

**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

**STATE DEFENDANTS' RESPONSES TO CONSOLIDATED  
PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS**

Defendants hereby submit these responses and objections to the individual facts asserted in Consolidated Plaintiffs' Consolidated Statement of Additional Material Facts (Doc. 807-1) (hereafter, Plaintiffs' "PSOF"), showing the Court as follows:

Defendants respond and object to Plaintiffs' individual statements of fact below:

1. In 1960, the state of Georgia was effectively biracial in composition: according to the Census, 71.4% were white and 28.6% were Black. All other racial and ethnic groups were 0.08% of the population. Ex. 100 (Lee Rep. 18-19).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

2. Today, Georgia is a multiracial and multiethnic state. According to the 2020 Census data, whites (non-Hispanic) make up 52% of the State's

population, with African Americans at 32.6%, Latinos at 10%, and Asian Americans at 4.4%. Ex. 100 (Lee Rep. 19).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

3. While people of color population growth outpaced white population growth in most of the State, people of color are heavily concentrated in just a few counties. According to 2020 Census figures, more than 50% of the statewide population of people of color reside in six of Georgia's 159 counties: Fulton, Gwinnett, Cobb, DeKalb, Clayton, and Chatham. Ex. 106 (Palmer Rep. ¶ 15 & Tbl. 1).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. The fact is also immaterial to the claims and defenses in this case because rates of growth are not relevant to the claims.

4. According to U.S. Census Bureau estimates, these four counties (Cobb, DeKalb, Fulton, and Gwinnett) comprise only 27% of the State's white population but 39.8% of the State's Black population, Ex. 85 (Burden Rep. 4), almost 45% of the State's Latino population, and nearly 62% of the State's Asian American and Pacific Islander (AAPI) population, Ex. 95 (Cobb Rep. 13-14, 17).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because the second portion of the sentence is not based on Census

estimates. Further, the fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

5. The AAPI population is especially concentrated in the counties around Atlanta, Georgia: Forsyth (18%), Gwinnett (13.3%), Fulton (7.6%), DeKalb (6.6%), Cobb (5.6%) and Fayette (5.4%). Ex. 100 (Lee Rep. 21).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact, and the evidence cited does not support the statement that the AAPI population is “especially concentrated.”

6. Georgia’s demographic change has been driven largely by a sizable decline in the (non-Hispanic) white population and the emergence of two racial/ethnic minority groups: Latinos and Asian Americans. Ex. 100 (Lee Rep. 19).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case because the rates of population growth are not relevant to the claims.

7. From 2010 to 2020, Georgia’s population grew by 10.6% (1,024,255 people). Ex. 106 (Palmer Rep. ¶ 12). During that period, Georgia’s white population shrank by 1.0%, while Georgia’s non-white population cumulatively grew by 25.2%. *Id.* By group, Georgia’s Latino population grew by 31.6%, and Georgia’s AAPI population grew by 52.6%, *id.* ¶ 12 & Tbl. 1; Ex. 100 (Lee Rep.

18), and Georgia's Black population grew by 12.5% (from 2,950,435 to 3,320,513), Ex. 95 (Cobb Rep. 1-2).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and the citation to Exhibit 100 do not support the fact stated.

8. Over 73% of Black population growth from 2010 to 2019 occurred in the Atlanta region, where nine of the ten counties with the greatest increase in the Black population are located. According to county-level data from the Census' American Community Survey ("ACS") table B02001 (2010 and 2019), the nine counties with the greatest increases in Black population from 2010 through 2019 (together accounting for 73.03% of the State's Black population increase) are found in the Atlanta region. The counties are Gwinnett, Fulton, Cobb, DeKalb, Henry, Clayton, Douglas, Rockdale, and Newton. U.S. Census Bureau, "RACE," American Community Survey, ACS 5-year Estimates Selected Population Detailed Tables, Table B02001 (2019), [https://data.census.gov/table/ACSDT5Y2019.B02001?g=040XX00US13\\$0500000&y=2019](https://data.census.gov/table/ACSDT5Y2019.B02001?g=040XX00US13$0500000&y=2019), last visited Jan. 19, 2024); U.S. Census Bureau, "RACE," American Community Survey, ACS 5year Estimates Selected Population Detailed Tables, Table B02001 (2010), [https://data.census.gov/table/ACSDT5Y2010.B02001?g=040XX00US13\\$0500000&y=2010](https://data.census.gov/table/ACSDT5Y2010.B02001?g=040XX00US13$0500000&y=2010), last visited Jan. 19, 2024).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered, does not cite to evidence by page or paragraph number, and the evidence cited does not support the fact stated.

9. Based on an analysis of 41 statewide elections from 2012 to 2022 (which constitutes all general and runoff elections during that period excluding only the 2020 Special Senate elections), Black, Latino, AAPI, and other voters of color shared the same candidates of choice in each election and voted cohesively in support of these candidates, and white voters cohesively opposed each of those candidates. Ex. 106 (Palmer Rep. ¶¶ 7, 21, 23, 26, 27 & Figs. 1-2); *see also* Ex. 95 (Cobb Rep. 3, 31).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered, but Defendants admit that the Court may consider this evidence for purposes of the summary judgment motions.

10. In every election analyzed from 2012-2022, white voters voted cohesively in opposition to the candidate of choice of Black, Latino, and AAPI voters. On average, only 14.3% of white voters supported the candidates of choice of voters of color (which were largely Democratic candidates), and in no election did this estimate exceed 20%. Ex. 106 (Palmer Rep. ¶ 27 & Figs. 1-2).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered, but Defendants admit that the Court may consider this evidence for purposes of the summary judgment motions.

11. Black voters are extremely cohesive, with a clear candidate of choice in all 41 elections analyzed. On average, 98.7% of Black voters supported Democratic candidates. Ex. 106 (Palmer Rep. ¶¶ 25-27 & Figs. 1-2); Ex. 85 (Burden Rep. 5-6 & Tbl 1).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered, but Defendants admit that the Court may consider this evidence for purposes of the summary judgment motions.

12. In Georgia, Black voters support the Democratic party by wide margins. Ex. 85 (Burden Rep. 4-5 & Tbl. 1) A study of presidential, gubernatorial, and senatorial elections from 2014 through 2022 showed that Black voters consistently favored Democratic candidates by margins between 77 percentage points and 87 percentage points, while majorities of white voters in every election supported Republican candidates. *Id.* 5 & Tbl. 1. Even in Democratic Party primary elections, where all candidates belong to the same party, Black and white voters tend to support different candidates. *Id.* 6-7 & Tbl. 2.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and the evidence cited for the last sentence does not support the fact stated because the evidence relates only to presidential preference primary elections and not all Democratic Party primary elections.

13. After years of Republican dominance in Georgia statewide elections, elections became noticeably more competitive beginning in 2018 when the Republican candidate for Governor won by only 1.4 percentage points against Democratic candidate Stacey Abrams. Ex. 85 (Burden Rep. 8); Ex. 95 (Cobb Rep. 30).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

14. Democratic candidate Stacey Abrams was the gubernatorial candidate of choice of Black voters in 2018. Ex. 85 (Burden Rep. 6, Tbl. 1).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

15. Between 2014 and 2022, although the total number of active registered voters increased among all racial groups, the share of registered voters that identify as white dropped by more than five points, from 57.9% white in 2014 to 51.6% white in 2022. Ex. 85 (Burden Rep. 8-10 & Tbl. 3); *see also* Ex. 106 (Palmer Rep. ¶¶ 12-16).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

16. Voter turnout rates in Georgia are consistently higher among white Georgians than Black, Hispanic, and AAPI Georgians. Ex. 94 (Clark Rep.

Tbl. 6); Ex. 85 (Burden Rep. 9-10 & Tbl. 4); Ex. 96 (Fraga Rep. ¶ 35 & Tbl. 1); *see also* Ex. 113 (Grimmer Rep. Tbl. 2).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

17. Political participation among Black Georgians has long lagged behind that of white Georgians, with white voters consistently turning out at significantly higher rates than Black voters. *See* Ex. 94 (Clark Rep. Tbl. 6 (documenting average turnout gap of 8.8 points based on registered voters between 2010 and 2022)); Ex. 85 (Burden Rep. 9-10 & Tbl. 4 (documenting average turnout gap of 7.4 points based on CVAP between 2014 and 2022)).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and is stated as argument rather than as a statement of fact because it characterizes the nature of political participation rather than facts related to voter turnout.

18. Between the 2018 and 2022 midterm elections, overall voter turnout, adjusted for population growth, declined by 2.8 percentage points. Ex. 113 (Grimmer Rep. ¶ 28 & Tbl. 1).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

19. Over the most recent three midterm general elections, the white turnout rate in Georgia increased from 38.8% in 2014, to 53.6% in 2018, to



54.5% after SB 202 in 2022. Ex. 85 (Burden Rep. 10, Tbl. 4); *see also* Ex. 96 (Fraga Rep. ¶ 35, Tbl. 1) (calculating white turnout to be 55.3% in 2018 and 56.2% in 2022).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because both expert reports cited arrived at a different white turnout percentages for 2018 and 2022.

20. Over the most recent three midterm general elections, the Black turnout rate in Georgia increased from 35.0% in 2014 to 49.4% in 2018, but decreased to 42.5% after SB 202 in 2022. Ex. 85 (Burden Rep. 10, Tbl. 4); *see also* Ex. 96 (Fraga Rep. ¶ 35, Tbl. 1 (calculating Black turnout to be 49.1% in 2018 and 46.6% in 2022)); Ex. 113 (Grimmer Rep. ¶ 33 & Tbl. 2 (calculating Black turnout, adjusted for population growth, to be 49.5% in 2018 and 41.7% in 2022)).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because each expert report cited arrived at a different turnout percentages for 2018 and 2022.

21. The gap between white turnout and Black turnout in Georgia increased from 3.8 percentage points in 2014, to 4.2 percentage points in 2018, and to 12.0 percentage points in 2022 (after the implementation of SB 202). Ex. 85 (Burden Rep. 10, Tbl. 4); *see also* Ex. 113 (Grimmer Rep. ¶¶ 33-34 & Tbl. 2 (showing the gap between Black and white turnout, adjusted for

population growth, increased from 4.4 percentage points in 2018 to 12.0 percentage points in 2022)).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because each expert report cited arrived at a different turnout percentage gap for 2018.

22. Over the most recent presidential elections in Georgia, the Black turnout rate in Georgia increased from 51.8% in 2016 to 57.2% in 2020. Ex. 85 (Burden Rep. Tbl. 4); Ex. 113 (Grimmer Rep. Tbl. 2 (calculating Black turnout to be 52.0% in 2016 and 57.2% in 2020)).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because each expert report cited arrived at a different turnout percentage for 2018.

23. In recent presidential elections in Georgia, the AAPI turnout rate increased significantly, with surveys indicating an increase from 2016 to 2020 ranging from 21.9 and 23.0 percentage points. Ex. 113 (Grimmer Rep. Tbl. 2); *see also* Ex. 96 (Fraga Rep. ¶ 35, Tbl. 1); Ex. 100 (Lee Rep. 46).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because each expert report cited arrived at different turnout percentages for the referenced elections.

24. AAPI turnout in Georgia rose by 61,000 voters (84%) between the 2016 and 2020 presidential elections. Ex. 95 (Cobb Rep. 30).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

25. More than 325,000 additional ballots were cast by nonwhite voters in 2020 compared to 2016. Ex. 95 (Cobb Rep. 3).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

26. Over the most recent special senate runoff elections, the Black turnout rate in Georgia decreased from 54.9% in January 2021 to 43.0% in December 2022. Ex. 96 (Fraga Rep. ¶ 35, Tbl. 1); *see also* Ex. 113 (Grimmer Rep. Tbl. 2 (calculating Black turnout to be 52.5% in January 2021 and 38.6% in December 2022)).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because each expert report cited arrived at a different turnout percentage for the referenced elections.

27. Over the most recent special senatorial elections, the AAPI turnout rate in Georgia decreased from 53.8% in January 2021 to 35.2% in December 2022. Ex. 96 (Fraga Rep. ¶ 35, Tbl. 1); Ex. 113 (Grimmer Rep. Tbl. 2 (calculating AAPI turnout to be 50.4% in January 2021 and 30.3% in December 2022)).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because each expert report cited arrived at a different turnout percentage for the referenced elections.

28. Changes in voter turnout are an incomplete metric for gauging the impact of election law policies or changes in policies on the burdens citizens face when exercising the franchise. Ex. 97 (Fraga Sur-Rebuttal Rep. ¶ 12); Ex. 101 (Lee Rebuttal Rep. ¶ 1).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact. The fact as stated assumes there are burdens that must be overcome when voting.

29. Total turnout is an insufficient measurement of the relative burdens that Black voters and white voters must overcome under a law like SB 202 in order to cast a ballot. Ex. 97 (Fraga Sur-Rebuttal Rep. ¶¶ 12-17); Ex. 86 (Burden SurRebuttal Rep. 11-12); Ex. 83 (Deposition of Dr. Justin Grimmer [ECF 747] (“Grimmer Dep.”) 50:3-11 (“[T]he cost of voting could go up and an individual still could turn out to vote.”)); Ex. 101 (Lee Rebuttal Rep. ¶¶ 1, 21-27).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact. The fact as stated assumes there are burdens that must be overcome when voting.

30. The fact that voters take steps to counter a “higher barrier” to voting, and subsequently vote, is not evidence that the barrier does not exist. Ex. 96 (Fraga Rep. ¶ 14).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact. The fact as stated assumes there are barriers that must be overcome when voting.

31. Political scientists, including Plaintiffs’ Expert Dr. Fraga and State Defendants’ expert Dr. Grimmer, agree that voter turnout is dependent on a host of factors, including the type of election, party control of Congress and the presidency, changes in election administration, the competitiveness of the election, and countermobilization efforts. Ex. 96 (Fraga Rep. ¶ 49); Ex. 113 (Grimmer Rep. ¶ 37); Ex. 83 (Grimmer Dep. 54:21-25, 78:14-84:14); Ex. 86 (Burden Sur-Rebuttal Rep. 11); Ex. 84 (Deposition of Dr. Daron Shaw [ECF 768] (“Shaw Dep.”) 131:10-132:1); Ex. 101 (Lee Rebuttal Rep. ¶¶ 1-2).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

32. It is exceedingly difficult for social scientists to determine whether changes in voter turnout can be causally attributed to voting laws like SB 202, particularly with data from just one election cycle. Ex. 97 (Fraga Sur-Rebuttal Rep. ¶¶ 15-18); Ex. 86 (Burden Sur-Rebuttal Rep. 11); Ex. 83 (Grimmer Dep. 47:1749:11).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact. The fact assumes that social scientists are able to make causal attributions to changes in voting laws.

33. Defense expert Dr. Grimmer acknowledged that it is possible that a law could increase the costs of voting overall or on particular groups while turnout remains the same. Ex. 83 (Grimmer Dep. 50:8-51:5).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

34. Georgia state law has permitted all eligible voters to vote absentee-by mail without having to specify a reason (called “no-excuse absentee voting”) since 2005. O.C.G.A. § 21-2-381(a)(1)(A) (2005); Ex. 91 (Anderson Rep. 99); Ex. 96 (Fraga Rep. ¶ 51).

**RESPONSE:** Undisputed.

35. In elections before 2018, white voters in Georgia tended to use absentee-by-mail voting more than other racial groups. Ex. 91 (Anderson Rep. 99); Ex. 85 (Burden Rep. 11); Ex. 96 (Fraga Rep. ¶ 51). Specifically, in the 2014 midterm elections, 3.33% of Black voters in Georgia voted via absentee-by-mail, compared to 4.49% of white voters. Ex. 85 (Burden Rep. 11 & Tbl. 5). In the 2016 presidential election, 3.92% of Black voters in Georgia voted via absentee-by-mail, compared to 5.33% of white voters. *Id.*

**RESPONSE:** Disputed in part. While Dr. Burden, in his report compared Black and white voters use of absentee-by-mail voting, he did not compare all races. Burden Rep. 11 & tbl. 5 (Defs.' Ex. TTTT). Dr. Grimmer's report compared all racial groups' use of absentee by mail and absentee voting in Georgia going back to the 2014 election and found that AAPI voters had a higher share of absentee-by-mail votes cast than white voters from 2016 onward. See Grimmer Rep. ¶ 63 & fig. 2 (Defs.' Ex. DDDD) (reproduced below). Additionally, Black voters voted early in person at higher rates than white voters consistently from 2014–2018 and in 2022. *Id.*

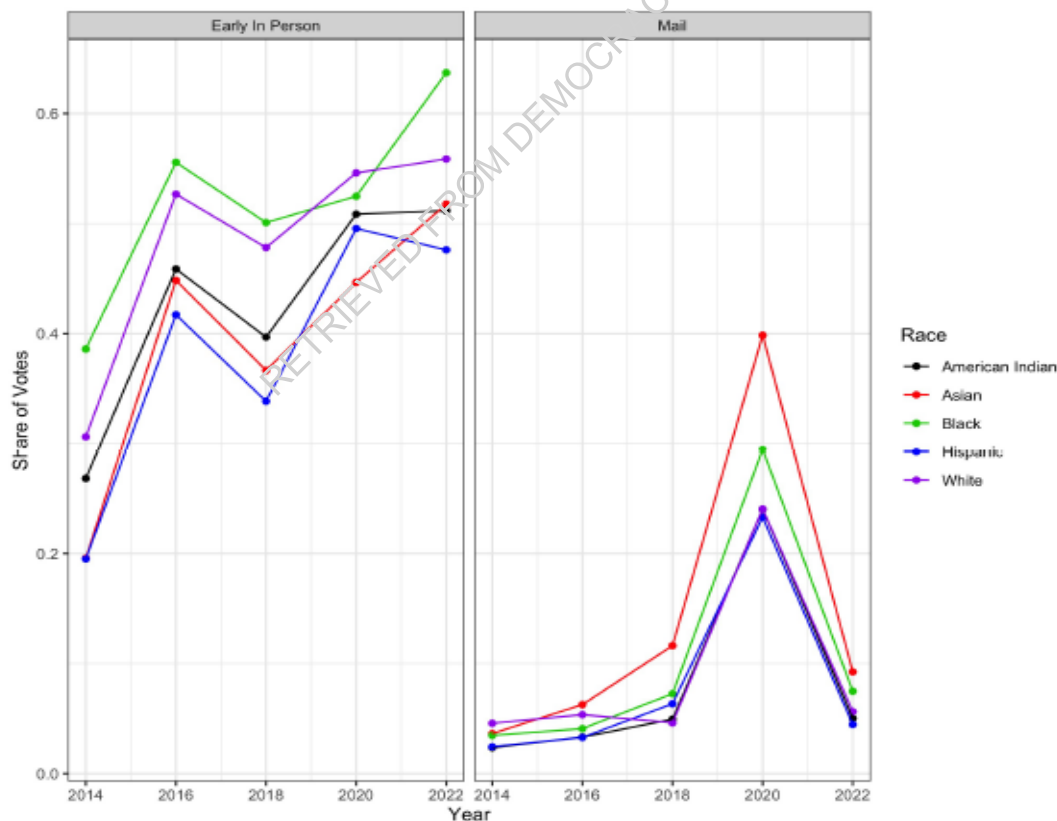


Figure 2: Comparing shares of votes from early in person voting and absentee mail voting.

36. In the November 2018 general election, Black voters' use of absentee-by-mail voting out-paced that of white voters for the first time, with 7.02% of Black voters in Georgia voting via absentee-by-mail, compared with 4.65% of white voters. Ex. 85 (Burden Rep. 11 & Tbl. 5); *see also* Ex. 96 (Fraga Rep. ¶ 55 & Tbl. 2 (showing that 4.6% of white voters, 7.1% of Black voters, 6.3% of Hispanic voters, 11.5% of AAPI voters, and 5.6% of all voters voted by mail in 2018)); Ex. 113 (Grimmer Rep. ¶ 63 & fig. 2).

**RESPONSE:** Undisputed, though State Defendants' note that Dr. Grimmer's report, which Plaintiffs cite, calculated the white absentee-by-mail share at 4.61% and the Black share at 7.25% in 2018. Grimmer Rep. ¶¶ 60, 62 (Defs.' Ex. DDDD). Dr. Shaw gives a similar rate of 4.6% for white voters and 7.2% for Black voters in 2018. Shaw 2/24 Rep. ¶ 20 (Defs.' Ex. LLLL).

37. In November 2020, Black voters' use of absentee-by-mail voting exceeded that of white voters by an even larger margin than in 2018, with 28.9% of Black voters voting via absentee-by-mail, compared with 24.0% of white voters. Ex. 85 (Burden Rep. 11 & Tbl. 5); *see also* Ex. 96 (Fraga Rep. ¶ 58 & Tbl. 2 (showing that 23.9% of white voters, 29.0% of Black voters, and 26.0% of all voters voted by mail in 2020)); Ex. 113 (Grimmer Rep. ¶¶ 60, 62 & fig. 2).

**RESPONSE:** Disputed in part and misleading. According to Dr. Grimmer, the share of white voters voting absentee by mail was 24.0% in 2020



compared to 29.4% of Black voters who voted absentee by mail in 2020. Grimmer Rep. ¶¶ 60, 62 (Defs.' Ex. DDDD). And Dr. Shaw's report places the respective shares for Black and white voters in 2020 at 29.3% and 23.8% respectively. Shaw 2/24 Rep. ¶ 20 (Defs.' Ex. LLLL). Additionally, the 2020 election was a unique outlier because the "COVID-19 pandemic caused many states, including Georgia, to alter how it administered its elections." Grimmer Rep. ¶ 37 & n.8 (citing Stanford-MIT Healthy Elections Project, *The Virus and the Vote: Administering the 2020 Election in a Pandemic* (July 1, 2021), <https://tinyurl.com/2p98hn69>), ¶ 39 (noting that "the coronavirus was salient and disrupting many Americans' routines") (Defs.' Ex. DDDD). And there were similar total turnout increases nationwide regardless of whether a state refused to offer no-excuse absentee voting in 2020. Shaw 2/24 Rep. ¶ 26 (Defs.' Ex. LLLL). This suggests that "the salience of the election and the perception that one's vote means something is much more important to turnout than what one needs to do in order to vote." *Id.* ¶ 27.

38. In all major Georgia statewide elections from 2018 to November 2022, AAPI registrants had the highest rate of absentee-by-mail ballot requests. Ex. 96 (Fraga Rep. ¶ 68, Tbl. 3); Ex. 113 (Grimmer Rep. fig. 2).

**RESPONSE:** Disputed in part. The data compiled by Plaintiffs' own expert only shows *de minimis* differences between absentee-by-mail ballot request rates of AAPI voters and those of other racial groups in the 2018

general election (2.1%) and 2022 general election (.6%). Fraga Rep. 28 tbl. 3 (Defs.' Ex. BBBB) (reproduced below); *see also League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh'g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

	<i>Pre-SB202</i>			<i>Post-SB202</i>	
	Nov 2018	Nov 2020	Jan 2021	Nov 2022	Dec 2022
<b>Total</b>	4.1%	22.8%	17.3%	3.5%	2.9%
<b>White</b>	3.3%	22.5%	17.0%	3.6%	3.2%
<b>Black</b>	5.5%	24.3%	19.1%	3.7%	2.8%
<b>Hispanic</b>	4.2%	18.2%	11.2%	1.6%	1.0%
<b>Asian/PI</b>	7.6%	34.8%	22.9%	4.3%	2.8%

39. AAPI voters voted via absentee ballots at the highest rate compared to other racial groups from November 2018 to January 2021 in all major statewide elections. Ex. 96 (Fraga Rep. Tbl. 2).

**RESPONSE:** Disputed in part as Plaintiffs’ reference to the “highest rate” is vague. Additionally, the data compiled by Plaintiffs’ own expert only shows *de minimis* differences between AAPI absentee-by-mail voting rates and those of other racial groups in the 2018 general election (4.4%) and 2022

general election (1.8%). Fraga Rep. 23 tbl. 2 (Defs.’ Ex. BBBB) (reproduced below); see also *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

	<i>Pre-SB202</i>			<i>Post-SB202</i>	
	Nov 2018	Nov 2020	Jan 2021	Nov 2022	Dec 2022
<b>Total</b>	5.6%	26.0%	24.0%	6.2%	5.3%
<b>White</b>	4.6%	23.9%	21.7%	5.6%	5.2%
<b>Black</b>	7.1%	29.0%	27.5%	7.3%	5.5%
<b>Hispanic</b>	6.3%	23.2%	20.4%	4.4%	2.7%
<b>Asian/PI</b>	11.5%	39.7%	34.9%	9.1%	6.2%

40. AAPI, Black, and Latinx voter turnout decreased at a disproportionately high rate compared to white voters between the general and runoff elections directly before and after SB 202. Ex. 96 (Fraga Rep. ¶¶ 36-40, Tbls. 1, 2).

**RESPONSE:** Disputed, but immaterial. There is no context for what is “disproportionately high rate.” First, this statement takes the 2020 presidential election as the proper baseline for turnout, but that is improper because it compares a presidential election year to a midterm election. See Grimmer Rep. ¶ 28 (Defs.’ Ex. DDDD) (“Because the first statewide election

after SB 202 is a midterm election, I will first focus on turnout in midterm elections.”); *see also* Shaw 2/24 Rep. ¶ 13 (Defs.’ Ex. LLLL) (“But 2020 and (especially) 2018 are high-water marks for turnout in Georgia[.]”). And “the reality is that the decrease in turnout from 2018 to 2022 was less in Georgia (for Blacks and Whites) than it was nationally and less than it was in most other states.” Shaw 2/24 Rep. ¶ 14 (Defs.’ Ex. LLLL); *see also* Grimmer Rep. ¶¶ 35–51 (Defs.’ Ex. DDDD) (explaining that the declines in Georgia were consistent with declines seen nationwide in Black turnout); Shaw 2/24 Rep. ¶¶ 46–52 (Defs.’ Ex. LLLL) (same). Second, turnout in both the 2022 general election and 2022 general runoff election was very high, with the turnout rate for the 2022 midterm approximately 81% higher than the turnout rate for the 2014 midterm, which is larger than the increase of the 2020 general election turnout rate over the 2016 general election turnout rate. Grimmer Rep. ¶¶ 27–28 (Defs.’ Ex. DDDD). This change was also consistent with increases in turnout among all racial groups from 2014 to 2022. *Id.* ¶ 32 (“Across all racial groups, I find that the turnout rate has increased relative to the 2014 election[.]”).

Third, the turnout gap between white voters and other ethnic groups did not significantly vary from 2020 to 2022. The gap between white and Black voters changed from 9.6% (2020) to 9.9% (2022) (.3% difference). *See* Fraga Rep. 17 tbl. 1a (Defs.’ Ex. BBBB). Likewise, the gap in turnout between white

and Hispanic voters changed from 26.1% (2020) to 29.7% (2022) (3.6% difference). *Id.*; see *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). Finally, the gap between white and AAPI voters changed from 0.5% to 12.2% (a change of 11.7%), but this was a *narrowing* of the pre-2020 gap for midterm election turnout, which was 18.1% in 2018. Fraga Rep. 17 tbl. 1a (Defs.’ Ex. BBBB). And turnout by AAPI voters “increased 24.9% percentage points from the 2014 to 2022 general election[.]” Grimmer Rep. ¶ 35 (Defs.’ Ex. DDDD).

Fourth, AAPI, Latino, Black, Native American, and white voters continued to vote at absentee-by-mail levels consistent with prior elections, and all but AAPI voters (and then only by a small amount) utilized absentee-by-mail voting at a higher level than they did in 2018, the last pre-pandemic election. Grimmer Rep. ¶¶ 58–62 (Defs.’ Ex. DDDD). Even so, “[AAPI] voters saw their highest midterm turnout rate in the 2022 midterm election,” specifically “a 3.9 percentage point increase relative to 2018[.]” *Id.* ¶ 32. Indeed, after SB 202, voter participation, including the use of absentee-by-mail voting of Black, white, AAPI, Latino, Native American, and all voters remained near record high especially for a midterm election. *Id.* ¶¶ 27–28, 31–35 & tbl.

2 (turnout rates), 41–42, 44–45, 58–64; Shaw 2/24 Rep. ¶¶ 20–22 (Defs.’ Ex. LLLL).

Indeed, Dr. Grimmer found that “[i]n the 2022 midterm election, [AAPI] voters cast the largest share of their ballots by mail-in absentee voting[.]” Grimmer Rep. ¶¶ 32, 59, 64 (Defs.’ Ex. DDDD); *see also id.* ¶ 64 (“Compared to the 2020 election, I find that the change in mail-in absentee ballot usage among [AAPI] voters is similar to the change in mail-in absentee ballot usage among white voters and the change overall.”). Similarly, with respect to Latino voters there was an increase from the pre-COVID baseline in the share of absentee voting. *See id.* ¶¶ 33, 61. The same also holds true of Native American voters. *Id.* ¶¶ 32, 58.

Fifth, no causal conclusions can be made about SB 202’s contributions to these changes absent “extremely strong” assumptions), Shaw 2/24 Rep. ¶ 11 (Defs.’ Ex. LLLL) (noting the many assumptions needed as well as factors that must be ignored for a causal finding); Burden 21:4–22:12 (Defs.’ Ex. R hereto) (acknowledging that many factors can affect turnout besides changes to election laws).

41. AAPI voters’ rates of voting absentee declined at a disproportionately high rate compared to white voters between the general and runoff elections directly before and after SB 202. Ex. 96 (Fraga Rep. ¶¶ 55, 57, 60-61). While AAPI voters’ use of absentee ballots declined by 30.6 percentage

points between the general elections directly before and after SB 202, white voters' rates declined by only 18.3 percentage points. *Id.* Tbl. 2. Similarly, while AAPI voters' use of absentee ballots declined by 28.7 percentage points between the runoff elections immediately before and after SB 202, white voters' rates declined by only 16.5 percentage points. *Id.*

**RESPONSE:** Disputed, but immaterial. There is no context for what is “disproportionately high rate.” Plaintiffs’ proffered numbers are inaccurate because they do not show the percentage decrease of AAPI and white voters’ use of absentee-by-mail voting and they ignore that the numbers from 2020 were unique due to the Covid-19 pandemic. Grimmer Rep. ¶ 37 & n.8 (citing Stanford-MIT Healthy Elections Project, *The Virus and the Vote: Administering the 2020 Election in a Pandemic* (July 1, 2021), <https://tinyurl.com/2p98hn69>), ¶ 39 (noting that “the coronavirus was salient and disrupting many Americans’ routines”) (Defs.’ Ex. DDDD). Plaintiffs’ claim that there was an 18.9% drop in absentee voting for white voters compared to 30.5% for AAPI voters is just “statistical manipulation.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021). The correct comparison is not 18.9% to 30.5% but to the respective *percentage decrease*, not *the difference between* the pre-SB 202 and post-SB 202 values.<sup>1</sup> When this is

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<sup>1</sup> “To calculate a percentage decrease, first work out the difference (decrease) between the two numbers you are comparing.

done, it reveals a 77.07% drop-off for Asian voters and an 76.57% drop-off for white voters. Fraga Rep. ¶ 23 tbl. 2 (Defs.' Ex. BBBB); *accord* Grimmer Rep. ¶ 64 (Defs.' Ex. DDDD) (finding similar declines of 76.6% for whites and 76.8% for Asians). Thus, there was only a .2%-.5% difference between the decline among Asian and white voters. Fraga Rep. ¶ 23 tbl. 2 (Ex. BBBB). And Black voters had the *smallest* percent decrease at 74.6%. *Id.* In fact, While AAPI and Latino turnout following SB 202 declined slightly more than white turnout, Native American turnout actually increased after SB 202. *See* Grimmer Rep. ¶¶ 31–35 & tbl. 2 (Ex. DDDD). And all racial groups had an increase in turnout from the 2014 to 2022 general elections, with some racial groups like AAPIs and Native Americans outpacing the increase in white turnout from that period. *Id.* ¶ 35. Thus, when each group's usage of absentee-by-mail voting from the 2020 general election to the 2022 general election is calculated, it shows similar declines. *Id.* ¶ 64. The difference in decline then for each ethnic group was not statistically significant. *See League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 933 (11th Cir.) (describing

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Decrease=Original Number–New Number. Next, divide the decrease by the original number and multiply the answer by 100. Percentage Decrease=(Decrease Original Number)×100. The result expresses the change as a percentage—i.e., the percentage change.” Will Kenton, *How to Calculate the Percentage Change*, Investopedia (Jan. 23, 2024), <https://www.investopedia.com/terms/p/percentage-change.asp>.



“difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

42. AAPI voters’ rates of applying for absentee ballots declined at a disproportionately high rate compared to white voters between the general and runoff elections directly before and after SB 202. Ex. 96 (Fraga Rep. ¶¶ 68-70).

**RESPONSE:** Disputed, but immaterial. There is no context for what is “disproportionately high rate.” The figures from the 2020 election are not reliable metrics because of the changes in behavior caused by the COVID-19 pandemic. Grimmer Rep. ¶ 37 & n.8 (citing Stanford-MIT Healthy Elections Project, *The Virus and the Vote: Administering the 2020 Election in a Pandemic* (July 1, 2021), <https://tinyurl.com/2p98hn69>), ¶ 39 (noting that “the coronavirus was salient and disrupting many Americans’ routines”) (Defs.’ Ex. DDDD). And Plaintiffs’ own expert’s data do not support this statement. See Fraga Rep. 28 tbl. 3 (Defs.’ Ex. BBBB) (reproduced below).

	<i>Pre-SB202</i>			<i>Post-SB202</i>	
	Nov 2018	Nov 2020	Jan 2021	Nov 2022	Dec 2022
<b>Total</b>	4.1%	22.8%	17.3%	3.5%	2.9%
<b>White</b>	3.3%	22.5%	17.0%	3.6%	3.2%
<b>Black</b>	5.5%	24.3%	19.1%	3.7%	2.8%
<b>Hispanic</b>	4.2%	18.2%	11.2%	1.6%	1.0%
<b>Asian/PI</b>	7.6%	34.8%	22.9%	4.3%	2.8%

Using the data provided in this chart, the percent decrease in white voters applying for absentee ballots from the 2020 to 2022 general election was 84% and for Asian voters it was 87.64% (a difference of 3.64%). *Id.* Similarly, from the January 2021 runoff to the December 2022 runoff, the percentage decrease for AAPI voters was 87.77% and for white voters was 81.18% (a 6.59%) difference. And such small differences are insignificant. *See League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). Notably, Dr. Fraga’s report shows that Asian voters post-SB 202 applied for absentee ballots at a higher rate than white voters and all other ethnicities in the general election with a slight dip in the runoff. Fraga Rep. 28 tbl. 3 (Defs.’ Ex. BBBB). And, even more significantly, Plaintiffs’ expert’s data shows that consistent with pre-SB 202 trends, a greater share of Asian voters voted absentee by mail than any other ethnic group in every election post-SB 202. *Id.* at 23 tbl. 2; *accord* Grimmer Rep. 50 fig. 2 (Defs.’ Ex. DDDD).

43. Increases in the rates of AAPI absentee-by-mail ballot applications were sharper relative to white registrants before the passage of SB 202 but shrank faster than that of white registrants after SB 202’s restrictions took effect. Ex. 96 (Fraga Rep. ¶ 70).

**RESPONSE:** Disputed, but immaterial. There is no context for what constitutes a “sharper” increase or “shrank faster,” and any qualitative change is out of context. Also, it is incorrect. AAPI voters’ use of absentee-by-mail ballots shrank at a similar rate post-SB 202 to that of white voters. Grimmer Rep. ¶ 64 (Defs.’ Ex. DDDD) (“The decrease in mail-in absentee ballot usage among white voters was 76.6%, while the decrease in mail-in absentee ballot usage among Asian voters was 76.8%.”). And, as noted *supra* (Resp. ¶ 42), there was no significant difference in the decline in absentee ballot applications between white and AAPI voters following SB 202. And, as Dr. Grimmer has shown, AAPI voters in Georgia have consistently—since 2016—cast the largest share of absentee-by-mail ballots. Grimmer Rep. 50 fig. 2 (Defs.’ Ex. DDDD). Indeed, Dr. Fraga’s own data shows that a greater percentage of AAPI voters submitted absentee ballot applications and voted absentee by mail than white voters both *before* (2020 general election) and *after* SB 202 (2022 general election). Fraga Rep. 23 tbl. 2, 28 tbl. 3 (Defs.’ Ex. BBBB).

44. While rates of AAPI voters applying for and voting by absentee ballot decreased across the 2018 and 2022 midterm elections, white voters’ rates increased. Ex. 96 (Fraga Rep. Tbls. 2, 3 & fn. 18). Similarly, AAPI registrants were more likely to request an absentee by mail ballot than white

voters prior to SB 202, AAPI registrants were less likely than white voters to apply to vote by mail in the December 2022 statewide election. *Id.* ¶¶ 63-70.

**RESPONSE:** Disputed because these claims are out of context. Plaintiffs' expert's data shows that, consistent with pre-SB 202 trends, a greater share of AAPI voters voted absentee by mail than any other racial or ethnic group in every election post-SB 202. *See* Fraga Rep. 23 tbl. 2 (Defs.' Ex. BBBB); *accord* Grimmer Rep. 50 fig. 2 (Defs.' Ex. DDDD). Indeed, Dr. Fraga's own data shows that a greater percentage of AAPI voters submitted absentee ballot applications and vote absentee-by-mail than white voters both *before* (2020 general election) and *after* SB 202 (2022 general election). Fraga Rep. 23 tbl. 2, 28 tbl. 3 (Defs.' Ex. BBBB). And, as explained previously in Resp. ¶¶ 41–43, none of these changes between white and AAPI voters' rates of requesting and voting absentee applications is significant.

Plaintiffs point to the one anomalous data point which bucked the general trend lines pre- and post-SB 202, where AAPI registrants *requested* ballots at a lower level than white voters in the December 2022 runoff election. But they omit that, according to their own expert, AAPI voters still *voted* absentee-by-mail at a greater rate than whites, and any other racial or ethnic group, in that election. *See* Fraga Rep. 23 tbl. 2 (Defs. Ex. BBBB); *accord* Grimmer Rep. 50 fig. 2 (Defs.' Ex. DDDD).

45. In 2018, 11.5% of AAPI voters voted via absentee-by-mail, and in 2020 39.7% of AAPI voters voted via absentee-by-mail. Ex. 96 (Fraga Rep. Tbl. 2); *see also* Ex. 113 (Grimmer Rep. ¶ 59).

**RESPONSE:** Undisputed that these are the percentages of AAPI voters who voted via absentee-by-mail in the 2018 and 2020 general elections.

46. On average, Black voters comprised 42% of absentee-by-mail ballots returned each day in the November 2020 general election, despite accounting for only 32% of total voters. Ex. 85 (Burden Rep. 11, 16-17 & Tbl. 5 & fig. 4).

**RESPONSE:** Disputed, because misleading for lack of context. In the 2020 election, the share of Black voters voting early-in-person departed from the norm of consistently outpacing white voters, with 52.5% of Black voters voting early-in-person compared to 54.6% of white voters. Grimmer Rep. 50 fig. 2, ¶¶ 60, 62 (Defs.’ Ex. DDDD). That one-time anomaly reversed post-SB 202 with 63.7% of Black voters casting their votes early-in-person compared to 55.9% of white voters. *Id.* ¶¶ 60 & 62. And “Black voters in 2022 cast the largest share of their votes using absentee voting methods.” *Id.* ¶ 63; *see also id.* (“In 2022, 71.2% of votes from Black voters were cast using either early in person or mail-in absentee voting. This is 9.7 percentage points more than white voters, 10.2 percentage points more than Asian American voters, 15

percentage points more than American Indian voters, and 19.1 percentage points more than Hispanic voters.”).

47. The 2020 general election also saw a marked shift in partisan voting method patterns. For the first time, the Democratic candidate for president received more absentee-by-mail votes than the Republican candidate. Ex. 104 (Lichtman Rep. 9). Overall, nearly 850,000 absentee votes were cast for the Democratic candidate for president, while only 450,000 were cast for the Republican candidate. The Democratic candidate got 34.3% of his votes from absentee ballots, while the Republican got only 18.3%. This shift in absentee voting impacted election results. The Democratic candidate for president won Georgia’s electoral votes for the first time in 28 years. And Democrats won both of Georgia’s Senate seats for the first time since 2000. *Id.* 9-11.

**RESPONSE:** Disputed in part. There is no basis for concluding that “this shift in absentee voting impacted election results.” Shaw 2/24 Rep. ¶ 24 (“But the political science literature suggests the effects of in-person early voting on turnout are minuscule.”), ¶ 25 (“In most academic studies, the reported relationships between no-excuse absentee mail policies and turnout are null, or positive but modest, or negative.”), & 18 tbl. 1 (reproduced below) (Defs.’ Ex. LLLL).

Table 1— Summary of Literature on Absentee Mail Voting				
Paper	Design	Unit	Turnout Effect	Absentee Mode Effect
Oliver (1996)	X-Section	Individual	Null to modest +	Large +
Karp & Banducci (2001)	X-Section	Individual	Modest +	Large +
Fitzgerald (2005)	DiD	State-Year	Null	
Gronke, Galanes-Rosenbaum & Miller (2007)	Panel	State-Year	Null	
Leighley & Nagler (2009)	Panel	State-Year	Null to Modest +	
Giammo & Brox (2010)	Panel	County-Year	Modest – to Modest +	
Larocca & Klemanski (2011)	Pooled X-Section	Individual	Modest +	
Leighley & Nagler (2011)	Panel	State-Year	Modest +	
Springer (2012)	DiD	State-Year	Null	
Burden et al. (2014)	Pooled X-Section	Individual	Modest – to Large -	
Burden et al. (2014)	DiD	County-Year	Modest -	
Meredith & Endter (2015)	RDD	Individual	Null	Large +

Notes: X-Section (X-S) refers to a cross-sectional design and DiD refers to a difference-in-differences design, and RDD refers to a regression discontinuity design.

Notably, one study found that “nationwide, states that did not offer no-excuse absentee voting in 2020 saw turnout increases similar in magnitude to states that offered no-excuse absentee voting for the first time in 2020.” *Id.* ¶ 26 (quoting Jesse Yoder et al., *How Did Absentee Voting Affect the 2020 U.S. Election?*, 7 *Sci. Advances* eabk1755 (2021)). This suggests that “the salience of the election and the perception that one’s vote means something is much

more important to turnout than what one needs to do in order to vote.” *Id.* ¶ 27.

48. The State’s expert admitted that, taking an average of the four most recent election cycles (2016, 2018, 2020, and 2022), Black voters are more likely to vote by mail or to vote early in-person. Def’s Ex. LLLL (Shaw Rebuttal Rep. ¶ 20).

**RESPONSE:** Undisputed but immaterial.

49. Despite changes in the relative usage of rates of absentee ballots, in recent elections, Black voters’ absentee ballots were rejected at higher rates than those of white voters. Ex. 85 (Burden Rep. 11-12 & Tbl. 6 (showing that in every federal election from 2014-2022, Black voters had higher absentee ballot rejection rates than white voters)).

**RESPONSE:** Undisputed that Black voters’ absentee ballots were rejected at higher rates than those of white voters in federal elections from 2014 through 2022, but the introductory phrase has no context and is immaterial. Additionally, according to Plaintiffs’ expert’s data, the gap in Black-white rejections was statistically insignificant: 0.21% in 2020; 0.16% in 2021, and 0.16% in 2022. Burden Rep. 12 tbl. 6 (Defs.’ Ex. TTTT). Further, the absentee ballot application does not ask for a voter’s race, and there is no evidence an election official approves or rejects a request for an absentee-by-mail ballot due to the race of the applicant. *See Application for Georgia Official*



Absentee Ballot, available at [https://sos.ga.gov/sites/default/files/forms/Absentee\\_Ballot\\_Application\\_20212.pdf](https://sos.ga.gov/sites/default/files/forms/Absentee_Ballot_Application_20212.pdf) (last visited May 12, 2024).

50. Ahead of the 2018 election, Black-led nonpartisan organizations and Stacey Abrams' gubernatorial campaign engaged in voter mobilization efforts aimed at increasing registration and turnout among non-white voters, including an emphasis on absentee-by-mail voting. Ex. 85 (Burden Rep. 9); Ex. 4 (Burnough Decl. ¶ 12); Ex. 269 (Cotton Decl. ¶¶ 7-12).

**RESPONSE:** Disputed as to the characterization of Stacy Abrams's New Georgia Project and its related organizations as nonpartisan. Otherwise, undisputed.

51. Black-led nonpartisan organizations hosted celebrations around voting that included food, music, drinks, and other line relief efforts. Ex. 31 (30(b)(6) Deposition of Georgia State Conference of the NAACP (Gerald Griggs) [ECF 731] ("GA NAACP Dep.") 48:13-49:14); Ex. 265 (Calhoun Decl. ¶¶ 17-18); Ex. 269 (Cotton Decl. ¶¶ 9-12, 23-24); Ex. 8 (Jones Decl. ¶ 10).

**RESPONSE:** Undisputed but immaterial. This statement ignores the overall context of line relief efforts, which included handing out other items of value, including clothing and phone chargers; other organizations engaging in provision of items of value, including apparent partisan organizations; and the non-celebratory but rather partisan or coercive tone of other such efforts.

Mashburn 3/14 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex. T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F).

52. In part as a result of these mobilization efforts, Black voter turnout increased from 35.0% in the November 2014 midterm elections to 49.4% in the 2018 midterm elections. Ex. 85 (Burden Rep. Tbl. 4); Ex. 91 (Anderson Rep. 140, 172).

**RESPONSE:** Disputed. Plaintiffs provide no statistical or causal analysis around line warming, not even a bare comparison of areas with and without such efforts. Shaw 2/14 Rep. ¶ 67 (Defs.’ Ex. KKKK).

