31:12-32:1; 38:15-24; 47:9-15; 49:20-50:14).

Since SB 202's passage, JI has been forced to spend more time recruiting, educating, and training its membership about SB 202's requirements. SAMF ¶ 844

(JI Dep. 59:11-60:5). Whereas JI previously went on extended GOTV bus tours—stopping in up to five counties per day to educate and register voters—it now conducts intensive town hall-style lectures to provide training specifically regarding SB 202, and thus, can typically stop in just one county per day. SAMF ¶¶ 841-842 (JI Dep. 31:12-32:8). Defendants acknowledge this testimony exists, but note that "JI had no documentation reflecting" it. ECF No. 764-1 at 51-52. Defendants, however, cite no authority requiring such documentation to permit standing. Defendants also argue that JI does not tie its diversion to specific provisions of SB 202, but this misses the point: JI testified that its more intense trainings were specifically required to "train [people] on the effects of Senate Bill 202." Response to Defendants' SAMF ¶ 151 (JI Dep. 31:19-20).

c. Metropolitan Atlanta Baptist Ministers Union, Inc. ("MABMU")

MABMU is a service organization and network of over 80 clergy of Baptist churches in the greater Atlanta area that minister to largely Black congregants, whose mission is to help make the greater Atlanta area a better place to live. SAMF ¶ 807 (Ex. 313 (Rev. S. Smith Decl. ¶ 2)). MABMU has various committees that focus on education, civic and social action, and empowerment. SAMF ¶ 808 (Rev. S. Smith Decl. ¶ 3). It 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.

SAMF ¶ 808 (Rev. S. Smith Decl. ¶ 3). Voting and social justice have been a component of MABMU's work for decades, and in recent years, MABMU has provided transportation for seniors during early voting, participated in voter protection campaigns, provided voter education, training, and empowerment, and encouraged voter turnout. SAMF ¶ 809 (Rev. S. Smith Decl. ¶ 4).

MABMU was forced to divert resources following SB 202's passage to help educate and reeducate its membership and their constituent congregations on the additional obstacles to voting that SB 202 erected. SAMF ¶ 811 (Rev. S. Smith Decl., ¶ 6). Specifically, MABMU now devotes a substantial portion of its weekly meetings to SB 202. SAMF ¶ 811 (Rev. S. Smith Decl. ¶ 6).

Defendants argue that MABMU has "no evidence" of a causal connection between any specific provision of SB 202 and increased meeting times. ECF No. 764-1 at 54. Defendants are wrong. Prior to SB 202, MABMU's weekly meetings included a 7-minute report on voter encouragement and education; following SB 202's passage and its increased restrictions on voting, MABMU now dedicates between 45 minutes and one hour every two weeks exclusively to discussing SB 202. SAMF ¶ 811 (Rev. S. Smith Decl. ¶ 6). And this increased time devoted to voting has left MABMU with less time for its Christian education, Bible study, current event reports, and updates on sick community members. SAMF ¶ 812 (Rev. S. Smith Decl. ¶ 6). In addition, MABMU has devoted resources to creating new

materials for its members to share with their congregations and engaged in more Souls to the Polls events. SAMF ¶¶ 813-814 (Rev. S. Smith Decl. ¶ 7). Finally, as a result of SB 202's shortening of the early voting period, MABMU can transport fewer elderly voters to early voting locations. SAMF ¶ 816 (Rev. S. Smith Decl. ¶ 9).

d. First Congregational Church, United Church of Christ Incorporated ("First Church")

First Church is a holistic ministry that tends to the well-being of the person. SAMF ¶ 845 (Ex. 20 (UCOC Dep. 20:13-23)). First Church is active in addressing food insecurity, working with various nonprofits to provide educational activities and after-school programs, providing financial assistance programs, and holding sponsored seminars on policing and community violence. SAMF ¶ 845 (UCOC Dep. 20:13-23; 33:10-22; 35:12-19). Since its founding, First Church has also engaged in voter-related activities such as GOTV efforts, including: coordinating Souls to the Polls events; providing transportation to the polls; voter registration; and voter education. SAMF ¶ 846 (UCOC Dep. 21:13-19; 34:23-35:4; 36:21-37:13).

Following SB 202's passage, First Church has been forced to divert resources to help educate its members on the additional obstacles to voting imposed by SB 202. SAMF ¶ 847 (UCOC Dep. 25:6-16; 27:2-28:2). For example, First Church's social justice committee, which oversees voting-related initiatives, had to increase the size of its membership to address the need for education and understanding

regarding the changes introduced by SB 202. SAMF ¶ 848 (UCOC Dep. 70:1-9). In addition, because many of its congregants were confused by the provisions of SB 202, First Church held community forums to discuss SB 202 and created educational flyers concerning new requirements. SAMF ¶¶ 849-850 (UCOC Dep. 28:3-16; 62:13-63:11; 64:9-66:11; 69:6-11). But for SB 202, First Church's limited resources would have been directed to other aspects of the Church's mission. SMF ¶ 851 (UCOC Dep. 45:4-8). Defendants again concede the existence of this testimony, and simply argue that First Church did not have documents specifically quantifying the number of hours diverted. ECF No. 764-1 at 56. Defendants also contend, *id.*, that First Church knew of only one member that did not vote because of SB 202, the Eleventh Circuit has long recognized that laws making voting more *difficult*, though not impossible, for minority voters can violate Section 2 or the Constitution. *See, e.g.*, *United States v. Marengo County Comm'n*, 731 F.2d 1546, 1570 (11th Cir. 1984) (failure to appoint Black poll officials "impaired [B]lack access to the political system and the confidence of [B]lacks in the system's openness"). Defendants ignore testimony that First Church knew of "several members who were burdened by the additional difficulties of voting and access to voting." Pls.' Resp. SMF ¶ 175 (UCOC Dep. 25:15-21).

e. Georgia Latino Alliance for Human Rights ("GLAHR")

GLAHR's mission is to educate, organize, and train the Latinx community in Georgia to defend and promote their civil and human rights, including educating voters about how to vote. SAMF ¶¶ 831-832 (Ex. 29 (GLAHR Dep. 27:22-28:7; 34:8-16)). GLAHR's voter education consists largely of grassroots engagement, such as going door-to-door in the Latinx community to encourage individuals to vote and provide them with information on how to do so. SAMF ¶ 833 (GLAHR Dep. 31:1-11; 34:20-36:1; 39:12-17).

Since the passage of SB 202, GLAHR has had to substantially increase resources devoted to fulfilling its mission of educating voters in the Latinx community. This has included the need to hire more people, devote more staff time, train staff, and develop more materials. SAMF ¶ 834 (GLAHR Dep. 46:15-47:5). Likewise, in 2020, prior to SB 202's passage, GLAHR canvassed approximately 5,000 households, but in 2022, because of SB 202, GLAHR canvassed approximately 25,000 households to engage in voter education and reeducation about matters such as drop boxes, limited voting hours, identification requirements, early voting, and absentee ballots. SAMF ¶ 835 (GLAHR Dep. 40:1-41:10). In addition to voter education, GLAHR has also had to spend more time training and reeducating its own staff, which has been time-consuming for the organization and its individuals. SAMF ¶ 836 (GLAHR Dep. 41:18-42:3).

Defendants' primary argument as to GLAHR is that it has only presented evidence that it is "simply doing more of the same things it usually did." ECF No. 764-1 at 57. Setting aside that the Court has already rejected this argument, *see* 21-cv-01259-JPB, ECF No. 64 at 6-7, Defendants also ignore contrary testimony that GLAHR has had to divert time away from other initiatives, commitments, and causes, including those dealing with deportations, detentions, arrests, and racial profiling. SAMF ¶ 837 (GLAHR Dep. 42:13-43:11; 48:20-25; 105:13-106:20 Moreover, GLAHR had to completely cancel a conference in Philadelphia due to the amount of canvassing and outreach work done in the Georgia Latinx community. SAMF ¶ 837 (GLAHR Dep. 105:13-106:20).

D. The Individual Plaintiffs Have Established Cognizable Injury

"A plaintiff need not have the franchise wholly denied to suffer injury. Any concrete, particularized, non-hypothetical injury to a legally protected interest is sufficient." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005). "For purposes of standing, a denial of equal treatment is an actual injury even when the complainant is able to overcome the challenged barrier." *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009) (finding standing for individual voters who were registered to vote but required to obtain photo ID because of new voting law). The evidence shows, at least sufficient to survive summary judgment, that SB 202 has injured the Individual Plaintiffs in various ways.

1. NGP Plaintiffs

a. Elbert Solomon

SB 202 has imposed multiple barriers to Mr. Solomon's exercise of his constitutional right to vote. Because of his advanced age and his health issues, which make it difficult to stand in line for long periods of time without access to food or a restroom, Mr. Solomon prefers voting by absentee ballot. SAMF ¶ 937 (Ex. 70 (Solomon Dep. 24:7–13)); SAMF ¶ 939 (Solomon Dep. 21:22–22:15; 30:16–21; 31:9–15). And his experience with unreliable mail service in 2020 led him to return his ballot using an outdoor drive-up drop box in front of the Spaulding County elections office to ensure that county officials would receive his ballot on time. SAMF ¶ 938 (Solomon Dep. 24:15–25:22); SAMF ¶ 939 (Solomon Dep. 21:22–22:15; 30:16–21; 31:9–15). But SB 202's severe limitations on drop box availability, including the requirement that drop boxes now all be located inside government buildings, *see* O.C.G.A. § 21-2-385(c)(1), meant that Mr. Solomon could no longer just drive up to a drop box and deposit his ballot like he did in 2020. SAMF ¶ 940 (Solomon Dep. 31:9–24). As a result of the changes in election law, Mr. Solomon voted early in person during the December 2022 Senate runoff election and stood in line for an hour and a half. SAMF ¶ 941 (Solomon Dep. 45:2–8). Contrary to what State Defendants argue, *see* ECF No. 764-1 at 25, whether Mr. Solomon was ultimately able to vote in the 2022 election is irrelevant for purposes of standing; as

noted above, a voter "need not have the franchise wholly denied to suffer injury." *Common Cause/Ga.*, 554 F.3d at 1351. The evidence—which State Defendants largely ignore—demonstrates that Mr. Solomon has in fact been burdened by SB 202, and therefore has standing to pursue his claims in this case.

b. Fannie Marie Jackson Gibbs

Ms. Gibbs has mobility and other health issues that limit her movement and largely confine her to her home, and these disabilities make it difficult or impossible for her to vote in person. SAMF ¶ 942 (Ex. 62 (Gibbs Dep. 19:15–18, 75:11–76:14)). Because of her condition, Ms. Gibbs voted by mail in the November 2020 and January 2021 runoff election and deposited her absentee ballot in an outdoor, drive-up drop box during the June 2020 primary. SAMF ¶ 943 (Gibbs Dep. 29:2–13).

