

Republicans, or socialists from reenfranchisement on account of their political affiliation—might violate the First Amendment”).

182. SB 202 was enacted immediately after Black voters, young voters, and Democratic voters saw their preferred candidates win Georgia’s electoral votes in the November 2020 presidential election and both of Georgia’s U.S. Senate races in the January 2021 runoff election.

183. As detailed above, the General Assembly enacted the challenged provisions in SB 202 with the purpose of restricting these voters’ ability to cast ballots for their preferred candidates in future elections on the basis of their viewpoint.

184. None of the challenged provisions in the Voter Suppression Bill are narrowly tailored to serve a compelling government interest. They are therefore unconstitutional restrictions on speech under the First Amendment to the U.S. Constitution.

COUNT IV

First Amendment

U.S. Const. Amend. I, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202 Violation of the Rights to Freedom of Speech and Expression (Brought Solely Against Gammage and Edwards)

185. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 25, 36 through 66, 96 through 100, and 110, as though fully set forth herein.

186. The First Amendment to the United States Constitution, incorporated to the states through the Fourteenth Amendment, protects the rights of free speech and expression—including “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 422–23 (1988).

187. Organizations and individuals, like Plaintiffs NGP, Black Voters Matter, and Rise, who plan to distribute, or coordinate the distribution of, food and drink to voters waiting in line engage in First Amendment-protected core political speech and expression by encouraging those voters to stay in line.

188. SB 202 unconstitutionally criminalizes protected speech and expression by making it a misdemeanor to “give, offer to give, or participate in the giving of any money or gifts, including, but not limited to, food and drink, to an elector.” SB 202 § 33(a).

189. That provision unconstitutionally restricts individuals’ and organizations’ First Amendment rights, and it is not sufficiently related to any compelling, or even legitimate or important, government interest.

COUNT V

Civil Rights Act

52 U.S.C. § 10101, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202

Immaterial Voting Requirement

(Brought Against All Defendants Except Gammage and Edwards)

190. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 35, 38 through 75, and 110, as though fully set forth herein.

191. The Civil Rights Act prohibits any person acting under color of law from “deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.” 52 U.S.C. § 10101(a)(2)(B).

192. This provision was “intended to address the practice of requiring unnecessary information for voter registration with the intent that such requirements would increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters.” *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003).

193. SB 202 requires the rejection of any absentee application or ballot that fails to provide the elector’s date of birth.

194. “[A]n elector’s year of birth is not material to determining the eligibility of an absentee voter.” *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018).

195. The only conceivable purpose of the date-of-birth requirement is to confirm an elector’s identity. But SB 202 already requires electors applying for and voting by absentee ballot to prove their identity with a unique identifier, such as a driver’s license or state identification number.

196. Because an elector’s date of birth is not a unique identifier, its inclusion does not materially improve election officials’ ability to confirm an elector’s identity. If SB 202’s driver’s license or state identification number requirements are determined to be lawful, then the additional requirement that an elector provide a date of birth is entirely redundant.

197. By requiring election officials to reject absentee applications and ballots solely on the basis of a missing or incorrect year of birth, SB 202 violates the Civil Rights Act.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- (a) Declaring that the challenged provisions in the Voter Suppression Bill violate the First and Fourteenth Amendments to the U.S. Constitution as undue burdens on the right to vote;

- (b) Declaring that the challenged provisions in the Voter Suppression Bill violate Section 2 of the Voting Rights Act;
- (c) Declaring that the challenged provisions in the Voter Suppression Bill violate the First Amendment to the U.S. Constitution;
- (d) Declaring that the challenged provisions in the Voter Suppression Bill violate the Civil Rights Act;
- (e) Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from enforcing any of the challenged provisions of the Voter Suppression Bill;
- (e) Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and
- (f) Granting any such other and further relief as this Court deems just and proper.

Respectfully submitted, this 24th day of January, 2024.

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