53. This outreach to minority voters expanded into the 2020 election cycle, including voter registration, line warming, and a continued emphasis on absentee-by-mail voting during the COVID-19 pandemic. Ex. 319 (Woodall 3/13/23 Decl. ¶¶ 8-14); Ex. 265 (Calhoun Decl. ¶¶ 9-21); Ex. 31 (GA NAACP Dep. 43:8-24 (similar programs that began “well before 2019 . . . really ramped [up] from 2019-2021”)); Ex. 8 (Jones Decl. ¶¶ 9-10); *see also* Ex. 95 (Cobb Rep. 2-3 (noting 1.2 million new registrants added to voter rolls between 2018 and 2020)).

**RESPONSE:** Undisputed but immaterial. The 2020 election cycle was during an extraordinarily unusual year, marked by the pandemic and by chaos surrounding the electoral environment.

54. Nonpartisan organizations and clergy offered food, water, and other items to voters, creating a welcoming environment at the polls and encouraging people to stay in line at crowded polling places experiencing long lines. Ex. 259 (Briggins 5/20/22 Decl. ¶¶ 10, 12-13); Ex. 265 (Calhoun Decl. ¶¶ 17-18); Ex. 269 (Cotton Decl. ¶¶ 9-12, 23-24); Ex. 272 (Dennis 5/16/23 Decl. ¶¶ 6-9); Ex. 297 (Kinard Decl. ¶¶ 5, 13) (Ms. Kinard received line relief support as a voter in 2010 and first served as a line relief volunteer in 2014); Ex. 19 (30(b)(6) Deposition of Delta Sigma Theta Sorority (Rhonda Briggins) [ECF 698] (“Delta Dep.”) 97:21-100:10); Ex. 31 (GA NAACP Dep. 48:13-50:4); Ex. 319 (Woodall 3/13/23 Decl. ¶¶ 9-11).

**RESPONSE:** Disputed. Many voters did not feel this created a welcoming environment, and in fact felt that these events showcased corruption or created an unwelcoming environment. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.’ Ex. M); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F); Mashburn 3/14 111:23–113:1 (voters believed political parties were “running the line”), 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex. T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ). This statement ignores the overall context of line relief efforts, which included handing out other items of value, including clothing and phone chargers, Mashburn 3/14 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex. T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ); other

organizations engaging in provision of items of value, including apparent partisan organizations; and the non-celebratory but rather partisan or coercive tone of other such efforts, Germany 6/24/22 Decl. ¶ 30(c) (Defs.’ Ex. F) (One such organization stated its activities were the “last chance to reach Georgians before they vote” in an election that could “determine control of the U.S. Senate.”).

55. Although Black community groups had provided line relief support for many years, these activities attracted new attention in 2018 and 2020. *See* Ex. 259 (Briggins 5/20/22 Decl. ¶¶ 10, 12-13 (describing line relief tradition and media coverage of long wait times for Black voters)); Ex. 257 (Brower 1/18/24 Decl. ¶ 32); *see also, e.g.*, Ligaya Figueras, *World Central Kitchen feeds metro Atlanta voters*, Atlanta J. Const., Oct 13, 2020, <https://www.ajc.com/things-to-do/worldcentral-kitchen-feeds-metro-atlanta;voters/KDDBNKPRGFB63IIFSFXZEPPQBU/>.

**RESPONSE:** Disputed. These activities appear to have started recently, and much of the attention was on other groups as well. Mashburn 3/7 104:11–105:7 (Defs.’ Ex. JJ); Eveler 287:16–25 (Defs.’ Ex. T); Kabani 111:20–23 (Defs.’ Ex. VV); K. Smith 149:16–150:4 (Defs.’ Ex. W); Griggs 48:13–23 (Defs.’ Ex. WW); Germany 6/24/22 Decl. ¶ 30(c) (Defs.’ Ex. F) (One such organization stated its activities were the “last chance to reach Georgians

before they vote” in an election that could “determine control of the U.S. Senate.”).

56. These line relief activities occurred in neighborhoods and at polling places disproportionately serving voters of color, usually in metro-Atlanta counties. *See* Ex. 269 (Cotton Decl. ¶¶ 9, 23 (Poll Chaplains program focused on “poorer or Black neighborhoods” in metro-Atlanta because they tended to experience longer lines)); Ex. 265 (Calhoun Decl. ¶¶ 17-21); Ex. 297 (Kinard Decl. ¶¶ 6, 14).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). In addition, the fact does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and includes multiple facts that are not separately numbered.

57. Black political engagement flourished during this period, facilitated in part by expansions of the opportunity to vote that were introduced during the pandemic, such as absentee ballot drop boxes and state and county efforts to mail unsolicited absentee ballot applications to registered voters. Ex. 4 (Burnough Decl. ¶¶ 13-14); Ex. 8 (Jones Decl. ¶¶ 9, 11).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

58. In addition, between the 2020 general and 2021 runoff elections, a historic number of Georgians registered to vote, with Black people accounting for a disproportionately large share of these newly eligible voters (over 35%, despite constituting just 30% of all registered voters). Ex. 96 (Fraga Rep. ¶¶ 170-173 & Tbl. 20).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

59. Both nationally and in Georgia, AAPIs are not only the fastest growing racial group, but also the fastest growing segment of the electorate. Ex. 100 (Lee Rep. 41). The AAPI population in the U.S. grew by 43% between 2000 and 2010 and by another 36% between 2010 and 2020. Ex. 100 (Lee Rep. 16). In a span of eight years, between 2004 and 2012, the number of registered AAPI voters doubled in Georgia. Ex. 92 (Chang Rep. 20).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

60. Historically, AAPIs have a lower turnout among the citizen voting age population (“CVAP”) than whites and Blacks. This is true both nationally and in the state of Georgia. Ex. 100 (Lee Rep. 44-46, fig. 2-3 & Tbl. 1).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

61. For each presidential election year between 2012 and 2020, voter registration and voter turnout rates for AAPIs in Georgia were significantly lower than for Georgians overall. Ex. 100 (Lee Rep. 45 & Tbl. 1).

**RESPONSE:** Objection to the extent that Plaintiffs' characterization of "significantly lower" is argumentative and self-serving and to the extent that these facts are based on CPS data, which, by Dr. Lee's own admission, are based on "known biases" such as "overreporting and nonresponsive bias" and is subject to "sampling error; the smaller the subpopulation of interest" and "should be interpreted with some caution." (Lee Final Report, p. 42 n.53 and p. 45 n.55.) As stated, this fact is therefore speculative and not based on fact.

62. In Georgia's 2012 general election, AAPIs represented only 1% of voters despite composing 3.3% of the voting age population. Ex. 106 (Palmer Rep. Tbl. 1).

**RESPONSE:** Objection. This fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than a statement of fact.

63. Voter mobilization and outreach beget participation. People register to vote more often when they are asked to do so. They vote more often when they are asked to do so. Ex. 100 (Lee Rep. 48).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

64. According to the 2008 American National Election Study (“ANES”) survey, which surveys voters up to three months before a given election, 47% of whites, 38% of Blacks, and 31% of Latinos reported being contacted and asked to vote in that election compared to only 21% for Asian Americans, representing a 26-percentage-point difference between white and AAPI voters. In the 2020 ANES survey, the respective numbers were 41% of Whites, 36% of Latinos and Blacks, and 32% of Asian Americans, representing a 9-percentage-point difference between white and AAPI voters. Ex. 100 (Lee Rep. 56).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

65. According to the 2020 American Election Eve poll, which interviews similar pools of voters as ANES a week from Election Day, 67% of Blacks, 56% of whites, 52% of Latinos, and 51% of Asian Americans reported being contacted about and encouraged to vote in 2020, reflecting at least an 11-percentage-point increase for Asian Americans between 2008 and 2020. Ex. 100 (Lee Rep. 56-57). According to some metrics, that number could be as large as a 30 percentage-point increase. *Id.* 57.



**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

66. 30.9% of Asians in the United States speak a language other than English at home and report speaking English less than “very well,” according to the 2019 American Community Survey. Ex. 100 (Lee Rep. Fig 4); Ex. 106 (Palmer Rep. 7).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

67. In Georgia, 33% of Asians and 35% of Hispanics report speaking English less than “very well,” according to the 2020 American Community Survey. Ex. 106 (Palmer Rep. ¶ 18).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

68. AAPIs, more than any other racial group, cite “difficulty with English” as a main reason for not registering to vote, according to the Current Population Survey Voting and Registration Supplement. Ex. 100 (Lee Rep. 52 & fig. 6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact and it is not separately numbered.

69. In Georgia, county election officials are not required to provide translated election materials in any Asian languages. Ex. 33 (30(b)(6) Deposition of Georgia Secretary of State (Ryan Germany) [ECF 706] (“SOS Dep.”) 41:2442:10); Ex. 36 (30(b)(6) Deposition of Gwinnett County (Kelvin Williams) [ECF 711] (“Gwinnett Cnty. Williams Dep.”) 77:11-22); Ex. 21 (30(b)(6) Deposition of Fulton County (Nadine Williams) [ECF 704] (“Fulton Cnty. Dep.”) 149:2-7); Ex. 15 (30(b)(6) Deposition of Cobb County (Janine Eveler) [ECF 700] (“Cobb Cnty. Dep.”) 186:8-10, 197:15-17); Ex. 18 (30(b)(6) Deposition of DeKalb County (Keisha Smith) [ECF 702] (“DeKalb Cnty. Dep.”) 69:5-8).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

70. In Georgia, the Secretary of State did not provide instructional materials for how to request an absentee ballot on a statewide basis in any language other than English. Ex. 33 (SOS Dep. 41:3-11).

**RESPONSE:** State Defendants admit only that the Secretary of State is not required to provide any voting materials, including instructional materials in any language other than English and object to this paragraph on

the ground that the fact is therefore immaterial to the claims and defenses in this case. State Defendants also object on the grounds that the fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than fact.

71. In Georgia, notices to cure deficiencies with absentee ballot applications are not provided in any Asian languages. Ex. 21 (Fulton Cnty. Dep. 122:7-9); Ex. 15 (Cobb Cnty. Dep. 204:3-23, 204:8-9); Ex. 18 (DeKalb Cnty. Dep. 72:8-73:3).

**RESPONSE:** State Defendants admit only that the Secretary of State is not required to provide any voting materials, including absentee ballot applications, in any language other than English and object on the ground that the fact is therefore immaterial to the claims and defenses in this case. State Defendants also object on the grounds that the fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than fact and infers a legal conclusion.

72. The 2016, 2018, and 2020 elections in particular show increasing rates of Asian American voter participation relative to previous elections. Ex. 100 (Lee Rep. 55).

**RESPONSE:** Objection. The fact is based on CPS data, which has “known biases”, such as “overreporting and nonresponsive bias” and is subject to “sampling error; the smaller the subpopulation of interest” and “should be

interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.)

This fact is therefore speculative and not based on fact.

73. In 2016, Asian American turnout numbers increased compared to 2012, while turnout numbers for Blacks and Latinos declined and turnout for whites inched marginally higher. Ex. 100 (Lee Rep. 55).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and does not support the fact stated. The fact is based on CPS data, which has “known biases”, such as “overreporting and nonresponsive bias” and is subject to “sampling error; the smaller the subpopulation of interest” and “should be interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.) This fact is therefore speculative and not based on fact.

74. The 2020 election was a record year for AAPI voter turnout. Nationally, 59 percent of all Asian Americans eligible to vote did so—the highest rate of voting for Asian Americans since the collection of this data. Ex. 100 (Lee Rep. 55).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. The fact is based on CPS data, which has “known biases”, such as “overreporting and nonresponsive bias” and is subject to “sampling error; the smaller the subpopulation of interest” and

“should be interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.) This fact is therefore speculative and not based on fact.

75. A large portion of AAPI citizens are new or first-time voters. Ex. 100 (Lee Rep. 48, 60, 84).

**RESPONSE:** Objection. The evidence does not support the fact stated.

76. In Georgia, 53.5% of Asian Americans eligible to vote turned out in 2020, a 21.9-percentage-point increase from 2016. Ex. 100 (Lee Rep. Tbl. 1).

**RESPONSE:** Objection. The facts are not separately numbered and are based on CPS data, which has “known biases”, such as “overreporting and nonresponsive bias” and is subject to “sampling error; the smaller the subpopulation of interest” and “should be interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.) This statement is therefore speculative and not based on fact.

77. From 2016 to 2020, Asian Americans experienced an 84% vote gain in Georgia. Ex. 100 (Lee Rep. 56).

**RESPONSE:** Objection. The evidence cited does not support the fact stated and it is immaterial to the claims and defenses in this case.

78. The increase in AAPI voter turnout is in part the result of increased mobilization. Ex. 100 (Lee Rep. 55-63).

**RESPONSE:** Objection. The fact is based on CPS data, which is based on “known biases” such as “overreporting and nonresponsive bias” and is

subject to “sampling error; the smaller the subpopulation of interest” and “should be interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.) This fact is therefore speculative and not based on fact. In addition, the fact also does not comply with 56.1(B)(1) because it does not cite to evidence by specific page or paragraph number as required by the rule.

79. According to the 2020 American Election Eve Poll, the proportion of Asian Americans who voted for the first time in the congressional race in Georgia’s 7th District is estimated at 41%; of those eligible AAPI voters who were contacted and encouraged to vote, 46% were first-time voters, whereas of those who were not contacted, the proportion of first-time voters is lower at 31%. Ex. 100 (Lee Rep. 60).

**RESPONSE:** Objection. This paragraph does not comply with L.R. 56.1(B)(1) because it is based on a poll, the source, methodology and accuracy of which have not been established, it not separately numbered and states facts that are immaterial to the claims and defenses in this case.

80. AAPI voters found communications from non-partisan community organizations such as Advancing Justice-Atlanta to be more informative and persuasive than from other sources such as political parties or candidates. Ex. 100 (Lee Rep. 61).

**RESPONSE:** Objection. This paragraph does not comply with L.R. 56.1(B)(1) because it is not separately numbered, states facts that are

immaterial to the claims and defenses in this case, is argumentative and the evidence does not support the fact stated.

81. The increases in AAPI voter turnout are also in part due to the availability of vote by mail, as AAPIs are by-far the group of voters that is likeliest to vote by mail. Ex. 100 (Lee Rep. 65).

**RESPONSE:** Objection. This paragraph does not comply with L.R. 56.1(B)(1) because it is not separately numbered, states facts that are immaterial to the claims and defenses in this case, is argumentative and the evidence does not support the fact stated. In addition, the facts are based on CPS data, which has “known biases”, such as “overreporting and nonresponsive bias” and is subject to “sampling error; the smaller the subpopulation of interest” and “should be interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.) This statement is therefore speculative and not based on fact.

82. Nationally, only 19% of Asian Americans voted in person on Election Day in 2020. Ex. 100 (Lee Rep. 65).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. In addition, the facts are based on CPS data, which has “known biases”, such as “overreporting and nonresponsive bias” and is subject to “sampling error; the smaller the subpopulation of interest” and “should be

interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.)

This statement is therefore speculative and not based on fact.

83. In Georgia, nearly 40% of Asian Americans voted by mail in the November 2020 election, compared to 24% of white voters. Ex. 100 (Lee Rep. Tbl. 2).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. In addition, the facts are based on CPS data, which has “known biases”, such as “overreporting and nonresponsive bias” and is subject to “sampling error; the smaller the subpopulation of interest” and “should be interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.) This statement is therefore speculative and not based on fact.

84. In Georgia, AAPI voters stand out as the group least likely to vote in person in 2020, whether via early in person (44% of AAPIs compared to 54% for all Georgia voters) or in person on Election Day (16% of AAPIs, compared to 20% for all Georgia voters). Ex. 100 (Lee Rep. Tbl. 2).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. In addition, the facts are based on CPS data, which has “known biases”, such as “overreporting and nonresponsive bias” and is subject to “sampling error; the smaller the subpopulation of interest” and “should be interpreted with some caution.” (Lee Final Report, p. 42 n.53 and p. 45 n.55.) This statement is therefore speculative and not based on fact.



85. A 2020 poll surveying Asian Americans in ten battleground states found that 80% of Asian Americans report being comfortable voting by mail (57% were “very comfortable”) while only 51% reported feeling comfortable voting in person (and only 27% were very comfortable). Ex. 100 (Lee Rep. 69).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case and does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

86. The November 2020 and January 2021 elections in Georgia resulted in historic wins for minority-preferred candidates in Georgia, including the elections of: President Joe Biden, the first Democratic presidential candidate to win the state in nearly three decades, and Vice President Kamala Harris, the first Black and first Indian-American Vice President ever elected; Reverend Raphael Warnock, a Democrat and Georgia’s first Black Senator, who defeated incumbent Republican Senator Kelly Loeffler; and John Ossoff, a Democrat and Georgia’s first Jewish Senator, who defeated incumbent Republican Senator David Perdue. Ex. 95 (Cobb Rep. 30-31); Ex. 85 (Burden Rep. 6, Tbl. 1 (showing Biden, Warnock, and Ossoff were Black-preferred candidates)); Ex. 4 (Burnough Decl. ¶¶ 14-15); Ex. 170 (Ga. Sec’y of State, Official Results of the November 3, 2020 General Election); Ex. 172 (Ga. Sec’y of State, Official Results of the January 5, 2021 Special Runoff Election).

**RESPONSE:** State Defendants admit that the Court may consider the respondent's evidence for purposes of the summary judgment motion.

87. Democrats Joe Biden, Raphael Warnock, and John Ossoff won their elections in Georgia by extremely close margins: Biden by 0.25% (12,670 votes); Warnock by 2.08% (93,272 votes), and Ossoff by 1.22% (54,944 votes). Ex. 95 (Cobb Rep. 30); Ex. 85 (Burden Rep. 8); Ex. 170 (Ga. Sec'y of State, Official Results of the November 3, 2020 General Election); Ex. 172 (Ga. Sec'y of State, Official Results of the January 20, 2021 Special Runoff Election); *see also* Ex. 171 (Ga. Sec'y of State, Official Results of the November 3, 2020 General Election Recount (reporting Biden won by 0.24% (11,779 votes))).

**RESPONSE:** State Defendants admit that the Court may consider the respondent's evidence for purposes of the summary judgment motion.

88. The recent competitiveness of Georgia elections "is widely understood to be a reflection of the growing participation of Black voters." Ex. 85 (Burden Rep. 4-5); *see also* Ex. 4 (Burnough Decl. ¶¶ 14-15); Ex. 8 (Jones Decl. ¶¶ 10-12).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than a statement of fact and is not material to the claims or defenses in this case.

89. Georgia's competitive races, coupled with the state's rapidly growing AAPI population, means that Georgia's AAPIs have increasingly drawn attention as a potential pivotal electorate. Ex. 100 (Lee Rep. 21).

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible. FED. R. EVID. 801 and 802, *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-91 (5th Cir. 1961). In addition, it does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than a statement of fact and is not material to the claims or defenses in this case. Furthermore, Plaintiffs' own expert states that Georgia's AAPI population went from 3.3% in 2010 to 4.5% in 2020. Palmer Rep. ¶ 12 & tbl. 1 [Doc. 812-10]. Plaintiffs' statement of a 1.2-percentage-point increase does not support the statement of "rapid[] grow[th]."

90. In 2020, AAPI registrants were 2.6% of Georgia's voters but made up 3.8% of Georgia's absentee-by-mail ballot requests. Ex. 106 (Palmer Rep. Tbl. 1); Ex. 100 (Lee Rep. 67).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it does not cite evidence by page or paragraph number of the Lee Report. In addition, the evidence does not support the fact stated and is not separately numbered.

91. In 2020, Georgia's 7th congressional district, which had been held by Republicans for a quarter century, elected a Democratic representative,

Carolyn Bourdeaux, by a margin of about 10,000 votes or 2.8 percentage points. Ex. 100 (Lee Rep. 59).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered, and the evidence does not support the fact stated.

92. Plaintiff expert Taeku Lee estimates that, without Asian American votes, Carolyn Bourdeaux would not have won her congressional seat in 2020. Ex. 100 (Lee Rep. 59).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case.

93. In Forsyth County, AAPIs are 18 percent of the county population and were 7.8 percent of the county's turnout in the 2020 general election. Ex. 100 (Lee Rep. 67).

**RESPONSE:** Objection. The fact is not material to the claims and defenses in this case.

94. In the leadup to November 2020, Georgia voters were confident that their vote would be counted in the upcoming general election, continuing a trend of confidence in Georgia's elections. Ex. 99 (King Rep. 16-18); Ex. 184 (Email thread J. Fuchs to SOS Staff, "Fwd: Final Poll Results: GA Statewide Survey" (Oct. 28, 2020), at CDR01357172).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

95. Survey results circulated to the Secretary of State's office in October 2020 showed that "Georgia voters overwhelmingly believe[d] that their vote [would] be counted accurately and kept secret, regardless of how they choose to vote," Ex. 184 (Email thread J. Fuchs to SOS Staff, "Fwd: Final Poll Results: GA Statewide Survey" (Oct. 28, 2020), at CDR01357172), and that during early voting for the November 2020 election, both Republicans and Democrats were very confident that their vote would be counted, *id.* at CDR01357173.

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

96. Messages received from political leaders, particularly those of the party a voter supports, can affect voter confidence, as can unsubstantiated claims of voter fraud. Ex. 99 (King Rep. 13-14); Ex. 80 (Deposition of Dr. Bridgett King [ECF 790] ("King Dep.") 94:6-24); Ex. 83 (Grimmer Dep. 39:3-41:20 (testifying that false narratives of voter fraud can undermine public confidence in election administration)); Ex. 34 (30(b)(6) Deposition of the Georgia State Election Board (Matthew Mashburn) [ECF 709] ("SEB Dep.") 131:25-132:25, 136:7-137:1, 143:10-12).

**RESPONSE:** Undisputed.

97. State and County election officials agree that there was not widespread voter fraud in the November 2020 election. Ex. 59 (Deposition of Ryan Germany [ECF 707] (“Germany Dep.”) 65:2-5); Ex. 34 (SEB Dep. 127:25-128:21); Ex. 49 (Deposition of Lynn Bailey, taken Oct. 6, 2022 [ECF 715] (“Bailey 10/6/22 Dep.”) 61:8-11); Ex. 82 (Deposition of Lynn Bailey, taken Mar. 21, 2023 [ECF 716] (“Bailey 3/21/23 Dep.”) 175:8-12, 206:5-14); Ex. 72 (Deposition of Marie Frances Watson [ECF 722] (“Watson Dep.”) 129:7-12); Ex. 57 (Deposition of Joseph Blake Evans [ECF 717] (“Evans Dep.”) 54:4-55:9); Ex. 61 (Deposition of Chris Harvey [ECF 719] (“Harvey Dep.”) 72:22-73:4); Ex. 21 (Fulton Cnty. Dep. 75:13-15, 129:1-3, 272:21-25); Ex. 15 (Cobb Cnty. Dep. 100:8-10).

**RESPONSE:** Undisputed.

98. As the counting of November 2020 general election ballots finished, accusations of cheating with absentee voting were reported in some conservative media outlets and circulated widely on social media. Ex. 91 (Anderson Rep. 9698).

**RESPONSE:** Undisputed.

99. In Georgia, and elsewhere, the Trump campaign focused its fraud accusations on areas with large Black populations, such as Fulton and DeKalb Counties. *See, e.g.*, Ex. 177 (Trump Call to Frances Watson, Chief Investigator, Washington Post video (Dec. 23, 2020), USA-04279 at 1:15); Ex. 91 (Anderson

Rep. 98 (quoting the Dec. 23, 2020 call in which President Trump stated: “if you can get to Fulton, you’re going to find things that are going to be unbelievable . . . Fulton is the motherlode.”)); Ex. 4 (Burnough Decl. ¶ 16); *see also* Ex. 122 (Dec. 3, 2020 Sen. Jud. Subcomm. Hr’g Tr., AME\_002333:12-2334:6 (Giuliani) (referencing mail-in ballots in Philadelphia and other cities with Black majorities or pluralities)).

**RESPONSE:** Disputed, the cited portions of the record do not support the purported statement of fact and are immaterial. While Donald Trump mentioned Fulton County during the call with Ms. Watson, Plaintiffs cite nothing to support their inference that he did so because the County is plurality Black. Rep. Burnough’s Declaration adds no factual support for that claim either, simply repeating Plaintiffs’ allegation that Fulton was mentioned because it is plurality Black without explaining how she came to that conclusion. *See* Burnough Decl. ¶ 16 (Pls.’ Ex. 4). A “declaration used to support or oppose a motion [for summary judgment] must be made on personal knowledge,” Fed. R. Civ. P. 56(c)(4), and Rep. Burnough has none that would shed light on the former President’s unspoken intent.

The cited testimony from Mr. Giuliani also undermines, rather than supports, Plaintiffs’ assertion of racial targeting, as he pointed to six cities as hotbeds of alleged fraud: Detroit, Pittsburgh, Philadelphia, Milwaukee, Phoenix, and Las Vegas. Of those, only one (Detroit) is majority Black, and

only two (Philadelphia and Milwaukee) are plurality Black. Meanwhile, Pittsburgh is majority White, Las Vegas is plurality White, and non-Hispanic Whites are the second-largest group in Phoenix (42.2%) while only 7.1% of the population is Black. *See* U.S. Census Bureau, 2020 Census: Demographic & Housing Characteristics, Detroit, MI, <https://tinyurl.com/2dt7bs67>; *id.* Philadelphia, PA, <https://tinyurl.com/yuadee4k>; *id.* Milwaukee, WI, <https://tinyurl.com/yt5bmttk>; *id.* Pittsburgh, PA, <https://tinyurl.com/nhz8sb6b>; *id.* Las Vegas, NV, <https://tinyurl.com/mryxt8d2>; *id.* Phoenix, AZ, <https://tinyurl.com/y8xh773r> (all last accessed May 13, 2024). And Mr. Giuliani even explained a non-racial basis for these selections: “What do they all have in common? They’re controlled by one political party ..., and they have records of criminal corruption indictments as long as my arm.” Ga. S. Jud. Subcomm. Hr’g Tr., AME\_002333:16–20 (Dec. 3, 2020) (Defs.’ Ex. JJ hereto). In any event, Plaintiffs’ statement in this paragraph is immaterial as Plaintiffs have not explained how any of what Donald Trump said on the call with Ms. Watson, or what Mr. Giuliani said during the December 3, 2020 hearing, influenced any provision of SB 202, making this statement of purported fact immaterial. *See Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997) (“An issue of fact is ‘material’ if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case.”).



100. The misinformation resulted in threats to election workers, particularly in metro-Atlanta counties. *See, e.g.*, Ex. 187 (Email from H. McCloud to SOS staff, “FW: 11.19.2020 - Election FAQs for Representatives” (Nov. 19, 2020), CDR00146327-44); Ex. 67 (Deposition of Hayley McCloud [ECF 789] (“McCloud Dep.”) 79:12-84:9 (providing information related to voter fraud accusations)); Ex. 175 (Gabriel Sterling Press Conference, CBS 46 video clip (Dec. 1, 2020), USA-04144 at 9:03-9:52 (Sterling describing a GIF with a slowswinging noose aimed at a Gwinnett County elections worker)); Ex. 234 (*Hearing on the January 6th Investigation before the H. Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol*, 117th Cong. 33-34 (June 21, 2022) (testimony of Wandrea “Shaye” Moss, describing racist threats, including “Be glad it’s 2020 and not 1920.”)).

**RESPONSE:** Undisputed but immaterial. None of the cited sources explain which “misinformation” specifically was the cause of those threats. Nor are these threats material to this litigation.

101. In a December 15 email, Representative Bonnie Rich to SOS staff asking why SOS did not conduct a signature match audit in Fulton and DeKalb Counties, “the two counties where there is at least a perception of greatest fraud.” Ex. 192 (Emails between H. McCloud to Members of the Georgia General Assembly “Re 12.14.2020 - Secretary of State Election Update” (Dec. 14-15, 2020), CDR00216111-12).

**RESPONSE:** Undisputed.

102. In a phone call with the Secretary of State Brad Raffensperger that later became public, then-President Trump specifically pointed the finger at Black election workers, one of whom he described as a “professional vote scammer and hustler.” Ex. 178 (Call from former President Donald Trump to Georgia Sec. of State Brad Raffensperger, Washington Post video (Jan. 2, 2021), USA-04281 at 4:14-4:19); Ex. 231 (Email from R. Sinners to SOS Staff, “Morning Reads - 12/2/21” (Dec. 2, 2021), CDR00024677-84).

**RESPONSE:** Disputed in part. Insofar as Plaintiffs are claiming that Mr. Trump did so *because* of the race of the person to whom he was referring, the cited portions of the record do not support that purported statement of fact. In fact, during the call, Mr. Trump blamed Dominion Voting Systems far more than this single election worker. See Tim Darnell, *Read: Full Transcript of Donald Trump’s Call to Brad Raffensperger*, Atl. First News (Feb. 15, 2023), <https://tinyurl.com/auss459c>. In any event, these assertions are immaterial because Plaintiffs have not tied any provision of SB 202 to Mr. Trump’s comments during this phone call.

103. Following the November 2020 election, numerous unsuccessful lawsuits alleging voter fraud or other purported irregularities were filed in Georgia. *E.g.*, *Trump v. Raffensperger*, No. 2020-CV-343255 (Ga. Super. Ct., Fulton Cnty. 2020) (lawsuit alleging that state officials and several counties

violated elections code by sending unsolicited absentee ballot applications); *Wood v. Raffensperger*, No. 2020CV342959 (Ga. Super. Ct., Fulton Cnty. 2020) (court dismisses lawsuit alleging state officials had violated election code by accepting private grants to help fund elections, among other claims). *See* Ex. 105 (Minnite Rep. 30-32, 5464).

**RESPONSE:** Undisputed.

104. These lawsuits all proved unsuccessful “in identifying any fraud” or overturning the results of the election. Ex. 105 (Minnite Rep. 30-32, 54-64); Ex. 91 (Anderson Rep. 113-14).

**RESPONSE:** Undisputed.

105. Issues raised in several of these lawsuits—from the legitimacy of the signature match process to the distribution of unsolicited absentee ballot applications—became blueprints for the election changes proposed in the Georgia General Assembly’s 2021-2022 Legislative Session. *See* Ex. 91 (Anderson Rep. 113-14); Ex. 105 (Minnite Rep. 30-32, 54-64).

**RESPONSE:** Disputed. The cited portions of the record do not support the purported statement of fact. Additionally, the statement is an argument, rather than a statement of fact. While several lawsuits did pertain to signature matching and mass mailings of absentee ballots, and while SB 202 did include provisions that replaced the former and proscribed the latter, the rationales for these provisions are not dependent on failed lawsuits, which did not serve

as a “blueprint” for SB 202. *See* State Defs.’ MSJ at 13–17, 17–18 [Doc. 759]. The two expert reports Plaintiffs cite point out that the lawsuits failed and note that several legislative hearings were held about election-related issues in 2020, but neither demonstrates issues raised in the failed suits were “blueprints” for the statute passed in the next legislative session. In any event, Plaintiffs’ characterization of the issues raised in these lawsuits as the “blueprints” for certain of SB 202’s provisions requires no response here, since that is an “argumentative conclusion[]” rather than a “fact.” *See Inglett & Co. v. Everglades Fertilizer Co.*, 255 F.2d 342, 349 (5th Cir. 1958).

106. On November 15, 2020, Representative Barry Fleming made a racially derogatory statement in a published op-ed when he compared the “always suspect absentee balloting process” to “the shady part of town down near the docks you do not want to wander into because the chance of being shanghaied is significant. Expect the Georgia Legislature to address that in our next session in January.” Ex. 186 (Barry Fleming, *Guest Column: Republican Party wins on Election Day, and future is bright*, *Augusta Chronicle*, Nov. 15, 2020, USA-0415862); Ex. 5 (Hugley Decl. ¶ 11 (“I believe Representative Fleming questioned the security of absentee voting using a racially derogatory statement because more minority voters took advantage of mail-in absentee voting in 2020 than in previous election years.”)); Ex. 6 (Nguyen Decl. ¶ 38); Ex. 91 (Anderson Rep. 100). Fleming had previously

supported no-excuse absentee-by-mail voting in 2005 when it was introduced in Georgia. Ex. 294 (Khwaja Decl. ¶ 12).

**RESPONSE:** Disputed that there is anything “racially derogatory” about that language—a point addressed in State Defendants’ response to ¶ 559, *infra*. Rep. Hugley’s speculation as to Rep. Fleming’s intent is unsupported and inadmissible, since a “declaration used to support or oppose a motion [for summary judgment] must be made on personal knowledge,” Fed. R. Civ. P. 56(c)(4), and Rep. Hugley has no such personal knowledge of Rep. Fleming’s intent. Moreover, Rep. Fleming’s support of no-excuse absentee voting in 2005 is immaterial because SB 202 retained no-excuse absentee voting. *See Wood v. Life Ins. Co. of N. Am.*, 593 F. Supp. 3d 1189, 1191 n.1 (N.D. Ga. 2022) (noting that a court should “exclude[] assertions of facts that are immaterial or presented as arguments or legal conclusions”).

107. Current Georgia Elections Director Blake Evans testified in his deposition, “I think conspiracy theories, whether they were misinformation being touted, whether it was from the president or somebody else, contributed to the creation of a significant amount of concern amongst voters.” Ex. 57 (Evans Dep. 175:1-5).

**RESPONSE:** Undisputed that Mr. Evans said this during his deposition.

108. On December 7, Secretary Raffensperger recertified the final 2020 Presidential recount results and dismissed continuing concerns that the election was fraught with problems because “the evidence, the actual evidence, [and] the facts tell us a different story.” Ex. 176 (Georgia Secretary of State Update on 2020 Election Results, C-Span (Dec. 7, 2020), USA-04141 at 3:42); Ex. 91 (Anderson Rep. 114).

**RESPONSE:** Undisputed that Secretary Raffensperger made these statements.

109. Secretary Raffensperger and State officials repeatedly dismissed allegations that the 2020 elections were not secure. Ex. 176 (Georgia Final 2020 Presidential Recount Results, C-SPAN video (Dec. 7, 2020), USA-04141 at 3:42 (Secretary Raffensperger recertifying election results and dismissing voter fraud allegations because “the evidence, the actual evidence, [and] the facts tell us a different story.”)); Ex. 200 (B. Raffensperger letter to Congressmen and Senator Loeffler, “RE: Point by Point Refutation of False Claims about Georgia Elections” (Jan. 6, 2021), CDR00119748-57); Ex. 69 (Deposition of Gabriel Sterling [ECF 721] (“Sterling Dep.”) 118:16-119:6); Ex. 91 (Anderson Rep. 16, 107, 111, 130-31 (cataloging repeated statements by various election officials that Georgia’s elections were safe and secure)); Ex. 67 (McCloud Dep. 79:12-84:9).

**RESPONSE:** Undisputed that State officials characterized the 2020 election as secure, subject to the understanding that “secure” simply means that the election was untainted by widespread fraud.

110. The Secretary of State’s Office sent Georgia legislators numerous emails in November and December 2020 for the express purposes of debunking misinformation and allegations of fraud regarding, and increasing confidence in, the 2020 and 2021 elections. *See, e.g.*, Ex. 190 (Email from H. McCloud to Members of the General Assembly, “12.04.2020 - Secretary of State Election Update - State Farm Video Debunked by WSBTV” (Dec. 4, 2020), CDR00463567-69); Ex. 188 (Email from H. McCloud to Members of the General Assembly, “12.01.2020 - Secretary of State Election Update” (Dec. 1, 2020), CDR00464854-56); Ex. 187 (Email from H. McCloud to SOS staff, “FW: 11.19.2020 - Election FAQs for Representatives” (Nov. 19, 2020), CDR00146327-44); Ex. 192 (Emails between H. McCloud and Members of the General Assembly “Re 12.14.2020 - Secretary of State Election Update” (Dec. 14-15, 2020) CDR00216110-12); Ex. 67 (McCloud Dep. 83:18-19 (testifying that the purpose of the SOS’s emails to legislators during this time “was to try and prevent misinformation from spreading”), 87:13-88:24 (testifying that the SOS Elections Updates emails were regularly sent to all legislators to answer questions, debunk misinformation)).

**RESPONSE:** Undisputed.

111. The State Election Board investigated dozens of allegations of voter fraud from the 2020 election and “found no merit to the challenges against Georgia’s election integrity.” Ex. 34 (SEB Dep. 134:8-25); *see also id.* 40:9-16 (observing that many complaints received by the SOS were “just craziness”).

**RESPONSE:** Disputed in part as misleading. A document issued by the State Election Board (“SEB”) used the quoted language, but State Defendants note that the deposition testimony cited by Plaintiffs went on to make clear that SB 202 addressed “legitimate concerns” about Georgia’s elections. Mashburn 3/7 137:16–138:5 (Defs.’ Ex. K hereto). As for the parenthetical quotation, it is also misleading: “the Secretary of State’s Office would ... do a reasonable effort to separate legitimate claims from just craziness. Although, ... we get a fair amount of craziness that comes through.” *Id.* at 40:12–16 (Defs.’ Ex. K hereto).

112. The Legislature held at least five hearings in December 2020 purportedly related to voter “fraud” in November 2020: (1) December 3 Senate Government Oversight Committee hearing, Ex. 135 (Sen. Gov. Oversight Comm. Meeting Notice (Dec. 3, 2020), USA-03298); (2) December 3 Senate Judiciary Election Law Study Subcommittee hearing, Ex. 136 (Sen. Jud. Election L. Study Subcomm. Meeting Notice (Dec. 3, 2020), USA-03299); (3) December 10 House Governmental Affairs Committee hearing, Ex. 137 (H.



Gov. Aff. Comm. Meeting Notice (Dec. 10, 2020), USA-03184)); (4) December 23 House Governmental Affairs Committee hearing, Ex. 138 (H. Gov. Aff. Comm. Meeting Notice (Dec. 23, 2020), USA-03185)); and (5) December 30 Senate Judiciary Election Law Study Subcommittee hearing, Ex. 139 (Sen. Jud. Election L. Study Subcomm. Meeting Notice (Dec. 30, 2020), USA-03323)).

**RESPONSE:** Disputed in part because neither the meeting notices nor the transcripts support Plaintiffs' characterization of the meetings as being confined to the topic of "fraud." See Ga. S. Gov't Oversight Comm. Notice of Dec. 3, 2020 Meeting, USA-03298 (Pls.' Ex. 135) ("We will hear how the election process went and take suggestions on what can be done to improve the process and confidence in how the election is conducted. Anyone with firsthand knowledge of problems with the election or fraudulent activity relative to the election may submit sworn written statements of fact."); Ga. S. Jud. Subcomm. Dec. 3, 2020 Meeting Agenda (Pls.' Ex. 136) ("Agenda: To study Georgia's election laws, and their past and present impact on the current election cycle."); Ga. H. Gov'tl Affs. Comm., Notice of Dec. 10, 2020 Elections Investigative Hr'g (Pls.' Ex. 137) ("Agenda: The committee will meet to discuss Georgia voting processes and elections."); *id.*, Dec. 23, 2020 Hr'g (Pls.' Ex. 138) (same); Ga. S. Jud. Subcomm. Dec. 30, 2020 Meeting Agenda (Pls.' Ex. 139) ("Agenda: To study Georgia's election laws, and their past and present impact on the current

election cycle,” and to “[c]onsider the Committee Report from the December 3rd Meeting”).

113. The December 2020 legislative hearings were broadcast on television and were widely covered in conservative media. Ex. 9 (Jordan Decl. ¶ 32).

**RESPONSE:** Disputed in part and immaterial. The claim that they were “widely covered in conservative media” is not fully supported by the cited paragraph of Plaintiffs’ source, which simply says the following: “The Subcommittee Hearings were live streamed on cable news networks, including One America News Network (OAN) and Newsmax. It is my understanding that the December 3rd Subcommittee Hearing was not open to all press. As a Senator, you develop some familiarity with the journalists who cover local politics; however, most of the media personnel at the December 3rd Subcommittee Hearing were unfamiliar to me and were not from local news networks.” Jordan Decl. ¶ 32 (Pls.’ Ex. 9).

114. In a departure from normal procedures, during some of the hearings, attorneys involved in the voter fraud lawsuits, including Rudy Giuliani and Ray Smith, were permitted to ask questions. Ex. 10 (Parent Decl. ¶¶ 15-21); Ex. 9 (Jordan Decl. ¶¶ 30-36); Ex. 6 (Nguyen Decl. ¶¶ 17-24); *see also* Ex. 191 (Email from R. Germany to SOS staff, “Re: draft statement” (Dec. 10, 2020), CDR00059322-23 (approved public statement from the Secretary of

State's Office)); Ex. 344 (Dec. 30, 2020 Sen. Jud. Comm. Hr'g Tr., AME\_002894:10-2899:11).

**RESPONSE:** Disputed in part and immaterial. Plaintiffs omit the crucial fact that Mr. Giuliani and Mr. Smith were simply allowed to ask questions of other witnesses that they had invited with them to the hearings. *See* Ga. S. Jud. Comm. Hr'g Tr., AME\_002894:10–2899:11 (Dec. 30, 2020) (Defs.' Ex. LL hereto); Ga. S. Jud. Subcomm. Hr'g Tr. (Dec. 3, 2020), AME\_002140:12–2318:25 (Giuliani) (Ex. JJ hereto); AME\_002178:11–2187:25, 2205:15–2215:10, 2243:5–6, 2258:1–2260:23, 2290:2–2300:7 (Smith) (Defs.' Ex. JJ hereto). For this reason, this fact is immaterial to this litigation, as Plaintiffs cannot explain how allowing such questions influenced SB 202 or affected legislative business in any way.

115. Some of the election law changes proposed during the December 2020 legislative hearings were ultimately enacted in SB 202. *Compare* Ex. 124 (Dec. 10, 2020 H. Gov. Aff. Comm. Hr'g Tr., AME\_002434:14-20) (testimony advocating for a prohibition on the distribution of unsolicited mail ballot applications), *and id.* at AME\_002436:1-14 (testimony advocating for ID numbers on absentee ballot applications and ballots) *with* SB 202 §§ 25, 27-28 (prohibition on government entities mailing unsolicited mail ballot applications and new ID requirements for absentee ballot applications and ballots).

**RESPONSE:** Undisputed, but immaterial.

116. These hearings featured both overt and coded references to race. For example, Giuliani repeatedly linked Black election workers doing their jobs to drug dealers. Ex. 124 (Dec. 10, 2020 H. Gov. Aff. Comm. Hr’g Tr., AME\_002498:6-24 (referring to Black election workers as “scurrying around” and hiding ballots like they were “passing out dope.”)). He described two Black election workers, who later received death threats, as “passing around USB ports as if they’re vials of heroin or cocaine.” *Id.* at AME\_002514:5-25; *see also* Ex. 6 (Nguyen ¶ 29 (describing Giuliani’s testimony at December 10, 2020 House Governmental Affairs Committee hearing)); Ex. 10 (Parent Decl. ¶ 22 (describing relentless focus on Fulton and DeKalb counties and coded references to race)).

**RESPONSE:** Disputed in part, immaterial, and lacking support in the record. Plaintiffs’ claim that Mr. Giuliani made “overt ... references to race” is unsupported by the cited portions of the record. The cited sources, moreover, do not support Plaintiffs’ theory that Mr. Giuliani’s words were “coded references to race,” an argumentative conclusion that is also not proper in a statement of material *facts*. *See Inglett & Co. v. Everglades Fertilizer Co.*, 255 F.2d 342, 349 (5th Cir. 1958); *Wood v. Life Ins. Co. of N. Am.*, 593 F. Supp. 3d 1189, 1191 n.1 (N.D. Ga. 2022). In any event, Plaintiffs’ allegation of racist undertones is immaterial insofar as they fail to connect Mr. Giuliani’s

testimony (or any “coded” racism Plaintiffs perceive in that testimony) to any provision of SB 202.

117. At least one advisor to former President Trump pleaded guilty to a felony charge of aiding and abetting false statements and writings for knowingly, willingly, and unlawfully making false statements about election fraud during one of these December 2020 hearings. Tamar Hallerman and David Wickert, *Disavowing Trump, a tearful Jenna Ellis pleads guilty in Fulton election probe*, Atlanta J. Const. (Oct. 24, 2023), <https://www.ajc.com/politics/fourth-defendantnegotiates-plea-deal-with-fulton-prosecutors/S3SO4MZ3MBGCJD6YD47ZE4MYQE/>.

**RESPONSE:** Undisputed, but immaterial, as Plaintiffs have not identified any provision of SB 202 that was inspired by Ms. Ellis’s statements.

118. Fulton County election workers Ruby Freeman and Wandrea’ “Shaye” Moss won a civil defamation suit against Rudy Giuliani based on numerous false statements Giuliani made regarding their election-related activities at State Farm Arena in Atlanta during the 2020 election cycle. Ms. Freeman and Ms. Moss were awarded \$145,969,000 in damages. Ex. 320 (*Freeman v. Giuliani*, No. 21-cv-3354 BAH (D.D.C. 2023) ECF No. 142 (Final Judgment) (declaring that Giuliani “engaged in extreme and outrageous conduct” and that his conduct was “intentional, malicious, wanton, and willful”)). Jenna Ellis, an advisor to former President Trump, pleaded guilty to

a felony charge of aiding and abetting false statements and writings for knowingly, willingly, and unlawfully making false statements about election fraud during a December 2020 Georgia Senate Judiciary Subcommittee meeting. Ex. 321 (*Georgia v. Ellis*, No. 23SC188947 (Ga. Sup. Ct. 2023) (Accusation) (listing the false statements made, including “[t]hat at least 96,600 mail-in ballots were counted in the November 3, 2020, presidential election in Georgia, despite there being no record of those ballots having been returned to a county elections office”; and “[that] Fulton County election workers at State Farm Arena ordered poll watchers and members of the media to leave the tabulation area on the night of November 3, 2020, and continued to operate after ordering everyone to leave”)); Exs. 322-323 (*Georgia v. Ellis*, No. 23SC188947 (Ga. Sup. Ct. 2023) (Motion to Nolle Prosequi, Order of Nolle Prosequi)).