But when Ms. Gibbs attempted to find a drop box for her absentee ballot in 2022, she had a much more difficult time doing so. The drop box Ms. Gibbs used in 2020 was located outside and easily accessible by a car. SAMF ¶ 944 (Gibbs Dep. 31:4–9, 31:21–24). For the 2022 elections, the outdoor drop box was no longer accessible, so when Ms. Gibbs attempted to vote by drop box, she had a much more difficult time doing so, and had to use her walker and scooter and needed assistance from her grandson to enter the elections office where the drop box had been relocated. SAMF ¶ 945 (Gibbs Dep. 29:14–30:15, 30:21–31:9). These facts completely undermine State Defendants' suggestion that Ms. Gibbs voted without

"any difficulty or problem." ECF No. 764-1 at 26.

c. Jauan Durbin

The impact of SB 202 on Mr. Durbin's voting experience extends beyond the 2022 runoff election. *See* ECF No. 764-1 at 26. In particular, Mr. Durbin (they) testified that they previously provided food and water to voters waiting in long lines, but because of the line relief ban in SB 202, they are no longer able to engage in the same types of voter support activities. SAMF ¶ 948 (Ex. 53 (Durbin Dep. 17:16-18:19, 52:3-13)). That Mr. Durbin voted in the primary, general, and runoff elections in 2022, SAMF ¶ 946 (Durbin Dep. 17:5-7, 37:3-23), is irrelevant, as participation in those elections does not ameliorate the injuries Mr. Durbin has experienced in being silenced in their ability to express messages of solidarity and encouragement that were critical to supporting Georgians standing in long lines to vote in 2020. SAMF ¶ 949 (Ex. 273 (Durbin Decl. ¶¶ 4–6); Durbin Dep. 36:11–13).

2. Advancing Justice-Atlanta Individual Plaintiffs

a. Steven Paik

Mr. Paik, a voter with limited English proficiency, testified that SB 202's shortened window to request an absentee ballot makes voting difficult for him, because he needs assistance to translate the materials into his native language of Korean. Resp. to SMF ¶ 131 (Ex. 68 (Paik Dep.) 43:24-44:15). Indeed, he has required in-language assistance from Advancing Justice–Atlanta in every election in which he has voted. Resp. to SMF ¶ 131 (Paik Dep. 42:7–43:18).

b. Angelina Thuy Uddullah[11]

Ms. Uddullah is a busy mom who works full-time while also pursuing her J.D. degree in a part-time evening law program. SAMF ¶ 722 (Ex. 71 (Uddullah Dep.) 22:16-23, 33:6-23). Despite her preference to vote absentee-by-mail, she missed the deadline to request her 2022 General Election absentee ballot under SB 202's shortened window for requesting absentee ballots. SAMF ¶¶ 722–23 (Uddullah Dep. 35:19–24; 37:22-39:12). In order to cast her vote, Ms. Uddullah had to stop her studies early and bring her newborn child and two year-old nephew with her to the polls—an experience so hectic she forgot to put on her shoes. *Id.* Similarly, for the 2022 runoff election, Ms. Uddullah was nearly unable to vote. She could not participate in early voting because of work and school obligations, and her ability to ultimately vote on Election Day was due to her husband leaving work early to drive her to the polling place. SAMF ¶ 724 (Uddullah Dep. 40:8–41:7).

c. Anjali Enjeti-Sydow

Ms. Enjeti-Sydow has served as a poll worker since August 2020, which prevents her from voting in-person on Election Day. SAMF ¶ 727 (Ex. 56 (Enjeti-Sydow Dep.) 46:13–16; 72:14–18). She has a disability that limits her mobility. SAMF ¶ 728 (Enjeti-Sydow Dep. 47:2–3). After SB 202, the Ocee Library drop box near Ms. Enjeti-Sydow's home (which had been a 12- or 13-minute drive away) was

[11] Defendants' motion misspells Ms. Uddullah's surname.

shuttered. SAMF ¶ 729 (Enjeti-Sydow Dep. 46:21–47:2). Even though Ms. Enjeti-Sydow would prefer to vote absentee-by-mail using a drop box, the limited availability of drop boxes after SB 202 did not afford her a realistic opportunity to do so. *Id.* (Enjeti-Sydow Dep. 46:21–47:11; 73:18–22).

Although Ms. Enjeti-Sydow barely managed to deposit her daughters' absentee ballots in a drop box in the 2022 general election, this was an onerous and physically painful process for her. Because SB 202 advanced the last day of drop box use by four days and further limited drop box access to polling hours, Ms. Enjeti-Sydow scrambled to locate the nearest drop box at Alpharetta Library on "the last possible day of drop box absentee voting," jumping in the car and ultimately driving one-hour round-trip, on a day when she had to work and was "in so much pain and did not want to drive." SAMF ¶ 730 (Enjeti-Sydow Dep. 41:8-10; 105:18–106:9). Ms. Enjeti-Sydow was negatively impacted by SB 202's restrictions on drop box access.

d. Nora Aquino

Defendants have not moved for summary judgment as to Plaintiff Nora Aquino. *See* ECF No. 764-1 at 45–49. Contrary to Defendants' representation that Ms. Aquino was dismissed, *see* ECF No. 764-1 at 45 n.8, she remains a plaintiff in this case to this day. Defendants have presented no argument challenging Ms. Aquino's standing to bring suit, and no such argument may be raised for the first

time on reply. *Carlisle v. Nat'l Com. Servs., Inc*., 722 F. App'x 864, 868 (11th Cir. 2018) (district court properly determined that defendant waived argument by failing to assert it in its opening brief); *Freeman v. Kroger Co*., 2015 WL 11236555, at *6 n.18 (N.D. Ga. Jan. 27, 2015) (movant's attempt to raise new summary judgment grounds for the first time on reply was "procedurally improper").

Regardless, Ms. Aquino clearly has standing. She does not drive and has, in past elections, consistently relied on her daughter to help her cast her vote. Resp. to SMF ¶ 133 (Ex. 48 (Aquino Dep.) 29:9-14, 52:7-14). Her ability to vote, and the method in which she can vote in any given election, is dependent on the availability of her daughter, who works fulltime in an office approximately 30 miles away from Ms. Aquino's home. SAMF ¶ 721 (Aquino Dep. 37:20-41:7, 42:13-43:13, 44:12-15). In 2020, Ms. Aquino's daughter drove her to drop her ballot off at a drop box outside Brookhaven City Hall, after business hours. SAMF ¶ 721 (Aquino Dep. 45:17- 46:9). After SB 202, however, Ms. Aquino does not have the option to use a drop box available to receive ballots outside of polling location hours.

E. Plaintiffs' Injuries Do Not Rely on Intervening Acts of Third Parties

Defendants also argue that Plaintiffs cannot have been injured by provisions of SB 202 where, they allege, implementation/enforcement depend on "the decisions of county officials on election administration" because they are "speculative" and not "certainly impending," relying on *City of S. Miami*, 65 F.4th at 637. ECF No.

764-1 at 19-23. That case, which concerned whether non-profit organizations devoted to immigrant rights had standing to challenge Florida's anti-sanctuary cities law, is inapposite. The court held that the alleged harm—from *anticipated* effects of enforcement on undocumented immigrants and the organizations that serve them—was too speculative because it was based on a "highly attenuated chain of *possibilities*[:]" that "[i] the federal government will target [organizations'] members for deportation; [ii] the federal government will enlist the help of local authorities, even though street-level cooperation with federal officials is exceedingly rare; [iii] local officials will invoke their authority under [the challenged new law] to justify cooperation; [iv] local authorities will successfully target the organizations' members; *and* [v] local authorities, following federal directives, will racially profile the organizations' members in the process despite [the challenged new law's] explicit ban on discrimination." *Id.* (emphasis added). Plaintiffs offered "speculative fears of future harm," but "fail[ed] to establish that local officers profiled anyone based on S.B. 168." *Id.* at 640.

Here, in contrast, no long sequence of events must occur before Plaintiffs are injured. SB 202's new limits and prohibitions are in place, voters have already had to navigate them—and in fact, though not the standard, at least hundreds have already been disenfranchised (SAMF ¶¶ 210-11 (Pulgram Decl. ¶¶ 3-16, 20-27, 30-32))—and Plaintiff organizations have already had to divert resources in response to

SB 202.[12] This difference overwhelms whatever superficial similarities Defendants play up between *City of S. Miami* and the present facts. *See Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) (plaintiffs established organizational standing by showing that they diverted resources to address the challenged voting program); *Common Cause/Georgia*, 554 F.3d at 1350 (organizational standing established where plaintiff would divert resources from its regular activities to educate and assist voters in complying with new voter ID requirement). The court in *City of S. Miami* recognized the difference between the facts at issue there and those in an election case in distinguishing *Browning*, in which the court did find organizational standing:

> In *Browning*, the organizations helped black voters comply with new voting rules that went into effect before an election. Those rules applied to all voters, 'forcing' the organizations to divert resources to educate these voters before the election."

City of S. Miami, 65 F.4th at 639.

Thus, as in *Browning* and *Arcia*, in election cases in which the challenged law is in force, organizations can establish standing with evidence that they have diverted resources to help their members contend with new restrictions; they need not show that county officials, for example, are likely to behave one way or another as a result

[12] And even as to future harm, a "certainly impending" standard "does not require a plaintiff to show that it is 'literally certain that the harms they identify will come about[.]'" *Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1338–39 (11th Cir. 2021) (quoting *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 414 n.5).

of the new restrictions. Plaintiffs' diversion of resources to help their members contend with SB 202's restrictions on, *inter alia*, early voting times, mobile voting units, drop boxes, proactively mailed absentee ballot applications, and voter challenges are therefore not too speculative for standing purposes. ECF No. 764-1 at 19-23. Indeed, the injuries—including voter disenfranchisement—have already occurred, including with respect to the particular areas that Defendants assert require speculation as to acts by third parties.

Early voting times. Among other timing changes, SB 202 shortened the runoff period to four weeks, and gave counties the discretion to limit early voting hours (to 9 a.m. to 5 p.m.) and to cancel Sunday voting altogether. SB 202 §§ 28, 42. The statute even prohibits counties from holding early voting before 7 a.m. or after 7 p.m. and from opening early voting on more than two Sundays. SB 202 § 28 at 1488-1518. Plaintiffs were harmed by having to divert resources to familiarize their members and the community at-large regarding these changes, to ensure that voters would not miss their chance to vote. *See, e.g.*, SAMF ¶¶ 770 (Kilanko Dep. 32:10-33:20, 119:12-121:9), 823 (CBC Dep. 77:2-11; 101:24-102:12), 835 (GLAHR Dep. 40:1-41:10), 866 (GCPA Butler Dep. 90).

Mobile voting units. In 2020, counties could deploy mobile voting units, without limitation, and Fulton County *did* use these units. SAMF ¶ 475 (Fulton Cnty. Dep. 175:3-10). SB 202 now prohibits the use of mobile voting units except

during emergencies declared by the Governor. O.C.G.A. § 21-2-266 (b). This deprives voters of a means of access to the franchise and caused Plaintiff organizations to divert resources to educate members of the public on this change, two forms of justiciable harm. Defendants' argument that injury from this prohibition "could only exist if county officials independently decided to utilize those units," ECF No. 764-1 at 20-21, is misleading and ignores what has already happened. It also ignores evidence that both Fulton and Douglas County would again deploy their mobile voting units if the restrictions in SB 202 were removed. SAMF ¶ 481 (Ex. 21 (Fulton Cnty. Dep. 183:1-7); Ex. 63 (Kidd Dep. 174:24–5)).

Drop boxes. Prior to SB 202, counties could authorize drop boxes in the quantity and locations of their choice. In the most populous counties, officials chose to place secure, video-monitored drop boxes in various outdoor locations, where they were available for the public to return their ballots 24 hours a day. SAMF ¶¶ 289, 293 (Ex. 142 (SEB Emergency Rule 183-1-14-0.6.14 adopted at Apr. 15, 2020 meeting); Ex. 69 (Sterling Dep. 68:2-11, 69:1-6); Ex. 35 (Gwinnett Cnty. Manifold Dep. 131:7-132:9); Fulton Cnty. Dep. 52:9-17). SB 202 revoked counties' discretion, severely circumscribing the number of drop boxes each county can offer, limiting their placement to specific indoor locations, and restricting the hours of their availability. SB 202 § 26; *cf.* O.C.G.A. § 21-2-382 (2021). As a result, for example, Fulton County went from utilizing 37 drop boxes to 8, Gwinnett County from 24 to

6, and DeKalb County from 33 to 6. SAMF ¶¶ 323-25 (Ex. 85 (Burden Rep. 41-44); Ex. 97 (Fraga Sur-Rebuttal Rep. ¶¶ 69-70); Grimmer Rep. Tbl. 21). Plaintiff organizations have already been injured by diverting resources to teach organization members and other community members about the cuts to drop box access and availability, not to mention the harm to voters themselves. *See, e.g.*, *id.* ¶¶ 713, 742, 760, 815, 828 (Khwaja Decl. ¶ 23; Mattox 5/11/23 Decl. ¶¶ 16, 19, 20; Arc Dep. 27:16-28:19; Sixth District AME Dep. 29:9-13; Rev. S. Smith Decl. ¶ 8; CBC Dep. 73:21-74:20).

Proactively mailing absentee ballot applications. Prior to SB 202, government officials and Plaintiff organizations could and did proactively mail absentee ballot applications to registered voters. *See, e.g.*, SAMF ¶¶ 182, 186, 188 (Ex. 4 (Burnough Decl. ¶ 13); Ex. 49 (Bailey 10/6/22 Dep. 49:7-50:1, 118:19-120:6); Kidd Dep. 49:6-25; Ex. 18 (DeKalb Cnty. Dep. 63:17-23)). With SB 202's complete ban on mailing by government officials, and limitations on organizations' ability to proactively mail applications, Plaintiffs had to educate their members about the change, *see, e.g.*, *id.* ¶ 798 (Orland Decl. ¶ 19), and also immediately stop proactively mailing absentee ballot applications, a separate and sufficient injury from frustration of their missions. *Id.* ¶¶ 860, 874 (GA NAACP Dep. 106:9-11, 106:16-22; Butler Authentication Decl. at 21; GCPA Butler Dep. 118:6-10).

Voter challenges. SB 202 allows any Georgian to file an unlimited number

of challenges to the eligibility of Georgia voters and requires counties to hold a hearing to resolve these challenges within ten days. O.C.G.A. § 21-2-299. If a challenge is successful, the challenged voter will be removed from the voter roll and unable to vote without re-registering. Tens of thousands of voters have been ensnared in voter challenges, including Plaintiffs' members. SAMF ¶¶ 505, 510, 513, 515, 868, 922 (Gwinnett Cnty. Manifold Dep. 42:19-45:13; DeKalb Cnty. Dep. 115:16-22; Ex. 15 (Cobb Cnty. Dep. 62:23-63:13); Ex. 34 (SEB Dep. 223:2-13); Fulton Cnty. Dep. 149:7-12; Sept. 21, 2022 Gwinnett County Board of Registrations and Elections Meeting Minutes; Mar. 16, 2023 Fulton County Board of Registration and Elections Meeting Minutes; Sept. 6, 2022 Forsyth County Board of Voter Registrations & Elections Regular Monthly Meeting; GCPA Battles Dep. 88:10-89:5; GCPA Butler Dep. 133:11-134:24; NGP Dep. 64:21-25). In response, Plaintiffs have mobilized to track these challenges, to alert their challenged members, and to ensure that none are removed from the rolls. *See, e.g.*, *id.* ¶¶ 868, 884, 923 (GCPA Butler Dep. 179:17-23; GCPA Battles Dep. 87:4-15; Common Cause Dep. 166-67; NGP Dep. 13:12–15, 62:8–18, 64:21–65:2). Injury has occurred and will continue, as there is no indication that these mass challenges will end.

F. Plaintiffs' Injuries Are Traceable to and Redressable by Defendants

Defendants assert that Plaintiffs' claims related to (i) the processing of absentee applications and absentee ballots ("absentee claims") and (ii) injuries

suffered as a result of long lines ("line relief claims") are not traceable to nor redressable by them because *county* officials are responsible for carrying out the challenged provisions of SB 202. ECF No. 764-1 at 58-62. Defendants also argue that certain other injuries related to "discretionary decisions" by counties cannot be "against" or traced to them. ECF No. 764-1 at 19-23. Defendants are mistaken. As an initial matter, County Defendants do not deny traceability and redressability as to themselves. Accordingly, even if this Court were to rule for State Defendants here, Plaintiffs would still have standing to pursue these claims. Moreover, although the Court did *not* order preliminary relief against the State Defendants on materiality, those Defendants have appealed, asserting standing to defend the statutes even where only County Defendants are bound.[13]

In all events, although an "injury cannot result [from] the independent action of some third party not before the court," ECF No. 764-1 at 60 (internal quotations omitted), the traceability requirement is not stringent: "[e]ven a showing that a plaintiff's injury is indirectly caused by a defendant's actions satisfies the fairly traceable requirement." *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1271 (11th Cir. 2019) (quoting *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1324 (11th Cir. 2012)). In election cases, "[a]n injury is traceable to an election official responsible for the

[13] *See In Re: Georgia Senate Bill 202*, No. 23-13085, Opposition of State Defendants-Appellants to Motion to Dismiss Appeal for Lack of Jurisdiction, ECF No. 89 (11th Cir. Oct. 23, 2023).

election administration process or rule that allegedly has caused the plaintiff's injury." *Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d 1128, 1185 (N.D. Ga. 2022) (injury caused by challenged laws traceable to Georgia Secretary of State and the State Election Board even where county officials played a prominent role in the voter identification/matching processes involved).

An injury is redressable when "a decision in a plaintiff's favor would significantly increase the likelihood that she would obtain relief." *Lewis v. Gov. of Ala*., 944 F.3d 1287, 1301 (11th Cir. 2019) (en banc) (cleaned up). If the court's judgment could remedy plaintiff's injury, "whether directly or indirectly," there is standing. *Id*. It need only be "'likely' that the injury will be 'redressed by a favorable decision'" of the court. *Lujan*, 504 U.S. at 561 (quoting *Simon v. E. Ky. Welfare Rts. Org*., 426 U.S. 26, 38 (1976)).