**RESPONSE:** Undisputed but immaterial, as Plaintiffs have not identified any provision of SB 202 that was inspired by Mr. Giuliani’s statements that were found to be defamatory. The assertion regarding Jenna Ellis is also immaterial, for reasons addressed in State Defendants’ response to ¶ 117.

119. Efforts by Democratic legislators to contest the false claims were shut down by organizers of the hearings. For example, during the December 10, 2020, House Government Affairs Committee Hearing, shortly after

Representative Bee Nguyen’s questioning of one witness exposed some of the factual infirmities in his unfounded allegations of widespread absentee ballot fraud, the Chair ordered an unexpected break. After the break, Committee members were prohibited from questioning witnesses. *See, e.g.*, Ex. 6 (Nguyen Decl. ¶¶ 23, 25-28); *see also* Ex. 9 (Jordan Decl. ¶¶ 26-27); Ex. 10 (Parent Decl. ¶ 19 (Democratic legislators not permitted to call witnesses or given advance notice of who would testify at the December 3, 2020 Senate Judiciary Subcommittee hearing)).

**RESPONSE:** Disputed, but immaterial. Plaintiffs are wrong in asserting that: “Efforts by Democratic legislators to contest the false claims were shut down by organizers of the hearings.” On the contrary, at the December 10, 2020 hearing, three Democratic lawmakers were allowed to question witnesses and to give statements calling election-fraud claims baseless. *See* Ga. H. Gov’tl Affs. Subcomm. Mtg. Tr. (Dec. 10, 2020), AME\_002470:23–2476:10, 2699:23–2701:24 (Rep. Trammell); 2444:23–2447:3, 2712:12–14 (Rep. Shannon); 2451:8–2454:19, 2481:16–2492:16, 2599:24–2602:2, 2670:13–2671:4, 2707:16–2709:25 (Rep. Nguyen) (Defs.’ Ex. KK hereto).

Even Plaintiffs’ own expert points this out: one witness’s supposed fraud “findings were dissected in real-time and his data shown to be grossly flawed by Rep. Bee Nguyen who discovered the names of two friends and a

constituent, legal Georgia voters, on [the witness's] list of illegal voters among a litany of other inaccuracies including the illegal address claim.” Minnite Rep. 58 n.181 (Pls.’ Ex. 105). Nor is it even true that committee members were prohibited from questioning witnesses “after the break”; even Rep. Nguyen was allowed to ask questions twice more after that point. *See* Ga. H. Gov’tl Affs. Subcomm. Mtg. Tr. (Dec. 10, 2020), AME\_002594 (the “break” to which Rep. Nguyen was referring), 2599:24–2602:2, 2670:13–2671:4 (Defs.’ Ex. KK hereto).

Furthermore, the same House committee held another hearing on December 23, 2020, during which several officials from the SOS’s Office testified at length and defended the integrity of the 2020 results. *See generally* Ga. H. Gov’tl Affs. Comm. Mtg. (Dec. 23, 2020), available at <https://tinyurl.com/y4mce26h>. The State Senate’s Government Oversight Committee, too, held a hearing on December 3, 2020 during which Ryan Germany testified on behalf of the SOS’s Office and rejected claims of election meddling, while county election workers likewise debunked conspiracy theories about alleged improprieties in tabulating ballots. *See* Parent Decl. ¶¶ 6–12 (Pls.’ Ex. 10).

120. As the then-Lieutenant Governor conceded, those hearings provided the momentum for voting laws in the 2021 Legislative Session. Ex. 181 (Geoff Duncan, *Georgia’s GOP lieutenant governor, says Giuliani’s false*



*fraud claims helped lead to restrictive voting law*, CNNPolitics video (Apr. 8, 2021), USA04134 at 2:17-2:38).

**RESPONSE:** Undisputed that then-Lieutenant Governor Duncan opined that Rudy Giuliani’s legislative testimony during the December 2020 hearings was “where this really started to gain momentum in the Legislature,” though State Defendants note that it is unclear what Duncan meant by the pronoun “this.” Insofar as Plaintiffs are presenting Mr. Duncan’s claim an assertion of “fact,” no response is required here because that claim is an “argumentative conclusion[]” rather than a “fact.” *See Inglett & Co. v. Everglades Fertilizer Co.*, 255 F.2d 342, 349 (5th Cir. 1958). Additionally, such a conclusion is not supported by the record.

121. Trump campaign lawyers, Rudy Giuliani and Ray Smith, replayed footage of Black Fulton County election workers at State Farm Arena on election night bringing out cases of ballots from beneath a table and argued that they were engaging in election fraud. Ex. 123 (Sen. Jud. Election L. Study Subcomm., Video of Proceedings (Dec. 3, 2020), USA-04100 at 13:00-29:55); Ex. 124 (Dec. 10, 2020 H. Gov. Aff. Comm. Hr’g Tr., AME\_002501:13-2507:11); Ex. 10 (Parent Decl. ¶ 22).

**RESPONSE:** Undisputed, but immaterial.

122. In late December 2020, the Senate Election Law Study Subcommittee issued a report, which collected and repeated allegations of

fraud from the December hearings. Ex. 194 (Ga. Sen. Jud. Subcomm. Final Rep., CDR00008854-68).

**RESPONSE:** Undisputed, but immaterial.

123. Secretary of State officials rejected the findings in the Senate Election Law Study Subcommittee report. For example, Gabriel Sterling referred to it as “full of disinformation and falsehoods.” Ex. 197 (Email thread G. Sterling to SOS staff, “Re: FYI - Wednesday 12/30: Senate Judiciary - Elections Subcommittee Meeting” (Dec. 28, 2020), CDR00059366-67). Ryan Germany referred to it as “[f]rom the Giuliani show hearing the Senate had.” Ex. 194 (Email from R. Germany to SOS staff, “Fwd: THE\_FINAL REPORT.PDF” (Dec. 21, 2020), CDR00008853).

**RESPONSE:** Undisputed, but immaterial.

124. More than 100 election bills were introduced in the 2021 legislative session. *See* Ex. 215 (SOS March 2021 Summary of Bills, CDR00466535-62); Ex. 4 (Burnough Decl. ¶¶ 29, 46); Ex. 91 (Anderson Rep. 133).

**RESPONSE:** Disputed, as this statement is unsupported by the cited portions of the record, and it is immaterial. Neither the cited portions of Rep. Burnough’s declaration nor those of Dr. Anderson’s report claims that there were over 100 election bills. In fact, Rep. Burnough states that “nearly fifty election bills had been introduced during the 2021-2022 Legislative Session,” Burnough Decl. ¶ 46 (Pls.’ Ex. 4), which undermines Plaintiffs’ claim. And

Plaintiffs' Ex. 215 is merely the SOS's "bill watch," which includes 123 items—at least 29 of which are not "election" bills or resolutions according to the General Assembly's website, in that they do not mention elections, or at least do not affect Title 21 of the O.C.G.A.<sup>2</sup> Plaintiffs themselves elsewhere endorse using this method for counting the number of "election"-related measures introduced in the Legislature (*i.e.*, by using the search function on the General Assembly's site). *See* response to ¶ 178, *infra*. Plaintiffs' Exhibit 215 thus does not support their claim, even if one counts both bills and resolutions when counting the number of election "bills." Regardless, the number of *other* election bills introduced in the Legislature in 2021 is immaterial to whether SB 202 was enacted with discriminatory intent.

And Plaintiffs themselves elsewhere endorse using this method for counting the number of "election"-related measures introduced in the Legislature (*i.e.*, by using the search function on the General Assembly's site). *See* PSOF ¶ 178. Regardless, the number of *other* election bills introduced in the Legislature in 2021 is immaterial to whether SB 202 was enacted with discriminatory intent.

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<sup>2</sup> *See* HR 13; HR 97; HB 56; HB 61; HB 103; HB 162; HB 211; HB 225; HB 242; HB 331; HB 341; HB 361; HB 456; HB 535; HB 582; HB 624; HB 682; HB 684; SR 100; SB 9; SB 21; SB 22; SB 162; SB 211; SB 240; SB 249; SB 271; SB 283; HB 734.

125. The House Special Election Integrity Committee (EIC) considered nearly 50 bills, a “significant increase in the amount of election-related bills introduced in a single legislative session.” Ex. 4 (Burnough Decl. ¶ 29).

**RESPONSE:** Undisputed that the Election Integrity Committee (EIC) “considered nearly fifty bills during the 2021-2022 Legislative Session[.]” Burnough Decl. ¶ 29 (Pls.’ Ex. 4). But disputed that this constitutes a “significant increase.” Plaintiffs do not explain what they mean by “significant increase,” since the EIC did not exist before the 2021-2022 session. Comparing the EIC to the House Governmental Affairs Committee, however, the General Assembly’s website shows that it considered 30 election bills and 4 election resolutions in 2019 (41 in the 2019-2020 session, minus the 7 measures that were introduced in 2020: HB 757, HB 812, HB 902, HB 1172, HB 1238, HR 1621, SB 463). Ga. Gen. Assemb., *Legislation Search*, <https://tinyurl.com/4cf6n7ne> (search parameters: Session: 2019-2020 Regular Session; Bill Type: All; Committee: Governmental Affairs; Georgia Code Title: 21-Elections). It is thus debatable whether “nearly 50” constitutes a “significant” increase, which in any event is an argumentative statement of opinion unsuited for inclusion in a statement of material *facts*. Regardless, the increase in the number of election bills introduced in 2021 is immaterial to whether SB 202 was enacted with discriminatory intent.

126. Committee chairs in both the House and Senate often introduced substitute bills—many with significant new provisions—during hearings on the bill and did not make timely drafts available to Black and other Democratic committee members, which is not normal legislative process. Ex. 4 (Burnough Decl. ¶¶ 29, 34-36, 43 (House EIC)); Ex. 8 (Jones Decl. ¶ 19 (Senate Gov. Affairs)); Ex. 7 (Harrell Decl. ¶¶ 10-11, 13 (same)).

**RESPONSE:** Disputed, as the cited portions of the record do not support the purported statement of fact. Additionally, Plaintiffs’ paragraph consists of legal argument, rather statements of fact, and thus no response is required. However, State Defendants address in the following paragraphs the flaws in the three declarations cited by Plaintiffs, which confirm that the cited materials do not support this statement.

*First*, as for Rep. Burnough, she alleges that Democrats were “outnumbered” on the Election Integrity Committee (EIC) and “largely shut out of the drafting process,” and that “[a]t one point during the legislative session, Cobb County Elections Director Janine Eveler reached out to the Democratic members of the Special Election Integrity Committee with a question about a proposed election bill that we had not even received yet.” Burnough Decl. ¶ 29 (Pls.’ Ex. 4). But the fact that Democrats were “outnumbered” on the EIC is unsurprising, as they were the minority party. And this declaration does not make clear what degree of involvement

constitutes being “shut out,” or how that differed from the “normal” degree of involvement of the minority party in the General Assembly in drafting legislation introduced by the majority party. Furthermore, the claim that Democrats were “shut out” of that process ignores the fact that SB 202’s drafting *was* substantially influenced by input from Democrats and other advocates of different policy priorities.<sup>3</sup> Lastly, that Eveler asked an EIC member for about legislation of which that member had not yet seen a draft does not mean Democrats on the EIC were afforded less time than they usually would be to consider drafts of what became SB 202.

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<sup>3</sup> “For instance, in one of the precursor bills to S.B. 202, no-excuse absentee voting for people under the age of sixty-five was eliminated. Weekend voting was also eliminated. Notably, S.B. 202 maintains both no-excuse absentee voting and weekend voting. S.B. 202 also includes provisions and ideas that were typically supported by Democrats, including provisions that required more staff, equipment and polling places in large precincts with long lines. Moreover, in response to concerns about pretrial detainees lacking a DDS ID, S.B. 202 was amended to ensure that pretrial detainees in jails could access their driver’s licenses for purposes of voting.” 10/11/23 Order at 58 (PI Order) [Doc. 686-1] (internal citations omitted). At its February 4, 2021 meeting, the EIC made additional changes to the initial precursor bill based on input from Democrats, including the Minority Whip. *See* Germany 7/27/23 Decl., Ex. 4 (SOS0003113:1–24) (Defs.’ Ex. B). Additionally, SB 202’s allowance of an ID *number* as opposed to a photocopied ID was added at the behest of a county election official and a Democrat on the EIC. *See* Kidd 105:6–24 (Defs.’ Ex. G hereto). Similarly, Former Lieutenant Governor Duncan, in the same interview on which Plaintiffs affirmatively rely, *see* Pls.’ Opp. to MSJ at 45–46 [Doc. 822], explained that SB 202 “ultimately was a culmination of Democratic and Republican ideas” (a part of the interview Plaintiffs conspicuously omit). *See* Interview by John Berman with then-Ga. Lt. Gov. Geoff Duncan, CNN (Apr. 7, 2021), at 0:44-0:47, available at <https://tinyurl.com/5tnfahnd> (Pls.’ Ex. 181; USA-04134).

Rep. Burnough next opines that the “overall legislative process surrounding HB 531 was rushed and non-transparent, similar to SB 202. First, to my knowledge, no Democrats were involved in the drafting of this significant bill. Second, the bill was not made publicly available until the day of the [Feb. 18, 2021] hearing.” Burnough Decl. ¶ 34 (Pls.’ Ex. 4). Again, Rep. Burnough does not make clear what degree of involvement the minority party in the General Assembly usually has in drafting legislation introduced by the majority party, and the claim that “no Democrats were involved” neglects to consider the ways in which Democrats substantially shaped the legislation. And Rep. Burnough’s complaint that the process was “non-transparent” because a draft of HB 531 was not made publicly available until the February 18, 2021 hearing overlooks the fact that there were two more hearings on that bill held on February 19th and 22nd. *See Hearing on HB 531 Before the Ga. H. Special Comm. on Election Integrity*, 2021 Leg., Reg. Sess. (Feb. 19, 2021), available at <https://tinyurl.com/5cjb8f2e>; *Hearing on HB 531 Before the Ga. H. Special Comm. on Election Integrity*, 2021 Leg., Reg. Sess. (Feb. 22, 2021), available at <https://tinyurl.com/bdcppdem>.

Rep. Burnough then says that “the [EIC] Chairman was constantly introducing substitute bills for HB 531 and did not make these substitute bills available in a timely manner, causing confusion for Democratic colleagues and members of the public.” Burnough Decl. ¶ 35 (Pls.’ Ex. 4). The first problem

with this claim is that it is far too vague and subjective. “Rule 56 ... requir[es] that the opposing party must be diligent in countering a motion for summary judgment ... and that mere general allegations which do not reveal detailed and precise facts will not prevent the award of a summary judgment.” *Franz Chem. Corp. v. Phila. Quartz Co.*, 594 F.2d 146, 150 (5th Cir. 1979). “[C]onclusory allegations without specific supporting facts have no probative value.... [T]he requirement of Fed. R. Civ. P. 56(e) [is] that an affidavit must set forth specific facts in order to have any probative value.” *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985). What is more, contrary to Plaintiffs’ characterization of the process as “not normal,” combining larger omnibus bills into a standalone bill was “common practice in the legislature. They’ll use another bill, seemingly insignificant in the scope of things, as a vehicle for the entire policy. To the lay voter it may seem unusual, but that happens very frequently.” Adams 205:6–10 (Defs.’ Ex. O hereto). “[T]hat happens quite frequently, not just in elections law. It happens in other codes and titles.” *Id.* at 205:23–25; accord Germany 7/27/23 Decl. ¶ 43 (Defs.’ Ex. C) (“Such incorporation of various legislative proposals into a single omnibus piece of legislation is commonplace because in the Georgia General Assembly, bills generally only amend a single title of the Official Code of Georgia, meaning that any bill that amended Title 21 could be amended to make other changes to Title 21.”).



The cited paragraph of Rep. Burnough’s declaration does not compare the amount of time given to members of the minority party to read drafts of SB 202 to the amount given to members of the minority party to read drafts of other legislation. Some testimony, meanwhile, indicated that there was no such bias. *See* Adams 57:20–22 (Defs.’ Ex. O hereto) (“I would not single out either party. There were situations where members of both parties would be given the bill at the last minute.”). Moreover, the cited paragraph of Rep. Burnough’s declaration does not explain how any of this is “not normal legislative process.” Indeed, records of the legislative history behind HB 316 indicate that minority-party lawmakers and members of the public opposed to the statute complained about the same aspects of the process, undercutting Plaintiffs’ attempts to distinguish HB 316 from SB 202. <sup>4</sup>

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<sup>4</sup> *See* Video Recording of Senate Proceedings, 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 2:32:53–56 (Mar. 13, 2019) (remarks by Sen. Jones (D-22d)), <https://tinyurl.com/2wpy4be3> (“Why could that not be in this bill? Because we’re rushing through it. Because we’re going too fast.”); *id.* at 2:26:14–21 (remarks by Sen. Jordan (D-6th)) (“[W]e need more time with this bill ..., and we should all vote ‘no.’”); *id.* at 3:36:30 (remarks by Sen. Orrock (D-36th)) (“It’s a shame to see this rushed through.”); *id.* at 3:17:49–3:18:30 (remarks by Sen. Seay (D-34th)) (“We are doing something so hurriedly .... We didn’t have a chance to even invite people down here to actually see for themselves the ... choices that we’re considering.”); *id.* at 1:11:43 (remarks by Sen. Henson (D-41st)) (“We were not allowed to properly, in my opinion, vet this bill.”); Video Recording of Senate Ethics Comm. Mtg., 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 1:55:39–1:56:58 (Mar. 6, 2019) (remarks by Sen. Harrell (D-40th)), <https://tinyurl.com/48jfypja> (“This was a rushed process, and we didn’t look at enough details.”); *id.* at 1:48:26–1:50:09 (remarks by Sen. Henson (D-41st)) (“[M]any members did not have a chance to hear from experts ... before the full

Finally, Rep. Burnough states that the EIC “had two subcommittees .... In subcommittee, we considered smaller election bills that often were subsequently merged into the larger election bills considered by the full ... Committee. Those smaller bills were not always presented to the full Committee, which was not typical and prevented members of one subcommittee from fully vetting bills heard in the other subcommittee.” Burnough Decl. ¶ 36 (Pls.’ Ex. 4). But even if this practice was truly “not typical,” Plaintiffs statement fails to explain that members of one

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committee voted.... [W]e stifled our debate.... [T]his is a rush process ....”; Video Recording of House Gov’tl Affs. Election Subcomm. Mtg., 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 2:56:40–2:58:35 (Feb. 19, 2019) (remarks by Cindy Battles (Common Cause Ga.)), <https://tinyurl.com/4emft4cx> (“[HB 316] was made available to the public on Friday.... [I]t’s in subcommittee on Tuesday. I commend Rep. Fleming for the amount of things that he was able to put in this bill, but we still have organizations who are analyzing the bill. Like, that’s how fast this process is moving.... We need more time to analyze the bill .... [T]here needs to be a transparent process, and there needs to be accountability. And it doesn’t feel like there’s either one of those things.”); Video Recording of Senate Ethics Voting & Elections Subcomm. Mtg., 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 7:03–7:46 (Mar. 4, 2019) (remarks by Marilyn Marks (Coal. for Good Governance)), <https://tinyurl.com/mwc2p6zw> (“It’s just being too rushed for something this major.... [S]erious mistakes are going to be made if the same speed is used in going through the rest of this bill.”); Video Recording of H. Gov’tl Affs. Election Subcomm. Mtg., 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 3:26:45 (Feb. 20, 2019) (remarks by Eric Robertson (New Ga. Proj.)), <https://tinyurl.com/6nn2k2fr> (“For all the issues that ... have been raised today, we would ask that this committee table this bill to allow for more input from the public, to allow for these issues to be further considered.”); Press Release, Fair Fight, *Fair Fight Statement on HB 316 Vote* (Mar. 13, 2019), <https://tinyurl.com/yjfe5m8x> (“HB 316 ... [i]s being rushed through the legislature with no fiscal note ..., an irresponsible and unprecedented omission for a bill of this magnitude.”).

subcommittee needed to read the “smaller bills” individually, as opposed to reading the “larger election bills” into which the smaller ones were combined, to adequately “vet[]” the proposals. Nor does this declaration indicate that legislators of color or members of the minority party were systematically disfavored in this regard. Another paragraph of Rep. Burnough’s declaration complains of another draft of SB 202 being circulated too soon before a hearing, and also that “[q]uestions about the bill were directed to Chairman Fleming instead of Senator Burns. Traditionally, questions would have been directed to the sponsoring legislator.” *Id.* ¶ 43. The former point has already been addressed, and the latter point is immaterial to whether SB 202 was enacted with discriminatory intent.

*Second*, as for Sen. Jones, the cited paragraph of his declaration complains of the same alleged issues: Democrats being “largely left out of the bill drafting process” (which is misleading, for reasons already explained), and that “[w]hile some of the meeting notices would contain copies of bills, substitutes bills would then be presented by the time the actual meeting occurred. This limited meaningful public discussion of the bill and gave Democratic Committee members little time to prepare,” Jones Decl. ¶ 19 (Pls.’ Ex. 8). But these assertions fail to distinguish the process of drafting SB 202 from that of drafting other statutes, such as HB 316. And for reasons already explained, Sen. Jones’ vague, subjective criticisms of the drafting process are

insufficient to create a fact issue as to legislative intent. *See Franz Chem. Corp. v. Phila. Quartz Co.*, 594 F.2d 146, 150 (5th Cir. 1979); *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985); *Burger King Corp. v. E-Z Eating, 41 Corp.*, 572 F.3d 1306, 1316 n.12 (11th Cir. 2009) (“[T]his affidavit is far too vague to create a genuine issue” of material fact.). Sen. Jones’ other objection to the drafting process is that “[w]e also would receive notifications of 7 a.m. Committee meetings the day before the meetings occurred.” Jones Decl. ¶ 19 (Pls.’ Ex. 8). But as is explained in response to ¶ 135, *infra*, there is nothing unusual about 7 AM meetings or meetings announced the day before, and in any event, only two of the 25 meetings of the committees that considered what became SB 202 were held at 7 AM.

*Third*, Sen. Harrell’s declaration complains that, “[u]nlike other committees in which I have served in the General Assembly, I would often not receive proposed changes to S.B. 241 ahead of hearings, including proposed substitute bills or amendments. Often, these substitute bills made substantial changes to the original versions of proposed legislation, including adding new sections to the bill ... not discussed during previous meetings.” Harrell Decl. ¶ 10 (Pls.’ Ex. 7). But the record confirms that the practices of which Sen. Harrell complains—drafts being circulated shortly before meetings and multiple drafts being combined into longer bills—were in fact quite common in Georgia, as was explained above, and there is no evidence that legislators of

color or minority-party members were systematically disfavored in this regard. And, like the cited portions of Rep. Burnough’s and Sen. Jones’ declarations, Sen. Harrell’s sweeping generalities about what would “often” happen, and “substantial” changes to drafts, during the legislative process are too general to create a genuine factual dispute as to legislative intent. *See Franz Chem. Corp. v. Phila. Quartz Co.*, 594 F.2d 146, 150 (5th Cir. 1979); *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985); *Burger King Corp. v. E-Z Eating, 41 Corp.*, 572 F.3d 1306, 1316 n.12 (11th Cir. 2009).

Sen. Harrell also goes on to claim that SB 202’s drafting was unusual because “usually when an amendment to a bill is provided to the Chair, it must be provided 24 hours in advance of a hearing. In a previous legislative session, I recall having had an amendment rejected in the Senate Ethics Committee, because I had submitted it with slightly less than 24 hours of notice.” Harrell Decl. ¶ 13 (Pls.’ Ex. 7). Again, there is no indication in the record that lawmakers supported by voters of color were systematically disfavored in this respect. Nor does the fact that Sen. Harrell has had amendments rejected for being submitted too soon before hearings mean that it is “not normal” for an untimely amendment to be considered despite its untimeliness. Indeed, that is what happened to some of Sen. Harrell’s own untimely amendments to HB 316. *See* Video Recording of Senate Ethics Comm. Mtg., 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 1:55:39–1:56:58 (Mar. 6, 2019) (remarks by Sen. Harrell

(D-40th)), <https://tinyurl.com/48jfypja> (“I have not been impressed with this process for vetting this bill, and it started with the rules .... 24 hours’ notice is required for meeting announcements, but there’s also a rule in this committee that Amendments have to be turned ... by 24 hours before. So the meeting was announced with 24 hours and two minutes. I had my amendments in within 30 minutes, and they were rejected. *We had to fight to have them accepted.*” (emphasis added)).

All told, at each turn, the various allegations included in Plaintiffs’ PSOF ¶ 126 are either misleading, argumentative, vague, or simply immaterial to the claims and defenses in this action.

127. The legislative session is not 40 calendar days; it is 40 legislative days which, in the 2021 legislative session, was 79 calendar days, including 58 weekdays. Georgia General Assembly Calendar & Daily Documents, <https://www.legis.ga.gov/documents/house/calendars?session=1029&date=202312-04T21:12:09.280Z> (identifying January 11, 2021 as the first day of the legislative session and March 31, 2021 as the last day); *see also* Ex. 67 (McCloud Dep. 198:7-198:21 (same)).

**RESPONSE:** Undisputed.

128. County election officials struggled to keep up with the large volume, length, and complexity of the election bills introduced during the 2021 legislative session. *See, e.g.,* Ex. 15 (Cobb Cnty. Dep. 230:24-232:14); Ex. 4

(Burnough Decl. ¶ 34-37); Ex. 49 (Bailey 10/6/22 Dep. 59:17-24 (noting more than the typical amount of election bills were introduced in the 2021 legislative session), 62:1163:2 (“The volume of bills coming through, there were more than usual, more than I can recall in a long time, if perhaps ever.”)); Ex. 219 (Email from L. Bailey to election officials, "Latest version of legislation" (Mar. 17, 2021), COBB033033 (noting the bill was “sooooo long and testimony time so short”)); Ex. 13 (30(b)(6) Deposition of Athens-Clarke County [ECF 699] (Charlotte Sosebee) (“Athens-Clarke Cnty. Dep.”) 38:10-38:13; 158:25-159:5).

**RESPONSE:** Disputed, the cited portions of the record do not support the purported statement of fact, the statements are legal arguments, rather than statements of fact, and the statements are immaterial. Of the record portions cited by Plaintiffs for this statement, only the Cobb County representative’s deposition (Eveler, Pls.’ Ex. 15) comes close to expressing the deponent’s opinion that it was hard for her to keep up with the election bills being introduced in 2021. The cited paragraphs of Rep. Burnough’s declaration do not mention anything about county officials’ ability to keep up with election bills. The cited portions of Lynn Bailey’s deposition express her view that there were many election bills introduced in 2021 but do not speak to whether election officials struggled to keep up with all of them. Lynn Bailey’s email opines that an early draft of what became SB 202 was very “long” but again does not speak to whether it was longer than usual for an election bill or

whether election officials struggled to keep up with the election bills introduced in 2021.

Likewise, the cited portions of Charlotte Sosebee's deposition express her view that the process of drafting election legislation would "sometimes" slip by her if she did not regularly check in; it does not seem, however, that she considered SB 202 atypical in this regard. *See* Sosebee 37:22–38:1 ("Q. And did you feel that often legislation was slipping by you in the legislative session during 2021? A. I feel that way with any legislative session if I'm not following the bills daily.") (Defs.' Ex. C hereto).

What is more, Plaintiffs' assertion that county officials "struggled" to keep up is an argumentative conclusion rather than an assertion of "fact," and as such, does not require a response here. Finally, in any event, county officials' ability to keep up with *other* election bills introduced in 2021 is immaterial to this litigation over the legislative intent behind SB 202, as the former issue "is largely unconnected to the passage of the actual law in question." *See Greater Birmingham Ministries v. Sec'y of State of Ala.*, 992 F.3d 1299, 1324 (11th Cir. 2021).

129. On January 7, 2021, Georgia House Speaker David Ralston announced a stand-alone, special committee on election integrity. Legislators formed the House Special Election Integrity Committee ("EIC") to assess election related bills during the 2021 legislative session. Ex. 179 (Speaker



Ralston Press Conference, Jan. 7, 2021, USA-04138 at 4:18-4:35); Ex. 91 (Anderson Rep. 13233); Ex. 4 (Burnough Decl. ¶¶ 23-29 (stating formation of EIC was an “unusual legislative tactic”)).

**RESPONSE:** Disputed in part with respect to the characterization of a special committee as an “unusual legislative tactic.” In reality, special committees have been common in the House in recent years: five special committees, as well as at least five “working groups[,] have been used in the House on particular topics since 2017.” Germany 7/27/23 Decl. ¶ 23; *see also* Germany 5/14/24 Decl. ¶ 11 (Ex. A hereto).

130. The creation of the EIC was a divergence from previous sessions in Georgia, because the House Governmental Affairs Committee traditionally considers election-related legislation and had done so for at least 16 years including for HB 244 (2005) and HB 316 (2019). Ex. 4 (Burnough Decl. ¶¶ 2325); Ex. 116 (HB 244 Status History, Ga. Gen. Assemb. 2005-2006 Regular Session, <https://www.legis.ga.gov/legislation/14446>); Ex. 153 (HB 316 Status History, Ga. Gen. Assemb. 2019-2020, <https://www.legis.ga.gov/legislation/54991>).

**RESPONSE:** Disputed, but immaterial, that it was unusual for a House committee other than Governmental Affairs to consider election-related legislation. *See* Ga. Gen. Assemb., Legislation Search, <https://tinyurl.com/4trjy5ye> (search parameters: Session: 2019-2020 Regular

Session; Bill Type: All Bill Types; Georgia Code Title: Elections; Status: House Action) (out of 46 “election” bills or resolutions on which there was House action during the 2019-20 session, excluding mere code revisions, 7 were considered by other House committees: HB 264, HB 389, HB 537, HB 1102, HB 1126, HR 531, SB 351); Ga. Gen. Assemb., Legislation Search, <https://tinyurl.com/sscwrdk9> (search parameters: Session: 2017-2018 Regular Session; Bill Type: All Bill Types; Georgia Code Title: Elections; Status: House Action) (out of 35 “election” bills or resolutions on which there was House action during the 2017-2018 session, excluding mere code revisions, 5 were considered by other House committees: HB 399, HB 485, HB 500, HB 725, HB 973, HB 526). State Defendants also dispute that establishment of a special committee was unusual, for reasons explained in the response to ¶ 129, *supra*. See Germany 7/27/23 Decl. ¶ 23 (Defs.’ Ex. C).

131. By 2021, several representatives on the House Governmental Affairs Committee had substantial experience with election legislation. See Ex. 6 (Nguyen Decl. ¶ 39). Compare Ex. 156 (Georgia General Assembly - House Committee on Governmental Affairs Committee Members 2019, <https://www.legis.ga.gov/committees/house/92?session=27>) with Ex. 155 (Georgia General Assembly - House Committee on Governmental Affairs Committee Members 2021, <https://www.legis.ga.gov/committees/house/92?session=1029>) (showing at least

13 of 20 members of the 2021 Governmental Affairs committee had served on the same committee in 2019).

**RESPONSE:** Undisputed.

132. House Speaker Ralston selected Representative Barry Fleming as Committee Chairman, rather than Representative Shaw Blackmon, who chaired the Governmental Affairs Committee. Ex. 4 (Burnough Decl. ¶ 26).

**RESPONSE:** Undisputed, but immaterial.

133. Speaker Ralston excluded all but one of the Government Affairs Committee's Democratic members from the EIC, thereby minimizing the number of Democrats on the committee who had prior experience with election legislation. *See* Ex. 4 (Burnough Decl. ¶ 28); Ex. 6 (Nguyen Decl. ¶ 39).

**RESPONSE:** Disputed in part, but immaterial. The record does not show that the existence of only a single Democratic member from the Government Affairs Committee on the Election Integrity Committee (EIC) was due to deliberate "exclus[ion]." State Defendants also dispute that Speaker Ralston's decision "minimiz[ed] the number of Democrats on the committee who had prior experience with election legislation." The cited portions of the record do not show that he was obligated to name anyone to the EIC simply because that person met those criteria.

134. Rep. Barry Fleming and other sponsoring legislators worked with Ryan Germany and outside counsel Bryan Tyson and Javier Pico-Prats to craft

many election-related bills. *See* Ex. 59 (Germany Dep. 33:1-35:11); Ex. 207 (Emails between R. Germany & E. Stiles, Sen. Dugan’s Chief of Staff, “RE: Edits to LC 28 0244” (Feb. 26-28, 2021), CDR00062772-74); Ex. 218 (Email thread with J. Lanier, J. Pico-Prats, B. Tyson, R. Germany, and Rep. Fleming, “RE: Edits to LC 28 0313S” (Mar. 14-15, 2021), CDR00157637-40).

**RESPONSE:** Undisputed, but immaterial.

135. Senate committee meetings on election measures sometimes occurred at 7:00 a.m., with notice only provided the day before the meetings occurred. Ex. 8 (Jones Decl. ¶ 19); Ex. 7 (Harrell Decl. ¶ 8). These early morning committee meetings were unprecedented. *See* Ex. 7 (Harrell Decl. ¶ 8); Ex. 9 (Jordan Decl. ¶ 44).

**RESPONSE:** Disputed in part, but immaterial. The cited times were not “unprecedented.” Of the 18 total committee hearings held regarding SB 202 or its predecessor bills, only two were held at 7 AM and only three before 8 AM (which Plaintiffs use in their Opposition as a benchmark for what counts as an “early” meeting, *see* Pls.’ Opp. to MSJ at 71 [Doc. 822]). The following table lists all such meetings in order of time of day, then in order of date, *see* Germany 5/14/24 Decl. ¶ 3 (Defs.’ Ex. A hereto):

Date in 2021	Time	Chamber
Feb. 18	7 AM	Senate
Mar. 3	7 AM	Senate
Feb. 25	7:30 AM	Senate
Mar. 17	8 AM	Senate

Mar. 23	8 AM	Senate
Mar. 22	9:15 AM	Senate
Feb. 19	9:30 AM	House
Feb. 26	11:30 AM/upon adjournment	House
Mar. 18	2 PM	House
Mar. 22	2 PM/upon adjournment	House
Feb. 18	3 PM	House
Feb. 22	3 PM	House
Feb. 24	3 PM	House
Mar. 1	3 PM	Senate
Mar. 17	3 PM	House
Feb. 23	3:30 PM	House
Mar. 15	3:30 PM	Senate
Mar. 16	4:45 PM	Senate

The times at which the EIC and Senate Ethics Committee held other meetings (i.e., other than those meetings that specifically considered SB 202 or its predecessors) during this same period paint a similar picture, *see* Germany 5/14/24 Decl. ¶ 3 (Defs.' Ex. A hereto):

<b>Date in 2021</b>	<b>Time</b>	<b>Chamber</b>
Feb. 18	7 AM	Senate
Mar. 3	7 AM	Senate
Feb. 25	7:30 AM	Senate
Mar. 17	8 AM	Senate
Mar. 23	8 AM	Senate
Mar. 22	9:15 AM	Senate
Feb. 19	9:30 AM	House
Feb. 26	11:30 AM/upon adjournment	House
Mar. 18	2 PM	House
Mar. 22	2 PM/upon adjournment	House
Feb. 18	3 PM	House
Feb. 22	3 PM	House
Feb. 24	3 PM	House
Mar. 1	3 PM	Senate
Mar. 17	3 PM	House

Feb. 23	3:30 PM	House
Mar. 15	3:30 PM	Senate
Mar. 16	4:45 PM	Senate

In the last three regular sessions (2019-2020, 2021-2022, 2023-2024), there were at least 50 legislative committee meetings held at 7:30 AM or earlier (not counting the hearings on SB 202 or its predecessor bills), including at least 24 held at 7 AM or earlier. Germany 5/14/24 Decl. ¶ 6 (Defs.’ Ex. A hereto). Fifteen of the hearings held at 7 AM or earlier were Senate committee hearings. *See id.* Moreover, contrary to Plaintiffs’ contention, it is not unusual for committee meetings to be announced no sooner than one day before they are held. *See id.* ¶ 7. On the whole, there was nothing unusual about when legislative committee meetings regarding SB 202 were scheduled or announced.

136. Because of these unusual procedures, it was difficult for legislators and the public to meaningfully engage in the process. Ex. 4 (Burnough Decl. ¶¶ 2930; 34-38); Ex. 8 (Jones Decl. ¶ 19), Ex. 7 (Harrell Decl. ¶ 6); *see also* Ex. 256 (Battles Decl. ¶¶ 11-15 (describing effects of these procedural irregularities on public participation)).

**RESPONSE:** Disputed that “these ... procedures” were “unusual,” for reasons already explained in the preceding paragraphs. Plaintiffs’ assertion that “it was difficult for legislators and the public to meaningfully engage in

the process” is an argumentative conclusion rather than a fact and hence does not require a response. To the extent that assertion *is* factual, however, it is contradicted by the evidence. Assuming *arguendo* that Plaintiffs are right that the “process that resulted in HB 316 allowed legislators to learn about the issue and provided opportunities for meaningful engagement on the substance of the bill,” Pls.’ Opp. to MSJ at 71 [Doc. 822], then according to Plaintiffs’ own criteria, the same is true of SB 202. Contemporaneous debates on HB 316 reveal that members of the minority party, including many of the same legislators on whose affidavits Plaintiffs rely here, carped at length about the supposedly inadequate consideration and rushed process, just as they later did regarding SB 202’s drafting.<sup>5</sup> Indeed, of the seven meetings held in 2019 that

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<sup>5</sup> See sources cited note 4, *supra*; Video Recording of Senate Proceedings, 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 1:55:33 (Mar. 13, 2019) (remarks by Sen. Henson (D-41st)), <https://tinyurl.com/2wpy4be3> (“Now, just on our own committee process and how it’s gone in the Senate, I have problems with it.... [T]hat was a strained process. That committee was announced 24 hours ahead of time.... [I]t was rushed.”); Video Recording of Senate Ethics Comm. Mtg., 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 1:55:39–1:56:58 (Mar. 6, 2019) (remarks by Sen. Harrell (D-40th)), <https://tinyurl.com/48jfypja> (“I have not been impressed with this process for vetting this bill, and it started with the rules because, as you know, 24 hours’ notice is required for meeting announcements, but there’s also a rule in this committee that Amendments have to be turned in ... by 24 hours before. So the meeting was announced with 24 hours and two minutes. I had my amendments in within 30 minutes, and they were rejected. We had to fight to have them accepted. And then we had a committee substitute that none of us saw until we walked in this morning.... This was a rushed process, and we didn’t look at enough details.”); *id.* at 1:48:26–1:50:09 (remarks by Sen. Henson (D-41st)) (“This is a very expedited move through the Senate. I will say it is rushed through the Senate.

considered HB 316 or its predecessor bills, three (the March 6th Senate and February 20th and 21st House hearings) were announced either the days before, or the days of, the meetings, as indicated by the cited meeting notices. *See* Germany 5/14/24 Decl. ¶ 7 (Defs.’ Ex. A hereto); Pls.’ Exs. 159–166 (Meeting Notices). And, during HB 316’s drafting, opponents had complaints similar to those of Plaintiffs about when committee hearings were announced.<sup>6</sup> These parallels reinforce State Defendants’ point that the processes of drafting both statutes were materially the same.

137. HB 531 was continuously changing without enough time for legislators or the public to review. For example, HB 531 was introduced on February 18, 2021, and witnesses testified on the bill on February 19, 2021,

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Today is my first day. I was not on the subcommittee, yet many members did not have a chance to hear from experts or people who we would have liked to have heard from before the full committee voted. As you could tell today, we stifled our debate.... [U]nfortunately, we feel the public are the losers that we are not able to ... more robustly debate these issues.... [W]e do feel this is a rush process, ... that other options should have been more openly considered ....”; Video Recording of House Proceedings, 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 2:20:26 (Feb. 26, 2019) (remarks by Rep. Trammell (D-132d)), <https://tinyurl.com/y9m8mvxh> (“And we need to slow it down with this bill.”); *id.* at 2:23:01 (“I’m asking you to slow it down. Vote ‘no.’ We have time.”); *cf.* Video Recording of House Gov’tl Affs. Comm. Mtg., 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 41:55 (Feb. 21, 2019) (remarks by Rep. Oliver (D-82nd)), <https://tinyurl.com/2y8rpkbx> (“This has been fast moving ....”).

<sup>6</sup> *See* sources cited notes 4–5, *supra*; Video Recording of House Gov’tl Affs. Comm. Mtg., 155th Gen. Assemb., 1st Sess., at 58:01 (Feb. 21, 2019) (remarks by Rep. Shannon (D-84th)), <https://tinyurl.com/2y8rpkbx> (“I didn’t even know we were having this committee meeting until this morning.”).



but the substitute bill that made changes to HB 531 and was to be discussed on February 19 was not circulated or made publicly available until February 22, 2021. *See e.g.*, Ex. 127 (Feb. 18, 2021 H. Election Integrity Comm. Hr’g Tr., SOS0003068:4-16 (Rep. Alexander)); Ex. 128 (Feb. 19, 2021 H. EIC Hr’g Tr., AME000100:2-22 (Cindy Battles)); Ex. 130 (Feb. 23, 2020 H. EIC Hr’g Tr., SOS0002497:7-16 (Linda Bridges)); Ex. 4 (Burnough Decl. ¶ 37).

**RESPONSE:** Disputed that “HB 531 was continuously changing without enough time for legislators or the public to review,” which is a vague argumentative conclusion rather than a fact and hence does not require a response. Moreover, the record portions cited by Plaintiffs do not support their argument that the bill was “changing without enough time for legislators or the public to review.” While it may be that “the substitute bill that made changes to HB 531 and was to be discussed on February 19 was not circulated ... until February 22, 2021,” this assertion is misleading because the “substitute bill” that “was to be discussed on February 19” was only minimally different from the already-circulated version—with the differences, which were summarized by Rep. Fleming at the start of the hearing, being largely non-substantive: “as you know with any large bill that we are working on, as the committee process works, there are changes that we’ll make.... [T]here are what I refer to as technical changes, comments here, wrong citing of code in different places. I want to mention to you some of those that we have already

identified. The Chair would anticipate that today legislative counsel will be working on a committee substitute that I would hope to get to the committee later, hopefully by around 5:00, close of business. We will send that to all the committee members electronically so you'll have time to look at that as well. Here are some of the that I want to go ahead and tell you about them and so ... you can expect them.” H. Special Election Integrity Comm. Hr’g Tr., AME\_000091:14–92:5, 2021 Leg., Reg. Sess. (Ga. 2021) (Feb. 19, 2021) (Defs.’ Ex. MM hereto).

138. No election official testified during the full Committee hearings on SB 241. Ex. 8 (Jones Decl. ¶ 18).

**RESPONSE:** Undisputed that no election official testified at the three Senate Ethics Committee hearings mentioned in the cited paragraph of Sen. Jones’ declaration: namely, those of February 25, March 1, and March 3, 2021.

139. Rather than open debate, the Georgia Secretary of State staff met privately with certain EIC members before the bills’ introduction in the Committee, but not with opponents (including no meetings with any Black legislators). Ex. 59 (Germany Dep. 36:14-38:12); Ex. 141 (H. Special Comm. on Election Integrity Meeting Notice (Feb. 4, 2021), USA-03187 (listing Democratic Representatives Alexander, Burnough, Douglas, and Smyre as members)); Ex. 4 (Burnough Decl. ¶¶ 43-45).

**RESPONSE:** Undisputed but immaterial that “the Georgia Secretary of State staff met privately with certain EIC members before the bills’ introduction in the Committee, but not with opponents.” This fact is immaterial, since this is common practice during the legislative drafting process. *See* State Defs.’ Reply in Support MSJ on Discriminatory Intent Claims at 45–47. But State Defendants dispute that these meetings occurred “[r]ather than” open debate; as State Defendants’ reply explains, a lively public debate on the drafting of what became SB 202 *also* took place, notwithstanding any private meetings. *See id.* at 37–43.

140. Such secrecy in the drafting process impeded meaningful participation by anyone other than those selected by the bill sponsors. *See, e.g.,* Ex. 222 (Email thread J. Kirk to J. Eveler, “RE: LC 28 0300S - substitute for SB 241 & HB 531” (Mar. 19, 2021), COBB024273-75 (“If they [legislators] weren’t being so secretive about what they were doing it would be easier to work on the right [bill] number.”)); Ex. 256 (Battles Decl. ¶ 21 (describing SB 202’s legislative process as “an exercise in obfuscation”)).

**RESPONSE:** Disputed, but immaterial. Additionally, as this statement consists of argument, rather than statements of fact, no response is required. Moreover, the cited portions of the record do not support the purported statement of fact. First, whether there was “secrecy” in the drafting process, whether participation was “impeded,” and what constitutes “meaningful”

participation are matters of pure opinion—argumentative conclusions rather than facts that do not require responses here. Second, the cited portions of the record provide little, if any, support for Plaintiffs’ characterization of the drafting process. The comment in an email that lawmakers were being “secretive” is a personal opinion, and it does not support the sweeping assertion that “meaningful participation by anyone other than those selected by the bill sponsors” had been “impeded.” Likewise, Ms. Battles’ statement that “SB 202 felt like an exercise in obfuscation” is a vague expression of her personal feelings that does not support Plaintiffs’ sweeping assertion that “secrecy in the drafting process impeded meaningful participation by anyone other than those selected by the bill sponsors.”