Defendants cite to *Jacobson* for the proposition that "if another party . . . can continue to implement the challenged provisions even were this Court to enjoin the parties to this action, then Plaintiffs have not established redressability." ECF No. 764-1 at 59. But *Jacobson* does not support their argument, nor does prevailing law. "[S]tanding is not defeated merely because the alleged injury can be fairly traced to the actions of both parties and non-parties." *Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla.,* 148 F.3d 1231, 1247 (11th Cir. 1998) (finding injuries related to artificial light sources that were harmful to turtles redressable by defendant county

because county had regulatory authority over municipalities where offending light occurred). An injury is redressable by a defendant even if the defendant can provide only a partial remedy. *Made in the USA Found. v. United States*, 242 F.3d 1300, 1310-11 (11th Cir. 2001).

1. Claims Based on Processing of Absentee Ballot Applications and Absentee Ballots

Defendants argue that because "county officials process absentee-ballot applications and absentee ballots," any injuries based on these claims cannot be traced to or redressed by them. ECF No. 764-1 at 60-61. County officials might receive and tabulate ballots, but, by law, State Defendants have oversight roles and responsibilities concerning *absentee* applications and ballots. The harms associated with the absentee claims are traceable to State Defendants and redressable by an order enjoining them (i) to refuse to certify results from counties that do not comply with federal law, (ii) to issue rules, training, and instructions to counties uniformly to follow federal law, and (iii) to propound ballots, forms, and envelopes that cease requiring birthdate or ID information.

a. Traceability

Georgia law vests Defendants with near comprehensive oversight authority over state elections. The Secretary of State "organizes and oversees all election activity, including . . . municipal, state, county, and federal elections . . .[,] [is] responsible for certification of election results . . . and preparation of ballots and

election forms and materials . . .[,] maintains the Statewide Voter Registration Database . . .[,] [and is] accountable for investigating election fraud and enforcing state election laws." *Elections Division*, Ga. Sec'y of State, https://sos.ga.gov/index.php/elections. In executing this role, the Secretary of State conducts election training each year that provides instruction for county registrars and superintendents of elections. O.C.G.A. § 21-2-50(a)(11).[14] The facts establish (as Mr. Germany acknowledges) that the counties generally comply with those instructions without any necessary enforcement procedures. SMF ¶ 216 (SEB Dep. 195:10, 257:24-258:4; Fulton Cnty Dep. 257:24-258:4, 270:10-12; Cobb Cnty Dep. 275:20-23; DeKalb Cnty Dep. 206:8-12). Moreover, state law requires that if there are errors in county returns, "the Secretary of State shall notify the county submitting the incorrect returns and direct the county to correct and recertify such returns." *Id.*; *see also* O.C.G.A. § 21-2-499.

The State Election Board ("SEB"), of which the Secretary of State is a member, also has the duty to promulgate such rules and regulations "consistent with law, as will be conducive to the fair, legal, and orderly conduct" of elections,

[14] The State equally believes in the SOS's considerable supervisory authority over county election officials. *See* Ga. Op. Att'y Gen. No. 2005-3, 2005 WL 897337, at *3 (Apr. 15, 2005) (recognizing "it is clear that under both the Constitution and the laws of the State the Secretary is *the* state official with the power, duty, and authority to manage the state's electoral system. No other state official or entity is assigned the range of responsibilities given to the Secretary of State in the area of elections.").

O.C.G.A. § 21-2-31(2), so as "to obtain uniformity" in county practices and proceedings. O.C.G.A. § 21-2-31(1). Georgia law requires county superintendents to follow "the rules and regulations promulgated by the State Election Board." O.C.G.A. § 21-2-70 (7). Though no evidence suggests counties would refuse to follow such rules, the SEB has the power to compel compliance with its rules or to restrain "other illegal conduct in connection therewith" for any election or primary law. O.C.G.A § 21-2-32(a). And the Secretary of State shall provide support and assistance to SEB to enforce compliance. O.C.G.A. § 21-2-33.1(h). Courts in this district have found Defendants' oversight and enforcement authority over Georgia elections to be determinative in establishing traceability and redressability. *See Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d at 1187; *see also City of S. Miami*, 65 F. 4th at 643-4 (recognizing that a party's oversight and/or enforcement powers *can* satisfy traceability/redressability requirements).

In light of their overarching authority, State Defendants are at least indirectly involved in Georgia's absentee voting program. But they are also *directly* involved. The Secretary of State provides the form and substance of absentee ballot applications. O.C.G.A. § 21-2-381(a)(1)(C)(i); *see also* O.C.G.A. § 21-2-381(e) (SEB "promulgates reasonable rules and regulations for the implementation of" section § 21-2-381(a)(1)). Corresponding to SB 202's prohibition on the proactive mailing of absentee ballot applications, the SEB "shall" subject individuals to

sanctions who send them. O.C.G.A. § 21-2-381(a)(3)(B). If an individual errs in completing their absentee ballot application, they are sent a provisional absentee ballot with "information prepared by the Secretary of State as to the process to be followed to cure the discrepancy." O.C.G.A. § 21-2-381(b)(3). Lastly, the Secretary of State determines and prescribes the form for absentee ballots and absentee ballot return envelopes, O.C.G.A. § 21-2-383(a), as well as the instructions for preparing and returning ballots. O.C.G.A. § 21-2-384 (b).

In sum, Defendants are directly involved in, and have regulatory duties, oversight, and enforcement authority over, the absentee claims such that they are traceable to them. Defendants provide the instructions and the specific forms requiring the challenged identification and the immaterial date of birth information on absentee ballot applications and envelopes; Defendants "shall" enforce the prohibition on proactive mailing of absentee ballot applications; Defendants oversee and provide instructions about the timing of the window for requesting and mailing absentee ballots; and Defendants have the duty to promulgate rules for elections, train county officials, investigate and enforce non-compliance with their regulations, and police other illegal acts under these election laws.

b. Redressability

The absentee claims are likewise redressable by any of at least four orders from this Court directing Defendants to perform their statutory functions. At a

minimum, there are at least factual issues as to whether State action is likely to redress Plaintiffs' injuries. Where a Court decree against the Secretary would, "as a practical matter . . . significantly increase the likelihood" that the local officials would respond, that satisfies redressability. *Jacobson*, 974 F.3d at 1255.

First, the Court may enjoin the Secretary of State from certifying county election results that fail to comply with federal law in counting absentee votes. This District has regularly issued such injunctions. *See, e.g.*, *Martin v. Crittenden*, 347 F. Supp. 2d 1302 (N.D. Ga. 2018) (ordering Secretary of State to refuse certification of election results until all absentee ballots were counted); *Democratic Party of Ga., Inc.*, 347 F. Supp. 3d at 1340 (same); *Common Cause v. Kemp*, 347 F. Supp. 3d 1270, 1300 (N.D. Ga. 2018) (enjoining Secretary of State from certifying election results to allow for further review and, where appropriate, tabulation of provisional ballots that had been inappropriately excluded from the count by the counties).

The Secretary has the responsibility "to tabulate, compute, and canvass the votes cast for all candidates voted for by the electors of more than one county" and to certify their election results. O.C.G.A. § 21-2-499. That includes the duty to direct counties to fix errors: "***In the event an error is found*** in the certified returns presented to the Secretary of State or in the tabulation, computation, or canvassing of votes as described in this Code section, ***the Secretary of State shall*** notify the county submitting the incorrect returns and ***direct the county to correct and recertify***

such returns." *Id*. (emphases added). The use of "shall" makes the State's involvement in correcting absentee ballot errors mandatory, such that an order enjoining the state not to certify county results until errors have been corrected is "likely" to achieve redress by having that vote counted. The Secretary could comply with such an injunction by, for example, advising county officials through an official election bulletin ("OEB") not to enforce any unlawful requirement of SB 202. Indeed, the Secretary has advised county officials in the past that they were not to enforce the prior iteration of the birthdate requirement. *See Martin v. Crittenden*, No. 18-cv-4776, Dkt. 54 (Reply Brief) at 15-16 (Nov. 12, 2018) (OEB from Secretary of State advising officials that "an election official does not violate [the relevant statute] when they accept an absentee ballot despite the omission of a day and month [or year of birth] . . . ."); *Democratic Party of Ga., Inc.*, 347 F. Supp. 3d at 1340 (citing the same). An order enjoining the Secretary of State would redress Plaintiffs' injuries.

Second, the Court should enjoin the Secretary of State to correct absentee ballot applications, envelopes, and ballot forms, and the corresponding instructions it sends Georgians, to be consistent with the Court's findings about the requirements of federal law. Such an order would, for instance, eliminate throughout the state the current state forms' instruction to enter immaterial dates of birth and improper identification requirements.

Third, once the Court has determined that SB 202's absentee restrictions are improper, the State is duty bound to take corrective action. The Court should therefore enjoin the SEB to issue rules, regulations, and training requirements consistent with its findings. As Mr. Mashburn testified: "counties will do what they are told. . . . I've found them to be very dedicated public servants . . . so they will do what they are told to do." SAMF ¶ 500 (SEB Dep. 257:24-258:4).

Fourth, the Court should enjoin the SEB from enforcing SB 202's prohibition on proactively mailing absentee ballot applications to voters, and, more broadly, from enforcing any provisions the Court deems unconstitutional or illegal. Such an order would eliminate the unwarranted risk to Plaintiffs of liability for providing individuals with absentee ballot applications and other legal actions, at least partially redressing the injury.