In actuality, considerable evidence that the public and legislative opponents were afforded ample time to voice objections. Compared to this trove of evidence in the record, Battles’ vague, subjective criticisms of the drafting process are clearly insufficient to create a fact issue as to legislative intent. *See Franz Chem. Corp. v. Phila. Quartz Co.*, 594 F.2d 146, 150 (5th Cir. 1979); *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985); *Burger King Corp. v. E-Z Eating, 41 Corp.*, 572 F.3d 1306, 1316 n.12 (11th Cir. 2009). It should also be noted that Battles’ declaration on her own behalf cannot support Plaintiffs’ sweeping assertion that “anyone other than those selected by the bill sponsors” was shut out of the drafting process—since a “declaration

used to support or oppose a motion [for summary judgment] must be made on personal knowledge,” Fed. R. Civ. P. 56(c)(4), and Battles cannot claim to have knowledge that *everyone* else was unable to participate in that process.

141. Legislators voted along party lines in both the House and Senate. No Democrats or Black legislators in either the House or Senate voted for SB 202. Ex. 144 (SB 202 Votes - House Passage (Mar. 25, 2021), USA-03968); Ex. 115 (SB 202 Votes - Senate Agreement to House Substitute (Mar. 25, 2021), USA-03969); Ex. 4 (Burnough Decl. ¶ 50); Ex. 10 (Parent Decl. ¶ 43).

**RESPONSE:** Undisputed, but immaterial.

142. Senators could only vote agree or disagree on the full SB 202, although it had morphed from a two-page bill when it passed the Senate to over 90 pages in the House, further limiting the Senate’s opportunity to debate the substance of the final bill. See Ex. 8 (Jones Decl. ¶¶ 22-25); Ex. 115 (SB 202 Votes - Senate Agreement to House Substitute (Mar. 25, 2021), USA-03969); Ex. 2 (SB 202 as passed).

**RESPONSE:** Disputed in part, but immaterial. Undisputed that, when SB 202 returned to the Senate for final passage, it was engrossed (i.e., amendments were no longer allowed), though State Defendants dispute that engrossment at that point “limit[ed] the Senate’s opportunity to debate the substance of the final bill.” The Senate Ethics Committee had *already* held multiple hearings during which the bill’s “substance” was debated and

amendments proposed. Indeed, the fact that SB 202 was engrossed when it returned to the Senate for final passage parallels events that occurred in 2019 when HB 316 returned to the Senate for a final vote, despite the objections of members of the minority party. *See* Video Recording of Senate Proceedings, 155th Gen. Assemb., 1st Sess. (Ga. 2019), at 1:10:12, 1:11:43 (Mar. 13, 2019) (remarks by Sen. Henson (D-41st)), <https://tinyurl.com/2wpy4be3> (“I ... ask that you do not engross this bill.... We were not allowed to properly, in my opinion, vet this bill.”); *id.* at 1:13:26 (House voting to engross the bill). Since there is nothing unusual about engrossment at that stage of the process, the fact that this occurred with SB 202 is also immaterial to the issue of legislative intent.

143. Governor Kemp explicitly acknowledged that SB 202 was enacted in response to the 2020 Democratic victories in Georgia, stating: “I was as frustrated as anyone else with the results, especially at the federal level. And we did something about it with Senate Bill 202.” Ex. 95 (Cobb Rep. 5, 62); Ex. 104 (Lichtman Rep. 45 (citing video recording of Governor Kemp’s remark)).

**RESPONSE:** Disputed in part. Undisputed that Governor Kemp used the quoted language, but State Defendants dispute Plaintiffs’ characterization of Kemp’s position as being that “SB 202 was enacted in response to the 2020 Democratic victories in Georgia,” when in fact Kemp cited numerous public-policy rationales for SB 202. *See* Ga. Gubernatorial Republican Debate, C-

SPAN (May 1, 2022) , at 11:03 (“I was as frustrated as anyone else in the 2020 election results and I actually did something about it, working with the Georgia general assembly to address those issues .... We have outlawed Zuckerberg money. We have tied ... photo IDs to absentee ballots. we secured drop boxes to make sure we don’t have these problems in the future .... But again, I’m as frustrated as anyone else with the results, especially at the federal level. And we did something about it with Senate Bill 202. Tying voter ID – I was the first person that came out and put that idea on the table and we now have that in the law. Secured drop boxes, making sure that we are not going to have long lines, which the Democrats continue to complain about, and it is their counties where this is happening. Making sure we do not have outside money coming into the process. And I want to remind everybody, we have paper ballots in our elections. The voting system that we currently have has a verifiable paper audit trail, which was counted in the 2020 election.”), available at <https://tinyurl.com/2et95p4p>.

At any rate, Gov. Kemp’s remarks in this May 2022 debate are immaterial to the legislative intent behind SB 202, which was enacted more than a year earlier. *See Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d 1128, 1249 n.114 (N.D. Ga. 2022) (“Governor Kemp’s campaign speech cannot be used as evidence of the historical background *Arlington Heights* factor because the statements are not tied to the sequence events leading to

the enactment of [the challenged statute].”); *Edwards v. Aguillard*, 482 U.S. 578, 596 n.19 (1987) (“The [Supreme] Court has previously found the postenactment elucidation of the meaning of a statute to be of little relevance in determining the intent of the legislature contemporaneous to the passage of the statute.”); *cf. League of Women Voters of Fla., Inc. v. Lee*, 340 F.R.D. 446, 457 (N.D. Fla. 2021) (“[T]he purpose the Governor’s office thinks SB 90 serves, the Governor’s statements regarding the 2020 election, and the Governor’s office’s thoughts on the success or failure of the 2020 election ... are not particularly relevant to whether the legislature passed SB 90 with discriminatory intent.”).

144. The testimony from election officials who would have to implement these dramatic changes to Georgia election law was often limited to the “good one[s]” selected by Germany and Fleming. Ex. 230 (Germany Text Messages, lines 15-18, 191); *see also* Ex. 204 (Email from R. Germany to L. Bailey, N. Boren, and J. Eveler, “draft legislation” (Feb. 18, 2021), COBB023443 (noting Chairman Fleming seeks the input of Lynn Bailey (Richmond County), Nancy Boren (Muscogee County), and Janine Eveler (Cobb County))).

**RESPONSE:** Disputed, but immaterial. And the cited portions of the record do not support the assertion that legislative testimony from election officials was “often” limited. The cited text messages simply indicate that, on the morning of February 18, 2021, Ryan Germany contacted Rep. Fleming,



Javier Pico-Prats, and Bryan Tyson to say, “[y]’all start without me. Im [sic] going to call some election directors,” and then followed up several seconds later by asking, “[w]ould we want them to testify today or tomorrow?” Rep. Fleming responded about a minute later with, “Yes tomorrow, maybe today if you have a good one.” Pls.’ Ex. 230 at 3.

Plaintiffs incorrectly infer that, by a “good one,” Rep. Fleming meant an official sympathetic to his policy goals is strained and unwarranted. *See* Germany 3/7 44:16–20 (“The way I interpreted that is someone who would essentially be a good, competent witness to speak ... from the county election perspective ... in a committee hearing on legislation.”) (Defs.’ Ex. J hereto). Even more obviously false is Plaintiffs’ claim that this single text message indicates that legislative “testimony from election officials ... was often limited” to officials with certain views. The same goes for the email cited by Plaintiffs, which merely reads, “Can I discuss with you guys at 9 to give an introduction? Barry Fleming asked us for our input on this one.” Pls.’ Ex. 204 (Email from R. Germany to L. Bailey, N. Boren, and J. Eveler, “draft legislation” (Feb. 18, 2021)). Indeed, as Plaintiffs themselves note, several election officials critical of provisions of what became SB 202 testified during legislative hearings. *See* State Defs.’ Resp. to ¶ 145.

145. Nevertheless, these few election officials that testified during the hearings on SB 202 and its predecessor bills testified *against* several of the

challenged provisions. *See, e.g.*, Ex. 129 (Feb. 22, 2021 H. EIC Hr’g Tr., AME\_000360:3-361:16 (Bartow Cnty. Elections Supervisor J. Kirk)); Ex. 128 (Feb. 19, 2021, H. EIC Comm. Hr’g Tr., AME\_000204:20-205:19 (Richmond Cnty. Elections Supervisor L. Bailey), AME\_000207:19-208:9 (same), AME\_000223:14-224:2 (Cobb Cnty. Elections Supervisor J. Eveler), AME\_000228:10-229:18 (Lowndes Cnty. Elections Supervisor D. Cox)); Ex. 118 (Mar. 18, 2021 H. EIC Hr’g Tr., AME\_001627:11-19 (Heard Cnty. Elections Supervisor Tonnie Adams)).

**RESPONSE:** Disputed, but immaterial. The cited portions of the record do not fully support the purported statement of fact. Several officials who testified at the cited hearings also supported various provisions of SB 202. *See* H. Election Integrity Comm. Hr’g Tr. (Feb. 22, 2021), AME\_000362:23–363:5 (Bartow Cnty. Elections Supervisor J. Kirk) (supporting restriction on line warming); *id.* at 418:6–14 (Coffee Cnty. Elections Supervisor M. Hampton) (supporting ID provisions for absentee voting) (Defs.’ Ex. NN hereto); H. Election Integrity Comm. Hr’g Tr. (Feb. 19, 2021), AME\_000206:13–20 (Richmond Cnty. Elections Supervisor L. Bailey) (supporting ID provisions for absentee voting); *id.* at 220:17–222:11 (Cobb Cnty. Dir. of Elections J. Eveler) (same); *id.* at 234:11–19 (Heard Cnty. Elections Supervisor C.T. Adams) (same); *id.* at 290:20–293:1, 294:11–17, 297:14–24 (Gen. Counsel, Ga. Sec’y of State, R. Germany) (supporting ID provisions, provisions allowing SEB to

dismiss and replace county election officials, and dropbox provisions) (Defs.' Ex. MM hereto); *see also* H. Special Comm. on Election Integrity Hr'g Tr. (Mar. 18, 2021), AME\_001571:5–9 (Todd Edwards, Ass'n of Cnty. Comm'rs of Ga. Dir. T. Edwards) (“[M]any of the provisions will be helpful to Georgia counties in administering elections, several provisions we had requested be in this and other bills, we thank the committee for placing those in there.”) (Defs.' Ex. PP hereto).

146. Tonnie Adams, Heard County Election Supervisor and Legislative Committee Chairman for the Georgia Association of Voter Registration and Election Officials (“GAVREO”), surveyed county election officials across the State for their feedback on the 2021 legislative proposals. Adams sent the responses to this Survey to all Georgia State Senators on March 8, 2021, Ex. 209 (Email from T. Adams to Members of the Ga. Senate, “Elections Officials’ view of election bills? with attachment (Mar. 8, 2021), USA-ADAMS\_000053.0001-000054.0016), and the same Survey responses to Georgia State Representatives on March 10, 2021, Ex. 216 (Email from T. Adams to Members of the Gen. Assemb., “Election Bills input from election officials” with attachment (Mar. 10, 2021) (“Adams Survey”), USA-ADAMS-000026.0001-000027.0016). Adams sent the responses to this Survey to all legislators with a goal of influencing the legislature to adopt changes that make election administration easier, not harder. Ex. 47 (Deposition of Charles

Tonnie Adams [ECF 714] (“Adams Dep.”) 141:16-142:23, 146:13-147:10, 148:10-149:12). The survey noted several election officials’ opposition to election law changes that ultimately became the challenged provisions, on the basis that they would make election administration more difficult. *See generally* Ex. 216 (Adams Survey).

**RESPONSE:** Disputed in part, but immaterial. Undisputed that Adams “surveyed county election officials across the State for their feedback on the 2021 legislative proposals”; undisputed that Adams “sent the responses to this Survey to all legislators with a goal of influencing the legislature to adopt changes that make election administration easier.” Undisputed that the survey noted “several” negative comments about provisions that were ultimately adopted—though, as State Defendants explain elsewhere, these comments were not necessarily representative of county officials’ views generally. *See* State Defs.’ Reply in Support MSJ on Discriminatory Intent Claims at 55–61. It should also be noted that Adams’ survey was informal and non-randomized. *See* Adams 143:7–150:21 (Defs.’ Ex. O hereto).

147. According to Tonnie Adams, of GAVREO, legislators largely did not include the changes he and other election officials advocated for during 2021 legislative Sessions. Ex. 47 (Adams Dep. 80:11-14).

**RESPONSE:** Disputed in part. When asked “Did the legislators include changes that you advocated for?,” Adams answered, “Not many,” before then

saying, “let me think one moment” and listing several suggestions of his that were adopted by lawmakers. Adams 80:13–81:14 (Defs.’ Ex. O hereto).

148. Several county election officials expressed frustration about the legislature failing to consider the input of county election officials, including officials who testified in front of the legislature. *E.g.*, Ex. 49 (Bailey 10/6/22 Dep. 63:18-65:14); Ex. 211 (Email thread L. Bailey to election officials, “RE: [EXTERNAL] Final Election Bill Status on Crossover Day - Get Ready” (Mar. 9, 2021), COBB032414-17 (Richmond County Elections Supervisor, noting, “[S]ome of the (election) proposals make me sick . . . it is apparent that little or no research has been done . . .”)); Ex. 201 (Email from L. Bailey to election officials, “RE: [EXTERNAL] Re: New Legislation” (Feb. 110, 2021) at COBB023362 (Fulton County Elections Supervisor, asking, “[W]ill any legislator listen to us?”)); Ex. 212 (Email thread L. Ledford to election officials, “RE: [EXTERNAL] Final Election Bill Status on Crossover Day - Get Ready” (Mar. 9, 2021) at COBB032406 (Gwinnett County Elections Supervisor noting “[i]t’s all knee jerk with no thought whatsoever to administration, including budgets”)); Ex. 214 (Email thread C. Sosebee to election officials, “RE: [EXTERNAL] Final Election Bill Status on Crossover Day - Get Ready” (Mar. 9, 2021), COBB032572 (Athens-Clarke County Elections Supervisor noting, “I am not sure [the legislators] care about our opinions at all.”)); Ex. 223 (Email from J. Eveler to election officials, “RE: Latest version of SB 202” (Mar. 19,

2021), COBB024284 (Cobb County Elections Supervisor, referring to an email to legislators, “I doubt anyone will listen though.”); Ex. 220 (Email thread R. Barron to election officials, “Re: [EXT] Fwd: LC 28 0300S - substitute for SB 241 & HB 531” (Mar. 18, 2021), COBB024251 (Gwinnett County Elections Supervisor noting, “It’s like beating our heads against the wall, they’re [legislators] just not listening...”)); Ex. 213 (Email thread R. Barron to election officials, “Re: [EXTERNAL] Final Election Bill Status on Crossover Day - Get Ready” (Mar. 9, 2021), COBB032418 (Fulton County Elections Supervisor noting, “They keep saying that they are doing this to make our jobs easier, but they are going to make it more difficult”)).

**RESPONSE:** Undisputed only that the officials quoted made the comments attributed to them. Those emails’ characterization of lawmakers’ receptivity to local officials’ views is inaccurate, which in any event is an argumentative conclusion rather than a fact. *See* State Defs.’ Reply in Support MSJ on Discriminatory Intent Claims at 55–61.

149. In contrast, in 2019, county election officials were polled about which voting machines they preferred, and the Legislature ultimately adopted the system that 95% of responding officials preferred. *See* Ex. 167 (H. Gov. Aff. Elections Subcomm. Hr’g, Video of Proceedings (Feb. 19, 2019), at 41:30-45:53 (Lynn Bailey), [https://www.youtube.com/watch?v=0eAe3YpLVbs&list=PLIgKJe7\\_xdLXdPK0QRJ3d0SobsoioRiCc&t=1151s](https://www.youtube.com/watch?v=0eAe3YpLVbs&list=PLIgKJe7_xdLXdPK0QRJ3d0SobsoioRiCc&t=1151s)).

**RESPONSE:** Disputed in part, but immaterial. Undisputed that Lynn Bailey made the 95-percent claim during the 2019 hearing cited by Plaintiffs. State Defendants dispute, however, that this represents a point of “contrast” to the process of drafting SB 202. Bailey’s 2019 testimony did not make clear her methodology for carrying out this “poll[],” and there is thus no way to know if its results are directly comparable to those of Adams’ 2021 informal email survey. Furthermore, insofar as Bailey’s purported survey results are being used as evidence that officials supported certain proposals, this assertion is “inadmissible hearsay and ‘entitled to no weight’ on a motion for summary judgment.” *Joe Regueira, Inc. v. Am. Distilling Co.*, 642 F.2d 826, 830 (5th Cir. Unit B 1981) (quoting *Pan-Islamic Trade Corp. v. Exxon Corp.*, 632 F.2d 539, 556 (5th Cir. 1980)); see also *T. Harris Young & Assocs., Inc. v. Marquette Elecs., Inc.*, 931 F.2d 816, 827 (11th Cir. 1991). To be sure, “[s]urveys and ... questionnaires are admissible, if they are pertinent to the inquiry, upon a showing that the poll is reliable and was compiled in accordance with accepted survey methods,” *C. A. May Marine Supply Co. v. Brunswick Corp.*, 649 F.2d 1049, 1054 (5th Cir. July 1981), and if the surveys ask only for respondents’ “state[s] of mind,” Fed. R. Evid. 803(3). But there has been no such showing as to Bailey’s 2019 “poll[].”

150. Georgia legislators are familiar with the demographics of the State and their districts. *E.g.*, Ex. 4 (Burnough Decl. ¶¶ 15-16); Ex. 8 (Jones Decl. ¶¶

12, 20); Ex. 252 (9/22/23 Prelim. Inj. Hr’g Tr. 15:25-18:25, 19:14-20:17 (Jones)); Ex. 106 (Palmer Rep. ¶¶ 22-28).

**RESPONSE:** Disputed, but immaterial. The cited portions of the record do not support the purported statement of fact. Rep. Burnough and Sen. Jones state that they both are familiar with those demographics but not what *other* lawmakers know, *see* Fed. R. Civ. P. 56(c)(4) (“An affidavit or declaration used to ... oppose a motion [for summary judgment] must be made on personal knowledge ...”), and Dr. Palmer discusses racial voting patterns without making any claims about Georgia legislators’ familiarity therewith.

151. It is widely known among elected officials and political observers in Georgia that voting is racially polarized in the State. Ex. 85 (Burden Rep. 7 (discussing media reporting on voting preferences by different racial groups)); Ex. 4 (Burnough Decl. ¶ 15); Ex. 8 (Jones Decl. ¶ 12); Ex. 78 (Deposition of Dr. Barry Burden [ECF 743] (“Burden Dep.”) 86:22-87:9); Ex. 80 (King Dep. 86:15-88:16 (discussing the difficulty of separating racial identity and party affiliation)).

**RESPONSE:** Disputed in part, but immaterial. Plaintiffs’ cited sources do not establish how “widely known” this racially polarized voting is “among elected officials and political observers.” Only Dr. Burden’s report even purports to address the point, surmising that “[t]his [polarization] would be widely known among those who are active in state politics,” but he does not



elaborate on how he came to this conclusion, except to say that media outlets have covered the topic and so ostensibly everyone should be aware of it.

152. Georgia legislators are also familiar with the demographics of their supporters and opponents, as well as with the different methods of voting preferred by different groups of voters. *See* Ex. 4 (Burnough Decl. ¶¶ 15-16); Ex. 8 (Jones Decl. ¶¶ 12, 20).

**RESPONSE:** Disputed, but immaterial. The cited portions of the record do not fully support the purported statement of fact. Rep. Burnough and Sen. Jones state that they both are familiar with those demographics and the different methods of voting preferred by different groups, but they do not point to any evidence of what other Georgia legislators know.

153. After November 2020, it was widely known among elected officials and political observers that Black voters disproportionately cast absentee-by-mail ballots compared to white voters, and that this increased use of absentee voting contributed to statewide wins by Democratic candidates. Ex. 85 (Burden Rep. 11 & Tbl. 5); Ex. 5 (Hugley Decl. ¶¶ 20, 23); Ex. 252 (9/22/23 Prelim. Inj. Hr'g Tr. 15:25-16:11 (Jones)); Ex. 189 (Email thread H. McCloud to Legislators, "Re: Data from the SOS on the Presidential Results" with attachment (Dec. 23, 2020), CDR00063983-86 (SOS' breakdown of presidential results sent to Republican legislators)); Ex. 69 (Sterling Dep. 65:15-66:12 (noting that, in

2020, SOS office was aware of anecdotal evidence that Democrats tended to use absentee voting more than Republicans)).

**RESPONSE:** Disputed. The cited portions of the record do not demonstrate how “widely known” that was “among elected officials and political observers.” Furthermore, the claim that “Black voters[] ... increased use of absentee voting contributed to statewide wins by Democratic candidates” in 2020 is unsupported by the cited record portions; the sources do not demonstrate that these “statewide wins” would not have occurred if the Black voters who voted absentee for the first time in 2020 had not been able to vote absentee. Indeed, as State Defendants explained in their response to ¶ 37, *supra*, states across the country experienced similar increases in overall voter turnout during the 2020 election cycle, regardless of whether those states allowed no-excuse absentee voting. And Black voters also voted early in person at higher rates than white voters consistently from 2014–2018, which continued in 2022. *See* Resp. to ¶ 35, *supra*.

154. By 2021, it was widely known that Black voters—in Georgia and elsewhere—are less likely than white voters to possess state-issued photo ID. *See* Ex. 88 (Meredith Rep. ¶¶ 50-59 (discussing studies of ID possession in Georgia, North Carolina, South Carolina, Texas, and Wisconsin)).

**RESPONSE:** Disputed in part. Undisputed that the cited paragraphs of Dr. Meredith’s report point to several studies that find racial differences of

no more than a few percentage points in rates of state-issued ID possession, though only one (a 2008 study that that 93% of Black and 96.3% of White registrants had such ID) concerned ID possession rates in Georgia. *See* Meredith Rep. ¶ 51 (Pls.’ Ex. 88). (Another study from 2012 of Georgia considered the different issue of how voter ID requirements affect the likelihood of voting). *See id.* ¶ 52. And such differences are not evidence of a disparate impact violative of the VRA, § 2. *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were “neither of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). However, nothing in the paragraphs of Dr. Meredith’s report cited by Plaintiffs speaks to how “widely known” the results of these studies were.

155. In Georgia, specifically, scholars have demonstrated disparities in DDS ID possession as far back as 2006, when the State adopted its photo voter ID requirement for in-person voting. Ex. 88 (Meredith Rep. ¶¶ 51-52).

**RESPONSE:** Undisputed only that the cited paragraphs of Dr. Meredith’s report point to one study from 2008 that purported to find that 93% of Black and 96.3% of White registrants in Georgia had state-issued ID. Again, however, such differences are not evidence of a disparate impact violative of the VRA, § 2. *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 933 (11th Cir.) (holding that differences of 3.89% and 2.21% were

“neither of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). This study, even assuming *arguendo* its findings are right, is therefore immaterial.

156. Legislators and advocacy groups involved in the legislative process specifically requested and received from the Georgia Secretary of State’s office data revealing how many registered voters had a DDS ID or a Social Security number associated with their voter registration record. Ex. 206 (Email from H. McCloud to SOS staff, “RE: Ethics Chair Max Burns - Data Request RE SB 67” (Feb. 18, 2021), CDR00043461-62 (SOS office gathering data in response to legislator’s request)); Ex. 205 (Email from H. McCloud to Chairman Burns, “RE: Voters who have a DL or voter ID associated with their voter registration number” (Feb. 18, 2021), CDR01369683); Ex. 208 (Email from B. Evans to Q. Felder, “RE: ORR #21-97 - Logan Churchwell” with attachment (Mar. 1, 2021), CDR00044825-29 (data request from Public Interest Law Foundation)); Ex. 59 (Germany Dep. 141:11-20).

**RESPONSE:** Undisputed.

157. Poy Winichakul, counsel at the Southern Poverty Law Center, testified during the February 19, 2021, House Special Committee on Election Integrity hearing about the specific burdens an ID requirement poses for voters of color. Ex. 128 (Feb. 19, 2021 H. EIC Comm. Hr’g Tr., AME\_000109:2-AME\_000111:1).

**RESPONSE:** Undisputed that Ms. Winichakul made these claims during the hearing.

158. Rev. James Woodall, then-President of the GA NAACP, provided statistics regarding the foreseeable discriminatory effects of the challenged provisions on Black voters in his testimony during the February 22, 2021, House Special Committee on Election Integrity hearing and the March 16, 2021, Senate Ethics Committee hearing. *See* Ex. 319 (Woodall 3/13/23 Decl. ¶¶ 15-16); Ex. 129 (Feb. 22, 2021, H. EIC Hr’g Tr., AME\_000332:19-333:2). Specifically, Rev. Woodall testified that: (a) even if 97% of registered voters in Georgia had a DDS ID in their voter registration file, “that would leave about 210,000 Georgians, eligible Georgia voters without access due to these ID requirements,” *id.* at AME\_000332:19-AME\_000333:2; (b) because “[h]igher percentages of Black and Brown Georgians live in poverty,” the limitations to getting an ID, or making a photocopy of an ID, would disproportionately burden them, *id.* at AME\_000335:613; (c) “drop boxes being used only during normal business hours in this legislation would very well defeat the purpose of having drop boxes at all,” Ex. 131 (Mar. 16, 2021 Sen. Ethics Comm. Hr’g Tr., AME\_001354:9-18); and (d) “[v]oters in predominantly black neighborhoods wait on average 29 percent longer than those in non-black neighborhoods. They’re also 74 percent more likely to wait more than half an hour to vote,” Ex. 129 (Feb. 22, 2021, H. EIC Hr’g Tr., AME\_000335:21-336:2); *see also id.* at.

AME\_000337:11-338:2 (explaining the foreseeable disparate impact of the line relief provisions on minority-led organizations like the GA NAACP).

**RESPONSE:** Undisputed that Rev. Woodall made these claims during the hearing. State Defendants note, however, that many of those claims are inaccurate or unfounded. As State Defendants explain in their briefing, at least 48.3% of registrants marked as having missing, incorrect, or out-of-date DDS ID numbers in the November 2022 registry do in fact have DDS IDs. Second, even those who lack DDS ID have multiple means of satisfying the ID requirement: “a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address,” including free ID cards available at offices in every county. *See* O.C.G.A. §§ 21-2-381(a)(1)(C)(i), 21-2-417(c). Third, whether limiting dropboxes to “normal business hours” would “defeat the purpose of having drop boxes at all” is the witness’s personal opinion, and in any case has nothing to do with disparate impact. Finally, SB 202’s effects on polling-place wait times are highly debated, so lawmakers did not have to agree with this witness’s warnings that it would adversely affect racial gaps in wait times. That some racial groups waited in line longer on average than others before SB 202 does not prove that SB 202 made those disparities worse. *See* State Defs.’ Reply in Support MSJ on Discriminatory Intent Claims at 104–07.

159. Defendant Sara Tindall Ghazal, then-Cobb County attorney and now-State Election Board member, testified in the March 16, 2021, Senate Ethics Committee Hearing on HB 531 (a predecessor of SB 202) that the proposed nearban on out-of-precinct (“OP”) voting would disproportionately affect black voters. Ex. 131 (Mar. 16, 2021 Sen. Ethics Comm. Hr’g Tr., AME\_001409:14-1411:14) (Ghazal, misspelled “Gazalle” in the transcript). Specifically, she explained to the legislature that the provision “would have a hugely disparate impact on Black voters. In 2018, for example, approximately 72 percent of the provisional ballots that were counted were Democratic voters with Black voters overrepresented within those Democratic votes by more than 20 percent.” *Id.* at AME\_001409:1419. Ms. Ghazal went on to note, “What makes this provision particularly damaging is that it’s final and irrevocable. A provision[al] ballot is a voter’s last opportunity to have their vote counted and their voice heard. A voter cannot find another day or another method to cast their ballot if they can’t make it to their precinct. They have no recourse to this utter and complete disenfranchisement, and I encourage you to strike this totally from the bill.” *Id.* at AME\_001411:22-1411:14.

**RESPONSE:** Undisputed that Ms. Ghazal made these claims during the hearing. Again, however, State Defendants note that these claims are misleading, for reasons explained in State Defendants’ reply briefing. First, SB 202’s rules for OP voting served purposes other than merely “to reduce

down-ballot votes not counting”—namely, to reduce administrative burdens. *See* SB 202 at 6:130–38 (Defs.’ Ex. A). Also, the SOS *already* engages in “voter education and outreach.” Germany 4/13 182:2–18 (Defs.’ Ex. I hereto); Germany 3/7 204:9–15, 226:10–227:14 (Defs.’ Ex. J hereto); Harvey 22:5–19 (Defs.’ Ex. T hereto). And SB 202 *does* instruct “poll workers” to “redirect voters” to the proper precinct—unless those voters have arrived too late to go to their assigned precincts, in which case they may vote at the precincts at which they arrived. *See* SB 202 at 74:1899–75:1907 (Defs.’ Ex. A). Finally, Ms. Ghazal’s reference to “the model that Senator Harrell outlined” was Sen. Harrell’s proposal that, “if somebody shows up at the wrong precinct, the election worker can bring up the correct ballot on the [voting] machine so you don’t lose those votes in the down ballot races.” Tr. of Hr’g Before the S. Comm. on Ethics, 2021 Leg., Reg. Sess. (Ga. 2021) (AME\_001309:11–16 (3/15/21)) (Defs.’ Ex. OO hereto). But, as Rep. Fleming explained in response to Sen. Harrell, “let’s just assume ... you’re correct on that. What you can’t do though is have enough machines to do that if you have several more hundred people show up at a precinct that are registered to vote there because we have a precinct-by-precinct election process on election day.” *Id.* at AME\_001309:15–22. There was, therefore, a valid, non-discriminatory basis for the Legislature’s rejection of Sen. Harrell’s proposal. *See* State Defs.’ Reply in Support MSJ on Discriminatory Intent Claims at 77–78.



160. Aunna Dennis, Executive Director of Common Cause Georgia, criticized the restrictions on out-of-precinct (OP) voting and cited a study showing that voters of color are more likely to move within their county, increasing the chance they will vote in the wrong precinct. Ex. 118 (Mar. 18, 2021, H. EIC Hr’g Tr., AME\_001517:2-24) (Dennis).

**RESPONSE:** Undisputed that Ms. Dennis criticized the bill’s rules for OP voting and that she purported to cite an unnamed “study released this week by the Brennan Center for Justice,” H. Election Integrity Comm. Hr’g Tr. (Mar. 18, 2021), AME\_001517:12–13 (Defs.’ Ex. PP hereto), but Plaintiffs have failed to include that study in the record.

161. Legislators also discussed how the bill would disparately impact Black voters. During the EIC’s hearing on SB 202, Rep. Burnough objected to SB 202’s cap on the number of drop boxes, noting that Clayton County (with a 73% Black population), would likely see a reduction from nine drop boxes to one. Ex. 119 (Mar. 22, 2021 H. EIC Hr’g Tr., AME\_001717:24-1718:25).

**RESPONSE:** Disputed in part. Undisputed that during the March 22, 2021 hearing, “Rep. Burnough objected to SB 202’s cap on the number of drop boxes”; the cited transcript pages, however, do not mention Clayton County, nor does any other portion of the March 22nd hearing transcript. State Defendants also note that the first sentence of this paragraph (“Legislators also discussed how the bill would disparately impact Black voters.”) appears to

be a summary of Plaintiffs’ view of the evidence, as it has no citation, and as such, State Defendants do not separately respond to it here.

162. On March 22, 2021, Asian Americans Advancing Justice—Atlanta submitted written testimony to the Special Committee on Election Integrity on the likely impact and harm SB 202 would have on AAPI voters in Georgia. The testimony included data on the high rates of voting by mail within the AAPI community; the already high rates of rejection of absentee ballot applications of AAPI voters; and descriptions of the specific harms that would befall Limited English Proficient voters and new or first-time voters. Ex. 226 (Email from P. Nguyen to Rep. Fleming and legislative staff, “Advancing Justice-Atlanta testimony on SB 202” with attachment (Mar. 22, 2021), AJATL-SB 202-0000118587).

**RESPONSE:** Undisputed that this organization submitted this document to the Legislature, though State Defendants disagree that the few statistics cited by the organization provided meaningful support for its claims. *See State Defs.’ Reply in Support MSJ on Discriminatory Intent Claims at 73–74.*

163. After SB 202 passed the House on March 25, 2021, Senator Michelle Au testified on the Senate floor over concerns that SB 202 would disenfranchise minority, immigrant and working-class voters. Ex. 3 (Au Decl. ¶ 14).

**RESPONSE:** Undisputed that Senator Au made this claim during the March 25th legislative debate.

164. On December 23, 2020, and December 28, 2020, SOS Legislative Affairs Director Hayley McCloud sent to members of the General Assembly a spreadsheet that specified by county the number of ballots each presidential candidate received in the November 2020 election, broken down by method of voting (in-person election day (“ED”); absentee by mail (“ABM”); advance voting (“AV”); and provisional (“PROV”)). Ex. 189 (Email thread H. McCloud to Legislators, “Re: Data from the SOS on the Presidential Results” with attachment (Dec. 23, 2020), CDR00063983-86); Ex. 196 (Email from H. McCloud to Legislators, “Information from the Office of the Secretary of State: 2020 Presidential Compiled Results Data” with attachment (Dec. 28, 2020), CDR00099553-54). According to this data, Biden received almost twice as many votes cast via absentee-by-mail ballots as Trump, whereas Trump got more votes through in-person election day voting than Biden—almost 400,000 more (849,729 versus 451,157). Ex. 189 (CDR00063986 (spreadsheet)).

**RESPONSE:** Disputed in part. Undisputed that McCloud sent this data to members of the General Assembly; it appears, however, that Plaintiffs have misstated the figures supplied in the cited spreadsheet. Looking to pre-recount numbers (as Plaintiffs apparently intended to do), Biden won 367,205 election-day votes, compare to 587,697 for Trump (or 1.6 times as many as

Biden); meanwhile, Trump won 451,157 absentee-by-mail votes, compared to 849,729 for Biden (or 1.9 times as many as Trump).

165. Representative Bruce Williamson also requested that the Secretary of State's office provide voting totals "for each presidential candidate in each of the three voting classifications: Absentee Ballots, Early voting in person and Day of Election voting," which the Secretary's office provide on December 23, 2020, broken down by county. Ex. 189 (Email thread M. McCloud to M. Aziz, Rep. Blackmon, and Rep. Williamson, "RE: Data from the SOS on the Presidential Results" (Dec. 23, 2020), CDR00471627-30); *see also* Ex. 104 (Lichtman Rep. 37-38). That data was shared with legislators who served on the Election Integrity Committee and steered the effort to rewrite Georgia's election laws. Ex. 104 (Lichtman Rep. 37-38).

**RESPONSE:** Undisputed, but immaterial.

166. On February 18, 2021, SOS Legislative Affairs Director Hayley McCloud sent an email to Senate Chairman Max Burns with data regarding voters who have an ID associated with their voter registration record, which stated: "In response to your question today regarding the 99% comment made in committee, our team pulled specific data and found that approximately 99.9% of registered voters have either DL# or SSN#, and roughly 97% of registered voters have a driver's license or state voter ID number associated with their voter registration record." Ex. 205 (Email from H. McCloud to

Chairman Burns, “RE: Voters who have a DL or voter ID associated with their voter registration number” (Feb. 18, 2021), CDR01369683); *see also* Ex. 206 (Email from H. McCloud to SOS staff, “RE: Ethics Chair Max Burns - Data Request RE SB 67” (Feb. 18, 2021), CDR00043461-62); Ex. 59 (Germany Dep. 141:11-20); Ex. 67 (McCloud Dep. 204:16-25).

**RESPONSE:** Undisputed, but immaterial.

167. Legislators requested and had access to the State’s absentee voter records, which are publicly available on the SOS website. Ex. 185 (Email from S. Teasley to Rep. Blackmon, “Voter Absentee File” (Nov. 11, 2020), CDR01369749); *see* Ga. Sec. of State, *Voter Absentee Files*, <https://sos.ga.gov/page/voter-absentee-files>, last visited Jan. 19, 2024).

**RESPONSE:** Undisputed, but immaterial.

168. In Georgia, voter registration records include the self-identified race of the voter. *See* Ex. 96 (Fraga Rep. ¶ 22); Ex. 88 (Meredith Rep. ¶ 13).

**RESPONSE:** Undisputed, but immaterial.

169. In July 2017, voters filed a complaint challenging Georgia’s use of a direct-recording electronic voting (“DRE”) system. *See* Complaint, *Curling v. Kemp*, 1:17-cv-02989 (N.D. Ga.). Although the court later denied the plaintiffs a preliminary injunction, it noted that continued use of DREs likely violated the 14th Amendment. *See* Prelim. Inj. Ord., *Curling v. Kemp*, 334 F. Supp. 3d 1303 (N.D. Ga. 2018).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact is also not material to the claims and defenses in this case and does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Additionally, the court specifically held that “[t]he State’s ... interest in maintaining the DRE system *without significant change* cannot by itself justify the burden and risks imposed given the circumstances presented. Plaintiffs are substantially likely to succeed on the merits of one or more of their constitutional claims, *though this finding is a cautious, preliminary one*, especially in light of the initial state of the record. Plaintiffs have so far shown that the DRE system, *as implemented*, poses a concrete risk of alteration of ballot counts that would impact their own votes.” *Curling v. Kemp*, 334 F. Supp. 3d 1303, 1324 (N.D. Ga. 2018) (emphases added).

170. In September and November 2017, the General Assembly convened hearings to examine Georgia’s longstanding need for new voting machines, and during the 2018 legislative session, it considered but did not enact legislation that would have updated Georgia’s voting equipment. Ex. 157 (Secure, Accessible & Fair Elections (SAFE) Commission Report Submitted to the General Assembly (Jan. 10, 2019) at 3, [https://sos.ga.gov/sites/default/files/2022-03/safe\\_commission\\_report\\_final\\_1-10-18.pdf](https://sos.ga.gov/sites/default/files/2022-03/safe_commission_report_final_1-10-18.pdf) (“SAFE Commission Report”)); Ex. 168 (SB 403 (2018),

<https://www.legis.ga.gov/legislation/52638> (developing procedures for updating the state's voting systems)).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact is also not material to the claims and defenses in this case and does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

171. In April 2018, the Governor established the Secure, Accessible & Fair Elections (“SAFE”) Commission, designated to study alternatives to the DRE system. See Ex. 158 (Ga. Secretary of State, *Elections Safeguards: SAFE Commission*, <https://sos.ga.gov/page/elections-safeguards>). The Commission included legislators, election officials, a cybersecurity expert, voters, and representatives from three political parties. See Ex. 157 (SAFE Commission Report 2).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact is also not material to the claims and defenses in this case and does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

172. In January 2019, the SAFE Commission issued a report recommending that the State transition from its then-existing DRE system to

a new system using ballot marking devices (“BMDs”). Ex. 157 (SAFE Commission Report 4-7, 13-16). This recommendation was adopted in HB 316, almost half of which (23 of 49 sections) addresses changes to laws and processes to incorporate the new type of voting machine. *Compare* Ex. 152 (HB 316 as passed) *with* Ex. 157 (SAFE Commission Report 4-7, 13-16); Ex. 167 (H. Gov. Aff. Elections Subcomm., Video of Proceedings (Feb. 19, 2019) at 21:00, [https://www.youtube.com/watch?v=0eAe3YpLVbs&list=PLIgKJe7\\_xdLXdPK0Q\\_RJ3d0SobsoioRiCc&t=1151s](https://www.youtube.com/watch?v=0eAe3YpLVbs&list=PLIgKJe7_xdLXdPK0Q_RJ3d0SobsoioRiCc&t=1151s) (Rep. Fleming describing the purpose of HB 316 as making the necessary legislative changes to implement the change to BMDs)).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact is also not material to the claims and defenses in this case and does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

173. Six sections of HB 316 addressed changes to the “exact match system” for voter registration, and a cure process for rejected absentee ballots that was triggered by *successful* litigation in federal court. *See* Ex. 152 (HB 316 §§ 6, 27, 30, 32, 37, 38); Ex. 167 (H. Gov. Aff. Elections Subcomm., Video of Proceedings (Feb. 19, 2019) at 41:30, [https://www.youtube.com/watch?v=0eAe3YpLVbs&list=PLIgKJe7\\_xdLXdPK0](https://www.youtube.com/watch?v=0eAe3YpLVbs&list=PLIgKJe7_xdLXdPK0)



Q RJ3d0SobsoioRiCc&t=1151s (Richmond County Elections Supervisor Lynn Bailey describing provisions of HB 316 as requiring election officials to take certain additional steps when a voter registration application is rejected and implementing court orders involving signature mismatches on absentee ballots)); *see also Martin v. Kemp*, 341 F. Supp. 3d 1326, 1341 (N.D. Ga. 2018).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact is also not material to the claims and defenses in this case and does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

174. Nowhere in the preamble of HB 316 does it say that a purpose of HB 316 is to address issues of voter confidence or voter suppression related to the 2018 election. *See* Ex. 152 (HB 316 as passed).

**RESPONSE:** Disputed. While HB 316 did not expressly state its purposes, the statute had no “preamble” of the sort that SB 202 had. Additionally, the fact is argumentative and not material to the claims and defenses in this case and does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

175. No special committee was established to consider HB 316; instead, HB 316 was considered by the Senate Ethics Committee and the House Government Affairs Committees, which historically consider election bills in

the General Assembly. Ex. 153 (Ga. Gen. Assemb., *Georgia General Assembly - HB 316 Status History*, <https://www.legis.ga.gov/legislation/54991>); Ex. 4 (Burnough Decl. ¶ 25).

**RESPONSE:** Undisputed, but immaterial.

176. None of the committee meetings for HB 316 took place before 8:00 a.m., *see* Ex. 159-166 (2019 Meeting Notices), compared to regular early morning Senate Ethics committee meetings in 2021, *see* Ex. 8 (Jones Decl. ¶ 19); Ex. 7 (Harrell Decl. ¶ 8); Ex. 256 (Battles Decl. ¶ 21 (“[P]roponents conducted hearings at times that made it difficult for the public to partake . . . .”)).

**RESPONSE:** Disputed in part. Undisputed that “[n]one of the committee meetings for HB 316 took place before 8:00 a.m.”; disputed that there were “regular early morning Senate Ethics committee meetings in 2021,” for reasons explained in State Defendants’ response to ¶ 135, *supra*.

177. HB 316 went through minor substitutes and revisions but did not have a huge overhaul, much less without advance notice like SB 202. Time was allotted for meetings with legislators about amendments to include in the bill and legislators from the majority party did not automatically reject ideas or decline to meet with advocates based on their constituencies. Despite the relative speed in which HB 316 moved through the General Assembly,

organizations were given time to review the bill and any proposed changes. Ex. 256 (Battles Decl. ¶¶ 19-21).

**RESPONSE:** Disputed, but immaterial. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). Also, as this statement includes argument, rather than statements of fact, no response is required. Additionally, the cited portions of the record do not support the purported statements of fact. State Defendants also note, at the outset, that this is a long series of assertions rather than a single factual claim, which “is an improper practice” in a statement of material facts. *Waldrop v. Cmty. Health Sys., Inc.*, No. 4:16-CV-0235-HLM, 2017 WL 10399268, at \*1 n.1 (N.D. Ga. Aug. 28, 2017); see L.R. 56.1B(1) (“Each material fact must be numbered separately and supported by a citation to evidence proving such fact.”); *Mattox v. Life Ins. Co. of N. Am.*, 536 F. Supp. 2d 1307, 1320 n.18 (N.D. Ga. 2008), *aff’d*, 395 F. App’x 669 (11th Cir. 2010).

*First*, Plaintiffs’ assertion that “HB 316 went through minor substitutes and revisions but did not have a huge overhaul, much less without advance notice like SB 202,” is vague and subjective. It is unclear what counts as a “huge overhaul” as opposed to a “minor substitute[],” or how much “advance notice” Plaintiffs believe is required. “[P]aragraphs of [a] plaintiff’s statement of material facts” that “are largely conclusions of law or argumentative rather

than statements of facts material to [a] case ... do not warrant [a] court's consideration." *Ga. Advoc. Off., Inc. v. Shelp*, No. 1:09-CV-2880-CAP, 2011 WL 13269436, at \*10 n.3 (N.D. Ga. Mar. 9, 2011). "[I]f the 'facts' are really facts, they should be put forward as such without interstitial argumentation." *Inglett & Co. v. Everglades Fertilizer Co.*, 255 F.2d 342, 349 (5th Cir. 1958).

*Second*, to the extent any of ¶ 177 can be termed "factual," much of it is inaccurate. For one, combination of larger omnibus bills into a standalone bill is extremely common practice in the General Assembly, as State Defendants previously explained in their response to PSOF ¶ 126, *supra*.

*Third*, there is considerable evidence to undercut Battles' account of how HB 316's and SB 202's drafting processes differed. Despite being cited in support of Plaintiffs' claims that "HB 316 went through minor substitutes and revisions but did not have a huge overhaul, much less without advance notice like SB 202"; and that "organizations were given time to review the bill [HB 316] and any proposed changes," Battles' own remarks during an important committee hearing on HB 316 call these supposed distinctions into question:

This bill [HB 316] was introduced on Thursday. It was made available to the public on Friday. And after a holiday weekend, it's in subcommittee on Tuesday. I commend Rep. Fleming for the amount of things that he was able to put in this bill, but we still have organizations who are analyzing the bill. Like, that's how fast this process is moving.... We need more time to analyze the bill; we need more time to study it. You see a lot of people here; that's because people like me and a lot of these other activist organizations worked through the weekend to make sure everyone knew that this hearing was happening. We need a

transparent process for this bill and for the ... not just the voting machines ... We're focusing so much on the voting machines because there's so many other things in the bill, but there needs to be a transparent process, and there needs to be accountability. And it doesn't feel like there's either one of those things. ... We need to be discussing this further, and that's what I'm going to ask this ... subcommittee to do, is to do their part in helping to restore voter confidence by slowing [unintelligible] just a little bit, so that we can do this properly.