State Defendants rely heavily on this Court's previous conclusion that the harm from rejection of absentee ballots with missing or incorrect birthdates is neither traceable to nor redressable by State Defendants, "who are removed from the process of accepting or rejecting absentee ballots." ECF No. 613 at 16. But the Court's rationale did not address the four forms of redress urged here. The Court found that "[t]he Secretary of State's ability to ensure compliance with judicial orders and to inspect and audit absentee ballot envelopes does not render the rejection of absentee ballots traceable to [Defendants]" (D.I. 613 at 16). That does not account for the

Defendants' statutory authority to issue regulations, their obligation to correct legal errors before certification, or their direct responsibility for issuing ballots, envelopes, and forms. *See supra* pp. 78-79. At the very least, there is a question of fact as to whether county officials will honor such directives from the State: if they would, then the traceability and redressability requirements are met.

Defendants rely on *Jacobson* to argue that traceability and redressability are not met, but Defendants' role here is far different from the role of the Secretary of State in *Jacobson*. ECF No. 764-1 at 58-60. There, the Eleventh Circuit held that the plaintiffs' challenge to a ballot order law was not fairly traceable to the Secretary of State (the sole defendant) because Florida law tasks election Supervisors independently of the Secretary with printing the names of candidates on their counties' ballots in the order prescribed by the ballot statute, with no input from the Secretary other than identifying the names of the persons nominated. *Jacobson*, 974 F.3d at 1253. Florida Supervisors were independent constitutional officers elected locally. Only the governor, not the secretary of state, had authority over them. *Id.* "[T]he only means of control the Secretary [had] over the Supervisors [was] through coercive judicial process" in the form of an order for a writ of mandamus or an injunction. *Id*. at 1253. The Court reasoned that where "Florida law expressly gives a different, independent official control over the order in which candidates appear on the ballot," the challenged practice was not traceable to the Florida Secretary of

State. *Id.* at 1254. Plaintiffs failed to establish the Secretary of State's authority with respect to the challenged practice, *id.* at 1253-54, and there was no evidence that those officials were required by law to follow the Secretary's rules, nor that they would actually follow them. *See id.* at 1257.

Georgia courts have distinguished *Jacobson* and found challenged election laws traceable to and redressable by state elections officials, based on the power and authority they exercise over Georgia's election system. In *New Georgia Project v. Raffensperger*, for example, the court highlighted the Georgia Secretary's oversight of elections in holding that the plaintiffs' injuries were traceable to and redressable by Defendants, rejecting the argument that a plaintiff must sue all 159 Georgia counties to satisfy Article III standing. 484 F. Supp. 3d 1265, 1286 & n.16 (N.D. Ga. 2020) ("As the chief election official, the Secretary has the power and authority to manage Georgia's election system, including the absentee voting system"). Likewise, in *Black Voters Matter Fund v. Raffensperger*, the court held that, "because Georgia's election code delegates authority to the Secretary of State to oversee the elections and prepare the form of the absentee ballots and envelopes, the Court finds that Plaintiffs' alleged injuries are fairly traceable to the Secretary of State's alleged failure or refusal to provide pre-paid return postage on all absentee ballots." 478 F. Supp. 3d 1278, 1305-06 (N.D. Ga. 2020), *aff'd sub nom. Black Voters Matter Fund v. Sec'y of State for Georgia*, 11 F.4th 1227 (11th Cir. 2021); *accord Rose v.*

Raffensperger, 511 F. Supp. 3d 1340, 1357 (N.D. Ga. 2021) (distinguishing *Jacobson* and finding injury related to use of statewide elections to choose members of the Georgia Public Service Commission traceable to Secretary of State as he was responsible for administering the challenged elections and certifying their results).

There is, and should be, no constitutional imperative to sue each Georgia county, where an order directed to the State Defendants is likely to obtain relief without adding 159 additional defendants and the attendant pleadings, discovery, motions, and costs to taxpayers. Indeed, that the State Defendants are continuing on appeal to dispute this Court's findings on materiality, even after they were excluded from the injunction entered against the counties, undermines any claim that independent adjudications as to each county is essential to achieve redress.

2. Line Relief Claims

Defendants argue that injuries resulting from the prohibition on handing out food and drink in line are not traceable to or redressable by Defendants because Plaintiffs "can only be injured if the lines are long enough to necessitate nutrition and hydration for those waiting," ECF No. 764-1 at 62, and because Defendants are not responsible for long lines in Georgia. *Id.* Defendants are wrong on both counts.

In their line-relief claims, Plaintiffs allege violations of the 1st, 14th and 15th Amendments, as well as the VRA, based on interference with the expressive conduct of providing food and drink. *See, e.g., GA NAACP, et al v. Raffensperger, et al*, Case

No. 1:21-cv-01259 (JPB), ECF No. 35 (Amended Complaint) at 67-76, 80-82; *New Georgia Project, et al v. Raffensperger, et al*, Case No. 1:21-cv-01229 (JPB), ECF No. 39 (Amended Complaint) at 62–63. These claims do not depend on lines of any particular duration, though long lines persist. SAMF ¶¶ 444-46 (Pettigrew Rep. 20, 35, 44-45 & Tbls. 2.2, 43; Fulton Cnty. Dep. 206:22-25).

Additionally, injuries stemming from the line relief ban are traceable to Defendants because of their direct responsibility for enforcing the criminal penalties directed at that conduct. *See* O.C.G.A. § 21-2-414. Plaintiffs will be subject to those penalties if they engage in the protected conduct, and Defendants, such as District Attorney Gregory Edwards, have explicitly declined to disclaim their intent to enforce. *See* O.C.G.A. § 15-18-66(a)(3) (delineating authority of prosecuting attorneys to bring criminal cases in Georgia); O.C.G.A. § 21-2-3 (the Attorney General is authorized to investigate and prosecute "illegal election activities"); *see also* SAMF ¶ 960 (Ex. 54 (Edwards Dep. 43:15-22; 50:19-51:3; 51:15-19; 46:16-25)) (contending that there is no official or entity that could prevent him from bringing a prosecution for a violation of the Food, Drink, and Water Ban under his authority).[15]

[15] Defendant Keith Gammage, the Solicitor General of Fulton County, has not challenged Plaintiffs' standing for summary judgment. Nevertheless, his testimony confirms that injuries from enforcement of the Food, Water, and Drink Ban are traceable to prosecutors like him, as he "cannot categorically state that [he]'ll never

In *Jacobson*, the Eleventh Circuit found that the Florida Secretary of State could not redress injuries as she was not responsible for enforcing the challenged law. *Id.*, 974 F.3d at 1241-42. Here, Defendants are directly responsible for enforcing the challenged law. *See Rose*, 511 F. Supp. 3d at 1357 (distinguishing *Jacobson* on redressability where the Secretary did not deny his authority to ensure that elections for members of the Commission take place consistent with Section 2); *Finn v Cobb Cnty. Bd. of Elections and Registration*, No. 22-cv-2300-ELR, 2023 WL 6370625 at *6 (N.D. Ga. July 18, 2023) (distinguishing *Jacobson* and finding redressability where the plaintiffs "sued the entities responsible for 'enforcing' the [voting district] Map at issue"). Enjoining enforcement of the line relief ban by State Defendants is likely to redress Plaintiffs' injuries.

3. The Five Provisions from Section II (A) of Defendants' Motion

Defendants also argue that "Plaintiffs cannot show a certainly impending injury against" or traceable to them as to SB 202's provisions concerning early voting times, mobile voting units, drop boxes, proactive mailing of absentee ballot applications, and voter challenges. ECF No. 764-1 at 19-23. We address why each injury is indeed justiciable in section II.E., above. Those injuries are traceable to State Defendants.

---

bring a prosecution for the offenses contained in the [Food and Water] statute in which we speak." SAMF ¶ 961 (Ex. 58 (Gammage Dep. 61:7-21)).

As detailed *supra*, § II.F.1.a, Defendants have comprehensive oversight authority and enforcement powers, which include training county officials (O.C.G.A. § 21-2-50(a)(11)), promulgating rules and regulations (O.C.G.A. § 21-2-31(2)), and compelling compliance with such rules (O.C.G.A § 21-2-32(a)). *See also* SAMF ¶ 216 (SEB Dep. 195:10, 257:24-258:4; Fulton Cnty Dep. 257:24-258:4, 270:10-12; Cobb Cnty Dep. 275:20-23; DeKalb Cnty Dep. 206:8-12) (county officials generally comply with State mandates). Such powers—among others—render all injuries resulting from the five provisions of SB 202 that Defendants discuss in Section II (A) of their opening brief traceable to Defendants. *See New Georgia Project v. Raffensperger*, 484 F. Supp. 3d at 1285 (finding harms traceable to and redressable by Secretary of State even where the Secretary did not directly cause all the alleged harms, because Secretary of State is the chief election official for the State with the power and authority to manage Georgia's election system). Additional powers further confirm redressability.

First, with respect to early voting times, the counties are required to report their timing choices to the Secretary of State. O.C.G.A. § 21-2-385(d). Second, the Governor has the power to authorize emergency mobile voting use. *See* O.C.G.A. § 21-2-266 (b); O.C.G.A. § 38-3-51. Third, the Secretary of State provides guidance to the counties about drop boxes, O.C.G.A. § 21-2-382 (c)(2), (c)(4), and the Governor is vested with emergency powers to authorize broader drop box use (*id*. at

(c)(1)). Fourth, as already detailed, the SEB "shall" subject individuals to sanctions who proactively mail absentee ballot applications. O.C.G.A. § 21-2-381(a)(3)(B). Fifth, as to voter challenges, the Secretary of State, who is the official ultimately responsible for establishing and maintaining the list of eligible and qualified voters (O.C.G.A. § 21-2-211(a)) and for establishing the procedures to confirm voters' qualifications (O.C.G.A. § 21-2-216 (g)(7)), has the ultimate say on the removal of voters from the rolls resulting from any challenge. The Secretary of State issues and updates a Poll Worker Manual, which is used by the counties in their administration of elections and includes guidance for the counties on handling voter challenges during elections.[16] And, the SEB "*shall* subject the [board of registrars] to sanctions" for failure to comply with the voter challenge provisions. O.C.G.A. § 21-2-230 (f), § 21-2-229 (j). These five challenged provisions are all traceable to State Defendants.