Video Recording of House Gov'tl Affs. Election Subcomm. Mtg. at 2:56:40–2:58:35 (Feb. 19, 2019) (remarks by Cindy Battles (Common Cause Ga.)), <https://tinyurl.com/4emft4cx>. Other members of the public who spoke at that hearing on HB 316 likewise complained that the process was moving too quickly. *See id.* at 3:02:59–3:03:03 (“You guys are boldly cramming this bill down our throat at a fast rate, and I don’t like it.”).

*Finally*, there is Battles’ assertion (repeated by Plaintiffs) that, during HB 316’s drafting, “[t]ime was allotted for meetings with legislators about amendments to include in the bill and legislators from the majority party did not automatically reject ideas or decline to meet with advocates based on their constituencies.” Not only is this characterization of HB 316’s drafting argumentative and subjective—making it inappropriate for inclusion in a statement of material facts, for reasons already discussed—but even to the extent the statement can be considered factual, it still fails to distinguish HB 316’s drafting from that of SB 202. Contrary to Plaintiffs’ complaints, SB 202 *was* substantially influenced by input from Democrats and other advocates of

looser voting rules. *See* State Defs.’ Reply in Support MSJ on Discriminatory Intent Claims at 38, 48–49; Defs.’ Resp. to ¶ 126, *supra*.

178. Only 46 election bills were introduced in 2019, not 100 as in 2021. Ex. 154 (Ga. Gen. Assemb., *Legislation Search, 2019-2020 Regular Session, Elections*, <https://www.legis.ga.gov/search?k=&s=27&t=21&p=1>).

**RESPONSE:** Disputed, but immaterial. According to the linked source, there were 50 election “bills” (apparently including resolutions, per Plaintiffs’ criteria, as revealed by the link) introduced in 2019; Plaintiffs’ search of the General Assembly’s website shows 70 election measures introduced during the 2019-20 session, 20 of which were introduced in 2020: HB 757, HB 812, HB 902, HB 1102, HB 1126, HB 1172, HB 1238, HR 1621, SB 351, SB 409, SB 414, SB 429, SB 436, SB 455, SB 463, SB 487, SB 499, SB 521, SB 524, and SR 970. The assertion that 100 election bills were introduced in 2021 was addressed in State Defendants’ response to PSOF ¶ 124, *supra*. At any rate, the number of election bills introduced in 2019 or 2021 is immaterial to the intent behind SB 202, for reasons stated in State Defendants’ response to ¶ 128, *supra*.

179. During the 2021 legislative session, legislators and witnesses similarly requested that the legislature not rush to pass SB 202 or its predecessor bills, and instead take the next legislative session to fully examine the impact of the proposed election law changes. Ex. 5 (Hugley Decl. ¶¶ 14-15); Ex. 120 (Mar. 25, 2021 SB 202 H. Fl. Debate Tr., AME\_001840:8-15 (Rep.

Alexander)); Ex. 118 (Mar. 18, 2021 H. EIC Hr’g Tr., AME\_001578:10-15, AME\_001591:21-1592:1 (Marilyn Marks)); Ex. 131 (Mar. 16, 2021 Sen. Ethics Comm. Hr’g Tr., AME\_001378:17-21 (Cindy Battles)).

**RESPONSE:** Disputed in part, but immaterial. Undisputed that Marks, Rep. Alexander, and Battles argued that the Legislature should prolong the drafting process, though the cited paragraphs of Rep. Hugley’s declaration do not mention anyone making such a request to the Legislature. Regardless, this assertion is immaterial because, during the 2019 session, “legislators and witnesses similarly requested that the legislature not rush to pass” HB 316 or “its predecessor bills.” *See supra*, Resp. ¶¶ 136, 177. The fact that, according to Plaintiffs, similar calls to prolong consideration of bills occurred during SB 202’s drafting means that such calls did not evince a “procedural departure” on the General Assembly’s part.

180. In 2021, calls for a study commission to examine the election reform recommendations went unheeded in 2021. *See* Ex. 49 (Bailey 10/6/22 Dep. 64:23-65:14); Ex. 221 (Email from L. Bailey to Representative Fleming, “Input to Legislation” (Mar. 18, 2021), BAILEY-000028-29).

**RESPONSE:** Undisputed, but immaterial.

181. Black and AAPI voters are less likely than white voters to be on the “rollover” list. Ex. 113 (Grimmer Rep. 87 & Tbl. 11).

**RESPONSE:** Undisputed, but immaterial. Participation on the rollover list is voluntary for those eligible to participate. *See* O.C.G.A. § 21-2-381(a)(1)(G) (permitting “[a]ny elector meeting criteria of advanced age or disability specified by rule or regulation of the State Election Board” to request absentee ballots for an entire election cycle).

182. Efforts by the Secretary of State and county election officials to send absentee ballot applications to all active voters during the 2020 election cycle “incentivized many Black voters, who had traditionally preferred to vote in person, to mail in their ballots.” Ex. 4 (Burnough Decl. ¶ 13); *see also* Ex. 49 (Bailey 10/6/22 Dep. 119:16-120:6 (observing that the mailing contributed to “the volume of absentee ballots increas[ing] tremendously”)); Ex. 59 (Germany Dep. 57:12-16).

**RESPONSE:** Disputed in part, but immaterial. The Secretary of State and county election officials sending absentee-by-mail applications to all active voters at different points during the 2020 election cycle incentivized all voters, including those who had traditionally preferred to vote in person, to vote by mail. *See* Grimmer Rep. ¶ 57 (“Further, each group saw the highest share of mail voting in the 2020 election, with voters using mail voting at lower rates in the other elections.”), 50 fig. 2 (Defs.’ Ex. DDDD); *accord* Fraga Rep. 23 tbl. 2 (Defs.’ Ex. BBBB).



183. Then-General Counsel for the SOS, Ryan Germany, admitted in his deposition that the absentee voting process did not result in voter fraud. Ex. 59 (Germany Dep. 57:17-20).

**RESPONSE:** Disputed in part, but immaterial. While admitting that the absentee voting process did not result in widespread voter fraud, Germany did testify that the absentee voting process did result in widespread complaints of voter fraud. Germany 3/7 53:18–23 (Defs.’ Ex. HH) (“And even some of the things that -- when they talked about -- when democrats talked about voter suppression, republicans talked about voter fraud. But from our experience, my experience, Secretary of State’s Office, they were really quite similar actual things.”); *accord* Germany 10/30/23 Decl. ¶ 27 (Defs.’ Ex. B) (SOS sending unsolicited absentee applications led “to voter confusion at polling places [and] accusations of fraud”); Germany 5/20/22 VoteAmerica Decl. ¶ 22 (Defs.’ Ex. G) (“This resulted in many voters complaining to the State about these incorrect [prefilled absentee ballot] applications, where those voters repeatedly expressed confusion about the applications and concern that this was evidence that the election system was susceptible to voter fraud.”); Germany 7/27/23 Decl. ¶ 18 (Defs.’ Ex. C) (“For instance, lawsuits were filed ... alleging widespread voter fraud and ineligible voters voting, *Trump v. Raffensperger*, *Super. Ct. of Fulton Cty.*, No. 2020CV343255 (Dec. 4, 2020)[.]”).

184. Gabriel Sterling stated in his deposition that the SOS Office was not concerned about fraud in absentee voting before, during, or after sending unsolicited absentee ballot applications to all active registered voters for the June 2020 primary, and that no widespread voter fraud occurred with absentee voting in the 2020 elections. Ex. 69 (Sterling Dep. 55:14-17 (no widespread fraud in 2020 absentee voting), 60:15-61:6 (SOS not concerned about fraud before, during, or after sending AB applications prior to June 2020)); *see also* Ex. 36 (Gwinnett Cnty. Williams Dep. 77:7-10 (county election officials testifying they were unaware of any voter fraud occurring from the mailing of unsolicited or duplicate absentee ballot applications)); Ex. 18 (DeKalb Cnty. Dep. 67:8-11 (same)); Ex. 15 (Cobb Cnty. Dep. 185:16-19 (same)); Ex. 21 (Fulton Cnty. Dep. 114:12-14 (same)).

**RESPONSE:** Disputed in part, but immaterial. While there was no evidence of widespread voter fraud related to the SOS office sending out unsolicited absentee ballot applications in 2020, there were widespread complaints of fraud. Germany 10/30/23 Decl. ¶ 27 (Defs.' Ex. B) (SOS sending unsolicited absentee applications led "to leads to voter confusion at polling places [and] accusations of fraud"); *see also* Sterling 102:15–17 ("[M]ost studies show that if there is illegal voting, an opportunity for illegal voting, it's around the absentee ballot process."), 104:20–21 ("We were still existing in a [sic]

environment where confidence had been very severely undermined.”) (Defs.’ Ex. VVV).

185. In an April 2020 interview, then-Georgia House Speaker David Ralston criticized the SOS’s sending of unsolicited absentee ballot applications because they would “drive up turnout” in 2020 and lead to electoral outcomes he did not favor. Ex. 180 (*Live Call-In with House Speaker David Ralston*, YouTube (Apr. 1, 2020), USA-04145 at 19:55-21:44); *see also* Ex. 69 (Sterling Dep. 60:1661:11) (noting SOS Office’s awareness of Speaker Ralston’s opposition).

**RESPONSE:** Undisputed, but immaterial.

186. Counties with significant Black and Democratic-leaning populations, like Douglas, DeKalb, and Richmond Counties, proactively sent absentee ballot applications to registrants for the November 2020 election. Ex. 63 (Deposition of Milton Kidd [ECF 703] (“Kidd Dep.”) 49:6-25); Ex. 18 (DeKalb Cnty. Dep. 63:1723); Ex. 49 (Bailey 10/6/22 Dep. 49:7-50:1, 118:19-119:15).

**RESPONSE:** Undisputed, but immaterial. It is also undisputed that such mailings caused confusion and complaints from voters. Germany 10/30/23 Decl. ¶¶ 26–28, 31 (Defs.’ Ex. B); Sosebee 169:1 (Defs.’ Ex. R) (answering whether this practice caused voter confusion, “Yes because there were some voters who had received applications that had already completed applications for an absentee ballot”); Eveler 185:5–6 (Defs.’ Ex. T) (“Well,

actually, we received a lot of negative feedback [from voters][.]”); Kidd 53:7–12 (Defs.’ Ex. G hereto) (noting “negative feedback” from voters).

Voters expressed concern that these applications presented an open invitation for voter fraud—a concern exacerbated by voters believing that the applications themselves were actually ballots. Germany 5/20/22 VoteAmerica Decl. ¶ 42 (Defs.’ Ex. G); VoteAmerica Hr’g Tr. 20:3–5 (Defs.’ Ex. ZZZ); Kidd 190:6–22 (Defs.’ Ex. Y); Bailey 10/6 50:3–24 (Defs.’ Ex. FFF).

187. DeKalb and Douglas Counties cumulatively experienced an eight-fold increase in absentee voting as compared to the last presidential general election, substantially exceeding the six-fold statewide increase. Ex. 104 (Lichtman Rep. 19-20).

**RESPONSE:** Disputed because out of context, but immaterial. The statewide rate will naturally include Counties that exceeded that rate and below that rate because it is compiled from all the counties cumulatively. Without more context, that DeKalb and Douglas exceeded the statewide increase, tells us nothing about the *cause* of that increase, whether that increase was *significant* when compared to similarly situated Counties, and whether it had any relation to any particular policy.

With respect to the availability of absentee voting in 2020 there is no basis to think it had a significant impact on voter turnout. *See* Shaw 2/24 Rep. ¶ 24 (“But the political science literature suggests the effects of in-person early

voting on turnout are minuscule.”), ¶ 25 (“In most academic studies, the reported relationships between no-excuse absentee mail policies and turnout are null, or positive but modest, or negative.”), & 18 tbl. 1 (cataloguing studies) (Defs.’ Ex. LLLL).

Notably one study found that “nationwide, states that did not offer no-excuse absentee voting in 2020 saw turnout increases similar in magnitude to states that offered no-excuse absentee voting for the first time in 2020.” *Id.* ¶ 26 (quoting Jesse Yoder et al., *How Did Absentee Voting Affect the 2020 U.S. Election?*, 7 *Sci. Advances* eabk1755 (2021)). This suggests that “the salience of the election and the perception that one’s vote means something is much more important to turnout than what one needs to do in order to vote.” *Id.* ¶ 27.

188. According to State’s expert and former Richmond County Elections Supervisor Lynn Bailey, whose county sent pre-filled absentee ballot applications to all registered voters in the 2020 elections, election officials did not have any security concerns when they sent pre-filled absentee ballot applications to all registered voters in Richmond County, and were able to verify the “voter’s identity when [the applications] came in.” Ex. 49 (Bailey 10/6/2022 Dep. 49:7-50:1).

**RESPONSE:** Disputed as incomplete. Signature matching was still done. *See* O.C.G.A. § 21-2-381(b)(1) (2019) (requiring local election officials to

“compare the signature or mark of the elector on the application with the signature or mark of the elector on the elector’s voter registration card). Also, Ms. Bailey only testified that Richmond County sent unsolicited applications for the November election, not all “2020 elections” as Plaintiffs claim. Bailey 10/6 46:20–47:5 (Pls.’ Ex. 49). Plaintiffs’ statement also omits that Ms. Bailey testified that this caused voter confusion upon receiving multiple unsolicited absentee ballot applications. *Id.* at 50:3–7 (noting that “voters were getting applications from -- they would come in with a collection of five or six, and it was confusing”); *see also id.* at 50:21–24 (“But the biggest problem was the number of duplicate applications that came in for absentee ballots and the general voter confusion.”).

189. Distributing unsolicited absentee ballot applications decreases the costs of voting because it “ma[d]e it easier to vote,” Ex. 69 (Sterling Dep. 53:310), and such mailings reminded voters “to start to pay attention again to the electoral process.” Ex. 63 (Kidd Dep. 52:20-24).

**RESPONSE:** Disputed, but immaterial. The sending of unsolicited absentee-ballot applications caused a significant increase in the number of duplicate applications being submitted to county election officials in addition to causing widespread confusion among voters, cancellation of numerous absentee ballots, and numerous complaints of fraud. Germany 10/30/23 Decl. ¶¶ 26–28, 31 (Defs.’ Ex. B); Germany 5/20/22 VoteAmerica Decl. ¶¶ 30–32

(Defs.' Ex. G) (cancellation slowed down and burdened County officials as well as fed into voter distrust of election integrity); Bailey 10/6 50:3–7 (Pls.' Ex. 49) (noting that “voters were getting applications from -- they would come in with a collection of five or six, and it was confusing”); *see also id.* at 50:21–24 (“But the biggest problem was the number of duplicate applications that came in for absentee ballots and the general voter confusion.”); Sosebee 169:1 (Defs.' Ex. R) (answering whether this practice caused voter confusion, “Yes because there were some voters who had received applications that had already completed applications for an absentee ballot”); Eveler 185:5–6 (Defs.' Ex. T) (“Well, actually, we received a lot of negative feedback [from voters][.]”); Kidd 53:7–12 (Defs.' Ex. G hereto) (noting “negative feedback” from voters).

This required election officials to divert their finite resources to processing many unnecessary absentee-ballot applications. VoteAmerica Hr'g Tr. 28:16–21 (Defs.' Ex. ZZZ); Germany 10/30/23 Decl. ¶¶ 60-61 (Defs.' Ex. B). In fact, in the 2020 general election, there was a higher rate (about 15%) of voters cancelling their requested absentee ballots and chose to vote in person than the corresponding rates in 2018 and 2022 (4.3% and 3.6%, respectively). Grimmer Rep. ¶¶ 98–99 (Defs.' Ex. DDDD).

190. In the context of absentee ballot applications, election officials have testified that official absentee ballot applications sent directly from the

state or county decrease confusion and increase efficiency. Ex. 15 (Cobb Cnty. Dep. 284:21-285:1).

**RESPONSE:** Disputed. The unsolicited absentee ballot applications resulted in numerous duplicate applications, cancellation of numerous absentee ballots, and complaints of fraud. *See supra*, Resp. ¶ 189.

191. Election officials reported increased work due to SB 202, including canceling absentee ballot applications that were submitted too early and answering numerous questions about how to navigate the new process. Ex. 13 (Athens-Clarke Cnty. Dep. 88:24-25, 226:10-227:5).

**RESPONSE:** Disputed in part. While the representative of Athens-Clarke testified to increased work as noted, other counties found election procedures much easier under the provisions of SB 202, far fewer cancellations of absentee ballots, fewer rejected applications, and fewer duplicate applications. Eveler 197:7–14 (Defs.’ Ex. T) (complaints re: duplicate applications stopped in 2022); Germany 10/30/23 Decl. ¶ 99 (Defs.’ Ex. B); Grimmer Rep. ¶¶ 179–180 (Defs.’ Ex. DDDD) (significant drop in the percentage of duplicate absentee ballot applications after SB 202).

And the number of mail-in absentee ballots that were canceled and then voted in person declined significantly after SB 202. Grimmer Rep. ¶ 11 (Defs.’ Ex. DDDD). “In the 2022 election, the number of mail-in absentee ballots that were canceled and subsequently voted on Election Day dropped to lower levels



than in 2018 and 2020 and the share of mail-in absentee ballots that were canceled and subsequently voted on Election Day dropped to lower levels than in 2016, 2018, and 2020.” *Id.*; see also *id.* at 73 tbl. 13 (reproduced below)

Race	2014	2016	2018	2020	2022
American Indian	0.0149	0.0117	0.0139	0.0292	0.0114
Asian	0.0082	0.0054	0.0177	0.0193	0.0061
Black	0.0103	0.0089	0.0200	0.0168	0.0062
Hispanic	0.0129	0.0220	0.0337	0.0343	0.0124
White	0.0057	0.0051	0.0076	0.0149	0.0054
Overall	0.00809	0.00724	0.0151	0.0169	0.00596

Table 13: Share of Mail in Absentee Ballot Applications that are Ultimately Canceled, with Applicant Voting in Person at the Polling Place

Thus, the record confirms the decreased burden on counties from the cancellation of absentee ballots.

192. Election officials noted that SB 202’s additional “complications” in requesting and casting an absentee ballot “impact[] the voters more than [they] impact[]” election officials. Ex. 21 (Fulton Cnty. Dep. 108:3-8).

**RESPONSE:** Disputed in part. While that was the testimony of the representative of Fulton County, other counties and election officials noted there were fewer complaints related to absentee ballot requests, duplicate applications, or claims of fraud. Eveler 197:7–14 (Defs.’ Ex. T) (complaints re: duplicate applications stopped in 2022); Sosebee 225:19–25 (Defs.’ Ex. C hereto) (SB 202 absentee provisions did not make it more difficult to vote

absentee); Germany 10/30/23 Decl. ¶ 99 (Defs.' Ex. B); Watson 179:10–14, 183:3–5 (Defs.' Ex. XXX) (no issues with ballot return provisions after SB 202); Germany 6/29/23 Decl. ¶ 21 (Defs.' Ex. D) (SOS didn't receive complaints about dropboxes following SB 202); Mashburn 3/7 83:18–21 (Defs.' Ex. JJ) (same for SEB).

193. Gabriel Sterling noted that some absentee ballot applications sent from the state were not clearly marked as applications and that, “looking back, we might have made that clearer.” Ex. 69 (Sterling Dep. 56:6-9).

**RESPONSE:** Undisputed, but immaterial. SB 202 resolved this issue by ensuring that election officials only send applications to those who request them. *See* O.C.G.A. § 21-2-381(a)(1)(C)(ii). Also, Plaintiffs omit that local election officials received lots of calls and complaints in 2020 believing the later applications were actually ballots. Germany 10/30/23 Decl. ¶¶ 58, 67 (Defs.' Ex. B); Watson 178:11–179:4, 200:23–201:13 (Defs.' Ex. XXX); Kidd 190:6–22 (Defs.' Ex. Y); Bailey 10/6 50:3–24 (Defs.' Ex. FFF).

194. Cobb County Elections Supervisor Janine Eveler noted that the absentee ballot application process would be less confusing and result in fewer errors if voters had received and relied upon official applications sent by the state. Ex. 15 (Cobb Cnty. Dep. 185:5-10).

**RESPONSE:** Undisputed, but immaterial. SB 202 resolved this issue by ensuring that election officials only send applications to those who request

them and requiring third parties who send unsolicited applications to make it clear the application was sent from them and not any government official, avoid duplications, and not pre-fill the application. *See* O.C.G.A. § 21-2-381(a)(1)(C)(ii).

195. For the November 2020 election, the SOS Office created an online absentee-by mail application portal (“online portal”). Ex. 183 (Ga. SOS Press Release, “Secretary of State Raffensperger Unveils New Online Absentee Ballot Request Portal” (Aug. 31, 2020), CDR00210329-31).

**RESPONSE:** Undisputed. This was only authorized as part of the Emergency Authorization in response to the COVID-19 pandemic. *See* Ga. Comp. R. & Regs. 183-1-14-0.10 to .16 (2020).

196. The online portal, activated on August 31, 2020, allowed “Georgia voters with a driver’s license or state ID card . . . to request an absentee ballot entirely online.” Ex. 313 (Ga. SOS Press Release, “Secretary of State Raffensperger Unveils New Online Absentee Ballot Request Portal” (Aug. 31, 2020), CDR00210329-31).

**RESPONSE:** Undisputed, but immaterial.

197. The online portal is only in English. Ex. 100 (Lee Rep. 81-83).

**RESPONSE:** Undisputed, but immaterial.

198. Educational materials regarding SB 202’s changes to the procedure for utilizing absentee ballots were only in English. Ex. 33 (SOS Dep.

41:3-11); Ex. 15 (Cobb Cnty. Dep. 186:3-10); Ex. 21 (Fulton Cnty. Dep. 118:14-21).

**RESPONSE:** Disputed in part, but immaterial. The cited portion of Mr. Germany's testimony does not support this allegation. State-issued educational materials were in English except in locations where the law required they be in Spanish. *See* 52 U.S.C. § 10503 (bilingual voting requirements under the Voting Rights Act). Other third-party groups provided educational material in other languages. Kabani 95:1–20 (community outreach done in other languages); 146:7–22 (detailing Language Justice Campaign efforts in DeKalb County) (Defs.' Ex. H hereto); Nguyen 42:15–16 (“And we do all of our outreach in multiple languages[.]”), 57:16–24 (created FAQ for voters post SB 202 and translated it into “four other languages”), 66:5–10 (explaining that they translate “mailers to voters, walk cards, [and] all of our elections resources”) (Pls.' Ex. 12).

199. In the November 2020 election, voters of color under 65 years old used the SOS online portal to submit their absentee-by-mail applications at lower rates than white voters, with 45.9% of white applicants submitting their application via the portal, compared with 22.4% of Black applicants, 27.2% of Hispanic applicants, and 29.8% of AAPI applicants. Ex. 96 (Fraga Rep. ¶ 76 & Tbl. 4).

**RESPONSE:** Undisputed, but immaterial. The online portal was only one option for requesting an absentee-by-mail ballot for the November 2020 general election. *See* Ga. Comp. R. & Regs. 183-1-14-.12 (2020) (laying out requirements for submissions made in writing). Also as Dr. Grimmer explains, “Dr. Fraga has no data on the use of third-party mail-in absentee ballot application usage.” Grimmer Rep. ¶ 178 (Defs.’ Ex. DDDD).

200. Given that the online portal is only in English and contains complex, lengthy, and technical language, AAPI voters who face language barriers or are attempting to vote for the first time are likely to experience a high error or abandonment rate. Ex. 100 (Lee Rep. 84).

**RESPONSE:** Disputed, as the statement is purely speculative. That someone with low English language proficiency may have a more difficult time navigating any online portal only in English, that is not unique to AAPI voters and has nothing to do with being a first-time voter, a characteristic unrelated to a person’s race or English proficiency. Also, this speculation is inconsistent with the fact that “[i]n the 2022 midterm election, Asian voters cast the largest share of their ballots by mail-in absentee voting, 9.24%.” Grimmer Rep. ¶ 64 (Defs.’ Ex. DDDD).

201. During the 2018 election, Courts in this District held, in two separate decisions, that requiring birth year information violated the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B). *See*

*Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018); *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324 (N.D. Ga. 2018).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required. Further, as set out in State Defendants’ Motion for Summary Judgment, these decisions are not applicable as more recent decisions from the Third and Fifth Circuits make clear. *See Vote.Org v. Callanen*, 89 F.4th 459, 489 (5th Cir. 2023) (upholding Texas’s wet signature requirement against Materiality Provision challenge); *Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, 97 F.4th 120, 135 (3d Cir. 2024) (upholding Pennsylvania’s signature date requirement against Materiality Provision challenge). Further, the year of birth was not a consistent requirement in Georgia at the time those decisions were rendered; the statute merely gave counties the option to require it, and enforced at the counties’ discretion *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1306 (N.D. Ga. 2018) (“Defendant Crittenden’s predecessor has previously conceded that some counties require a voter’s year of birth for identification purposes but ‘where the year of birth is not necessary to confirm the identify of a voter, it is not otherwise required by O.C.G.A. § 21-2-386(a)(1)(C).’”).

202. Following the *Crittenden* decisions, the Secure, Accessible & Fair Elections (“SAFE”) Commission, established by Defendant Brian Kemp (then Secretary of State, and now Governor), recommended changes to Georgia

voting law. The Commission found that Georgia should update its voting laws to “make clear that slight variations in any information on the envelope not be a reason to reject an absentee ballot unless the variation does not allow the election official to identify the voter and confirm that the voter cast the ballot.” Ex. 157 (SAFE Commission Report 3).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required.

203. In 2019, following the Commission’s recommendations, the Georgia General Assembly passed, and the Governor signed, House Bill 316 (“HB 316”), which removed the requirement that voters write their birth year on ballot return envelopes. Ex. 152 (HB 316 § 30). Nonetheless, this was not a uniform requirement, but rather an option given to the counties to require. *See supra* Resp ¶ 201. Repealing the statute removed that option from the counties.

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required.

204. HB 316 “resulted in a significant decrease in the percentage of absentee ballots that were rejected at the outset” in the 2020 General Election as compared to the 2018 General Election, in part because “[t]here were quite a number in 2018 that were rejected for that missing [birthdate] information.” Ex. 325 (Oral Argument Transcript from *Wood v. Raffensperger et al.*, No. 20-cv-4651-SDG (N.D. Ga. Nov. 19, 2020), ECF. No. 64, at 51:12-15).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required.

205. Just a few months before SB 202's enactment, counsel for the Secretary of State and members of the Georgia State Election Board confirmed that HB 316 had "resulted in a significant decrease in the percentage of absentee ballots that were rejected at the outset" in the 2020 General Election as compared to the 2018 General Election, in part because "[t]here were quite a number in 2018 that were rejected for that missing [birthdate] information." Ex. 325 (Oral Argument Transcript from *Wood v. Raffensperger et al.*, No. 20-cv-4651-SDG (N.D. Ga. Nov. 19, 2020), ECF No. 64, at 51:12-15).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required.

206. SB 202's birthdate requirement is not used to determine whether an individual is "qualified" to vote under Georgia law; rather it is used to verify that the absentee ballot was voted by the elector who requested the ballot. Ex. 326 (State Resp. to NGP's 1st ROGs (May 16, 2022) at 3); Ex. 18 (DeKalb Cnty. Dep. 213:2-13); Ex. 35 (30(b)(6) Deposition of Gwinnett County (Zachary Manifold) [ECF 712] ("Gwinnett Cnty. Manifold Dep.") 116:24-117:22); Ex. 13 (Athens-Clarke Cnty. Dep. 76:10-3).

**RESPONSE:** Undisputed in part, but immaterial. Verifying voter identification on the absentee-ballot-return envelope protects against fraud,



promote the actual and perceived integrity of the election process, and create a uniform and objective means of verifying a voter's identity. Germany 10/30/23 Decl. ¶ 81, 84–86 (Defs.' Ex. B); Sterling 102:11–18, 104:17–105:2, 194:17–195:2 (Defs.' Ex. VVV); Bailey 10/6 91:21–92:5 (Defs.' Ex. FFF); Bailey 3/21 111:1–15 (Defs.' Ex. GGG). Every voter has his/her date of birth associated with their voter file. Germany 10/30/23 Decl. ¶ 83 (Defs.' Ex. B). The date of birth on the absentee ballot return envelope is used to determine the voter's identity when returning a completed absentee ballot and is part of every voter's voter file. *Id.* ¶ 83. Date of birth also distinguishes between people of the same name living in the same house, such as a father and son. Bailey 3/21 178:15–25 (Defs.' Ex. GGG). County poll workers routinely use a voter's date of birth as part of the verification process. Bailey 10/6 197:6–15 (Defs.' Ex. FFF) (DOB one of things to consider when verify identity); K. Williams 48:6–9 (Defs.' Ex. LL); Manifold 112:22–113:2, 116:24–117:1 (Defs.' Ex. MM); Wurtz 48:5–8 (Defs.' Ex. NN). And the voter must provide basic identifying information, including the voter's date of birth, on the absentee ballot return envelope to confirm the voter's identity and ensure the person returning the ballot is the person to whom the ballot was issued. State Defs.' SOF ¶ 512 [Doc. 755]; Germany 10/30/23 Decl. ¶¶ 81, 84–85 (Defs.' Ex. B).

And Plaintiffs citations confirm that the requirement is used to verify identity. State Resp. to NGP Pls. 1st Interrog. No. 1 (Pls.' Ex. 326) (affirming

that the requirement is used to verify identity); K. Smith 213:2–13 (Pls.’ Ex. 18) (affirming that eligibility is determined at registration); Manifold 116:24–117:1 (Defs.’ Ex. MM) (“Q: So to confirm, the date of birth requirement is to verify the identity of the voter? A: Correct.”); Sosebee 77:21–23 (Defs.’ Ex. C hereto) (answering whether birthdate needed to verify identity “I’m going to say yes because you want to make sure you’re issuing a ballot to the correct person”).

207. In the context of applying for absentee ballots, Cobb County Elections Supervisor Janine Eveler expressed concern that voters may accidentally write the wrong date on the application instead of their own birthdate. Ex. 49 (Bailey 10/6/22 Dep. 187:1-12).

**RESPONSE:** Undisputed, but immaterial. There is no evidence offered on the number, if any, of voters who listed the date the application was completed rather than the voter’s date of birth when the application clearly states what is being requested.

208. State’s expert and former Richmond County Elections Supervisor Lynn Bailey testified that based on experience, “it’s not uncommon for voters to put the current date of birth, or particularly the year of birth, to put the current year rather than their actual year of birth.” Ex. 49 (Bailey 10/6/22 Dep. 188:18-189:6).

**RESPONSE:** Undisputed that this was her testimony but immaterial. There is no evidence offered on the number, if any, voters who listed the date the application was completed rather than the voter's date of birth when the application clearly states what is being requested. Also, Ms. Bailey still supported requiring voters to put the day and month of their birthdate. Bailey 10/6 188:9–12 (Pls.' Ex. 49). Ms. Bailey also testified that requiring the date of birth also distinguishes between people of the same name living in the same house, such as a father and son. Bailey 3/21 178:15–25 (Defs.' Ex. GGG). And she testified that County poll workers routinely use a voter's date of birth as part of the verification process. Bailey 10/6 197:6–15 (Defs.' Ex. FFF) (DOB one of things to consider when verify identity).

209. In the 2022 elections, in just seven counties, over a thousand absentee ballots were rejected for the purported lack of a birthdate. Ex. 308 (Declaration of Laurence Pulgram dated January 12, 2023 ("Pulgram Decl.") ¶¶ 3-32, Exs. 1-20); Ex. 254 (Hall Cnty. Resp. to AME 1st ROGs (Jan. 11, 2023) at 1, 5-14); Ex. 327 (Athens-Clarke Cnty. Resp. to AME 1st ROGs (Jan. 11, 2023) at 9-1, Ex. A); Ex. 328 (Chatham Cnty. Resp. to AME 1st ROGs (Jan. 23, 2023) at 3-6); Ex. 329 (Cobb Cnty. Resp. to AME 1st ROGs (Jan. 19, 2023) at 1, 4-8); Ex. 330 (Fulton Cnty Resp. to AME 1st ROGs (Jan. 11, 2023) at 1, 3-10); Ex. 331 (Richmond Cnty. Resp. to AME 1st ROGs (Jan. 11, 2023) at 1, 4-14); *see also* Prelim. Inj. Ord. (Aug. 18, 2023) at 12, ECF No. 613.

**RESPONSE:** Undisputed, but immaterial. This represents .46% of all absentee ballots submitted during the 2022 general election and .82% in all mail-in absentee ballots in the 2022 runoff election. Grimmer Rep. ¶¶ 165–66 & tbls. 24 & 25 (Defs.’ Ex. DDDD) (reproduced below).

Race	Number Rejected	Rejected Rate
American Indian	4	0.0062
Asian	48	0.0062
Black	467	0.0059
Hispanic	18	0.0043
White	484	0.0036
Overall	1,145	0.0046

Table 24: Number of mail absentee ballots rejected due to missing or improper identification in 2022 general election, by self-reported racial group and overall.

Race	Number Rejected	Rejected Rate
American Indian	3	0.0072
Asian	65	0.0138
Black	467	0.0083
Hispanic	22	0.0095
White	890	0.0079
Overall	1,570	0.0082

Table 25: Number of mail absentee ballots rejected due to missing or improper identification in the December 2022 runoff election, by self-reported racial group and overall.

These data make clear that there were no “consistent differences across self-reported racial groups in the rates returned mail-in absentee ballots are rejected because of identification-related reasons.” *Id.* ¶ 166 (noting a .23

percentage point gap between Black and white voters in the general election but a .04 percentage point difference in the runoff).

210. In Gwinnett County alone, for instance, in a single run-off election, at least 218 absentee ballots were rejected for purportedly lacking a correct birthdate—accounting for roughly 75% of all rejected absentee ballots for that runoff, *see* Ex. 308 (Pulgram Decl. ¶ 10, Ex. 4); *see also id.* ¶¶ 14-15 (Ex. 8 (Gwinnett Spreadsheet)), even though Gwinnett County’s interrogatory responses stated that “0” absentee ballots were rejected for lack of a correct birthdate, Ex. 343 (Gwinnett Cnty. Resp. to AME 1st ROGs (Jan. 24, 2023) at 9). That was because Gwinnett County does not “separate” out absentee ballot exclusions based on the birthdate requirement. Ex. 35 (Gwinnett Cnty. Manifold Dep. 114:19115:11, 117:23-119:17).

**RESPONSE:** Undisputed, but misleading as stated. Plaintiffs fail to note the number of ballots cured by voters and fail to note that rejections due to identification issues of any typer are exceedingly rare. *See* Grimmer Rep. ¶¶ 165–66 & tbls. 24 & 25 (Defs.’ Ex. DDDD).

211. And in Cobb County, notice letters were issued to 759 voters indicating that their absentee ballots were rejected in the 2022 elections based on missing or incorrect birthdates. Ex. 308 (Pulgram Decl. ¶ 20). That same year Cobb County also notified 435 voters that their absentee ballots were rejected for listing identifying information that did not match the county’s

system records and advised 106 additional voters that their absentee ballots were rejected due to missing or mismatched signatures. *Id.* ¶¶ 23, 25, 27. Only 646 of these 1,300 voters submitted affidavits to Cobb County to cure their rejected ballots, and at least 146 of those 646 cure attempts were likely not successful given they failed to include copies of an ID (as required by O.C.G.A. § 21-2-386(a)(1)(C)), post-dated the statutory cure deadline, or lacked signatures. *Id.* ¶¶ 31-32. Because Cobb County seemingly did not maintain records of failed cure attempts, there is no indication that these impacted voters were able to cure their absentee ballots after rejection. *Id.* ¶ 32. Indeed, over 70 ballot rejection notices were mailed the same day as or one day before expiration of the cure period, and dozens more rejection notices were only mailed to voters between four and seven days *after* any opportunity to cure had expired. *Id.* ¶ 30.

**RESPONSE:** Disputed in part. Plaintiffs' claim that there is no indication that voters were able to cure their absentee ballots after rejection, but the cited material admits that voters submitted 646 cure affidavits and goes on to survey them. Pulgram Decl. ¶¶ 30–32 (Pls.' Ex. 308). Similarly, Plaintiffs claim of “dozens more” sent on or after the deadline for voting is unsupported by the record evidence they cite. The total that Plaintiffs identify is 93 letters out of 1,342 total rejection letters, or 6.93%. *Id.* ¶¶ 19, 30. And, of course, these mistakes are not authorized by SB 202, which instructs the

registrar or clerk to “promptly contact the elector in writing.” O.C.G.A. § 21-2-381(b)(4); *see also* O.C.G.A. § 21-2-384(a)(2) (“During the period for advance voting set forth in Code Section 21-2-385, the board of registrars or absentee ballot clerk shall make such determinations and mail or issue absentee ballots, provisional absentee ballots, and notices of rejection of application *within three days after receiving a timely application* for an absentee ballot.” (emphasis added)). Additionally, Plaintiffs do not indicate when these ballots were submitted so the late cure notices could be caused by the Counties receiving the ballots late.

212. “[U]nder 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.” Ga. Op. Att’y Gen. No. 2005-3, 2005 WL 897337, at \*3 (Apr. 15, 2005).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion and is not separately numbered.

213. The Secretary of State “organizes and oversees all election activity, including voter registration, . . . municipal, state, county, and federal elections . . . [,] [is] responsible for certification of election results [and] qualification of candidates. . . 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.” Ga. Sec’y of State, *About the Elections Division*, <https://sos.ga.gov/page/about-elections-division>, last visited Jan. 19, 2024.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion and is not separately numbered.

214. An injunction directed at the Secretary of State addressing election procedures can reduce Plaintiffs’ burden of assisting voters and “clarif[y] the legal requirements surrounding absentee ballots or clarif[y] the curative procedures for provisional ballots can reduce the number of rejected ballots.” *Democratic Party of Ga., Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1338 (N.D. Ga. 2018).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion, is not materials to the claims and defenses in this case and is not separately numbered.

215. The Secretary of State issues and periodically updates a Poll Worker Manual which is “used as a guide for the administration of elections conducted by county election officials for poll workers.” Ex. 232 (Poll Worker Manual (May 2021), CDR01369922-CDR01370025).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.



216. Counties generally do what they are told to do by the State Election Board, without necessity of separate enforcement proceedings. Ex. 34 (SEB Dep. 195:10, 257:24-258:4); Ex. 21 (Fulton Cnty. Dep. 257:24-258:4, 270:10-12); Ex. 15 (Cobb Cnty. Dep. 275:20-23); Ex. 18 (DeKalb Cnty. Dep. 206:8-12).

**RESPONSE:** Objection. The fact is not proper evidence as it is speculative and does not comply with L.R. 56.1(B)(1) because it is not separately numbered, and is not material to the claims and defenses in this case.

217. Counties are subject to sanction by the State Election Board, including the imposition of civil penalties, if they violate any state election law. Ex. 33 (SOS Dep. 219:21-25); O.C.G.A. § 21-2-33.1(a). The State Election Board may take remedial action against counties without a court order. Ex. 34 (SEB Dep. 192:18193:13).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and is a legal conclusion. The State Election Board can impose the penalties authorized by statute.

218. Several election officials informed legislators of their opposition to the 11-day absentee ballot request deadline in SB 202 and its predecessor bills and advocated instead for a 7- or 8- day deadline and a provision allowing applications from voters with last-minute emergencies. *See, e.g.,* Ex. 216

(Adams Survey at USA-ADAMS-000027.0003 (noting election officials in at least 34 counties opposed the 11-day absentee ballot request deadline, 11 of whom wanted to keep the 3-day deadline, and 23 advocated for a date closer to Election Day that was less “punitive” on voters)); *see also* Ex. 47 (Adams Dep. 152:9-153:7, 163:3-165:19); Ex. 128 (Feb. 19, 2021 H. EIC Hr’g Tr., AME\_000204:20-205:19 (Richmond Cnty. Elections Supervisor L. Bailey), AME\_000228:10-229:9-16 (Lowndes Cnty. Elections Supervisor D. Cox)); Ex. 221 (Email from L. Bailey to Representative Fleming, “Input to Legislation” (Mar. 18, 2021), BAILEY-000028-29); Ex. 49 (Bailey 10/6/22 Dep. 111:25-113:13); Ex. 129 (Feb. 22, 2021 H. EIC Hr’g Tr., AME\_000360:3-360:10 (Bartow County Elections Supervisor Joseph Kirk)); Ex. 224 (Email from J. Kirk to House Special Committee on Election Integrity members, “Comments from Election Supervisor on Substitute to SB 202” (Mar. 21, 2021), USA-ADAMS-000043.0001-44.0002); Ex. 118 (Mar. 18, 2021 H. EIC Hr’g Tr., AME\_001629:8-12 (Heard Cnty. Elections Supervisor T. Adams)); Ex. 202 (Email from T. Adams to House Special Committee on Election Integrity members, “HB 270” (Feb. 10, 2021) USA-ADAMS-000062.0001 (informing legislators of concerns that an 11-day absentee deadline, without adequate provisions for cases of emergency, would unnecessarily burden voters, stating, “I can find no reason to change the current code . . .”)).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). In addition, the fact does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and includes multiple facts that are not separately numbered, and the evidence cited does not support the fact stated.

219. In November 2020 and January 2021, Black, Hispanic, and AAPI applicants were more likely than white applicants to request absentee ballots during the now-eliminated period. Ex. 96 (Fraga Rep. ¶¶ 109-110 & Tbls. 9-10).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case and is not separately numbered.

220. In November 2020, more than 30,000 mail ballot applications, including 12,664 requests from Black applicants, 1,529 from Hispanic applicants, and 1,721 from AAPI applicants, were submitted later than the new absentee ballot request deadline enacted in SB 202. Ex. 96 (Fraga Rep. ¶ 110 & Tbl. 10).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case and is not separately

numbered. In addition, the facts as stated are based on incomplete underlying data.

221. In general elections before SB 202, Black voters' mail ballot applications were more likely than white voters' to be rejected for arriving too late. Ex. 96 (Fraga Rep. ¶ 99, Tbl. 7).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(--)  
is not material to the claims and defenses in this case and is not separately  
numbered. In addition, the facts as stated are based on incomplete underlying  
data.

222. Under SB 202's rules, absentee ballot applications from AAPI registrants in 2020 would have accounted for 5.2% of all late absentee ballot applications, a proportion higher than that of AAPI registrants who voted in 2020. Ex. 101 (Lee Rebuttal Rep. ¶ 7).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1)  
because it is not material to the claims and defenses in this case and the facts  
as stated are based on incomplete underlying data.

223. In post-SB 202 elections, absentee ballot applicants are far more likely to have their ballots rejected due to the application being late. Ex. 96 (Fraga Rep. ¶ 100). In November 2022 that rejection rate rose to 25.9%, and in December 2022, the rate of absentee ballot application rejections was 30.6%—

approximately three times higher than the highest pre-SB 202 rate of 9.5% (from November 2020 and January 2021). *Id.* ¶ 101 & Tbl. 7.

**RESPONSE:** Objection. The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

224. County officials reported that absentee ballot rejection rates increased in post-SB 202 elections and that the primary reason ballots were rejected was due to being received either too early or too late. Ex. 37 (30(b)(6) Deposition of Hall County (Lori Wurtz) [ECF 713] (“Hall Cnty. Dep.”) 51:1-54:23); Ex. 254 (Hall Cnty. Defendants’ Responses to AME Plaintiffs First Interrogatories, Interrogatory No. 2 (January 11, 2023)); Ex. 330 (Fulton Cnty. Defendants’ Responses to AME Plaintiffs First Interrogatories, Interrogatory No. 2 and 3, (January 11, 2023)); Ex. 51 (30(b)(6) Deposition of Columbia County (Nancy Gay) [ECF 701] (“Columbia Cnty. Dep.”) 49:18-51:23).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). In addition, the fact relies on incomplete underlying data. The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

225. In the 2022 midterm elections, Black and Hispanic applicants for absentee-by-mail ballots were more likely than white applicants to have their ballots rejected due to the application being late. Ex. 96 (Fraga Rep. ¶¶ 99-100 & Tbl. 7). The percent of rejected absentee-by-mail applications whose “Status Reason” for rejection indicated the application was received after the absentee ballot application deadline was 24.2% in November 2022 and 26.7% in December 2022 for white voters, compared with 28.5% in November 2022 and 38.4% in December 2022 for Black voters, and 32.1% in November 2022 and 36.8% in December 2022 for Hispanic voters. *Id.* ¶ 99, Tbl. 7.

**RESPONSE:** Objection. The fact relies on incomplete underlying data and is therefore based on speculation. The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

226. For AAPI voters, the share of mail ballot applications rejected for arriving too late jumped by 12 percentage points from the November 2020 to the November 2022 general election, and by 17.2 percentage points from the January 2021 to December 2022 runoff election. Ex. 96 (Fraga Rep. ¶¶ 99-100 & Tbl. 7). AAPI applicants had their rate of rejection more than double (November 2022) and triple (December 2022) relative to the pre-SB 202 rates. *Id.* ¶¶ 102 & Tbl. 7.