III. There Is a Well-Established Private Right of Action Under Section 2[17]

[16] *See,* Poll Worker Manual, Secure the Vote (Latest Update: May 2021) https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Manual%202021.pdf.

[17] As Defendants acknowledge, *see* ECF No. 764-1 at 63, fn. 12, "[t]he existence of a private right of action is an issue 'separate and distinct' from the issue of standing, and is not jurisdictional." *Mulhall v. Unite Here Local 355,* 618 F.3d 1279, 1293 (11th Cir. 2010) (citations omitted); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) ("It is firmly established in our cases that the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction"). However,

Relying largely on a single out-of-circuit case,[18] Defendants argue that Section 2 does not provide a private right of action. *See* ECF No. 764-1 at 59. But that is not the law in this Circuit or in this Court. In fact, there are hundreds, if not thousands, of cases brought by private parties to enforce Section 2 without question as to their right to do so. *See, e.g. Coca v. City of Dodge City*, No. 22-1274-EFM, 2023 WL 2987708, at *4 (D. Kan. Apr. 18, 2023) (Observing that, "since [1965] . . . scores[,] if not hundreds[,] of cases have proceeded under the assumption that Section 2 provides a private right of action."). Defendants offer no reason for this Court to depart from this consistent and accepted jurisprudence.

The Supreme Court has heard Section 2 cases brought by private parties for decades and, to date, has never precluded a private party from bringing claims under section 2 of the VRA. *See LULAC v. Perry*, 548 U.S. 399 (2006); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Shelby Cnty. v. Holder*, 570 U.S. 529, 537 (2013) (noting that "the Federal Government and individuals have sued to enforce § 2, and injunctive relief is available in appropriate cases to block voting laws from going into effect.") (citation omitted). Courts, including the Eleventh Circuit and those in this District, have uniformly, until the Eighth Circuit's recent divergence, followed

---

because Defendants raise this issue in their jurisdiction motion, Plaintiffs respond in their corresponding opposition.

[18] *See Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 586 F. Supp. 3d 893 (E.D. Ark. 2022) ("*Arkansas State*"), *aff'd,* 86 F.4th 1204 (8th Cir. 2023) ("*Arkansas State II*").

its lead in allowing private actors to bring Section 2 claims. *See, e.g., Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1302 (11th Cir. 2020); *Georgia State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1348 (11th Cir. 2015); *Ga. State Conf. of NAACP v. Georgia,* No. 21-cv-5338-ELB-SCJ-SDG. 2022 WL 18780945, at *7 (N.D. Ga. Sept. 26, 2022). And indeed several circuits, including the Eleventh Circuit, have explicitly held that Section 2 contains a private right of action. *Ala. State Conf. of NAACP v. Alabama*, 949 F.3d 647, 651-54 (11th Cir. 2020) (holding Section 2 provides for a private right of action because the VRA's text "unmistakably" makes clear that was Congress's intent), *rev'd on other grounds and vacated as moot by* 141 S. Ct. 2618 (2021); *Robinson v. Ardoin*, 86 F. 4th 574, 587-88 (5th Cir. 2023); *Mixon v. Ohio*, 193 F.3d 389, 406 (6th Cir. 1999). "[I]t would be ambitious indeed for a district court . . . to deny a private right of action in light of precedent and history." *LULAC v. Abbott*, No. 21-cv-259-DCG-JES-JVB, 2021 WL 5762035, at *1 (W.D. Tex. Dec. 3, 2021).

In reviewing the VRA's legislative history in other contexts, the Supreme Court explained that "the existence of the private right of action under Section 2 . . . has been clearly intended by Congress since 1965." *Morse v. Republican Party of Va.*, 517 U.S. 186, 232 (1996) (ruling that there was a private right of action under

Section 10).[19] Likewise, acknowledging that the VRA did not explicitly grant nor deny private parties authorization to seek a declaratory judgment, the Supreme Court held that private parties may enforce the VRA, specifically section 5. *Allen v. Bd. of Elections*, 393 U.S. 544, 557 (1969). The Court recognized Congress's purpose in enacting the VRA was "to make the guarantees of the Fifteenth Amendment finally a reality for all citizens." *Id.* at 556. "Achievement of the Act's laudable goal could be severely hampered . . . if each citizen were required to depend solely on litigation instituted at the discretion of the Attorney General." *Id.* Even before passage of the VRA, the Court had "held that a federal statute passed to protect a class of citizens, although not specifically authorizing members of the protected class to institute suit, nevertheless implied a private right of action." *Id.* at 557 citing *J.I. Case Co. v. Borak*, 377 U.S. 426 (1964).

The legislative history of the VRA further evinces Congress's intent to provide

[19] The language in *Morse* should not be dismissed as merely dicta. It was part of the rationale for that decision. Moreover, as the Eleventh Circuit has explained, "there is dicta and then there is dicta, and then there is Supreme Court dicta. This is not subordinate clause, negative pregnant, devoid-of-analysis, throw-away kind of dicta. It is well thought out, thoroughly reasoned, and carefully articulated analysis by the Supreme Court describing the scope of one of its own decisions." *Schwab v. Crosby*, 451 F.3d 1308, 1325 (11th Cir. 2006); *see also Henderson v. McMurray*, 987 F.3d 997, 1006 (11th Cir. 2021) (Pryor, J.). "[D]icta from the Supreme Court is not something to be lightly cast aside." *Peterson v. BMI Refractories*, 124 F.3d 1386, 1392 n. 4 (11th Cir. 1997). *See also Arkansas State II*, 86 F.4th at 1222 ("Appellate courts should afford deference and respect to Supreme Court dicta, particularly where, as here, it is consistent with longstanding Supreme Court precedent.").

for a private right of action under Section 2. The Report of the Senate Judiciary Committee accompanying the 1982 Amendments to the VRA "reiterate[d] the existence of the private right of action under [S]ection 2, as ha[d] been clearly intended by Congress since 1965."[20] S. Rep. No. 97-417, at 30. The House Committee Report accompanying the 1982 amendments to the VRA further states that "[i]t is intended that citizens have a private cause of action to enforce their rights under Section 2." H.R. Rep. No. 97-227, at 32. In recognition of this clear indication of congressional intent, the Supreme Court has repeatedly cited this legislative history in its analysis of Section 2 cases. *See Gingles*, 478 U.S.at 43, n. 2 (noting that the Court has "repeatedly recognized that the authoritative source for legislative intent [regarding § 2] lies in the Committee Report"); *see also Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2332-33 (2021) (citing 1982 Senate Report when interpreting the VRA). Congress' consistent reenactment of "the VRA, without making substantive changes, impliedly affirm[s] the previously unanimous interpretation of Section 2 as creating a private right of action." *Coca*, 2023 WL

[20] "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). This principle is significant given that in *City of Mobile v. Bolden*, 446 U.S. 55, 60 (1980)—decided two years prior to the 1982 amendments to the VRA—a plurality of the Court "assum[ed], for present purposes, that there exists a private right of action to enforce [Section 2 of the VRA]."

2987708, at *4.[21] It would be highly injudicious to now invalidate that intent—especially in the absence of any authority from the Eleventh Circuit or Supreme Court.

The text and structure of the VRA further reflects the congressional intent to allow private rights of action under Section 2. Section 2 of the VRA does not expressly provide a right to sue, *see* 52 U.S.C. § 10301 (a)-(b), but Section 3 provides broadly for relief in a "proceeding" brought by "the Attorney General *or an aggrieved person* . . . under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment." 52 U.S.C. § 10302(a) (emphasis added). If the phrase describing what an "aggrieved person," may bring—"a proceeding under any statute"— does not itself confer a private right of action, it at least most reasonably assumes that the statutes already allow for private lawsuits, including Section 2. 52 U.S.C. § 10302(a); *accord id.* § 10302(b)–(c). Additionally, Section 14(e) allows for "the prevailing party, *other than the United States*" to seek attorney's fees "[i]n any action or proceeding to enforce the voting guarantees of the fourteenth or

[21] The legislative history of other sections of the VRA, and judicial interpretations of it, are in accord. When Congress first reauthorized the VRA in 1970, it cited *Allen v. Bd. of Elections* for the proposition that Section 5 contained a private right of action. H.R. Rep. No. 91-397, at 8. During the 1975 reauthorization, Congress stated that it was "amend[ing] Section 3 of the [VRA] to afford to private parties the same remedies which Section 3 [then afforded] only to the Attorney General." S. Rep. No. 94-295, at 39–40. Congress thus made "what was once implied now explicit: private parties can sue to enforce the VRA." *Ala. State Conf. of NAACP v. Alabama*, 949 F.3d at 651, *rev'd and vacated as moot* by 141 S. Ct. 2618 (2021).

fifteenth amendment," 52 U.S.C. § 10310(e) (emphasis added), likewise reflecting that private parties beyond the United States have a right to enforce the VRA and Section 2.

Defendants contend that the Supreme Court's longstanding acceptance of Section 2 claims brought by private parties would not survive contemporary standards for implying private rights. ECF No. 764-1 at 65 (*citing Alexander v. Sandoval*, 532 U.S. 275, 287 (2001)). But, in fact, many courts over the past twenty years have endorsed private rights of action under Section 2. "[B]oth before and after the 2001 [*Alexander v. Sandoval*] case on which Defendants rely," courts have allowed "organizations and private parties . . . to enforce Section 2 of the VRA." *Veasey v. Perry*, 29 F. Supp. 3d 896, 906 (S.D. Tex. 2014); *see also Ga. State Conf. of NAACP v. Georgia,* 2022 WL 18780945 at *3 (applying the *Sandoval* framework for analyzing implied causes of action and finding that Section 2 satisfies it, thus there is a private right of action).

Relying on *Brnovich*, itself a Section 2 case brought by private parties, Defendants urge that, "when addressing Section 2 in a new context, 'a fresh look at the statutory text is appropriate.'" ECF No. 764-1 at 65, citing *Brnovich*, 141 S. Ct. at 2326). But, in *Brnovich*, the Court had to "consider[,] *for the first time*[,] how [Section] 2 applie[d] to *generally applicable time, place, or manner voting rules*." *Id.* (emphasis added). Because the Court had never before considered this

application of Section 2, a fresh look at the statute, according to the Court, was appropriate. By contrast, parties' private right of action under Section 2 is not a "new context"—those rights have been actively litigated before the Court for decades. *See, e.g.*, *Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994) ("The United States merely seeks to litigate its § 2 case for the first time, and the Government's claims, like those of the private plaintiffs, are properly before the federal courts."). In fact, in the same portion of the *Brnovich* decision that Defendants cite, the Court acknowledged the precedential weight of *Thornburg v. Gingles*, 478 U.S. 30 (1986). *Gingles* involved a Section 2 claim brought by private citizens—wherein the Court "first construed the current version of [Section] 2" by taking "its cue from . . . [the 1982] legislative history," *Brnovich*, 141 S. Ct. at 2325, a history, which, as noted above, unambiguously confirmed a private right of action.[22]

Defendants rely on *Arkansas State* (*see* ECF No. 764-1 at 64-67)—an outlying ruling that contradicted longstanding jurisprudence. The Eighth Circuit affirmed

[22] Contemporary Supreme Court precedent does not "chip away" at the availability of a private right of action under Section 2. *Cf.* ECF No. 764-1 at 64. To date, only two justices have suggested—in concurring and dissenting opinions—even a willingness to reconsider the availability of a private right of action under Section 2. *See Brnovich*, 141 S. Ct. at 2350 (2021) (Gorsuch, J., concurring); *Allen v. Milligan*, 599 U.S. 1, 90, n. 22 (2023) (Thomas, J., dissenting). Just this year, the Supreme Court observed that *Gingles* reflected the "first opportunity to address how . . . [Section] 2 would operate" following the 1982 amendments to the VRA, and, significantly, that "*Congress has never disturbed [the Court's] understanding of § 2 as Gingles construed it*." *Milligan*, 599 U.S. at 17-19 (emphasis added).

Arkansas State's repudiation of a private right of action under Section 2 of the VRA. *Arkansas State II*, 86 F.4th at 1204. The Eighth Circuit recognized that "[f]or much of the last half-century, courts have assumed that § 2 is privately enforceable," *id.* at 1217-18, but it nonetheless came to the opposite conclusion. *Id.* at 1218.[23] As the dissent there recognizes: the "path taken by the majority attempts to 'predict the Supreme Court's future decisions'" instead of following precedent. *Id.* at 1223. "Holding that Section Two does not provide a private right of action would work a major upheaval in the law, and [I am] not prepared to step down that road today." *Id.* That upheaval would make even less sense here given that claims under the VRA would continue even without a private right of action, as the United States government also asserts Section 2 claims. *See Arkansas State*, 586 F. Supp. 3d *at* 922 (leaving time for the Attorney General to join the *Arkansas State* case, if desired, before dismissal for lack of jurisdiction).

This Court, along with other federal courts, has declined to adopt the reasoning employed in *Arkansas State*. *See Alpha Phi Alpha Fraternity Inc. v. Raffensperger,* 587 F. Supp. 3d 1222, 1243, n. 10 (N.D. Ga. Jan. 28, 2022) ("[g]iven the extent and weight of the authority holding otherwise, including from the Supreme Court, this Court finds no basis to alter the analysis in its Order [and conclude there is no private right of action].") (citation omitted); *see also Ga. State*

[23] *Arkansas State II* awaits decision on a petition for en banc review.

Conf. of NAACP v. Georgia, 2022 WL 18780945, at *7 (N.D. Ga. Sept. 26, 2022) (finding "sufficient evidence on the face of the statute that Congress intended to imply a private remedy for Section 2 actions[.]"). As another court declining to follow *Arkansas State* stated, "[t]he simple fact is that the Supreme Court explicitly recognized a private right of action under Section 2 in *Morse*." *See Coca*, 2023 WL 2987708, at *5.

For the foregoing reasons, this Court should deny Defendants' invitation to reject decades of Section 2 litigation and the proper construction of the statute.

IV. Plaintiffs' Claims Do Not Implicate the Political Question Doctrine

Lastly, Defendants argue that the political question doctrine deprives the Court of jurisdiction over Plaintiffs' claims concerning "the length of time of runoff elections, the opening hours for early voting, and the use or non-use of mobile voting facilities instead of fixed physical locations." ECF No. 764-1 at 69. According to Defendants, these issues are nonjusticiable because (i) the Elections Clause commits the administration of elections to state legislatures and Congress and because (ii) there are no 'judicially discoverable and manageable standards' that this Court can apply to Plaintiffs' claims." *Id.* at 70. Defendants stretch the political question doctrine too far.

The political question doctrine dictates that federal courts should not hear cases which deal directly with issues that the Constitution makes the sole

responsibility of the Executive or Legislative Branches. *Nixon v. United States*, 506 U.S. 224, 228 (1993). But "the mere fact that [a] suit seeks protection of a political right does not mean it presents a political question." *Baker v. Carr*, 369 U.S. 186, 209 (1962) (holding that the plaintiff's challenge to apportionment of representatives was justiciable and not automatically barred by the political question doctrine). The claims that Defendants challenge do not implicate political questions; they were brought under well-established constitutional and statutory frameworks and involve issues that federal courts have adjudicated for decades.

Contrary to Defendants' argument, ECF No. 764-1 at 69, although the Elections Clause commits election administration to Congress and state legislatures, "[those bodies] do not have unreviewable discretion to pass election laws which violate federal statutes or constitutional rights." *Fair Fight Action v. Raffensperger*, 2021 WL 9553855, at *22. Nor does the Elections Clause bar federal courts from overturning state regulations of federal elections just because it also gives Congress such authority. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2495 (2019) ("Appellants suggest that, through the Elections Clause, the Framers set aside electoral issues such as the one before us as questions that only Congress can resolve. We do not agree." (citation omitted)). Defendants identify no case that even suggests a contrary view. *Fair Fight Action v. Raffensperger*, 2021 WL 9553855, at *23.

Federal courts can undoubtedly intervene when a state exercises power to

violate individuals' fundamental rights to vote or to contravene federal statutes. *See, e.g.*, *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 191-92 (1999) (restrictions on ballot initiatives posed unconstitutional burden on voters' rights despite states' power to oversee ballot initiative processes); *Smith v. Cobb Cnty. Bd. of Elections & Registrations*, 314 F. Supp. 2d 1274, 1286 (N.D. Ga. 2002) (courts may change electoral district boundaries when those boundaries violate voters' constitutional rights). Plaintiffs challenge the provisions concerning the length of time of runoff elections, the opening hours for early voting, and the use or non-use of mobile voting facilities precisely because they violate individuals' right to vote.

Nor is there a lack of "'judicially discoverable and manageable standards' that this Court can apply to Plaintiffs' claims," as Defendants argue. ECF No. 764-1 at 70. In this case, the court is "not being asked to supplant a [] policy decision of the political branches with [its] own unmoored determination of what [the] policy [] should be[;]" instead, "the Judiciary must decide . . . whether the statute is constitutional. This is a familiar judicial exercise." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2012).

Federal courts are well-versed in assessing and have long resolved claims about restrictions that unduly burden individuals' right to vote, such as those pled by Plaintiffs. *See, e.g.,* 1:21-cv-01259, ECF No. 35 at 68-84 (describing claims for relief pursuant to 42 U.S.C. § 1983, 52 U.S.C. § 10301, *et. seq.*, and 52 U.S.C. §

10101); *see also, Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (applying the *Anderson-Burdick* undue-burden test to prohibition of write-in ballots); *Rice v. Cayetano*, 528 U.S. 495, 512 (2000) (using the Fifteenth Amendment race discrimination test to evaluate state's voter-eligibility law); *Gingles*, 478 U.S. at 35-37 (evaluating state electoral districts using the test from section two of the Voting Rights Act). As the Eleventh Circuit stated in *Jacobson*, where a "statute burden[s] voting or associational rights even slightly, [the court] could apply legal standards to determine whether the burden was unconstitutional." *Jacobson*, 974 F. 3d at 1262 (political question doctrine does not apply if the challenged law involves the right to vote). Defendants' reliance on legal precedents in which (a) the court determined the political question doctrine did not apply, (b) the court did not apply the political question doctrine, or (c) the court did not find individuals' voting rights were burdened, does not support the doctrine's application here.[24]

[24] Defendants' theory relies on cases in which **(a)** the court found the political question doctrine did not apply (*see Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d at 1195-1196 (rejecting Defendants' argument that similar Georgia voting law provisions triggered the political question doctrine); *Massachusetts v. EPA*, 549 U.S. 497, 516-527 (2007) (holding that plaintiff's standing was proper and did not implicate the political question doctrine); *McMahon v. Presidential Airways, Inc.*, 502 F.3d 1331, 1365 (11th Cir. 2007) (finding that plaintiff's claims were justiciable because none of the six political question doctrine factors applied to them); **(b)** the court did not analyze claims under the political question doctrine (*Curling v. Raffensperger*, 50 F.4th 1114, 1125 (11th Cir. 2022) (granting defendant's motion for summary judgment without analyzing whether claims involved a political question)); or **(c)** the court was not persuaded that individuals' voting rights were

CONCLUSION

Plaintiffs respectfully request that this Court deny State Defendants' Motion for Summary Judgment on Jurisdiction in its entirety.