**RESPONSE:** Objection. The fact relies on incomplete underlying data and is therefore speculative. The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

227. A majority of days of the now-eliminated absentee ballot request period during the November 2020 election, more than half (52%-59%) of each day's requested absentee ballots were cast and counted—totaling more than 16,000 ballots. Ex. 87 (Burden Supp. Decl. 4-5 & Tbl. 1). Even on the Friday before Election Day, about one-third of requests resulted in mail ballots that were counted. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

228. The State's data do not account for voters who did not submit an absentee-by-mail ballot application or absentee-by-mail ballot at all because they knew they had missed (or would miss) the deadline. *See* Ex. 252 (9/22/23 Prelim. Inj. Hr'g Tr. 265:17-266:18).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case and is not separately numbered.

229. Before SB 202, counties could start distributing absentee ballots 49 days before the election—the same date that counties typically distributed Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) ballots; however, now under SB 202, counties begin distributing UOCAVA ballots 49 days before election day, while regular absentee ballots cannot be mailed out until the 29th day before election day. Ex. 63 (Kidd Dep. 111:19-25, 180:5-22); Ex. 15 (Cobb Cnty. Dep. 270:3-20); Ex. 35 (Gwinnett Cnty. Manifold Dep. 144:4-146:7). Several county officials expressed concern that these timing changes further complicate the administration of absentee voting and unnecessarily increase the burden on election workers in the lead up to election day. Ex. 15 (Cobb Cnty. Dep. 172:2-17; 270:3-20); Ex. 35 (Gwinnett Cnty. Manifold Dep. 146:1-147:2); Ex. 18 (DeKalb Cnty. Dep. 87:6-88:22).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because contains legal conclusions, it is not material to the claims and defenses in this case, and it is not separately numbered.

230. The share of absentee-by-mail ballots that were rejected due to arriving after the receipt deadline sharply increased after the passage of SB 202, growing from 0.2% in the 2020 general election to 0.84% in the 2022 general election. Ex. 96 (Fraga Rep. ¶ 133 & Tbl 14); Ex. 113 (Grimmer Rep. ¶ 101 & Tbl. 17).



**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1 because it is argumentative and includes descriptives, such as “sharply” which is not used in Dr. Grimmer’s report, cherry picks facts included in his report while omitting other facts, thereby misrepresenting his conclusions out of their proper context, cites to facts which are not material to the claims and defenses in this case and is not separately numbered.

231. The December 2022 rate of rejection is five times greater than the previous runoff election rate pre-SB 202, the January 2021 runoff, which had a ‘ballot received after deadline’ rejection rate of 0.30%. Ex. 96 (Fraga Rep. ¶ 133 & Tbl 14).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

232. After SB 202, Hispanic and AAPI voters were more likely to have their absentee ballot rejected due to receipt after the deadline than white voters. Specifically, in November 2022, 0.77% of white voters’ absentee ballots were rejected for arriving late, compared with 1.60% of Hispanic voters and 2.32% of AAPI voters. Ex. 96 (Fraga Rep. ¶ 134 & Tbl. 14). In December 2022, 1.58% of white voters’ absentee ballots were rejected for arriving late, compared with 4.41% of Hispanic voters and 5.20% of AAPI voters. *Id.*

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

233. It is likely that some voters who submitted their absentee ballots after the deadline would have submitted their ballots via a drop box during the four days of the election cycle, when such drop boxes were available prior to SB 202. Ex. 96 (Fraga Rep. ¶ 133).

**RESPONSE:** Disputed and immaterial as based on speculation as to what voters might have done if drop boxes had been available. Immaterial for the additional reason that voters are responsible for voting in a timely manner under state election laws. *See New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) (“Voters must simply take reasonable steps and exert some effort to ensure that their ballots are submitted on time, whether through absentee or in-person voting.”)

234. After SB 202, AAPI voters faced the steepest rise in rejected absentee ballots due to receipt after the deadline compared to any other racial group. Ex. 96 (Fraga Rep. Tbl. 14).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case.

235. Election administrators have no additional burden with the earlier absentee ballot request dates in place prior to SB 202’s passage. Instead,

election administrators benefit from having advance information of voters requesting an absentee ballot to prepare and plan for absentee ballot verification, preparation, and distribution. Ex. 98 (Kennedy Rep. 13).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

236. Elections officials find the shortened timeline for requesting absentee ballots to be a burden. Ex. 13 (Athens-Clarke Cnty. Dep. 88:8-22).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case and is not separately numbered.

237. Voting absentee with less time is “very difficult” because voters have to “get their ballots, turn them around, and mail them back.” Ex. 15 (Cobb Cnty. Dep. 172:2-10, 270:20-23); Ex. 75 (Deposition of Sandra Reed [ECF 805] (“Reed Dep.”) 27:8-22).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R.

56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

238. Existing issues with slow mail delivery further exacerbate the problem of returning absentee ballots when there is less time to receive and vote that ballot. Ex. 63 (Kidd Dep. 180:25-181:7); Ex. 76 (Deposition of Lorraine Rose [ECF 800] (“Rose Dep.”) 39:5-12).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

239. For voters with limited English proficiency or for voters who require language assistance, having less time to vote absentee makes it even more difficult for them to participate in the franchise. Ex. 21 (Fulton Cnty. Dep. 110:2-15).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

240. Under SB 202, voters in the 2022 general election who were able to vote absentee returned their ballots five to six days closer to election day than in the last few previous elections. Ex. 113 (Grimmer Rep. Tbl. 19).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1 because it is argumentative and misstates the conclusion in Dr. Grimmer's report and cherry picks facts included in his report while omitting other facts, thereby misrepresenting his conclusions.

241. Counties recognize that having less time to prepare and send out absentee ballots is itself more burdensome on election operations, and this may compel counties to increase the size of their staff in order to meet burdens under this law. Ex. 35 (Gwinnett Cnty. Manifold Dep. 146:8-147:2); Ex. 18 (DeKalb Cnty. Dep. 87:6-88:22).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case, is not separately numbered and is speculative.

242. In the weeks leading up to election day, which is when absentee ballots have to be sent out under the new SB 202 schedule, election officials have to also test their voting machines and conduct advance voting where staff are deployed to voting locations across the county, all of which is harder on

large counties who have to test hundreds of machines and send out large numbers of absentee ballots. Ex. 47 (Adams Dep. 178:22-180:15); Ex. 15 (Cobb Cnty. Dep. 172:11-17).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case, is not separately numbered and is speculative.

243. The vast majority of county election directors surveyed by Georgia Association of Voter Registration and Election Officials (“GAVREO”) opposed moving the ballot distribution window closer to election day because they believed doing so would create a large amount of work for election offices in the midst of preparing for and conducting early voting. Ex. 47 (Adams Dep. 34:15-17, 176:25177:23); Ex. 209 (Email from T. Adams to Senators, “Elections Officials’ view of election bills” with attachment (Mar. 8, 2021) at USA-ADAMS-000054.0009).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case, is not separately numbered and is speculative.

244. When the voter ID law was passed in 2005, it was well-known among State legislators that most absentee voters were white voters. *See* Ex. 5 (Hugley Decl. ¶¶ 19-20 (“[I]t was well-known among members of the General Assembly that most absentee voters were Republican and white.”)); *see also* Ex. 91 (Anderson Rep. 99); Ex. 69 (Sterling Dep. 62:8-13 (prior to 2018, Republicans disproportionately used absentee by mail voting)).

**RESPONSE:** Disputed, but immaterial. Not only is the testimony cited speculation but what legislators may have believed about the race of who voted absentee-by-mail more often in 2005 is irrelevant to the issues in this case.

245. Prior to SB 202, election officials would verify an absentee voter’s identity by comparing the signature on a voter’s absentee ballot application or absentee ballot envelope with their signature on file. O.C.G.A. § 21-2-381(a)(1)(C), § 21-2-385(a) (2019); Ex. 252 (9/22/23 Prelim. Inj. Hr’g Tr. 191:713).

**RESPONSE:** Undisputed, but immaterial.

246. SB 202 requires a voter to affirm that they do not possess a DDS ID before submitting alternate ID on absentee ballot applications, Off. of Ga. Sec’y of State, *Application for Georgia Official Absentee Ballot* 1 (2021), <https://securemyabsenteeballot.sos.ga.gov/resource/1688626692000/AbsenteeBallotPDF>, as well as the absentee ballot itself. Ex. 238 (CDR00125708).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required.

247. If a voter fails to provide the required ID, or if the ID number provided does not match the information in the voter registration system—either because the voter registration record includes no DDS ID number or because it includes an incorrect DDS ID number—the voter must take additional steps before voting. In these circumstances, county election officials would typically issue a provisional absentee ballot and, in a separate mailing, a cure notice instructing the voter to submit a copy of acceptable ID along with a sworn affidavit to cure the deficiency in the application. O.C.G.A. § 21-2-381(b)(3); Ex. 57 (Evans Dep. 148:15-149:25); Ex. 15 (Cobb Cnty. Dep. 42:6-16, 250:18-251:18, 254:23-256:2); Ex. 237 (Absentee Ballot Application Cure Affidavit Form and Notice, DELKALB020319-20); Ex. 63 (Kidd Dep. 99:23-100:5); Ex. 36 (Gwinnett Cnty. Williams Dep. 79:11-80:2).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required. The procedure is set out in O.C.G.A. § 21-2-381(b)(3)-(5).

248. Several county election officials informed legislators of their opposition to the proposed ID requirements for absentee ballot applications and absentee ballots in SB 202 and its predecessor bills, including noting that the new ID requirements would increase the administrative burden on election



officials. *E.g.*, Ex. 224 (Email from J. Kirk to House Special Committee on Election Integrity members, “Comments from Election Supervisor on Substitute to SB 202” (Mar. 21, 2021), USA-ADAMS-000043.0001-44.002 (opposing the ID requirement for absentee ballots)); Ex. 216 (Adams Survey at USA-ADAMS000027.0004-06 (noting half of the officials surveyed opposed the change), USAADAMS-000027.0005 (“It will cause a huge increase of provisional balloting needing to be cured and costing the counties a great deal of money in postage, ballots, and staff to accomplish the increase.”), USA-ADAMS-000027.0006 (because “[v]oters make errors on their information,” the requirements “WILL cause a lots of litigation and again an increase in provisional balloting that have to be cured—a costly and time consuming burden on our offices.”), *id.* (“[A]sking for more information will dramatically increase the number of rejected ballots that need to be cured because people don’t follow instructions.”), *id.* (the requirement will “require[e] us to have to duplicate more ballots.”)); Ex. 193 (Email from T. Edwards to Legislators, “ACCG Draft Election Bills” (Dec. 18, 2020), USAEDWARDS-00000316-17); Ex. 55 (Deposition of Todd Edwards [ECF 804] (“T. Edwards Dep.”) 122:22-123:16 (“ACCG’s position remained that [providing an ID or ID number] should be optional for voters to send in as a backup, so to speak, for verification, perhaps [to] expedite the process. But, no, we wanted [providing an ID or ID number] to remain optional, as our policy position stated.”)), *id.* at 193:3-11).

**RESPONSE:** Disputed in part and immaterial. While some election officials expressed concern about the voter identification requirements for absentee-by-mail ballot applications, the results of the 2022 elections show those concerns unfounded as the complaints received in 2020 regarding absentee-by-mail voting were not repeated in 2022. Eveler 197:7–14 (Defs.’ Ex. T) (complaints re: duplicate applications stopped in 2022); Germany 10/30/23 Decl. ¶ 99 (Def.’s Ex. B); Grimmer Rep. ¶¶ 179–180 (significant drop in the percentage of duplicate absentee ballot applications after SB 202), ¶ 12 (“In the 2022 election, the share of mail-in absentee ballots rejected for arriving after the deadline was lower than in 2018, but higher than in 2020. No expert has shown that SB 202 caused the increase relative to 2020.”), ¶ 16 (“the Black-white gap in rejection rates for signature mismatch or incomplete information on ballots in 2018 was larger than the Black-white gap in rejection rates for improper identification when returning a voted mail-in absentee ballot in the 2022 general election and the 2022 runoff election.”), (Defs.’ Ex. DDDD).

And the number of mail-in absentee ballots that were canceled and then voted in person declined significantly after SB 202. *Id.* ¶ 11. “In the 2022 election, the number of mail-in absentee ballots that were canceled and subsequently voted on Election Day dropped to lower levels than in 2018 and 2020 and the share of mail-in absentee ballots that were canceled and

subsequently voted on Election Day dropped to lower levels than in 2016, 2018, and 2020.” *Id.*

249. In Georgia, to obtain DDS ID, a voter must visit one of 67 DDS locations in person, provide documentary proof of identity, citizenship, and residency, and usually pay a \$32 fee. *See* Ex. 292 (S. Johnson Decl. ¶ 11); Ex. 28 (30(b)(6) Deposition of Georgia Department of Driver Services (Angelique McClendon) [ECF 705] (“DDS Dep.”) 37:1-39:9, 57:2-17; 131:13-132:20).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required. However, as Plaintiffs note in the very next paragraph, any fee is waived for those who cannot afford it.

250. DDS will waive the \$32 fee for individuals who swear they are registered to vote and lack required ID for voting, but all other requirements are the same. Ex. 28 (DDS Dep. 85:18-86:8, 87:8-23); Ex. 250 (GA Department of Driver Services’ Field Operations Manager’s Bulletin).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required.

251. Obtaining the necessary underlying documents can be costly, and the process itself presents many challenges for voters with limited resources. Ex. 292 (S. Johnson Decl. ¶¶ 13, 19-22 (describing obstacles that impede many low-income voters who attempt to obtain a driver’s license)).

**RESPONSE:** Disputed, but immaterial. The requirements for obtaining a DDS identification apply to all applicants and are similar to those upheld by the Eleventh Circuit. *See Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1337 (11th Cir. 2021).

252. Black citizens of voting age (“CVAs”) disproportionately face travel burdens compared to white CVAs. Specifically, 6.74% of Black CVAs are more likely to have to travel more than 90 minutes round-trip to get to a DDS office, compared with 2.78% of white CVAs. Ex. 93 (Chatman Rep. ¶ 85, Tbl. 3).

**RESPONSE:** Disputed in part because misleading. Plaintiffs omit that SB 202 provides that voters without DDS ID may employ alternative forms of identification including “a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector.” O.C.G.A. §§ 21-2-417(c), 21-2-381(a)(1)(C)(i) (“If such elector does not have a Georgia driver’s license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the elector shall affirm this fact in the manner prescribed in the application and the elector shall provide a copy of a form of identification listed in subsection (c) of Code Section 21-2-417.”).

And rejections of absentee ballots because of insufficient or incorrect identification in the 2022 general election were “0.46% of all returned mail-in absentee ballots.” Grimmer Rep. ¶ 165 & Tbl. 24 (Defs.’ Ex. DDDD). When examining these rejections Dr. Grimmer found that white voters had a

rejection rate of .36% and Black voters a rejection rate of .59%. *Id.* Needless to say a gap of .23% is not evidence of a disparate impact on Black voters. *See Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (rejecting claim when there was “only a 1% difference between the ID possession rates of white and minority Alabama voters.”); *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were “neither of large magnitude nor statistically significant.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

253. Black Georgians are less likely than white Georgians to possess a printer, scanner, photocopier, or smartphone to copy an alternative ID. Ex. 292 (S. Johnson Decl. ¶¶ 9, 20, 30); Ex. 88 (Meredith Rep. ¶¶ 41-49).

**RESPONSE:** Disputed and immaterial. Also, rejections of absentee ballots because of insufficient or incorrect identification in the 2022 general election constituted “0.46% of all returned mail-in absentee ballots.” Grimmer Rep. ¶ 165 (Defs.’ Ex. DDDD). When examining these rejections Dr. Grimmer found that white voters had a rejection rate of .36% and Black voters a rejection rate of .59%. *See Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (rejecting claim when there was “only a 1% difference between the ID possession rates of white and minority Alabama voters.”); *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th

905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were “neither of large magnitude nor statistically significant.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

254. According to the Georgia Voter ID Coalition Coordinator for the nonprofit organization VoteRiders, even voters receiving assistance from VoteRiders sometimes give up before completing the process because of these challenges. Ex. 292 (S. Johnson Decl. ¶ 22).

**RESPONSE:** Disputed and immaterial. That some individuals may have difficulty is not evidence of a disparate impact. And rejections of absentee ballots because of insufficient or incorrect identification in the 2022 general election constituted “0.46% of all returned mail-in absentee ballots.” Grimmer Rep. ¶ 165 (Defs.’ Ex. DDDD). When examining these rejections Dr. Grimmer found that white voters had a rejection rate of .36% and Black voters a rejection rate of .59%. *Id.* Needless to say, a gap of .23% is not evidence of a disparate impact on Black voters. *See Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (rejecting claim when there was “only a 1% difference between the ID possession rates of white and minority Alabama voters.”); *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were “neither of large magnitude nor statistically significant.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

255. National studies show that strict voter ID laws result in decreased minority participation, particularly in primary elections, as compared to white participation. While there were no statistically significant differences in the turnout for white voters, AAPI turnout decreased by 12.5% in states with strict voter ID laws. Ex. 100 (Lee Rep. 91).

**RESPONSE:** Disputed and immaterial. The data that Dr. Lee cites to show a disparate impact on minority voters from voter ID laws “come from cross-sectional comparisons that fail to address baseline differences across states.” Grimmer Rep. ¶ 159 (Defs.’ Ex. DDDD). In layman’s terms, the data Dr. Lee’s cited did not account for the fact that the states that adopted the voter ID laws had “lower turnout rates before adopting the law. *Id.* And in a subsequent study by Dr. Grimmer that adjusted for baseline differences in turnout there was no “consistent effect of voter identification laws on turnout.” *Id.* (citing Justin Grimmer et al., *Obstacles to Estimating Voter ID Laws’ Effect on Turnout*, 80 J. Pol. 1045 (2018)).

Consistent with this research, the data from Georgia following SB 202’s implementation do not support the thesis of a disparate impact on Asian voter turnout from SB 202’s objective identification requirements. *See id.* ¶ 64 (finding that “the change in mail-in absentee ballot usage among Asian voters is similar to the change in mail-in absentee ballot usage among white voters and the change overall”).

And for all racial groups there were far fewer rejections of absentee ballots due to incorrect or missing identification than under the prior signature match regime. *Id.* ¶¶ 170–71, tbls. 27 & 28.

Further, the Eleventh Circuit has upheld voter identification requirements, including when requesting an absentee-by-mail ballot. *See Greater Birmingham Ministries Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1337 (11th Cir. 2021).

256. Around the time SB 202 was enacted, SOS office data showed that approximately 272,729 registered voters did not have a DDS ID number associated with their voter record (about 3.5 percent of all registered voters), and these voters were disproportionately Black voters. Ex. 88 (Meredith Rep. ¶ 37 & Tbl. IV.B.6).

**RESPONSE:** Disputed in part, but immaterial. There is no basis or definition for the claim that the voters who did not have a DDS ID number associated with their voter record were “disproportionately” Black voters.

Also, focusing on the 3.5% of voters who lacked a DDS ID number in their voter registration file to show a disparate impact is impermissible “statistical manipulation.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021). Furthermore, this is before the efforts taken to clean up the voter registration records (that Plaintiffs mention in ¶ 258). This raised the number



of registered voters with an ID on file to approximately 99%. Evans 158:13–159:5, 160:19–23 (Pls.’ Ex. 57).

Additionally, the “the Black-white gap in rejection rates for signature mismatch or incomplete information on ballots in 2018 was larger than the Black-white gap in rejection rates for improper identification when returning a voted mail-in absentee ballot in the 2022 general election and the 2022 runoff election.” Grimmer Rep. ¶ 16 (Defs.’ Ex. DDDD).

257. According to the State’s own records, about 56% (at least 151,595 voters) of the 272,729 voters without a DDS ID number associated with their voter registration record in April 2021 identified as Black, although Black voters constituted just 30% of registered voters in Georgia. Ex. 88 (Meredith Rep. ¶ 37 & Tbl. IV.B.6).

**RESPONSE:** Undisputed but immaterial as Black voters have as much opportunity to obtain a DDS ID as any other racial group and other forms of identification are acceptable under state law. O.C.G.A. §§ 21-2-417(c) (forms of ID), 21-2-381(a)(1)(C)(i) (procedure for applying for absentee ballot).

And rejections of absentee ballots because of insufficient or incorrect identification in the 2022 general election constituted “0.46% of all returned mail-in absentee ballots.” Grimmer Rep. ¶ 165 (Defs.’ Ex. DDDD). When examining these rejections Dr. Grimmer found that white voters had a rejection rate of .36% and Black voters a rejection rate of .59%. *Id.* A gap of

.23% is not evidence of a disparate impact on Black voters. *See Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (rejecting claim when there was “only a 1% difference between the ID possession rates of white and minority Alabama voters”); *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were “neither of large magnitude nor statistically significant.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

258. In April 2021, after SB 202 was enacted, the SOS worked with Georgia DDS to update these records by matching voter registration records that did not contain a DDS ID number to DDS records of individuals with a Georgia driver’s license or State ID card. Ex. 57 (Evans Dep. 158:13-159:5); Ex. 59 (Germany Dep. 141:11-142:4 (describing effort to update voter registration records)).

**RESPONSE:** Undisputed, but immaterial.

259. After completing this project, the number of registered voters without a DDS ID number associated with their voter registration record exceeded 154,000 voters, Ex. 88 (Meredith Rep. ¶ 26) (describing September 2021 list of voters without a DDS ID number in the voter file), with Black voters still overrepresented, constituting 58.8% (about 90,777 voters) of voters without a DDS ID number in the voter file, while white voters were just 25% (about 39,010) of voters without an ID number, *id.* ¶¶ 29-30 & Tbl. IV.B.1

(describing racial demographics of September 2021 list of voters without a DDS ID number in the voter file).

**RESPONSE:** Disputed in part and immaterial because Black voters have as much opportunity to obtain a DDS ID as any other racial group and other forms of identification are acceptable under state law. O.C.G.A. §§ 21-2-417(c) (forms of ID), 21-2-381(a)(1)(C)(i) (procedure for applying for absentee ballot). Additionally, there is no definition or quantification for Black voters being “overrepresented” as part of the group referenced.

And rejections of absentee ballots because of insufficient or incorrect identification in the 2022 general election constituted “0.46% of all returned mail-in absentee ballots.” Grimmer Rep. ¶ 165 (Defs.’ Ex. DDDD). When examining these rejections, Dr. Grimmer found that white voters had a rejection rate of .36% and Black voters a rejection rate of .59%. *Id.* A gap of .23% is not evidence of a disparate impact on Black voters. *See Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (rejecting claim when there was “only a 1% difference between the ID possession rates of white and minority Alabama voters.”); *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were “neither of large magnitude nor statistically significant.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

260. The State has not repeated the matching project to update new voter registration records since summer 2021. Ex. 57 (Evans Dep. 160:24-161:9).

**RESPONSE:** Undisputed. However, voters may always verify the contents of their voter file and update it with a DDS ID number. Evans 156:8–14 (Defs.’ Ex. S hereto) (explaining that on absentee ballot request portal “there’s a third button to just validate your driver’s license number”).

261. The State did not use DDS data to update outdated or incorrect DDS ID numbers in the voter registration system. Ex. 57 (Evans Dep. 161:15-162:2).

**RESPONSE:** Undisputed. However, voters may always verify the contents of their voter file and update it with a DDS ID number. Evans 156:8–14 (Defs.’ Ex. S hereto) (explaining that on absentee ballot request portal “there’s a third button to just validate your driver’s license number”).

262. By the November 2022 general election, the number of Georgia voters without a DDS ID number associated with their voter registration record had climbed to 171,716 voters, about 61% of whom (105,216 registrants) identified as Black, compared to just 23% (39,597) who identified as white. Ex. 88 (Meredith Rep. ¶¶ 64-65 & Tbl. VI.A.1); *see also* Ex. 96 (Fraga Rep. ¶ 91 & Tbl. 6 (documenting 171,691 voter records with no DDS ID, including 39,841

who identify as white; 105,818 who identify as Black; 6,645 who identify as Hispanic; and 4,505 who identify as AAPI)).

**RESPONSE:** Disputed because misleading. Rejections of absentee-ballot applications due to identification mismatch were exceedingly rare, constituting 0.02% of rejections. Grimmer Rep. ¶ 168 & tbl. 26 (Defs.’ Ex. DDDD) (reproduced below). This low rate indicates that “the outdated identification information discussed in Dr. Meredith’s report did not manifest in a large increase in the rejection of absentee ballot applications.” *Id.* ¶ 168. And the difference between the rejection rates for Black and white voters was an infinitesimal .04%. *Id.*; see also *id.* tbl. 26 (reproduced below).

Race	Reject, ID Mismatch	Reject, ID Missing
American Indian	0.0000	0.0000
Asian	0.0002	0.0013
Black	0.0005	0.0010
Hispanic	0.0004	0.0004
White	0.0001	0.0005
Overall	0.0002	0.0007

Table 26: Share of Mail-In Absentee Ballot Applications Rejected because of ID Mismatch and ID Missing

263. An additional 71,274 voters had an out-of-date or otherwise inaccurate DDS ID number associated with their voter registration record in November 2022. Ex. 88 (Meredith Rep. ¶¶ 90-91 & Tbl. VI.F.1 (registrants with ID problems by race)).

**RESPONSE:** Disputed because misleading. Rejections due to mismatching identification are exceedingly rare. *See supra*, Resp. ¶ 262.

264. Collectively, about 242,990 registered voters had no DDS ID number or an incorrect DDS ID number associated with their voter registration record in November 2022, approximately 53% of whom identified as Black (nearly 130,000 or 5.6% of all Black registrants) and 33% of whom identified as white (about 80,000 or 2% of white registrants). Ex. 88 (Meredith Rep. ¶ 65 Tbl. VI.A.1 (all registrants by race), ¶¶ 90-91 & Tbl. VI.F.1).

**RESPONSE:** Disputed. The inaccuracy of Plaintiffs' figures is demonstrated in the discrepancies between paragraph nos. 262 and 264. *See supra*, Resp. ¶ 262.

265. Some voters have a DDS ID, but because their ID number is not recorded (or is inaccurately recorded) in the state voter registration system—the case for at least 117,384 voters—they will be shunted to the provisional absentee ballot process if they write their DDS ID number on a mail ballot application. *See* Ex. 88 (Meredith Rep. ¶ 75 & Tbls. VI.C.2 (column 4) (identifying 46,110 voters who have been issued a DDS ID but have no DDS ID number in their voter registration record) & Tbl. VI.F.1 (columns 2 & 3) (identifying 71,274 voters who have an incorrect DDS ID number in the voter registration system)); O.C.G.A. § 21-2-381(b)(3); Ex. 57 (Evans Dep. 148:15-149:25); Ex. 15 (Cobb Cnty. Dep. 250:18-251:18); Ex. 237 (Absentee Ballot

Application Cure Affidavit Form and notice (produced by DeKalb County Defendants), DELKALB020319-20); Ex. 63 (Kidd Dep. 99:23-100:5).

**RESPONSE:** Disputed, but immaterial. Voters may always verify the contents of their voter file and update it with a DDS ID number. Evans 156:8–14) (Defs.’ Ex. S) (explaining that on absentee ballot request portal “there’s a third button to just validate your driver’s license number”). Also, rejections due to a mismatch in identification are exceedingly rare. *See supra*, Resp. ¶ 262.

266. A total of 2% of AAPI registrants (4,505 AAPI registrants) are confirmed “NO” DDS registrants. AAPI registrants were over twice as likely to have no DDS number associated with their voter registration record as Whites. Ex. 96 (Fraga Rep. ¶¶ 86-88 & Tbls. 5 & 6).

**RESPONSE:** Disputed and immaterial, since the suggestion of AAPI registrants as being “twice as likely to have no DDS number associated with their voter registration record as Whites” is an inaccurate interpretation of the data. *See League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 81 F.4th 1328, 1334 (11th Cir. 2023) (“The district judge’s factual findings were clearly erroneous because they relied on fatally flawed statistical analysis[.]”); *see also Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021) (“This is precisely the sort of statistical manipulation that Judge Easterbrook rightly criticized, namely,  $1.0 \div 0.5 = 2$ .”). The correct interpretation is that well over

97%, and likely over 98%, of both white registrants and AAPI registrants have a DDS number associated with their voter registration record. This small difference is immaterial. *See League of Women Voters*, 81 F.4th at 1334; *Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (“Plaintiffs arrive at their ‘twice as likely’ statement by comparing the 1% of white voters who lack valid photo ID to the 2% of minority voters who lack a valid photo ID. But, . . . when Plaintiffs represent percentages in this way, it ‘is a misuse of data’ that ‘mask[s] the fact that the populations were effectively identical.’ There is only a 1% difference between the ID possession rates of white and minority Alabama voters.” (quoting *Frank v. Walker*, 768 F.3d 744, 753 n.3 (7th Cir. 2014))).

267. Because the data available from the State of Georgia does not capture voters who were deterred by the ID requirement from submitting a mail ballot application at all, the data cannot account for every voter who was unable to cast a ballot in 2022 because of SB 202’s new voter ID requirement for absentee ballot applications. *See* Ex. 89 (Meredith Sur-Rebuttal Rep. ¶¶ 2(a)-(b), 8-19).

**RESPONSE:** Disputed as it is speculation of individuals “deterred by the ID requirement from submitting a mail ballot application at all.” And Dr. Meredith offers no evidence for this phenomenon other than *positing* that it exists. *See* Meredith Sur-Rebuttal Rep. ¶ 9 (Pls.’ Ex. 89). And, as Dr. Shaw



explains, there is no basis for concluding that changes in absentee voting rules have an impact on election turnout. *See Shaw* 2/24 Rep. ¶ 24 (“But the political science literature suggests the effects of in-person early voting on turnout are minuscule.”), ¶ 25 (“In most academic studies, the reported relationships between no-excuse absentee mail policies and turnout are null, or positive but modest, or negative.”), & tbl. 1 (Defs.’ Ex. LLLL). And research does not show any “consistent effect of voter identification laws on turnout.” Grimmer Rep. ¶ 159 (Defs.’ Ex. DDDD).

268. In the November 2018 election, AAPI voters’ ballots were rejected for incorrect or missing ID information eight times more often than white voters (0.8% compared to 0.11%) and four times more often than all Georgians (0.8% compared to 0.21%), while Latinx voters’ absentee ballots were rejected almost 4 times the rate of white voters and about twice overall rate in Georgia. Ex. 96 (Fraga Rep. Tbl. 13).

**RESPONSE:** Disputed as to the characterization of “eight times more often” and “four times more often” for AAPI voters and “4 times the rate” and “twice overall rate” for Latino voters as that constitutes an inaccurate misrepresentation of the data which shows that very few voters experienced a ballot rejection due to incorrect or missing ID information. *See League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 81 F.4th 1328, 1334 (11th Cir. 2023) (“The district judge’s factual findings were clearly erroneous because

they relied on fatally flawed statistical analysis[.]”); *see also Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021) (“This is precisely the sort of statistical manipulation that Judge Easterbrook rightly criticized, namely,  $1.0 \div 0.5 = 2.$ ”); *Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (“Plaintiffs arrive at their ‘twice as likely’ statement by comparing the 1% of white voters who lack valid photo ID to the 2% of minority voters who lack a valid photo ID. But, .... when Plaintiffs represent percentages in this way, it ‘is a misuse of data’ that ‘mask[s] the fact that the populations were effectively identical.’ There is only a 1% difference between the ID possession rates of white and minority Alabama voters.” (quoting *Frank v. Walker*, 768 F.3d 744, 753 n.3 (7th Cir. 2014))).

269. In the November 2022 election, 0.62% of AAPI voters’ ballots, 0.41% of Hispanic voters’ ballots, and 0.36% of white voters’ ballots were rejected for incorrect or missing ID information. Ex. 96 (Fraga Rep. Tbl. 13).

**RESPONSE:** Undisputed, but immaterial. The data verifies that very few voters’ ballots were rejected for incorrect or missing ID information. *See* Grimmer Rep. ¶ 168 & tbl. 26 (Defs.’ Ex. DDDD). And the actual percentage of rejections due to ID issues was quite low for all racial groups (below 1%). *See* Fraga Rep. 57 tbl. 13 (Defs.’ Ex. BBBB).

270. In the December 2022 election, 0.78% of AAPI voters' ballots and 0.64% of white voters' ballots were rejected for incorrect or missing ID information. Ex. 96 (Fraga Rep. Tbl. 13).

**RESPONSE:** Undisputed. The data verifies that very few voters' ballots were rejected for incorrect or missing ID information in the December 2022 election. *See* Grimmer Rep. ¶ 168 & tbl. 26 (Defs.' Ex. DDDD). And the difference between white and AAPI voters in the November 2022 election was similarly small, an infinitesimal 0.36%. *See* Fraga Rep. 57 tbl. 13 (Defs.' Ex. BBBB).

271. County officials received complaints from voters noting the difficulties of having to make a physical copy of an alternative form of ID. Ex. 13 (Athens-Clarke Cnty. Dep. 226:22-227:2).

**RESPONSE:** Disputed, but immaterial. While Athens-Clarke may have received a limited number of complaints about having to make a copy of an alternative form of ID (as opposed to just listing a DDS ID number that the overwhelming majority of Georgia voters have) is not indicative of burden on any voter's right to vote.

Additionally, over 97% of all registered voters had either a Georgia driver's license or state identification number associated with their voter file. Sterling 239:8–20 (Defs.' Ex. VVV) (2020 98.6% have DL or state ID numbers

and 99.2% who voted in 2020 had one or the other); Evans 79:6–80:4 (Defs.’ Ex. KKK) (97 to 99 percent have DL or ID number in record).

272. Helen Lockette is a physically disabled African American voter residing in Dougherty County whose absentee ballots were rejected in 2022 because the DDS ID number in her voter registration record is out of date. Ex. 64 (Deposition of Helen Lockette [ECF 793] (“Lockette Dep.”) 8:8-8:17, 9:23-10:13, 32:24-33:22); Ex. 90 (Meredith Supp. Decl. ¶ 2.a).

**RESPONSE:** Undisputed but immaterial. The fact Ms. Lockette experienced rejections due to mistakes in County administration is not a result of SB 202. As Plaintiffs’ own expert explains there had been an administrative failure to update Lockette’s DDS ID number in 2017. Meredith Suppl. Decl. ¶ 5 (Pls.’ Ex. 90).

And, as Plaintiffs themselves admit (at ¶ 265), county officials will seek to correct these problems through the issuance of a provisional ballot or simply by updating a voter’s voter file when that file lacks a DDS ID number. Further, voters may always verify the contents of their voter file and update it with a DDS ID number. Evans 156:8–14 (Defs.’ Ex S hereto) (explaining that on absentee ballot request portal “there’s a third button to just validate your driver’s license number”). Additionally, rejections due to mismatching identification are exceedingly rare. *See supra*, Resp. ¶ 262.

273. Although Mrs. Lockette submitted absentee ballots throughout the 2022 election cycle, she did not receive any notice of an issue with her absentee ballot application until she attempted to vote in the December 2022 runoff election. By the time she received notice in December 2022, she believed it was too late for her to correct the problem. Ms. Lockette later learned that all of her 2022 absentee ballots were rejected because of this problem. Ex. 64 (Lockette Dep. 26:18-30:10, 49:19-50:19); *see also* Ex. 270 (Daniel Decl. ¶¶ 8-14 (describing additional steps required to overcome ID problem in 2022 election cycle)); Ex. 90 (Meredith Supp. Decl. ¶¶ 1-2) (describing inaccuracies in Mrs. Lockette's and Mr. Daniel's voter registration records)).

**RESPONSE:** Undisputed but immaterial as this is not an issue with SB 202 but a local, county level administrative issue unrelated to the provisions of the statutes. *See* Meredith Suppl. Decl. ¶ 5 (Pls.' Ex. 90). As with all voters, Ms. Lockette has the opportunity to update her voter file with accurate DDS ID information. Evans 156:8–14 (Defs.' Ex. S hereto) (explaining that on absentee ballot request portal “there’s a third button to just validate your driver’s license number”).

Additionally, any County failure to timely notify Ms. Lockette is a violation of SB 202. *See* O.C.G.A. § 21-2-381(b)(4) (instructing officials to “promptly contact the elector in writing” when they receive a deficient submission); *see also* O.C.G.A. § 21-2-384(a)(2) (“During the period for advance

voting set forth in Code Section 21-2-385, the board of registrars or absentee ballot clerk shall make such determinations and mail or issue absentee ballots, provisional absentee ballots, and notices of rejection of application *within three days after receiving a timely application* for an absentee ballot.” (emphasis added)).

274. Ms. Lockette has regularly voted absentee by mail since about 2007, when her disability made in-person voting too difficult. Before 2022, Ms. Lockette had little trouble voting by mail. Ex. 64 (Lockette Dep. 16:5-17:2).

**RESPONSE:** Undisputed, but immaterial. The issues Ms. Lockette faced in 2022 were not caused by SB 202. *See* Defs.’ Resp. to ¶ 273, *supra*.

275. Raymond Daniel is a disabled African American voter residing in Bibb County whose DDS ID number was not correctly reflected in the voter registration system during the 2022 election cycle. Ex. 270 (Daniel Decl. ¶¶ 1-5, 12-16); Ex. 90 (Meredith Supp. Decl. ¶ 2.b).

**RESPONSE:** Disputed in part and immaterial. As Plaintiffs’ own expert explains in the November 2022 version of the Georgia registration database, his “DDS record indicates that Daniel has a current DDS-issued ID number, his registration record does not contain it.” Meredith Suppl. Decl. ¶ 6 (Pls.’ Ex. 90). This likely occurred through a clerical error since Mr. Daniel re-registered to vote online for the November 2022 election following a request from a local election worker. Daniel Decl. ¶¶ 8–10 (Pls.’ Ex. 270). And

according to Mr. Daniel, his “absentee ballot for the November 2022 general election was accepted.” *Id.* ¶ 10.

And, as Plaintiffs themselves admit (at ¶ 265), county officials will seek to correct these problems through the issuance of a provisional ballot or simply by updating a voter’s voter file when that file lacks a DDS ID number. And voters may always verify the contents of their voter file and update it with a DDS ID number. Evans 156:8–14 (Defs.’ Ex. S hereto) (explaining that on absentee ballot request portal “there’s a third button to just validate your driver’s license number”). Additionally, rejections due to mismatching identification are exceedingly rare. *See supra*, Resp. ¶ 262.

276. A few days before the December 2022 runoff election, Mr. Daniel learned from a representative of a national organization that Bibb County had rejected his completed absentee ballot for that election because of an issue with his ID number. Ex. 270 (Daniel Decl. ¶ 13); Ex. 52 (Deposition of Raymond Omar Daniel [ECF 794] (“Daniel Dep.”) 25:7-27:3).

**RESPONSE:** Undisputed but immaterial. The issues Mr. Daniel faced in 2022 were not caused by SB. *See* Defs.’ Resp. ¶ 275, *supra*.

277. Mr. Daniel never received any notice from the Bibb County elections office that there was an issue with his December 2022 absentee ballot. Ex. 270 (Daniel Decl. ¶ 15); Ex. 52 (Daniel Dep. 25:7-27:3).

**RESPONSE:** Undisputed, but immaterial. This failure by the County is not authorized by SB 202, which instructs the registrar or clerk to “promptly contact the elector in writing,” to provide a notice of deficiency and an opportunity to cure. O.C.G.A. § 21-2-381(b)(4); *see also* O.C.G.A. § 21-2-384(a)(2) (“During the period for advance voting set forth in Code Section 21-2-385, the board of registrars or absentee ballot clerk shall make such determinations and mail or issue absentee ballots, provisional absentee ballots, and *notices of rejection of application within three days* after receiving a timely application for an absentee ballot.” (emphasis added)).

278. To correct the issue, Mr. Daniel visited his county board of elections office in person, and his December 2022 runoff election ballot was counted. Ex. 270 (Daniel Decl. ¶ 14); Ex. 52 (Daniel Dep. 27:1-27:3).

**RESPONSE:** Undisputed, but immaterial.

279. The administrative burdens imposed by SB 202’s ID requirements for absentee ballot applications—such as the burden of copying, scanning, or printing a separate document—disproportionately impact marginalized voters, including AAPI and limited English proficiency (“LEP”) voters, and can prevent these voters from casting their ballot. Ex. 103 (Lee Decl. ¶¶ 13-17).

**RESPONSE:** Disputed and also states a legal conclusion. Dr. Lee’s Declaration does not demonstrate that SB 202’s ID requirements “disproportionately impact marginalized voters, including AAPI and limited



English proficiency (“LEP”) voters[.]” This Declaration relies on general studies of “accessing public benefits programs such as Medicaid and SNAP[.]” Lee Decl. ¶ 17 (Pls.’ Ex. 103). Without citing any data about AAPI or LEP voters in Georgia or explaining whether these studies can meaningfully translate to absentee voting, he then makes the *unjustified* leap to the conclusion of a disparate impact on those voters. *Id.* When the data relating to AAPI voters are actually examined, it is clear that SB 202 had no disparate impact on them. *See supra*, Resp. ¶¶ 38–45.

Additionally, SB 202 only requires a copy of an alternate form of identification when a mailed copy of their absentee ballot application and only if they do not have a DDS ID and for a returned ballot only if they do not also have a Social Security Number. *See* O.C.G.A. §§ 21-2-417(c), 21-2-381(a)(1)(C)(i).

Finally, Plaintiffs do not challenge the language in which forms are printed or websites are maintained, just as they were prior to SB 202. And absentee ballot applications can be obtained by a phone call to election officials and are still “available online by the Secretary of State and each election superintendent and registrar.” O.C.G.A. § 21-2-381(a)(1)(C)(ii); *see also*, SOF ¶ 473 [Doc. 755]; Germany 10/30/23 Decl. ¶ 31 (Defs.’ Ex. B).

280. There are significant gaps in AAPIs' access to the necessary technology to print or scan the documents SB 202 requires. Ex. 103 (Lee Decl. ¶ 18).

**RESPONSE:** Disputed, but immaterial. There is no quantification or accurate evaluation of what it means when the paragraph says "significant gaps in AAPI's access to necessary technology to print or scan" ID documents. Dr. Lee cites a *nationwide* survey to imply that AAPIs *in Georgia* lack access to necessary technology to submit an absentee ballot applications. Lee Decl. ¶ 18 (Pls.' Ex. 103). And he gives no analysis of how any technology gaps among AAPIs in Georgia compare to whites and other ethnic groups. *Id.* This speculation is inadequate to show a disparate impact and is contradicted by the *actual* data of AAPI voting patterns *after* SB 202. See *supra*, Resp. ¶¶ 38–45.

281. AAPI voters are disproportionately LEP, and people with LEP are half as likely as native English speakers to have high levels of proficiency using digital tools or solving problems in digital environments. Ex. 103 (Lee Decl. ¶ 19).

**RESPONSE:** Disputed, but immaterial. There is no requirement to interact with any digital environment to request or cast an absentee-by-mail ballot in Georgia under SB 202. Dr. Lee cites a *nationwide* survey to imply that AAPIs with LEP *in Georgia* lack the technological proficiency to submit

absentee ballot applications. Lee Decl. ¶ 19 (Pls.’ Ex. 103). And he gives no analysis of how any issues with technology proficiency among AAPIs in Georgia compare to whites and other ethnic groups or *even how that relates to submitting an absentee application. Id.* This speculation is inadequate to show a disparate impact and is contradicted by the actual data of AAPI voting patterns after SB 202. *See supra*, Resp. ¶¶ 38–45.

282. Over 95% of registrants who do not have a DDS ID number associated with their voter registration record do have a social security number (“SSN”) associated with their record. Ex. 88 (Meredith Rep. ¶ 66 & Tbl. VI.A.2).

**RESPONSE:** Undisputed, immaterial, and misleading as stated. 96.5% of Georgia voters have either a State driver’s license or identification number associated with their voter file, so the amount of voters without ID “is miniscule compared to the overall state population of eligible voters.” *Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1329 (11th Cir. 2021). SOF ¶ 392 [Doc. 755]; Meredith Rep. ¶ 2(g) (Defs.’ Ex. HHHH) (identifying roughly 243,000 voters lacking either); Ga. Sec’y of State, *Georgia Active Voters*, <https://sos.ga.gov/georgia-active-voters-report> (identifying 7,004,034 active voters)). Also, this allegation omits that voters without either a DDS ID or Social Security Number may present the same alternate ID with both their application and in returning their absentee-by-mail ballot. *See* O.C.G.A. § 21-2-381(a)(1)(C)(i) (absentee applications alternative ID

provision), § 21-2-385(a) (absentee ballot alternative ID provision), § 21-2-417(c) (list of alternative forms of ID).

283. Senator Dugan had announced plans to modify SB 241 to allow for voters to use the last four digits of their social security number (“SSN4”) and birth date to request an absentee ballot, but this never occurred. Ex. 117 (Mar. 8, 2021, SB 241 Sen. Fl. Debate Tr., AME\_001041:19-1042:10).

**RESPONSE:** Disputed in part and immaterial. Senator Dugan did not “announce a plan” but simply indicated that he thought this provision would be added to the bill. SB 241 Ga. S. Fl. Debate Tr., AME\_001041:19–1042:10 (Mar. 8, 2021) (Pls.’ Ex. 117). In fact he acknowledged that this provision was not in the bill when he discussed the possibility. *Id.* at AME\_1042:11–13 (“Senator Jordan: So it’s actually not in the bill right now.” Senator Dugan: It is not in the bill right now.”).

284. The Georgia SOS has admitted that, as a practical matter, counties could use SSN to verify voters’ identity on absentee ballot applications, just as they currently use SSN to verify identity when a voter without DDS ID returns a completed mail ballot. Ex. 33 (SOS Dep. 276:25-278:2); Ex. 65 (Deposition of Matthew Mashburn [ECF 710] (“Mashburn Dep.”) 171:20-172:10).