---

burdened (*see Coal. for Good Governance v. Raffensperger*, No. 20-cv-1677-TCB, 2020 WL 2509092, at *4 (N.D. Ga. May 14, 2020) (finding case nonjusticiable where plaintiffs sought to require the State to mandate a laundry list of pandemic voting safety measures and noting that "[t]he relief Plaintiffs seek bears little resemblance to the type of relief plaintiffs typically seek in election cases aimed to redress state wrongs); *Curry v. Baker*, 802 F.2d 1302, 1314 (11th Cir. 1986) (finding that claims contesting the counting and marking of ballots presented non-justiciable question because they involved harm that was broader than the individual right to vote); *Made in the USA Found.*, 242 F.3d at 1312 (finding case nonjusticiable where plaintiffs challenged constitutionality of NAFTA agreement because case involved foreign affairs); *Agre v. Wolf*, 284 F. Supp. 3d 591, 596, 599 (E.D. Pa. 2018) (finding case nonjusticiable where plaintiffs challenged partisan gerrymander but underscoring that courts can properly hear claims involving constitutional guarantees of individual rights); *Rucho*, 139 S. Ct. at 2500–01 (finding case nonjusticiable where plaintiffs challenged partisan gerrymander and explicitly distinguishing from claims related to the individual rights violated by vote dilution); *Smiley v. Holm*, 285 U.S. 355, 366 (1932) (finding case nonjusticiable where petitioner challenged congressional districts as insufficiently compact and not containing an equal number of inhabitants); *Jacobson*, 974 F.3d at 1263 (finding case nonjusticiable where plaintiffs challenged the order of candidates on a ballot but holding that the judiciary has a "constitutionally prescribed role" to "vindicate the individual rights" of voters); *Gilligan v. Morgan*, 413 U.S. 1, 10, 93 S. Ct. 2440, 2446 (1973) (finding case nonjusticiable where plaintiffs sought to impose continuing regulatory jurisdiction over the activities of the Ohio National Guard but differentiating from cases involving "voting rights").

Respectfully submitted this 19th day of January, 2024.

/s/ Leah C. Aden
Leah C. Aden (pro hac vice)
laden@naacpldf.org
Alaizah Koorji (pro hac vice)
akoorji@naacpldf.org
John S. Cusick (pro hac vice)
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

Caitlin May (Ga. Bar No. 602081)
cmay@acluga.org
Cory Isaacson (Ga. Bar No. 983797)
cisaacson@acluga.org
ACLU FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, Georgia 30357
Telephone: (678) 981-5295
Facsimile: (770) 303-0060

Sophia Lin Lakin (pro hac vice)
slakin@aclu.org
Davin M. Rosborough (pro hac vice)
drosborough@aclu.org
Jonathan Topaz (pro hac vice)
jtopaz@aclu.org
Dayton Campbell-Harris (pro hac vice)
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 (pro hac vice)
smizner@aclu.org
ACLU FOUNDATION, INC.
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0781

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

Debo P. Adegbile (pro hac vice)
debo.adegbile@wilmerhale.com
Alexandra Hiatt (pro hac vice)
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 (pro hac vice)
george.varghese@wilmerhale.com
Stephanie Lin (pro hac vice)
stephanie.lin@wilmerhale.com
Mikayla Foster (pro hac vice)
mikayla.foster@wilmerhale.com
Sofie C. Brooks (pro hac vice)

sofie.brooks@wilmerhale.com
Lucas L. Fortier (pro hac vice)
lucas.fortier@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, Massachusetts 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

Tania Faransso (pro hac vice)
tania.faransso@wilmerhale.com
Laura Powell (pro hac vice)
laura.powell@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

Nana Wilberforce (pro hac vice)
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

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

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

Clifford J. Zatz (pro hac vice)
CZatz@crowell.com
Justin D. Kingsolver (pro hac vice)
JKingsolver@crowell.com
William Tucker (pro hac vice)
WTucker@crowell.com
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Telephone: (202) 624-2500

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

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, and Georgia Latino Alliance for Human Rights, Inc.

/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)
vilia.hayes@hugheshubbard.com
Neil Oxford (pro hac vice)
neil.oxford@hugheshubbard.com
Gregory Farrell (pro hac vice)
gregory.farrell@hugheshubbard.com
Mana Ameri
mana.ameri@hugheshubbard.com
William Beausoleil
william.beausoleil@hugheshubbard.com
James Henseler (pro hac vice)
james.henseler@hugheshubbard.com
HUGHES HUBBARD & REED LLP
One Battery Park Plaza New York, New York 10004-1482
Telephone: (212) 837-6000
Facsimile: (212) 422-4726

Gerald Weber
Georgia Bar No. 744878
Law Offices of Gerry Weber, LLC
Post Office Box 5391
Atlanta, Georgia 31107
Telephone: 404.522.0507
Email: wgerryweber@gmail.com

/s/ Laurence F. Pulgram
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 the Lower Muskogee Creek

/s/ Pichaya Poy Winichakul
Pichaya Poy Winichakul (Bar 246858)
poy.winichakul@splcenter.org
Bradley E. Heard (Bar 342209)
bradley.heard@splcenter.org
Matletha N. Bennette (pro hac vice)
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 (pro hac vice)
jess.unger@splcenter.org
Sabrina S. Khan (pro hac vice)
sabrina.khan@splcenter.org
SOUTHERN POVERTY LAW CENTER
1101 17th Street NW, Suite 705
Washington, DC 20036
Telephone: (202) 728-9557

/s/ Adam Sieff
Adam S. Sieff (pro hac vice)
adamsieff@dwt.com
Brittni Hamilton (pro hac vice)
brittnihamilton@dwt.com
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Facsimile: (213) 633-6899

Matthew Jedreski (pro hac vice)
mjedreski@dwt.com
Grace Thompson (pro hac vice)
gracethompson@dwt.com
Danielle Eun Kim (pro hac vice)
daniellekim@dwt.com
Kate Kennedy
katekennedy@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 (pro hac vice)
davidgossett@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

/s/ Meredyth L. Yoon
Meredyth L. Yoon (GA Bar No. 204566)
myoon@advancingjustice-atlanta.org
Laura Murchie (pro hac vice)
lmurchie@advancingjustice-atlanta.org
ASIAN AMERICANS ADVANCING JUSTICE-ATLANTA
5680 Oakbrook Parkway, Suite 148
Norcross, Georgia 30093
(404) 585 8446 (Telephone)
(404) 890 5690 (Facsimile)

/s/ Eileen Ma
Eileen Ma (pro hac vice)
eileenm@advancingjustice-alc.org
Kimberly Leung (pro hac vice)
kimberlyl@advancingjustice-alc.org
ASIAN AMERICANS ADVANCING JUSTICE-ASIAN LAW CAUCUS
55 Columbus Avenue
San Francisco, CA 94111
(415) 896 1701 (Telephone)
(415) 896 1702 (Facsimile)

/s/ Niyati Shah
Niyati Shah (pro hac vice)
nshah@advancingjustice-aajc.org
Terry Ao Minnis (pro hac vice)
tminnis@advancingjustice-aajc.org
Noah Baron (pro hac vice)
nbaron@advancingjustice-aajc.org
ASIAN AMERICANS ADVANCING JUSTICE-AAJC
1620 L Street, NW, Suite 1050
Washington, DC 20036
(202) 815 1098 (Telephone)
(202) 296 2318 (Facsimile)

/s/ R. Adam Lauridsen
Leo L. Lam (pro hac vice)
llam@keker.com
R. Adam Lauridsen (pro hac vice)
alauridsen@keker.com
Connie P. Sung (pro hac vice)
csung@keker.com
Candice Mai Khanh Nguyen (pro hac vice)
cnguyen@keker.com
Luis G. Hoyos (pro hac vice)
lhoyos@keker.com
Rylee Kercher Olm (pro hac vice)
rolm@keker.com
Niharika Sachdeva (pro hac vice)
nsachdeva@keker.com
Elizabeth Heckmann (pro hac vice)
eheckmann@keker.com
KEKER, VAN NEST AND PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
(415) 391 5400 (Telephone)
(415) 397 7188 (Facsimile)

Attorneys for Plaintiffs Asian Americans Advancing Justice–Atlanta, Steven J. Paik, Nora Aquino, Angelina Thuy Uddullah, and Anjali Enjeti-Sydow

/s/ Uzoma N. Nkwonta
Uzoma N. Nkwonta*
Jacob D. Shelly*
Melinda K. Johnson*
Tina Meng Morrison*
Marcos Mocine-McQueen*
Samuel T. Ward-Packard*
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW
Suite 400
Washington, D.C. 20001
Telephone: (202) 968-4490
unkwonta@elias.law
jshelly@elias.law
mjohnson@elias.law
tmengmorrison@elias.law
mmcqueen@elias.law
swardpackard@elias.law
**Admitted pro hac vice*

Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN & HORST, LLC
1201 W. Peachtree St., NW
One Atlantic Center, Suite 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
sparks@khlawfirm.com

Attorneys for Plaintiffs New Georgia Project, Black Voters Matter Fund, Rise, Inc., Elbert Solomon, Fannie Marie Jackson Gibbs, and Jauan Durbin

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Plaintiffs' Opposition to State Defendants' Motion for Summary Judgment on Jurisdiction, has been prepared in Times New Roman 14, a font and type selection approved by the Court in L.R. 5.1(C). I further certify that on January 19, 2024, the forgoing was filed with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record in this case.

/s/ Laurence Pulgram
Laurence Pulgram