**RESPONSE:** Disputed, but immaterial. SB 202 does not provide for the use of Social Security Numbers as an alternative to other forms of identification when requesting an absentee-by-mail ballot but does provide a

series of other forms of identification that are consistent with those required when voting in person and upheld by the Eleventh Circuit. *Compare Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1308 (11th Cir. 2021) (listing forms of acceptable photo ID) *with* O.C.G.A. § 21-2-417(a) (same).

285. The Georgia State Elections Board (SEB) enacted Emergency Rule #183-1-14-0.6-.14 in April 2020 regarding absentee ballot drop boxes, pursuant to its authority in O.C.G.A. § 21-2-31(2) (authorizing the SEB to promulgate rules “consistent with law” regarding the “conduct of primaries and elections”). Ex. 142 (EB Emergency Rule 183-1-14-0.6.14, USA-04333-34); Ex. 145 (SEB Hr’g Tr. (Apr. 15, 2020), USA-00681:5-USA-00686:13).

**RESPONSE:** Undisputed, but immaterial.

286. SEB Emergency Rule #183-1-14-0.6-.14 regarding the use of drop boxes was unanimously extended twice to apply to the November 2020 general election and the January 2021 runoff election. Ex. 146 (SEB Hr’g Tr. (July 1, 2020), USA-00765:13-USA-00769:6); Ex. 147 (SEB Hr’g Minutes (Nov. 23, 2020), CDR00107194-95).

**RESPONSE:** Undisputed, but immaterial.

287. Some State officials interpreted Georgia’s election laws to have allowed drop boxes prior to SB 202. Ex. 65 (Mashburn Dep. 73:16-24 (admitting drop boxes were not *prohibited* under prior Georgia law)); *see also id.* 74:20-75:5 (admitting that prior to SB 202, there were arguments that the statutory

provision about creating additional registration sites allowed drop boxes, although the State Election Board took the view that view that “there were no drop boxes that existed upon the expiration of the governor’s emergency order”).

**RESPONSE:** Disputed. Mashburn testified that “drop boxes were not in the statute,” which contained “[n]either restrictions nor permissions.” Mashburn 3/14 73:16–24 (Pls.’ Ex. 65). The other testimony does not support or even address the purported statement in the parenthetical. *See id.* at 74:20–75:5. Also immaterial, as no binding interpretive authority in Georgia held this view, and no drop boxes were actually placed or used by in any county before the emergency regulations in 2020.

288. In an email dated January 3, 2022, containing proposed talking points for Secretary Brad Raffensperger, Ryan Germany wrote, “What most people don’t realize is that before the General Assembly changed the law in SB 202 (after the 2020 election), that Georgia law already authorized counties to utilize drop boxes. None of them had yet, but I guarantee you that the Democrat-controlled counties would have after facing pressure from liberal groups.”” Ex. 198 (Email from R. Germany to SOS staff, “talking points” (Jan. 3, 2022), CDR00056863-64).

**RESPONSE:** Undisputed, but immaterial, as no binding interpretive authority in Georgia held this view, and no drop boxes were actually placed or

used by or in any county before the emergency regulations. A statement for use in talking points defending the SEB emergency order does not bear on the meaning of the statutory text, which may be interpreted as a matter of law.

289. SEB Emergency Rule #183-1-14-0.6-.14 set guidelines for the use of drop boxes, in the 2020 elections, including the following: drop boxes “may be open beginning 49 days before election day and shall close at 7:00 p.m. on Election Day,” had to “only be located on county or municipal government property generally accessible to the public,” “use a video recording device to monitor each drop box location,” be “constructed of durable material to be able to withstand vandalism and inclement weather” with an opening slot that does “not allow ballots to be tampered with or removed” and “minimize[s] the ability for liquid to be poured into the drop box,” “be securely fastened to the ground or an immovable fixture,” “be clearly labeled ‘OFFICIAL ABSENTEE BALLOT DROP BOX,’” and have ballots collected “at least once every 24 hours” and be closed by 7:00 p.m. on Election Day. Ex. 142 (EB Emergency Rule 183-1-14-0.6.14, USA04333-34).

**RESPONSE:** Undisputed.

290. Counties had discretion as to the number of drop boxes they could use. *See* Ex. 82 (Bailey 3/21/23 Dep. 120:5-120:11).

**RESPONSE:** Undisputed.

291. Consistent with O.C.G.A. § 21-2-382(a), there was no requirement that the drop boxes be located inside a building. Ex. 142 (EB Emergency Rule 1831-14-0.6.14, USA-04333-34).

**RESPONSE:** Disputed in part. Undisputed that the Emergency Rule did allow outdoor drop boxes. The plain text of O.C.G.A. § 21-2-382(a) only allowed for creation of additional absentee ballot return locations in government buildings or at the sites of existing polling places were, which were all inside buildings.

292. The only day or time limitation the SEB Emergency Rule was that drop boxes “may be open beginning 49 days before election day and shall close at 7:00 p.m. on Election Day.” Ex. 142 (EB Emergency Rule 183-1-14-0.6.14, USA04333-34).

**RESPONSE:** Undisputed.

293. During the 2020 elections, most drop boxes were located outdoors and available to voters 24 hours a day, seven days a week (including weekends). Ex. 69 (Sterling Dep. 68:2-11, 69:1-6); Ex. 35 (Gwinnett Cnty. Manifold Dep. 131:7132:9); Ex. 21 (Fulton Cnty. Dep. 52:9-17).

**RESPONSE:** Undisputed, but immaterial. Considering the circumstances surrounding COVID-19, it is unsurprising that drop boxes were located outdoors.



294. Many drop boxes were placed in underserved—usually minority communities, where public transportation options are limited. Ex. 261 (Brower 5/23/22 Decl. ¶ 9).

**RESPONSE:** Disputed in part. Many drop boxes were placed in urban communities in metropolitan Atlanta that have much greater access to public transportation than suburban or rural communities. *Compare* Chatman Rep. 21 fig. 6 (public transportation access) *with id.* at 12 fig. 1 (drop box locations in 2020) (Pls.’ Ex. 93).

295. Over 50% of absentee-by-mail ballots were returned via drop box in November 2020, totaling over 550,000 ballots. Exs. 173-174 (Stephen Fowler, *See where Georgians used drop boxes in the 2020 presidential election*, GBP.org, Sept. 2, 2022, <https://www.gpb.org/news/2022/09/02/see-where-georgians-used-dropboxes-in-the-2020-presidential-election> (reporting over 550,000 ballots returned by drop box in 2020)); Ex. 86 (Burden Sur-Rebuttal Rep. 6 (showing 52% of absentee-by-mail ballots were returned via drop box in 2020)); *see also* Ex. 110 (Rodden Rep. 15 (more than half of all mail-in ballots were submitted via drop box in Fulton, DeKalb, Cobb, and Gwinnett Counties in 2020)).

**RESPONSE:** Disputed. Dr. Burden did not correct for the full extent of errors identified in his overcounts of drop box ballots. *See* Grimmer Rep. ¶¶ 117–24 (Defs.’ Ex. DDDD); Updated Grimmer Rep. ¶¶ 32–41 (Defs.’ Ex.

EEEE). Immaterial because conditions during the emergency of the pandemic do not set a baseline for statutory or constitutional standards.

296. A total of 64.65% of the 550,000 absentee ballots returned to drop boxes were returned to drop boxes in Fulton, DeKalb, Gwinnett, Cobb, Douglas, Chatham, Rockdale, and Clayton counties. Exs. 173-174 (Stephen Fowler, *See where Georgians used drop boxes in the 2020 presidential election*, GBP.org, Sept. 2, 2022, <https://www.gpb.org/news/2022/09/02/see-where-georgians-used-dropboxes-in-the-2020-presidential-election>).

**RESPONSE:** Undisputed, but immaterial. Drop boxes were widely used during the pandemic to avoid indoor exposure to pathogens. Conditions during the emergency of the pandemic do not set a baseline for statutory or constitutional standards.

297. State and County election officials have asserted that SEB's Emergency Rule regarding drop boxes provided a high level of security. *E.g.*, Ex. 61 (Harvey Dep. 75:4-19, 76:7-16 (testifying that he did not have security concerns about the chain of custody process for moving ballots from drop boxes; the process "was sound and was, for the most part, well executed")); Ex. 69 (Sterling Dep. 72:10-17 (affirming drop boxes in 2020 were secure), 155:12-156:20 (criticizing SB 202's drop box provisions as burdensome, in 2020 they were secure)); Ex. 36 (Gwinnett Cnty. Williams Dep. 63:10-20, 66:1-6, 68:16-23 (SOS provided guidance requiring 24-hour surveillance and locking

mechanisms on the drop boxes, as well as chain of custody of ballots removed from them and custody forms for the boxes)); Ex. 21 (Fulton Cnty. Dep. 57:7-59:5 (SOS provided guidance requiring 24-hour cameras on the drop boxes and guidance on chain of custody procedures and forms), 60:16-22 (no security concerns regarding drop boxes), 69:10-20 (Fulton County did not have concerns about the security of drop boxes)); Ex. 49 (Bailey 10/6/22 Dep. 47:6-12 (drop boxes were “a very effective way for voters to return their ballots to us in a safe way”), 48:10-49:6 (Richmond County “d’dn’t have any problems with” drop boxes in the 2020 election and was “comfortable with the procedures that were in place”); 83:21-84:5); Ex. 18 (DeKalb Cnty. Dep. 48:12-18); Ex. 129 (Feb. 22, 2021 H. EIC Hr’g Tr., AME\_000361:1-16 (Douglas County Elections Supervisor testifying that that “drop boxes were a great tool that served us very well in our community.”)).

**RESPONSE:** Disputed in part. Although some election officials were comfortable with the security of drop boxes, other officials expressed concern about their security, and the difficulty of video monitoring. See SOF ¶ 303 [Doc. 755] (citing Germany 6/29/23 Decl. ¶ 18 (Defs.’ Ex. D)); SOF ¶ 306 (citing Germany 3/7 209:10–211:3 (Defs.’ Ex. HH); Germany 4/13 283:24–284:7 (Defs.’ Ex. GG); K. Williams 69:21–70:2 (Defs.’ Ex. LL)); SOF ¶ 307 (citing Germany 6/29/23 Decl. ¶ 16 (Defs.’ Ex. D)); SOF ¶ 308 (citing Mashburn 3/7 77:18–25 (Defs.’ Ex. JJ); Germany 7/27/23 Decl. ¶ 66 (Defs.’ Ex. C)); SOF ¶¶ 310–14

(citing Mashburn 3/14 75:8–13 (Defs.’ Ex. KK); Mashburn 3/7 81:16–83:9 (Defs.’ Ex. K hereto)); SOF ¶ 311 (citing Mashburn 3/14 76:12–18 (Defs.’ Ex. KK)); SOF ¶ 312 (citing Mashburn 3/7 82:13–18 (Defs.’ Ex. JJ)); SOF ¶ 313 (citing Germany 7/27/23 Decl. ¶ 66 (Defs.’ Ex. C)); SOF ¶ 313 (citing Mashburn 3/14 77:17–25 (Defs.’ Ex. KK)); SOF ¶ 314 (citing Germany 7/27/23 Decl. ¶ 66 (Defs.’ Ex. C)).

298. Election administrators from counties that opted to use drop boxes during the 2020 election cycle have noted several reasons why they decided to utilize drop boxes, including that drop boxes increased absentee voting options, reduced long lines, limited the spread of COVID-19, and addressed concerns about delays with the U.S. Postal Service. Ex. 18 (DeKalb Cnty. Dep. 52:4-53:17); Ex. 21 (Fulton Cnty. Dep. 71:8-24, 75:6-9); Ex. 63 (Kidd Dep. 33:21-36:4).

**RESPONSE:** Undisputed, but immaterial. Drop boxes were widely used during the pandemic to avoid indoor exposure to pathogens. Conditions during the emergency of the pandemic do not set a baseline for statutory or constitutional standards.

299. There was significant nationwide concern in 2020 about the performance of the USPS. The agency’s financial and administrative futures remain uncertain. Voters surveyed by Gallup in September 2020 reported that

“absentee ballots not being counted because the postal service delivered them too late” was a “major problem.” Ex. 86 (Burden Sur-Rebuttal Rep. 2).

**RESPONSE:** Undisputed in that there was concern. Disputed that the future of USPS is uncertain. Immaterial because the unusual circumstances of the pandemic placed USPS under extraordinary stress that is not otherwise present, and because the actual performance of the USPS in the 2020 election showed that the concerns were unfounded. See Grimmer Rep. ¶¶ 115–116 (Defs.’ Ex. DDDD).

300. When faced with equally convenient options of a mailbox or drop box, voters preferred using drop boxes because they provide a certainty that mailboxes do not. Ex. 86 (Burden Sur-Rebuttal Rep. 2-3).

**RESPONSE:** Disputed. The cited source stated the “many” voters prefer to return absentee ballots using means other than a mailbox, further hedged to say “it is likely that *voters doubting the performance of the postal service* would prefer to use drop boxes[.]” Burden Sur-rebuttal Rep. 2, 3 (Pls.’ Ex. 86). The cited concerns about mailed ballots not being counted lacks foundation. See Grimmer Rep. ¶¶ 115–116 (Defs.’ Ex. DDDD). Immaterial because the statement is based on experience during the pandemic, and because mail-in voting has long been recognized as the normal means of absentee voting.

301. A growing dissatisfaction and distrust of the mail added to the increased use of drop boxes. Ex. 98 (Kennedy Rep. 15); Ex. 347 (Mar. 22, 2021 Sen. Ethics Comm. Hr’g Tr., AME\_001675:17-AME\_001677:1 (Heard Cnty. Elections Supervisor T. Adams)); Ex. 128 (Feb. 19, 2021 H. EIC Hr’g Tr., AME\_000228:16-AME\_000229:2 (Lowndes Cnty. Elections Supervisor D. Cox)).

**RESPONSE:** Disputed in part, as the evidence proffered relates to an unspecified number of voters, and there is no sense of how the larger voting public views this and what their preferences are. In addition, the actual performance of the USPS in the 2020 election showed that the concerns were unfounded. *See* Grimmer Rep. ¶¶ 115–16 (Defs.’ Ex. DDDD).

302. Election officials testified to the legislature during the 2021 legislative session that drop boxes were extremely popular with voters. *See* Ex. 128 (Feb. 19, 2021 H. EIC Hr’g Tr., AME\_000207:12-19 (Richmond County Elections Supervisor Lynn Bailey noting, “[O]ur jurisdiction used drop boxes in November with great success. Our voters loved it. We d’dn’t have any issues with it. The drop box— -- we followed the strict guidelines that were set in place by the Secretary of State’s office that they had to be permanently affixed to the ground, they had to be monitored and all those things.”)), AME\_000228:16-21 (Lowndes County Elections Supervisor Deb Cox testifying, “The drop boxes are

very important. They're hugely popular. [. . .] They were used extensively in our county after hours.”)).

**RESPONSE:** Disputed in part, as in some instances the drop box surveillance video was too poor to be useful, and some counties did not actually have video. SOF ¶¶ 308, 313, 371 [Doc. 755]; Mashburn 3/7 75:8–14, 77:18–25, 82:9–18 (Defs.’ Ex. JJ); Germany 7/27/23 Decl. ¶ 66 (Defs.’ Ex. C); Mashburn 3/14 75:8–14, 77:17–24 (Defs.’ Ex. KK).

303. Regarding the SOS Office’s requests to counties for drop box surveillance video, then-SOS General Counsel Ryan Germany testified to the Legislature that “. . . anytime we have requested it [drop box surveillance video] from a county, we have – we have received it.” Ex. 121 (Dec. 3, 2020 Sen. Oversight Comm. Hr’g Tr., AME 001958:11-18).

**RESPONSE:** Disputed in part, as in some instances the drop box surveillance video was too poor to be useful, and some counties did not actually have video. SOF ¶¶ 308, 313, 371 [Doc. 755]; Mashburn 3/7 75:8–14, 77:18–25, 82:9–18 (Defs.’ Ex. JJ); Germany 7/27/23 Decl. ¶ 66 (Defs.’ Ex. C); Mashburn 3/14 75:8–14, 77:17–24 (Defs.’ Ex. KK).

304. The SEB did not discover any instances of drop box misuse resulting in the submission of ballots that should have not been submitted, or of improper access to the drop boxes. Ex. 65 (Mashburn Dep. 76:6-11, 77:9-14).

**RESPONSE:** Disputed in part, as there were instances of counties failing to properly secure drop boxes, such as using cardboard boxes, leaving keys in boxes, and failing to use required chain of custody. Mashburn 3/7 75:8–14, 82:9–18 (Defs.’ Ex. JJ); Mashburn 3/14 76:15–19 (Defs.’ Ex. KK); Germany 7/27/23 Decl. ¶ 66 (Defs.’ Ex. C) (Referenced in SOF ¶ 371 [Doc. 755]).

305. Mr. Mashburn admitted the cause of any drop box security or surveillance related instances was county non-compliance with the SEB rules already in place to ensure ballot security. Ex. 65 (Mashburn Dep. 76:1-5).

**RESPONSE:** Disputed in part, as Mr. Mashburn could not know all the causes of the failure of drop box security, and it is immaterial, in that the cause of the drop box insecurity does not minimize the need to protect against that insecurity with more robust statutory standards.

306. Some voters may have erroneously viewed drop boxes susceptible to abuse predominantly because these voters were unaware of the existing procedures for the collection, placement, and monitoring of drop boxes to ensure their security under the SEB rule. Ex. 34 (SEB Dep. 175:25-176:25); Ex. 65 (Mashburn Dep. 81:16-23).

**RESPONSE:** Disputed in part because the cited portion of Ex. 34 does not address the purported fact. Immaterial because what “some voters may have” thought is speculation that is not a statement of fact, and thus no response is required.



307. Several county election officials informed legislators of their opposition to the absentee ballot drop box provisions in SB 202 and its predecessor bills, including opposing the limits on the numbers of drop boxes permitted per county and advocating for drop boxes to be permitted outdoors and available 24 hours a day until 7:00 p.m. on Election Day. *See, e.g.*, Ex. 216 (Adams Survey at USA-ADAMS-000027.0007-08 (noting 35 election officials surveyed advocated for the SEB's Emergency Rule regarding drop boxes to become law), USAADAMS-000027.0007 ("The counties who installed [drop boxes] should not have to close them due to a change in the allowed number based on population."), *id.* ("Making [drop boxes] available only at early voting and during those hours only makes absolutely no sense."), USA-ADAMS-000027.0008 ("Boxes should be open as soon as ballots can be issued and close at the close of polls on Election Day.")); Ex. 224 (Email from J. Kirk to House Special Committee on Election Integrity members, "Comments from Election Supervisor on Substitute to SB 202" (Mar. 21, 2021), USA-ADAMS-000043.0001-44.0002 (petitioning for at least one drop box per early voting location)); Ex. 118 (Mar. 18, 2021 H. EIC Hr'g Tr., AME\_001627:11-19 (Heard County Elections Supervisor Tonnie Adams testifying that the proposed drop box provisions would render drop boxes "useless")); Ex. 128 (Feb. 19, 2021, H. EIC Hr'g Tr., AME\_000207:19-208:9 (Richmond County Election Supervisor Lynn Bailey advocating that legislators permit drop boxes to remain outdoors),

AME\_000223:14-224:2 (Cobb County Elections Supervisor Janine Eveler testifying that she is “not a big fan of mandating the absentee ballot drop boxes to be inside the advanced voting locations” and “having voters to bring their ballots into the polling place . . . [could] caus[e] some confusion and disorder in the poll”), AME\_000228:10-229:7 (Lowndes County Elections Supervisor Deb Cox testifying that requiring drop boxes to be indoors and only during early voting hours “defeat[s] the purpose of having” drop boxes)); Ex. 129 (Feb. 22, 2021 H. EIC Hr’g Tr., AME\_000361:1-16) (Bartow Cnty. Elections Supervisor J. Kirk); Ex. 227 (Email from T. Edwards to Legislators, “ACCG Election Bills Comments to Leadership” with attachment (Mar. 23, 2021). USA-EDWARDS-00000228-31 (ACCG informing legislators of its members’ preference that counties have “flexibility and option to employ” drop boxes and of its members’ opposition to making drop boxes available “only in advance voting locations and during absentee voting days/hours”)).

**RESPONSE:** Undisputed, but immaterial, as a legislative dispute over the wisdom of legislation does not bear on neutral and generally applicable legislation violates the Voting Rights Act, the Constitution, or the disability laws.

308. Some county election officials advocated to have drop boxes permitted at every early voting location. *E.g.*, Ex. 224 (Email from J. Kirk to House Special Committee on Election Integrity members, “Comments from

Election Supervisor on Substitute to SB 202” (Mar. 21, 2021), USA-ADAMS000043.0001-44.0002 (advocating for drop boxes at each advanced voting location)).

**RESPONSE:** Undisputed, but differences in opinion are immaterial to the statutory or constitutional validity of SB 202.

309. County officials objected against having to disassemble drop boxes that were already put in place prior to SB 202. Ex. 216 (Adams Survey at USAADAMS-000027.0007); Ex. 224 (Email from J. Kirk to House Special Committee on Election Integrity members, “Comments from Election Supervisor on Substitute to SB 202” (Mar. 21, 2021), USA-ADAMS-000043.0001-44.0002 (“The counties who installed [drop boxes] should not have to close them due to a change in the allowed number based on population.”)).

**RESPONSE:** Undisputed, but immaterial to the statutory or constitutional validity of SB 202.

310. “Ballot harvesting,” which is commonly understood as groups or individuals returning large numbers of absentee ballots in an unlawful manner, was already illegal in Georgia prior to SB 202. *See* O.C.G.A. § 21-2-385(a) (2020); *see also* Ex. 187 (Email from H. McCloud to SOS staf, “FW: 11.19.20–0 - Election FAQs for Representati”es” (Nov. 19, 2020) at CDR00146331, ¶ 11 (“Since the passage of HB 316, ballot harvesting is

explicitly forbidden by Georgia code.”)); Ex. 198 (Email from R. Germany to SOS staff, “talking points” (Jan. 3, 2022), CDR00056863-64).

**RESPONSE:** Undisputed, but immaterial to the statutory or constitutional validity of SB 202, as whether ballot harvesting was already illegal is irrelevant to whether unattended drop boxes presented an opportunity for ballot harvesting that the General Assembly was entitled to remove.

311. State Defendants admit there was no evidence of widespread ballot harvesting in the 2020 elections. *See, e.g.*, Ex. 346 (SOS Admission No. 16); Ex. 65 (Mashburn Dep. 76:6-11, 201:15-19).

**RESPONSE:** Undisputed, but immaterial as to the validity of protecting against a fraudulent practice, whether or not “widespread” as yet, and to the resources expended in having to investigate claims of ballot harvesting, whether or not well-founded. SOF ¶ 471 [Doc. 755].

312. Mr. Germany, then-SOS’s General Counsel, testified he did not recall any legislators expressing concerns regarding the security of drop boxes during the November 2020 election. Ex. 59 (Germany Dep. 66:4-7).

**RESPONSE:** Undisputed, but immaterial to constitutional or statutory validity of SB 202 drop box provisions.

313. The SEB dismissed a handful of complaints about drop boxes, where voters were alleged to each have deposited multiple ballots in a drop

box. Investigators determined in each case that voters were legally dropping off ballots for their family members. Ex. 96 (Fraga Rep. ¶ 141).

**RESPONSE:** Undisputed, but immaterial. State officials had to spend significant resources investigating claims of ballot harvesting at unattended drop boxes, which are especially susceptible to this kind of abuse. SOF ¶ 471 [Doc. 755]. Voter concerns about ballot harvesting centered on drop boxes. 9/22/23 PI Hr'g Tr. 201:1–11 (Defs.' Ex. DD hereto).

314. The SEB's investigations into the use of drop boxes in the 2020 election did not reveal any widespread voter fraud. Ex. 34 (SEB Dep. 83:10–17); Ex. 96 (Fraga Rep. ¶ 141).

**RESPONSE:** Undisputed, but immaterial, as the legal standard does not require the existence of widespread fraud, just a reasonable or its occurrence of it on other jurisdictions. Members of both parties were concerned with the potential for fraud, especially with the drop boxes and absentee ballots. Germany 10/30/23 Decl. ¶¶ 17, 23 (Defs.' Ex. B); The Carter Ctr., *2022 General Election Observation: Fulton County, Georgia* 16 (2022) (Germany 7/27/23 Decl., Ex. 34 (Defs.' Ex. C)); U.S. Election Assistance Comm'n, *Election Crimes: An Initial Review and Recommendations for Future Study* 8, 10, 12, 18–19 (Dec. 2006) (Defs.' Ex. ZZZZ); Germany 3/7 90:1–11 (Defs.' Ex. HH); Sterling 102:11–18 (Defs.' Ex. VVV).

315. State officials responded to an Associated Press survey with no mention of drop boxes being associated with voter fraud, stolen ballots, or incidents in which the boxes or ballots were damaged to the extent that election results would have been affected. Ex. 96 (Fraga Rep. ¶ 141).

**RESPONSE:** Undisputed, but immaterial.

316. In the most densely populated counties of Georgia, more than half of all absentee ballots cast in the November 2020 election were submitted via drop box: 64% in DeKalb, 61% in Cobb, and 55% in Fulton. Ex. 110 (Rodden Rep. 15).

**RESPONSE:** Undisputed, but immaterial. The pandemic voting patterns were extraordinary. Drop boxes were widely used during the pandemic to avoid indoor exposure to pathogens. Conditions and practices during the emergency of the pandemic do not set a baseline for statutory or constitutional standards, particularly in light of ample alternative means of voting and of absentee voting in particular.

317. SB 202 resulted in a dramatic cut in the number of drop boxes available in counties with large minority populations. Ex. 85 (Burden Rep. 27); Ex. 100 (Lee Rep. 79); Ex. 5 (Hugley Decl. ¶ 17 (“[T]he restrictions on drop boxes were targeted at minority voters because they drastically cut the number of drop boxes that the metro-Atlanta counties, which are heavily minority, could offer.”)).

**RESPONSE:** Disputed because, before SB 202, there was no nonemergency authority for drop boxes in Georgia. SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial number of drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting. SOF ¶ 369 [Doc. 755].

318. In November 2020, there were approximately 300 drop boxes in Georgia, 146 (48%) of which were in the four metro-Atlanta counties (Fulton, DeKalb, Cobb, and Gwinnett) plus Douglas, Chatham, Rockdale, and Clayton Counties. Ex. 85 (Burden Rep. 40-44 (showing 37 in Fulton; 33 in DeKalb; 24 in Gwinnett; 10 in Douglas; 10 in Chatham; and 8 in Clayton)); Ex. 86 (Burden Sur-Rebuttal Rep. 7 (noting that Cobb County actually had 16 drop boxes in 2020)); Exs. 173-174 (Total Absentee Ballots Collected by Drop Box, Georgia Public Broadcasting spreadsheet (Sept. 2, 2022), <https://www.gpb.org/news/2022/09/02/see-where-georgians-used-drop-boxes-inthe-2020-presidential-election> (showing 8 drop boxes in Rockdale County in 2020)); *see also* Ex. 96 (Fraga Rep. ¶ 143); Ex. 113 (Grimmer Rep. 98, fn. 49).

**RESPONSE:** Undisputed as to the number of drop boxes installed on a temporary basis under emergency authority to reduce pathogen exposure during the pandemic. Disputed because SB 202 started from a baseline of zero

drop boxes and added permanent authority for a substantial number of drop boxes regardless of emergency conditions. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

319. SB 202 caused a reduction in the total possible number of drop boxes by about 110, with the largest decreases in drop boxes required in the eight counties that offered the highest number of drop boxes, Ex. 85 (Burden Rep. 40-44 (showing a loss of: 29 in Fulton, 27 in DeKalb, 18 in Gwinnett, 9 in Douglas, 8 in Chatham, and 6 in Clayton)); Ex. 86 (Burden Sur-Rebuttal Rep. 7-8 (noting that Cobb County had 16 drop boxes in 2020 but is now permitted only six, so was forced to eliminate ten drop boxes)); Ex. 174 (Total Absentee Ballots Collected by Drop Box, Georgia Public Broadcasting spreadsheet (Sept. 2, 2022), <https://www.gpb.org/news/2022/09/02/see-where-georgians-used-drop-boxes-inthe-2020-presidential-election> (showing 8 drop boxes in Rockdale in 2020, indicating a loss of 7 when compared to Burden Rep. at 43, which shows Rockdale is permitted only one drop box under SB 202)), and are home to 53.2% of the State's Black population and 69.3% of the State's AAPI population and 50.6% of the State's Hispanic population, but only 29.1% of the



State's white population (Fulton, DeKalb, Gwinnett, Cobb, Douglas, Chatham, Rockdale, and Clayton Counties), Ex. 169 (U.S. Census Bureau, "TOTAL POPULATION," American Community Survey, ACS 5-Year Estimates Selected Population Detailed Tables, Table B01003 (2021)<sup>7</sup>); Ex. 342 (U.S. Census Bureau, "HISPANIC OR LATINO ORIGIN BY RACE," American Community Survey, ACS 5-Year Estimates Selected Population Detailed Tables, Table B03002 (2021)<sup>8</sup>); U.S. Census Bureau, "TOTAL POPULATION," American Community Survey, ACS 5-Year Estimates Selected Population Detailed Tables, Table B01003 (2021), <https://data.census.gov/table/ACSDT5YSPT2021.B01003?t=012:451:453&g=050XX00US13051,13063,13067,13089,13097,13121,13135,13247> (last visited Ja. 17, 2024) (AAPI population).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline,

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<sup>7</sup> Available at <https://tinyurl.com/pyxzbvdr> (last visited May 14, 2024).

<sup>8</sup> Available at <https://tinyurl.com/4nb27z49> (last visited May 14, 2024).

particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

320. Collectively, Fulton, DeKalb, Gwinnett, Cobb, Douglas, Chatham, Rockdale, and Clayton Counties used 146 drop boxes in 2020 and were limited by SB 202 to 33 drop boxes, a loss of 113 drop boxes (or approximately 77% of the drop boxes those counties had available in 2020). Ex. 85 (Burden Rep. 40-44); Ex. 86 (Burden Sur-Rebuttal Rep. 7-8); Ex. 174 (Total Absentee Ballots Collected by Drop Box, Georgia Public Broadcasting spreadsheet (Sept. 2, 2022), <https://www.gpb.org/news/2022/09/02/see-where-georgians-used-drop-boxes-inthe-2020-presidential-election>), *see also* Ex. 97 (Fraga Sur-rebuttal Rep. ¶¶ 69-70); Ex. 113 (Grimmer Rep. 110, Tbl. 21 (also showing 143 drop boxes reduced to 33)).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee

voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

321. Nearly one-half (45%) of the statewide Black population experienced a decrease of 8 or more drop boxes. Ex. 85 (Burden Rep. Tbl. 11, Lines 10-14); Ex. 86 (Burden Sur-Rebuttal Rep. 7-8 (update to show that Cobb County lost 10 drop boxes under SB 202, not the four noted in Ex. 85)).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

322. Fulton, DeKalb, and Gwinnett Counties (which contain one-third (33.7%) of the statewide Black population) experienced the greatest reduction in the number of drop boxes after SB 202. Ex. 85 (Burden Rep. 28, Tbl. 11, Lines 1214); *see also* Ex. 113 (Grimmer Rep. Tbl. 21).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes

regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

323. Specifically, Fulton County had the largest reduction in the number of drop boxes in the State: from 37 in November 2020 to 8 in 2022. Ex. 85 (Burden Rep. 41-44); *see also* Ex. 97 (Fraga Sur-Rebuttal Rep. ¶¶ 69-70); Ex. 113 (Grimmer Rep. Tbl. 21).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

324. The number of drop boxes in DeKalb County decreased from 33 in November 2020 to 6 in November 2022. Ex. 85 (Burden Rep. 41-44); *see also* Ex. 97 (Fraga Sur-Rebuttal Rep. ¶¶ 69-70 (32 drop boxes in 2020 to 6 in 2022)); Ex. 113 (Grimmer Rep. Tbl. 21 (same)).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

325. The number of drop boxes in Gwinnett County decreased from 24 in November 2020 to 6 in November 2022. Ex. 85 (Burden Rep. 41-44); *see also* Ex. 97 (Fraga Sur-Rebuttal Rep. ¶¶ 69-70 (23 drop boxes in 2020 to 6 in 2022)); Ex. 113 (Grimmer Rep. Tbl. 21 (same)).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the

number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

326. The number of drop boxes in Chatham County decreased from 10 in November 2020 to 3 in November 2022. Ex. 85 (Burden Rep. 41-44); *see also* Ex. 97 (Fraga Sur-Rebuttal Rep. ¶¶ 69-70); Ex. 113 (Grimmer Rep. Tbl. 21).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

327. The number of drop boxes in Cobb County decreased from 16 in November 2020 to 6 in November 2022. Ex. 86 (Burden Sur-Rebuttal Rep. 7-8); *see also* Ex. 97 (Fraga Sur-Rebuttal Rep. ¶¶ 69-70); Ex. 113 (Grimmer Rep. Tbl. 21).

**RESPONSE:** Undisputed, but immaterial because no legal standard requires drop boxes at all, let alone at every early voting location, and drop boxes have no independent legal significance as an alternate means of absentee voting.

328. Fulton County had 36 early voting locations in November 2022 but was permitted just 8 drop boxes under SB 202's strict limits. Ex. 235 (Fulton County Advance Voting Hours and Locations 2022 General Election, FultonCounty-SB202-00033198 (number of early voting locations)); Ex. 85 (Burden Rep. 42 (number of drop boxes allowed for Fulton in 2022)).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

329. SB 202 resulted in two-thirds to three-quarters of Black, Hispanic, and AAPI registrants in the state having a reduction in the number of drop boxes available for them to use, versus just over half of white registrants who

saw a decrease in their number of drop boxes. Ex. 96 (Fraga Rep. ¶¶ 149-150 & Tbl. 15); *see also* Ex. 85 (Burden Rep. 40-44). Specifically, after SB 202, 74.8% of registered Black voters, and 67.9% of registered Hispanic voters saw drop boxes in their county decrease. Ex. 96 (Fraga Rep. ¶¶ 148-150 & Tbl. 15). After SB 202, 76.6% of registered AAPI voters saw drop boxes in their county decrease, representing the biggest decline in drop box access among all racial groups. *Id.* Only 53.7% of white voters saw a decrease in the number of drop boxes available in 2022 compared with 2020. *Id.*

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

330. Only 29 counties did not use any drop boxes prior to the passage of SB 202. Together the counties represent only 4% of the Black population statewide. Ex. 85 (Burden Rep. 29).



**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

331. Only 9.1% of the statewide Black population resides in counties that saw an increase in the number of drop boxes after SB 202. Ex. 85 (Burden Rep. Tbl. 11, Lines 1 & 2). Of this 9.1%, only 0.8% had access to two more drop boxes in November 2022 compared with November 2020, while the remaining 8.3% saw an increase of a single drop box in their county. *Id.*

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee

voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

332. White voters were disproportionately likely to see no change in the number of drop boxes available in their county. Statewide, 34% of white registered voters saw no change in the number of drop boxes available in their county, compared to only 15.2% of Black, 25.0% of Hispanic, and 18.2% of AAPI registered voters. Ex. 96 (Fraga Rep. ¶ 150).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

333. The reduction in availability of drop boxes due to SB 202 is systematically related to the size of the Black population in a county. Ex. 85 (Burden Rep. 27). A linear regression analysis of the change in drop boxes and the Black population shows that, on average, a county with a Black population 10 percentage points or greater than another county experienced a decrease of

3.4 more drop boxes as a result of SB 202. Ex. 85 (Burden Rep. 27 & n.51 (finding that the correlation is statistically significant)); *see also* Ex. 93 (Chatman Rep. ¶ 66 (finding in 2020, only about 2.5 percent of the population of Georgia lived in counties that did not provide a ballot drop box)).

**RESPONSE:** Disputed because SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial drop boxes regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Disputed to the extent the supposed regression analysis shows anything “systematic[].” The Burden report does not reveal anything about how the supposed regression analysis was conducted, but merely states the conclusion of a “black box” analysis. Table 11 of the Burden report shows only that certain counties installed many more drop boxes during the pandemic than others, and does not reflect any effort to compare counties of similar overall size but different ethnic composition. Burden Rep. 28 tbl. 11 (Pls.’ Ex. 85). Immaterial because the number of drop boxes used to decrease exposure to pathogens during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

334. The State did not maintain records of drop box use by individual voters, so the State does not have a record of drop box use by race. Ex. 252 (9/22/23 Prelim. Inj. Hr'g Tr. 89:11-14 (Grimmer)).

**RESPONSE:** Undisputed that there are no state-wide records maintained by the State, of drop box use by individual voters. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

335. Douglas County is the only county in Georgia that recorded drop box use by voter in the 2020 Election Cycle. Ex. 85 (Burden Rep. 33-34); Ex. 63 (Kidd Dep. 114:16-116:8).

**RESPONSE:** Undisputed, but immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

336. The data on drop boxes from Douglas County confirm what the statewide evidence shows: Black voters were more likely to use drop boxes than white voters. Ex. 85 (Burden Rep. 34). In November 2020, Black voters in Douglas County were 4.1 percentage points more likely than other voters to return absentee ballots via drop boxes; in January 2021, Black voters in Douglas County were 6.0 percentage points more likely than other voters to return absentee ballots via drop boxes. *Id.*

**RESPONSE:** Disputed as to what the statewide evidence shows. In fact, white voters used drop boxes as much or more frequently than black voters.

See Updated Grimmer Rep. 1–26 (Defs.’ Ex. EEEE). Disputed as to what the Burden report shows. In fact, that report compared the percentage of black voters among drop box users in Douglas County with the percentage of black voters among all voters, not the percentage of black drop box users versus the percentage of voters of other races using drop boxes. Burden Rep. 34 (Pls.’ Ex. 85). Immaterial both because drop boxes are simply one of many means of absentee or early voting without independent significance and because the percentage differences are not legally significant, as shown in the State’s briefing.

337. Defense expert Dr. Grimmer’s opinion that Black voters used drop boxes less frequently than white voters is calculated based on two surveys, each containing fewer than 145 total drop box voters in Georgia. Ex. 87 (Burden Supp. Decl. 2-3). For 2022, the dataset he relies upon contains only 12 total self-reported drop box users in the entire State. *Id.* Plaintiffs’ expert Dr. Burden concludes these sample sizes are too small to draw conclusions about Georgia’s drop box voters as a whole. *Id.*; see also Ex. 341 (Fraga Supp. Decl. ¶ 17) (concluding that “the survey data relied on by defendant’s expert (Dr. Grimmer) indicates that Black voters in Georgia used drop boxes at a significantly higher rate than White voters in Georgia.”).

**RESPONSE:** This paragraph contains Plaintiffs’ characterization of their own expert reports, not a statement of fact, and thus no response is

required. Dr. Grimmer refuted these criticisms in any event. Updated Grimmer Rep. 18–21 (Defs.’ Ex. EEEE); 9/22/23 PI Hr’g Tr. 241:1–244:24 (Defs.’ Ex. DD hereto). Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

338. By reducing the number of drop boxes available, SB 202 results in increasing the distance that voters have to travel to use a drop box. Ex. 96 (Fraga Rep. ¶ 154).

**RESPONSE:** Disputed, because before SB 202, there was no nonemergency authority for drop boxes in Georgia. SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial number of drop boxes equitably distributed regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Undisputed that some voters had to travel further to a drop box in 2022 than in 2020, disputed as to others, including the many who had access to a drop box for the first time after SB 202. In addition, most drop box voters used a small number of the available boxes—in all but one county, a smaller number than is permitted by SB 202. Grimmer Rep. 8–9, 107–13 (Defs.’ Ex. DDDD). Immaterial, because the number of drop boxes, and the distance to travel to them, existing during the emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee

voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting.

339. More than 1.1 million registered voters in Georgia who had access to a drop box in their county before SB 202 had to travel farther than the statewide average of 4.8 miles to use the nearest drop box post-SB 202. Ex. 96 (Fraga Rep. ¶ 179 & Tbl. 21).

**RESPONSE:** Undisputed, but immaterial, as the number of drop boxes, and the distance to travel to them, existing during the emergency pandemic did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting. In addition, though there were quibbles about the exact proportions, meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

340. In densely populated urban counties, where higher shares of the population do not have access to automobiles, drop boxes had been conveniently dispersed through a wide range of neighborhoods prior to SB 202. After SB 202, in some of the most densely populated areas in the Atlanta area—above all in those in Fulton, Clayton and Dekalb counties—as well as in

Savannah and other smaller cities, the nearest drop box location moved much further away. Ex. 110 (Rodden Rep. 16).

**RESPONSE:** Undisputed, but immaterial, as the number of drop boxes, and the distance to travel to them, existing during the emergency pandemic did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting. In addition, though there were quibbles about the exact proportions, meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

341. The percent of registrants who are further than the statewide average distance from a drop box than they were pre-SB 202 was larger for Black (16.5%), Hispanic (15.5%), and AAPI (21.1%) registrants than for white registrants. Ex. 96 (Fraga Rep. ¶ 158); Ex. 324 (Deposition of Dr. Bernard L. Fraga [ECF 745] (“Fraga Dep.”) 145:22-146:20).

**RESPONSE:** Undisputed, but immaterial, because the number of drop boxes, and the distance to travel to them, existing during the emergency pandemic did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes have no independent legal



significance as an alternate means of absentee voting. Further immaterial because the percentage change in distances was not legally significant among racial groups. In addition, though there were quibbles about the exact proportions, meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

342. Extant evidence indicates that most voters use the drop box closest to their home address and proximity to the nearest drop box is the standard measure of drop box accessibility in peer-reviewed scientific research. Ex. 97 (Fraga SurRebuttal Rep. ¶¶ 49-54); *see also* Ex. 100 (Lee Rep. 76-77).

**RESPONSE:** Disputed, but immaterial. In fact, meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD). Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

343. Dr. Grimmer testified that he is not aware of any peer-reviewed literature that does not use distance from residential address as the standard measure of exposure to treatment related to drop box access. Ex. 83 (Grimmer Dep. 129:21-122:16).

**RESPONSE:** Undisputed, but immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular, and because meaningfully undisputed evidence showed that most voters who actually used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

344. The survey data relied on by Defendants’ expert shows that the percent of Georgia drop box users using proximity to residential address as a key consideration when choosing between drop boxes in 2020 is 68.8% or likely higher. Ex. 97 (Fraga Sur-Rebuttal Rep. ¶ 61 & Tbl. 3).

**RESPONSE:** Disputed, but immaterial. Regardless of what “key consideration” may mean, meaningfully undisputed evidence showed that most voters who actually used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD). Also immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

345. Dr. Grimmer testified that he is not aware of any peer-reviewed literature that does not use distance from residential address as the standard measure of exposure to treatment related to drop box access. Ex. 83 (Grimmer Dep. 129:21-122:16).

**RESPONSE:** This statement is duplicative of ¶ 343. Accordingly, State Defendants incorporate their responses to that paragraph here.

346. The survey data relied on by Defendants' expert shows that the percent of Georgia drop box users using proximity to residential address as a key consideration when choosing between drop boxes in 2020 is 68.8% or likely higher. Ex. 97 (Fraga Sur-Rebuttal Rep. ¶ 61 & Tbl. 3).

**RESPONSE:** This statement is duplicative of ¶ 344. Accordingly, State Defendants incorporate their responses to that paragraph here.

347. The average (mean) distance between a registered voter eligible to vote as of November 8, 2022, and the closest drop box within their county increased from 3.415 miles in the major statewide election prior to the enactment of SB 202 (November 2020) to 4.802 miles in the major statewide election following enactment of SB 202 (November 2022). This is an increase of 1.387 miles, or 2.774 miles in round-trip distance. Ex. 96 (Fraga Rep. ¶ 156 & Tbl. 15).

**RESPONSE:** Undisputed, but immaterial, because the number of drop boxes, and the distance to travel to them, existing during the emergency pandemic did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting

and of absentee voting in particular. Further immaterial because the percentage change in distances was not legally significant among racial groups. In addition, though there were quibbles about the exact proportions, meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

348. There is a clear dichotomy between white and non-white voters when it comes to the percentage of those voters who live above or below the average distance from a drop box. Only 12.4% of white registrants who lived 4.8 miles (the average) or closer to a drop box in 2020 now live further than 4.8 miles from their county’s closest drop box. The share of Black registrants shifting from being relatively near a drop box to relatively far from a drop box was higher, at 16.5% of Black registrants previously within 4.8 miles of a drop box. Both Hispanic and AAPI registrants also saw a decrease in the percentage of voters living within 4.8 miles of a drop box that was greater than the white voter population; 15.5% for Hispanic registrants and a decrease of 21.1% for AAPI registrants, a larger drop than any other racial/ethnic group. Ex. 96 (Fraga Rep. ¶¶ 158-159); Ex. 324 (Fraga Dep. 145:22-146:20, 148:13-19, 155:12-23, 156:10-16).

**RESPONSE:** Undisputed, but immaterial, because the number of drop boxes, and the distance to travel to them, existing during the emergency

pandemic did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular. Immaterial because, as explained in the briefing, the percentage change in distances was not legally significant among racial groups. Additionally immaterial because meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

349. Dr. Grimmer’s analysis shows that voters in the four metro-Atlanta counties (Cobb, DeKalb, Fulton, and Gwinnett Counties) returned their ballots to a wide variety of drop boxes. In Fulton County in 2020, a majority (52%) of mail-in voters who returned their ballot to a drop box returned their ballot to a drop box other than one of the seven most used drop boxes in the county. Ex. 113 (Grimmer Rep. ¶¶ 134-35, Tbl. 21). In fact, “Fulton County’s drop box use was the least concentrated among all counties.” *Id.* ¶ 135, Tbl. 21. Dr. Grimmer also acknowledged that Fulton County represented the plurality of voters who voted by drop box in Georgia—14.2% of drop box voters in the state voted in Fulton County. Ex. 83 (Grimmer Dep. 172:9-19). In DeKalb, Gwinnett, and Cobb Counties, mail-in voters who returned their ballot to a drop box returned their ballot to a drop box other than one of the 6 most

used drop boxes at a rate of 19%, 39%, and 26% respectively. Ex. 113 (Grimmer Rep. ¶ 135, Tbl. 21).

**RESPONSE:** Disputed as to the characterization of the data, which speak for themselves and show that voters outside Fulton County who used drop boxes returned their ballots predominantly to a small number of drop boxes. See Grimmer Rep. ¶ 135 & tbl. 21 (Defs.' Ex. DDDD). Immaterial because the number of drop boxes, and the distance to travel to them, existing during the emergency pandemic did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

350. There are a number of costs associated with traveling to access a drop box, early voting location, or DDS office, the largest and most quantifiable of which is time. Ex. 93 (Chatman Rep. ¶ 25).

**RESPONSE:** Undisputed, but immaterial, as there are always some burdens associated with voting, and the legal question is whether the burdens are neutral and reasonable. Immaterial as to drop boxes because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

351. In 2020, 6.47% of Black citizens of voting age (“CVAs”) in Georgia faced a travel burden to access a ballot drop box (with travel burden defined as a round-trip exceeding 60 minutes), compared to 4.74% of white CVAs who faced such a travel burden, a difference of 1.73%. Ex. 93 (Chatman Rep. ¶ 86 & Tbl. 3).

**RESPONSE:** Undisputed, but immaterial as the differences (which invert the proper comparison of 95.26% vs. 93.53%) are not legally significant and because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular. Immaterial because meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Def.’s Ex. DDDD).

352. In 2022, 7.34% of Black CVAs in Georgia faced a travel burden to access a ballot drop box, compared to 2.98% of white CVAs who faced such a travel burden, a difference of 4.36 %. Ex. 93 (Chatman Rep. ¶ 86 & Tbl. 3).

**RESPONSE:** Undisputed, but immaterial, as the differences (which invert the proper comparison of 97.02% to 92.66%) are not legally significant, as discussed in the briefing. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular. Changing aspects of one novel means of voting access, while retaining mailing and personal delivery (along with in-

person voting both early and on election day), is a minimal burden, if any at all. *See Ohio Democratic Party v. Husted*, 834 F.3d 620, 630 (6th Cir. 2016). Immaterial because traveling to a polling place is a usual burden of voting. Immaterial because meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

353. In 2020, Black CVAs statewide were 36% more likely than white CVAs to have a round-trip exceeding an hour to access a ballot drop box. In 2022, Black CVAs statewide were 146% more likely than white CVAs to have a roundtrip exceeding an hour to access a ballot drop box. Ex. 93 (Chatman Rep. ¶¶ 7, 88).

**RESPONSE:** Undisputed, but immaterial, as the emergency provisions of the pandemic do not create a new statutory or constitutional baseline, because traveling to a polling place is a usual burden of voting, and because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular. Immaterial because meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

354. A travel burden to access a ballot drop box exists almost exclusively among those who do not have access to a vehicle, but instead take



public transportation or walk. Ex. 93 (Chatman Rep. ¶ 14); Ex. 102 (Deposition of Dr. Daniel G. Chatman [ECF 737] (“Chatman Dep.”) 72:7-9).

**RESPONSE:** Disputed in part, as all persons typically have to travel to either drop boxes or voting centers, and this is a usual burden of voting; in addition, all people have access to mailboxes, where absentee ballots can be mailed. SOF ¶¶ 327, 328 [Doc. 755]. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular. Immaterial because meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.’ Ex. DDDD).

355. Black voting age citizens in Georgia disproportionately lack access to a vehicle at home. About 9% of Black CVAs in Georgia lack a vehicle in the household; about 3% of white CVAs in Georgia lack a vehicle in the household. Ex. 93 (Chatman Rep. ¶ 61); *see also* Ex. 14 (30(b)(6) Deposition of Black Voters Matter Fund [ECF 696] (Clifford Albright) (“BVMF Dep.”) 102:13-102:19, 107:12-107:21).

**RESPONSE:** Undisputed, but immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular, including much closer, easily accessible mailboxes. In addition, as explained in the briefing, the State’s

racially neutral election laws are not responsible for socio-economic effects claimed to result in part from long-past discrimination.

356. In 2020, the median one-way travel time to a ballot drop box via public transportation was 26.43 minutes. In 2022, the median one-way travel time to a ballot drop box via public transportation was 42.13 minutes. Ex. 93 (Chatman Rep. ¶ 39 & Tbl. 2).

**RESPONSE:** Undisputed, but immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular, the State's racially neutral election laws are not responsible for socio-economic effects claimed to result in part from long-past discrimination, and the pandemic emergency voting practices do not create a new statutory or constitutional baseline. Also immaterial because meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.' Ex. DDDD).

357. About 14% of Georgia's population of Black CVAs reside in Fulton County. Ex. 93 (Chatman Rep. ¶ 16).

**RESPONSE:** Undisputed, but immaterial.

358. In Fulton County, the share of white CVAs without access to an automobile and who would have had a round-trip exceeding one hour to access a ballot drop box rose from 1.0% in 2020 to 2.35% in 2022. The share of Black

CVAs without access to an automobile and who would have had a round-trip exceeding one hour to access a ballot drop box rose from 3.8% in 2020 to 13.2% in 2022. Ex. 229 (Chatman Sur-Rebuttal ¶ 16).

**RESPONSE:** Undisputed, but immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular, because the pandemic emergency voting practices do not create a new statutory or constitutional baseline, and because the State's racially neutral election laws are not responsible for socio-economic effects claimed to result in part from long-past discrimination. Immaterial because meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. Grimmer Rep. 9–10, 113–31 (Defs.' Ex. DDDD).

359. The elimination of drop boxes on the final four days of the election cycle, coupled with sharp reductions in the availability and usefulness of drop boxes on other days, disproportionately burden Black voters compared to white voters. Ex. 85 (Burden Rep. 20).

**RESPONSE:** Disputed, but immaterial. The Burden report grossly overestimates the proportion of ballots returned in the last four days before prior elections, and the racial differences vary sharply between elections. *See* Grimmer Rep. ¶¶ 13, 79–85 (Defs.' Ex. DDDD). Immaterial because there is no right to vote other than on election day, and because as a matter of law

voters are responsible for ensuring that they submit their votes in a timely manner under current election law. Immaterial because the percentage differences are not legally significant. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

360. Black voters disproportionately returned absentee ballots in the last four days before Election Day in November 2020, as they did in all federal general elections since 2014. Ex. 85 (Burden Rep. 14-20). During this period, nearly 70% of absentee ballots returned were returned by drop boxes. Ex. 86 (Burden SurRebuttal Rep. 6).

**RESPONSE:** Undisputed that 70% of last-minute absentee ballots in the November 2020 election were deposited in a drop box. Otherwise disputed, but immaterial. The Burden report grossly overestimates the proportion of ballots returned in the last four days before prior elections, and the racial differences vary sharply between elections. See Grimmer Rep. ¶¶ 13, 79–85 (Defs.’ Ex. DDDD). Immaterial because there is no right to vote other than on election day, because as a matter of law voters are responsible for ensuring that they submit their votes in a timely manner under current election law, and because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular. Immaterial because the percentage differences are not legally significant.

Immaterial because the 2020 election had unusual voting patterns, given the conditions and emergency rules of the pandemic, and because there is no evidence that any voter was deterred from voting because drop boxes were not available in the last four days of the 2022 elections. Burden 161:22–162:2 (Pls.’ Ex. 78, cited in SOF ¶ 301 [Doc. 755]).

361. By the 2020 election, it would be apparent that any new limitations placed on absentee voting procedures—whether it be requirements to request ballots or ways in which such ballots can be returned—will disrupt the voting habits of Black voters in Georgia substantially more than those of white voters, imposing greater costs on Black voters relative to white voters. Ex. 85 (Burden Rep. 16 & fig. 4).

**RESPONSE:** Disputed as speculation. This sentence contains Plaintiffs’ characterization of an expert report and its conclusion, not a statement of fact, to which no response is required. Immaterial as to drop boxes because the greatest “disruption” in absentee voting procedures was the imposition of drop boxes in 2020. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting.

362. Voters who used drop boxes on these final four days in 2020 were not able to use them during those final four days after SB 202. Voters possessing completed ballots on those days are also not able to take advantage

of early voting and would likely not have enough time to return their ballots by mail. The alternative is to appear in person at a county election office or other location with an authorized deputy registrar or get in line and vote in person on election day. Ex. 85 (Burden Rep. 30).

**RESPONSE:** Disputed that ballots mailed at a post office in the county likely would not arrive on time. Disputed in that the statement shows the existence of alternatives. Immaterial because there is no evidence that any voter was deterred from voting because drop boxes were not available in the last four days of the 2022 elections. Burden 161:22–162:2 (Pls.’ Ex. 78), cited in SOF ¶ 301 [Doc. 755]. Immaterial because there is no right to vote other than on election day, because as a matter of law voters are responsible for ensuring that they submit their votes in a timely manner under current election law, and because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting.

363. Fulton County observed that SB 202’s limits on both the number of drop boxes and their availability dramatically decreased usage of drop boxes. Ex. 21 (Fulton Cnty. Dep. 66:23-67:5).

**RESPONSE:** Undisputed, but immaterial, as there is no evidence that any voter was deterred from voting because drop boxes were not available in the last four days of the 2022 elections. Burden 161:22–162:2 (Pls.’ Ex. 78).

Immaterial because there is no right to vote other than on election day, because as a matter of law voters are responsible for ensuring that they submit their votes in a timely manner under current election law, and because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

364. In 2020, Georgia voter Erendira Brumley worked as a poll worker on election day, and therefore had to vote absentee by depositing her absentee ballot into a drop box; but now under SB 202, Ms. Brumley—who has continued to serve as a poll worker—has to take time off from her full-time job as a software architect in order to be able to use drop boxes, which have been relocated inside buildings and are only accessible during work hours (9 a.m. to 5 p.m.). Ex. 50 (Deposition of Erendira Brumley [ECF 796] (“Brumley Dep.”) 16:18-17:2, 21:5-11, 21:23-22:3, 22:19-23, 26:20-25, 29:14-20).

**RESPONSE:** Disputed, as Ms. Brumley could drop her ballot in a mailbox, which would not require her to take time off work. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

365. Similarly, in the 2022 primary election, Georgia voter Jessica Owens, who votes absentee because she cannot stand in line to vote in person without incurring additional costs for childcare, no longer had access to the drop box she previously used that was seven minutes away from her house.

Instead, Ms. Owens had to drive an hour roundtrip in search of the nearest drop box. Ex. 73 (Deposition of Jessica Owens [ECF 799] (“Owens Dep.”) 24:13-25:7, 26:18-27:10, 28:24-29:12, 36:19-37:1, 37:14-22).

**RESPONSE:** Disputed, as Ms. Owens could drop her ballot in a mailbox, which would not require her to stand in line or drive anywhere. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

366. The drop box Georgia voter Phil Weltner had used near his home during the 2020 elections was not available during the 2022 election; instead, Mr. Weltner and his daughter had to wait close to three hours in line before they were able to vote in the 2022 runoff election. Ex. 77 (Deposition of Phil Weltner [ECF 802] (“Weltner Dep.”) 16:12-21, 24:17-25:5, 26:14-19).

**RESPONSE:** Disputed as to the need to vote in person or wait three hours because Mr. Weltner could have voted an absentee ballot by mail if he did not want to stand in line. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

367. Georgia voter Monica Poole could not vote in person in the 2022 primary because of an injury that left her on crutches. As a result, she turned to absentee voting, only to be disenfranchised because of SB 202 restrictions



that made it difficult to return her ballot. Drop box access was very limited—the closest drop box was almost an hour drive from her home—and by the time she was able to print her ballot and get someone to drive her to the post office, it was too late to ensure her ballot would be delivered at the elections office on time, and her ballot was not counted. Ex. 74 (Deposition of Monica Poole [ECF 803] (“Poole Dep.”) 25:25-26:11, 32:25-33:21).

**RESPONSE:** Undisputed, but immaterial because Ms. Poole’s late printing of her ballot does not rise to the level of statutory or constitutional failure by the State. As a matter of law, voters are responsible for ensuring that they submit their ballots in a timely manner under current election law. Immaterial because drop boxes do not have any independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

368. Georgia voter Sheree Giardino has served as a poll watcher and helps coordinate voter protection efforts across several counties, and through that work, Ms. Giardino observed many voters who were confused about the location of drop boxes during the 2022 elections. Ex. 60 (Deposition of Sheree M. Giardino [ECF 797] (“Giardino Dep.”) 13:17-24, 17:23-18:10).

**RESPONSE:** Undisputed, but immaterial given that there were no drop boxes in Georgia before 2020, and because drop boxes do not have any

independent legal significance in light of ample alternative means of voting and of absentee voting in particular.

369. The share of absentee-by-mail ballots cast drastically decreased after the passage of SB 202: only 6.2% of votes were cast by mail in the November 2022 election; by contrast, 26.1% and 23.9% of votes were cast absentee in the November 2020 and January 2021 elections respectively. Ex. 113 (Grimmer Rep. ¶¶ 54-55).

**RESPONSE:** This statement is immaterial because there was special emphasis on voting by mail during the pandemic, both by government and by anxious voters, but there was no such emphasis or anxiety after the pandemic subsided. Additionally, the statement does not comply with L.R. 56.1 in that it is argumentative and includes descriptives, such as “dramatically” which are not used in Dr. Grimmer’s report, cherry picks facts included in his report while omitting other facts, thereby misrepresenting his conclusions out of their proper context, cites to facts which are not material to the claims and defenses in this case and is not separately numbered.

370. Based on data from the Georgia Secretary of State’s Office, there was an 81% decrease in mail-in voting between the November 2020 and 2022 elections—constituting a far greater decrease than any other state with competitive races. Ex. 100 (Lee Rep. 84-85).

**RESPONSE:** Objection. The Federal Rules of Evidence do not provide “an open door to all inadmissible evidence disguised as expert opinion” even though experts are “sometimes allowed to *refer* to [inadmissible] ... evidence.” *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998) (emphasis added) (internal citations omitted); *see also Joiner v. Gen. Elec. Co.*, 864 F. Supp. 1310, 1317 n.14 (N.D. Ga. 1994), *rev’d on other grounds*, 78 F.3d 524 (11th Cir. 1996), *rev’d*, 522 U.S. 136 (1997) (Even though certain evidence is “saved from exclusion as hearsay when an expert relies on [it] in giving his opinion . . . [that is not the case when the proffering party has not] . . . cited to the court expert testimony that supports the expansive proposition they advance.”). The facts cited are inadmissible and based on a newspaper article. *Dallas County v. Com. Union Assur. Co.*, 286 F.2d 388, 391–92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”). The statement is also immaterial because there is no independent significance to absentee voting as opposed to overall voting, and overall turnout reached record levels for a non-presidential election cycle. *See* SOF ¶¶ 348–51; Ga. Sec’y of State, *Georgia Voters Lead Southeast in Engagement, Turnout* (May 17, 2023), <https://tinyurl.com/2huchh3h> (Defs.’ Ex. FFFFFF); Shaw 2/14 Rep. 15–16 & tbl. 7 (Defs.’ Ex. KKKK); Grimmer Rep. ¶¶ 42, 44 (Defs.’ Ex. DDDD).

371. In pre-SB 202 Georgia elections between 2018 and 2021, AAPI registrants applied for absentee ballots at rates higher than white registrants. Ex. 96 (Fraga Rep. Tbl. 3).

**RESPONSE:** Objection to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

372. In the November 2018 midterm election, AAPI registrants applied for absentee ballots at higher rates than white registrants (7.6% AAPI; 3.3% white). Ex. 96 (Fraga Rep. ¶ 70, Tbl. 3).

**RESPONSE:** Objection to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

373. In the November 2020 presidential election, most AAPI registrants applied for absentee ballots at higher rates than white registrants (34.8% AAPI; 22.5% white). Ex. 96 (Fraga Rep. ¶¶ 68, 70, Tbl. 3).

**RESPONSE:** Objection to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely,

“other” and “unknown” and is based on self-reports data. State Defendants further object on the grounds that the fact is duplicative.

374. In the January 2021 runoff election, most AAPI registrants applied for absentee ballots at higher rates than white registrants (22.9% AAPI; 17.0% white). Ex. 96 (Fraga Rep. ¶ 70, Tbl. 3).

**RESPONSE:** Objection to the fact as duplicative of previous facts and to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

375. In Georgia elections post-SB 202, the rate of AAPI registrants applying for absentee ballots fell behind white registrants. Ex. 96 (Fraga Rep. ¶ 69, Tbl. 3).

**RESPONSE:** Objection. The fact is argumentative and implies causation when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

376. In the November 2022 midterm election, white registrants applied for absentee ballots at higher rates than AAPI registrants (3.6% white; 4.3% AAPI). Ex. 96 (Fraga Rep. ¶¶ 69-70, Tbl. 3).

**RESPONSE:** Objection. The fact is argumentative and implies causation when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

377. In the December 2022 runoff election, white registrants applied for absentee ballots at higher rates than AAPI registrants (3.2% white; 2.8% AAPI). Ex. 96 (Fraga Rep. ¶¶ 69-70, Tbl. 3).

**RESPONSE:** Objection. The fact is argumentative and implies causation when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

378. Rates of absentee-by-mail voting dropped off more sharply for Black, Hispanic, and AAPI voters after the implementation of SB 202, relative to White voters. Ex. 96 (Fraga Rep. ¶ 9 & Tbl. 2). The rates of absentee-by-mail

voting between 2020 and November 2022 general elections dropped off 21.7 percentage points for Blacks, 18.8 percentage points for Hispanic, 30.6 percentage points for AAPI compared to 18.3 percentage points for white voters. *Id.* In the November 2022 election, only 9.1% of AAPI voters used absentee ballots. *Id.* at ¶ 55 & Tbl. 2.

**RESPONSE:** Objection. The fact is argumentative and implies causation when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

379. After SB 202, AAPI voters had the largest drop off in absentee-by mail rates of any group. Ex. 96 (Fraga Rep. ¶ 60).

**RESPONSE:** Objection. The fact is argumentative and implies causation when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

380. Between 2018 and 2022, the percentage of AAPI voters who voted by mail dropped from 11.2% to 9%, representing the sharpest decline in absentee-by-mail voting among any racial group. Ex. 96 (Fraga Rep. ¶¶ 60, 70).

**RESPONSE:** Objection. The fact is argumentative and implies a legal conclusion of causation when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

381. The decline for AAPI voters’ use of absentee ballots from the January 2021 to the December 2022 runoff election was also greater than for white voters. Ex. 96 (Fraga Rep. Tbl. 2 (28.7% decline for AAPI voters compared to a 16.5% decline for white voters)).

**RESPONSE:** Objection. The fact is argumentative and implies a legal conclusion of causation when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers reflected in the table are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

382. White voters were the *only* racial/ethnic group to have their rate of mail voting remain higher than the 2018 figure by the December 2022



election. Black, Hispanic, and AAPI voters, voted by mail at a lower rate in the December 2022 runoff than in November 2018. Ex. 96 (Fraga Rep. ¶¶ 61-62).

**RESPONSE:** Objection. The fact is argumentative and implies causation, a legal conclusion, when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

383. In the three elections prior to SB 202, AAPI registered voters were more likely than White registered voters to request absentee-by mail ballots. That changed after SB 202—AAPI voters were less likely than White voters to request absentee-by-mail ballots in the two elections following SB 202. Ex. 96 (Fraga Rep. ¶¶ 10, 67-68).

**RESPONSE:** Objection. The fact is argumentative and us a legal conclusion as it implies causation when comparing elections during the COVID-19 pandemic and later elections and to the extent that the numbers are based on self-reported data and registrants may be in multiple categories and excludes 2 groups on the SOS voter registration file, namely, “other” and “unknown” and is based on self-reports data.

384. Voters who support Democrats are disparately burdened by the cumulate effects of SB 202’s absentee voting restrictions. They relied on drop

boxes and voted by mail at far greater rates than voters who support non-Democratic candidates in the elections immediately preceding SB 202. Ex. 104 (Lichtman Rep. 17-26, 31-36).

**RESPONSE:** Objection. The Federal Rules of Evidence do not provide “an open door to all inadmissible evidence disguised as expert opinion” even though experts are “sometimes allowed to *refer* to [inadmiss©e] ... evidence.” *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998) (emphasis added) (internal citations omitted); *see also Joiner v. Gen. Elec. Co.*, 864 F. Supp. 1310, 1317 (N.D. Ga. 1994), *rev’d on other grounds*, 78 F.3d 524 (11th Cir. 1996), *rev’d*, 522 U.S. 136 (1997) (Even though certain evidence is “saved from exclusion as hearsay when an expert relies on [it] in giving his opinion . . . [that is not the case when the proffering party has not] . . . cited to the court expert testimony that supports the expansive proposition they advance”). The stated fact is based on inadmissible hearsay. *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

385. Many counties in Georgia offered Sunday voting prior to the enactment of SB 202. Ex. 82 (Bailey 3/21/23 Dep. 216:4-14); Ex. 35 (Gwinnett Cnty. Manifold Dep. 108:14-109:2); Ex. 36 (Gwinnett Cnty. Williams Dep. 46:347:11).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

386. Early voting is of particular importance for Black voter turnout given that Black voters in Georgia are disproportionately likely to vote early, and particularly on weekend days, which are no longer required during the runoff period. Ex. 19 (Delta Dep. 75:11-76:3); Ex. 38 (30(b)(6) Deposition of The Justice Initiative, Inc. (Fer-Rell M. Malone, Sr.) [ECF 727] (“JI Dep.”) 101:9-102:5).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). In addition, the fact is also based on inadmissible lay opinion, not based on personal knowledge and does not comply with L.R. 56.1 as it is not separately numbered.

387. Early voting is also of particular importance to voters who tend to support Democratic candidates. These voters relied on early voting disproportionately in both the 2022 presidential elections and the 2021 U.S. Senate runoff. Ex. 104 (Lichtman Rep. 33-34).

**RESPONSE:** Objection. Defendants object on the grounds that the fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than fact and infers a legal conclusion and does not comply with L.R. 56.1 is

not material to the claims and defenses in this case and is not separately numbered.

388. The reduced advance voting opportunities for runoff elections with a federal candidate on the ballot will naturally result in increased voting on Election Day—meaning longer lines, particularly in urban areas, which disproportionately affect Black voters, who already face longer lines on average. Ex. 107 (Pettigrew Rep. 1, 20, 33-34); Ex. 81 (Deposition of Dr. Stephen Pettigrew [ECF 791] (“Pettigrew Dep.”) 160:10-162:9, 171:10-173:9, 177:12-178:1, 196:9-197:8, 205:9-208:9); Ex. 85 (Burden Rep. 20-22 & n.33).

**RESPONSE:** Objection. The cited evidence is speculative as to what will “naturally” happen and is therefore inadmissible and not proper for consideration on summary judgment. L.R. 56.1(B)(3). The fact also does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and is not separately numbered and is speculation not fact.

389. Former Cobb County Elections and Registration Director Janine Eveler recognized that the proposed early voting restrictions lead to longer wait times for voters. Ex. 217 (Email from Cobb County Elections Supervisor Janine Eveler to legislators (Mar. 11, 2021), CDR00009771-73). In March 2021, she warned legislators that in enacting SB 202, “[y]ou are eliminating all but a few days of early voting which will mean that lines on election day will be untenable.” *Id.*

**RESPONSE:** Objection. The cited evidence is speculative as to what will happen and is therefore inadmissible and not proper for consideration on summary judgment. L.R. 56.1(B)(3). The fact also does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and is not separately numbered and is speculation not fact.

390. Supporters of SB 202 claimed incorrectly that the number of OP voters had sharply increased. Ex. 118 (Mar. 18, 2021 H. EIC Hr'g Tr., AME\_001518:20-24 (Fleming testimony claiming that in 2016 there were 200-300 OP voters and by 2020 there were 20,000)).

**RESPONSE:** Objection. The fact is argument does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case, it is argumentative, misrepresents the underlying data and is not separately numbered.

391. Chairman Fleming's claim contradicts the State's own analysis, conducted on or before March 11, 2021, showing that 8,191 OP votes were cast in 2020, a decline from 2018, when 10,917 OP votes were cast, and a moderate increase from 2016, when 6,124 OP votes were cast. Ex. 228 (Email from B. Evans to SOS staff, "Provisional Ballot 2016 to 2018 to 2020 from Surveys.xlsx" (Mar. 25, 2021), CDR00044731-32).

**RESPONSE:** Objection. The fact is argumentative does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case,

it is argumentative, misrepresents the underlying data and is not separately numbered.

392. County election officials informed legislators of their concern that the ban on counting OP provisional ballots before 5:00 p.m. would disenfranchise voters who mistakenly appear to vote at the incorrect precinct. *See* Ex. 216 (Adams Survey at USA-ADAMS-000027.00013).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). In addition, the fact does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and is not separately numbered.

393. Voters' precincts may change from one election to another for a host of reasons including redistricting, or even scheduling conflicts. Ex. 21 (Fulton Cnty. Dep. 197:14-198:13).

**RESPONSE:** Objection. The fact is speculative as to what is meant by "a host of reasons" and does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case, it is argumentative, misrepresents the underlying data and is not separately numbered.

394. Multiple election officials admitted that, prior to SB 202, their counties encountered no administrative problems associated with duplicating OP ballots. *See, e.g.*, Ex. 49 (Bailey 10/6/22 Dep. 138:1-4); *see also* Ex. 63 (Kidd

Dep. 146:9-147:1 (“[T]he poll workers see [OP] provisional ballots as another way in which we’re helping voters exercise their right to vote.”), 155:13-17 (pre-S.B. 202 processing of out-of-precinct provisional ballots was not burdensome)); Ex. 21 (Fulton Cnty. Dep. 192:2-4, 194:7-16, 196:1-9 (testifying that providing provisional ballots is not a difficult process, and it would be easier for county administrators to permit voters to cast their ballots at an unassigned precinct within their county than to enforce SB 202’s restrictions on out-of-precinct voting)); Ex. 257 (Brower 1/18/24 Decl. ¶¶ 22-23 (former Fulton and DeKalb County election official noting that, based on his experience in Fulton and DeKalb Counties, boards of elections “have had experience processing out-of-precinct ballots for almost two decades, and they are able to do so successfully” and that any time saved in denying an OP ballot to a voter “is not more important than allowing eligible voters the opportunity to cast a vote and have that vote counted.”))).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). In addition, the fact does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and is not separately numbered.

395. Defendant Sarah Tindall Ghazal, then-Cobb County attorney and now-SEB member, proposed to the Legislature several less-discriminatory

alternatives to the ban on counting most OP provisional ballots that would have met the State's purported goals. She testified, "If the actual and not the pretextual goal were to reduce down-ballot votes not counting, a more narrowly tailored solution to the problem with such a disparate impact would be—should be contemplated, such as investing in voter education and outreach, mandating that poll workers stand outside precinct to check and redirect voters, or following the model that Senator Harrell outlined yesterday and giving voters their actual ballots. Ex. 131 (Mar. 16, 2021 Sen. Ethics Comm. Hr'g Tr., AME\_001410:22-1411:14 (Ghazal)).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). And the fact's inclusion of "less-discriminatory alternatives" is argumentative and a legal conclusion, neither of which are admissible for purposes of summary judgment and is based on impermissible lay opinion. In addition, the fact does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and includes multiple facts that are not separately numbered.

396. Black voters were more likely to cast OP ballots than white voters in 2018 and the 2020 election cycle, including in November 2020. Ex. 85 (Burden Rep. 35-38), *id.* at 36 ("Black voters were disproportionately likely to cast out-of-precinct provisional ballots in the November 2020 election."); *see also*



*id.* at 55 (“[T]he analysis presented here shows that individuals who cast out-of-precinct provisional ballots that were accepted for counting in recent Georgia elections were disproportionately Black voters. Examining three elections, the data demonstrate that Black voters were overrepresented among out-of-precinct voters in five out of six cases, and in several instance the overrepresentation was quite substantial.”); *see also* Ex. 252 (9/22/23 Prelim. Inj. Hr’g Tr. 94:8-97:4).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case and includes multiple facts that are not separately numbered. In addition, the facts as stated are based on testimony from the preliminary injunction hearing which had a lesser standard of admissibility than applies to this motion, is based on hearsay and incomplete underlying data and includes facts that are not material to the claims and defenses in this case. Additionally, the claim of disproportionate burdens is misleading and unsupported by the cited materials. Since 2014, the share of *all* votes cast provisionally (of which OP provisional votes are only a subset) was always less than half of one percent and was less than one-*fifth* of a percent in 2020; and the gap between white and any other race of voters’ rates of provisional voting never exceeded 0.44 percentage points. *See* Grimmer Rep. ¶ 66 tbl. 8 [Doc. 756-23].

397. Evidence from 19 counties in November 2018, 77 counties in November 2020, and 67 counties in January 2021 show that Black voters were more likely to cast OP ballots than white voters. Ex. 85 (Burden Rep. 35-37 & 53-55).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case and includes multiple facts that are not separately numbered and refer to pages generally rather than specific page references. In addition, the facts as stated are based on hearsay and incomplete underlying data, and this statement includes facts that are not material to the claims and defenses in this case. Additionally, the claim of disproportionate burdens is misleading and unsupported by the cited materials. Since 2014, the share of *all* votes cast provisionally (of which OP provisional votes are only a subset) was always less than half of one percent and was less than one *fifth* of a percent in 2020; and the gap between white and any other race of voters' rates of provisional voting never exceeded 0.44 percentage points. See Grimmer Rep. ¶ 66 tbl. 8 [Doc. 756-23].

398. Under SB 202, voters who previously would have received a provisional ballot if they are in the wrong precinct are now informed by election officials that if it is before 5:00 p.m. such a ballot will not count. This means fewer voters who arrive at the wrong precinct will be able to cast an effective

ballot because not all of them will make it to their assigned precinct. Ex. 110 (Rodden Rep. 34).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and includes multiple facts that are not separately numbered and refer to pages generally rather than specific page references. In addition, the facts as stated are based on inadmissible hearsay and incomplete underlying data.

399. A full accounting of every provisional ballot in the State is not possible, but “is also not necessary to reach firm conclusions about racial differences in the casting of out-of-precinct provisional ballots.” Ex. 85 (Burden Rep. 54).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and is based on inadmissible hearsay and incomplete underlying data. Additionally, the claim of disproportionate burdens is misleading and unsupported by the cited materials. Since 2014, the share of *all* votes cast provisionally (of which OP provisional votes are only a subset) was always less than half of one percent and was less than one-*fifth* of a percent in 2020; and the gap between white and any other race of voters’ rates of provisional voting never exceeded 0.44 percentage points. See Grimmer Rep. ¶ 66 tbl. 8 [Doc. 756-23].

400. The State requires very little in the way of recordkeeping regarding OP ballots. For example, counties do not record the time at which a provisional ballot is cast, so it is not possible to determine the time at which voters cast out-of-precinct ballots prior to SB 202. *See, e.g.*, Ex. 236 (Numbered List of Provisional/Challenged Voters Form, USA-BUTTS-000005.001 (sample of the hard copy form that is used to record provisional voters at the polling place on election day, with no space to record time)). Counties are not required to track OP voters electronically (though about 20 counties did so in Nov. 2020 and Jan. 2021. *See* Ex. 85 (Burden Rep. 35-37, 51)).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and includes multiple facts that are not separately numbered. In addition, the facts as stated are based on inadmissible hearsay and incomplete underlying data.

401. Likewise, SB 202's new OP rule places Black voters at greater risk of disenfranchisement, because socio-economic disadvantages faced by Black voters relative to white voters, such as lack of transportation and lower incomes, Black voters are more likely to face burdens in going to another polling place. Ex. 85 (Burden Rep. 38); Ex. 93 (Chatman Rep. ¶ 61).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case and is not separately numbered. In addition, the facts as stated are speculative and are not based

on fact. Additionally, the claim of disproportionate burdens is misleading and unsupported by the cited materials. Since 2014, the share of *all* votes cast provisionally (of which OP provisional votes are only a subset) was always less than half of one percent and was less than one-*fifth* of a percent in 2020; and the gap between white and any other race of voters' rates of provisional voting never exceeded 0.44 percentage points. See Grimmer Rep. ¶ 66 tbl. 8 [Doc. 756-23].

402. Black Georgians and Hispanic Georgians are more likely to move over a 12-month period than are white Georgians, increasing the likelihood that they will need to update or initiate a new voter registration. Ex. 85 (Burden Rep. 25).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case and is not separately numbered. In addition, the facts as stated are speculative and are not based on fact.

403. Black Georgians are particularly more likely to move within their home counties compared to white residents. Ex. 85 (Burden Rep. 25).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) is not material to the claims and defenses in this case.

404. Residential mobility can make it difficult for voters to determine their assigned precinct. Ex. 85 (Burden Rep. 25, 35); Ex. 47 (Adams Dep. 131:6-

132:24 (Precinct cards are being sent “later and later” by the State, using a third-party vendor, so “a registrant that registers to vote just before the registration deadline, which is four weeks before the election, you’re not going to get that precinct card until the election is over, chances are.”)).

**RESPONSE:** Objection. The fact is does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and is not separately numbered.

405. Voters may also lack information about their assigned precinct for other reasons, such as having received incorrect information from an election official or third party. Ex. 85 (Burden Rep. 35).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) as it is not material to the claims and defenses in this case and is not separately numbered and is based on speculation and not fact.

406. At least some voters who arrived at an unassigned polling place before 5:00 p.m. were unable to vote provisionally and were not able to make it to their assigned polling location to vote due to work obligations and limited time available to go vote. Ex. 30 (30(b)(6) Deposition of the Georgia Muslim Voter Project (Shafina Khabani) [ECF 725] (“GAMVP Dep.”) 184:18-185:8).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R. 56.1

as it is not material to the claims and defenses in this case and is not separately numbered.

407. Voter Donald Jumper was disenfranchised in the December 2022 runoff election, because he mistakenly appeared at the wrong polling place before 5:00 p.m. and did not have time to travel and wait in line again at his assigned precinct to vote. Ex. 293 (Jumper Decl. ¶¶ 4-8).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact is also argumentative and states an improper legal conclusion.

408. Voter Sebastian Mason was disenfranchised in the December 2022 runoff election, because he mistakenly appeared at the wrong polling place before 5:00 p.m. and did not have time to travel and wait in line again at his assigned precinct to vote. Ex. 300 (Mason Decl. ¶¶ 4-8).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact is argumentative and states an improper legal conclusion.

409. Since the general election in 2020, Erendira Brumley has worked as a poll worker on election day, and after SB 202 was enacted, Ms. Brumley has, in that role, informed voters that they were out of precinct and had to visit

their assigned precinct in order to vote. Ex. 50 (Brumley Dep. 21:5-11, 21:23-22:3, 22:19-23, 51:9-18).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

410. No other state that has banned all food or beverage distributions no matter the distance from the polling place, irrespective of intent or the minimal value of such items. Ex. 107 (Pettigrew Rep. 27).

**RESPONSE:** For instance, New York requires exactly that—at least according to the complaint. See Am. Compl. ¶¶ 16–17, *Brooklyn Branch of the NAACP v. Kosinski*, 1:21-cv-07667-KPF (S.D.N.Y. Mar. 22, 2022), ECF 38 (Defs.’ Ex. GG hereto) (“In other words, New York’s Line Warming Ban criminalizes the popular, expressive practice by nonpartisan organizations and other volunteers of sharing refreshments with voters while they wait in line” and noting the irrelevance of the exception for items provided inside “a polling place” with a retail value of less than one dollar, which must also be provided “without any identification of the person or entity supplying such provisions.”) (citing N.Y. Elec. Law § 17-140).

411. Line relief by Black activists and Black-led groups in Georgia transformed the environment at polling places by welcoming and encouraging Black voters seeking to participate in the political process despite generations



of exclusion and discrimination. *See* Ex. 257 (Brower 1/18/24 Decl. ¶¶ 26-28 (explaining that line relief “is used to overcome the history of discrimination against Black voters, including the history of hostility that Black voters encountered when trying to vote” and “makes polling places more welcoming to Black voters”)); Ex. 345 (Woodall 1/18/24 Decl. ¶¶ 8-10 (explaining that line warming was used “to engage Black voters and to help them feel protected at polling places” and to make “Black voters feel safe and welcome at polling places.”)); Ex. 259 (Briggins 5/20/22 Decl. ¶¶ 6, 14, 18 (line relief is “a form of social action”)); Ex. 16 (30(b)(6) Deposition of Common Cause (Treaunna Dennis) [ECF 697] (“Common Cause Dep.”) 168:8-22 (line relief is part of “a process that we have done in Georgia for many decades since we have been able to vote[,] since reconstruction”)).

**RESPONSE:** Disputed in part. Line warming practices were relatively rare in Georgia prior to the 2010s and were at a significantly reduced level. Mashburn 3/7 104:11–105:7 (Defs.’ Ex. JJ); Eveler 287:16–25 (Defs.’ Ex. T); Kabani 111:20–23 (Defs.’ Ex. VV); K. Smith 149:16–150:4 (Defs.’ Ex. W); Griggs 48:13–23 (Defs.’ Ex. WW). In addition, voter complaints show these practices make many voters feel unsafe, unwelcome, or unassured about electoral integrity. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.’ Ex. M); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F). These complaints became particularly true as organizations began handing out items of increasing value and acting in

increasingly intrusive ways. Mashburn 3/14 111:23–113:1 (voters believed political parties were “running the lines”), 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex. T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ). Given the volume of complaints and Georgia’s demographics, this likely includes many Black voters as well.

412. Voters at the edge of, or beyond, the 150-foot zone around precincts usually wait an hour or more to vote. Ex. 35 (Gwinnett Cnty. Manifold Dep. 41:25).

**RESPONSE:** Undisputed, but immaterial.

413. Although poll workers may make “available self-service water from an unattended receptacle,” SB 202 § 33, many counties do not, or cannot, provide self-service water receptacles to voters at polling precincts. Ex. 15 (Cobb Cnty. Dep. 142:23-25); Ex. 21 (Fulton Cnty. Dep. 214:25-215:8); Ex. 37 (Hall Cnty. Dep. 60:12-17); Ex. 51 (Columbia Cnty. Dep. 62:25-63:3); Ex. 18 (DeKalb Cnty. Dep. 184:18-22); Ex. 63 (Kidd Dep. 136:5-15).

**RESPONSE:** Disputed. “Many” is vague, and “cannot” is unsupported by the record cites. In addition, voters are free to provide their own water, or receive water from groups outside the buffer zone.

414. Providing food and water to Black voters waiting to vote continues a longstanding tradition in the Black community of offering sustenance to

fortify and support Black people exercising political rights. Ex. 259 (Briggins 5/20/22 Decl. ¶ 19); *see also* Ex. 312 (T. Scott Decl. ¶ 10).

**RESPONSE:** Disputed. Line warming practices prior to 2018 in Georgia do not resemble the sort of practices that caused chaos afterwards, and in any event, they were relatively rare. Mashburn 3/7 104:11–105:7 (Defs.’ Ex. JJ); Eveler 287:16–25 (Defs.’ Ex. T); Kabani 111:20–23 (Defs.’ Ex. VV); K. Smith 149:16–150:4 (Defs.’ Ex. W); Griggs 48:13–23 (Defs.’ Ex. WW).

415. Banning line warming activities sends the message that “some people do not want Black people to vote.” Ex. 257 (Brower 1/18/24 Decl. ¶ 30).

**RESPONSE:** Disputed, but immaterial. These measures sought to give voters a “safe spot to be in.” Bailey 3/21 127:15–128:6 (Defs.’ Ex. GGG). Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided. Durbin Decl. ¶ 6 (Defs.’ Ex. K). And voter complaints show these practices make many voters feel unsafe, unwelcome, or unassured about electoral integrity. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.’ Ex. M); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F). These complaints became particularly true as organizations began handing out items of increasing value and acting in increasingly intrusive ways. Mashburn 3/14 111:23–113:1 (voters believed political parties were “running the lines”), 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex. T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ). Given the

volume of complaints and Georgia's demographics, this likely includes many Black voters as well.

416. Voters and organizations said that these line relief efforts helped to reduce the burdens of standing in long lines and fortified Black voters to stay in long lines, without which they would have left without voting. *See, e.g.*, Ex. 312 (T. Scott Decl. ¶¶ 6-11 (describing staying in a 4-hour line after receiving food and water and the feeling of solidarity it engendered)); Ex. 314 (Sutton Decl. ¶¶ 5-9); Ex. 265 (Calhoun Decl. ¶ 18); Ex. 269 (Cotton Decl. ¶ 10); Ex. 259 (Briggins 5/20/22 Decl. ¶¶ 14-16); Ex. 286 (Hector 6/3/22 Decl. ¶¶ 17-19); Ex. 291 (C. Johnson Decl. ¶ 9); Ex. 333 (Honor 6/3/22 Decl. ¶ 19); Ex. 262 (Brown Decl. ¶¶ 6-9).

**RESPONSE:** Disputed and immaterial. There is no statistical evidence showing a positive effect from these activities, Shaw 2/14 Rep. ¶ 67 (Defs.' Ex. KKKK), and it is undisputed that they had a negative effect on many voters. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.' Ex. M); Germany 6/24/22 Decl. ¶¶ 29-31 (Defs.' Ex. F); Mashburn 3/14 111:23-113:1 (voters believed political parties were "running the lines"), 143:22-144:6 (Defs.' Ex. KK); Eveler 288:5-12 (Defs.' Ex. T); Harvey 149:19-25 (Defs.' Ex. PPP); Mashburn 3/7 104:12-105:7 (Defs.' Ex. JJ). In addition, Georgia has taken successful efforts to reduce wait times for voters, including Black voters, thus reducing any purported benefits. Shaw

2/24 Rep. ¶ 41 & fig. 9 (Defs.' Ex. LLLL) (4% of Black voters and 4.8% of White voters waited over 30 minutes).

417. Individuals and groups seeking to participate in line-warming activities were seeking to create a celebration out of voting. Ex. 16 (Common Cause Dep. 168:8-168:22); Ex. 49 (Bailey 10/6/22 Dep. 142:6-9); Ex. 43 (30(b)(6) Deposition of the New Georgia Project (Stephanie Jackson-Ali) [ECF 733] ("NGP Dep.") 125:13-126:11 (testifying a goal of line warming was "voter appreciation and helping voters feel celebrated for being there and being in line")); Ex. 258 (Bray Decl. ¶¶ 9-10 ("Nothing says Southern hospitality more than gathering around a table to share food. This is especially true in Black communities. We want to create that ethos in polling precincts in Georgia as well.")).

**RESPONSE:** Disputed in part and immaterial. At least some groups appeared to have partisan motives. One such organization stated its activities were the "last chance to reach Georgians before they vote" in an election that could "determine control of the U.S. Senate." Germany 6/24/22 Decl. ¶ 30(c) (Defs.' Ex. F). Moreover, "most times the line relief take place in areas where the people have an . . . interest in the outcome of the election." Mashburn 3/7 116:15–18 (Defs.' Ex. K hereto). And regardless of their intent, such groups actually created a chaotic, "circus"-like environment, caused voters to think partisan organizations were "running the line," and even necessitated police

involvement. Bailey 10/6 140:25–141:5 (Defs.’ Ex. FFF); Mashburn 3/7 104:12–105:7, 109:7–13 (Defs.’ Ex. JJ); Bailey 3/21 217:3–5 (Defs.’ Ex. GGG); Mashburn 3/14 107:24–108:2, 111:23–113:1, 128:1–5, 198:3–11, 152:20–153:14, 138:10–13 (Defs.’ Ex. KK & Defs.’ Ex. L hereto).

418. Aunna Dennis testified, “Line warming is a community activation act that we do here in Georgia to celebrate the time that we are voting with our neighbors and our community’ members. It’s equivalent for people in my community—I’m saying my community, people who are in communities ’f color, it’s similar to us having a victory meal after emancipation or Juneteenth or someone who was just recently naturalized being able to have a meal with their family when they are getting in their Sunday best to go to vote. That’s how we categorize line warming. This is a process that we have done in Georgia for many decades since we have been able to vote since reconstruction.” Ex. 16 (Common Cause Dep. 168:8-168:22).

**RESPONSE:** Disputed in part. Line warming practices prior to 2018 in Georgia do not resemble the sort of practices that caused chaos afterwards, and in any event, they were relatively rare. Mashburn 3/7 104:11–105:7 (Defs.’ Ex. JJ); Eveler 287:16–25 (Defs.’ Ex. T); Kabani 111:20–23 (Defs.’ Ex. VV); K. Smith 149:16–150:4 (Defs.’ Ex. W); Griggs Dep. 48:13–23 (Defs.’ Ex. WW). Moreover, “most times the line relief take place in areas where the people have

an . . . interest in the outcome of the election.” Mashburn 3/7 116:15–18 (Defs.’ Ex. K hereto).

419. Janine Eveler testified that there were “just a lot of things going on, and that made it a little chaotic.” Ex. 15 (Cobb Cnty. Dep. 144:7-8.) In the same deposition, however, she denied that the November 2020 election was chaotic, stating that “it was not chaotic in any way, and the results were accurate.” *Id.* at 57:18-19.

**RESPONSE:** Undisputed, but immaterial. The first quote discusses the chaos caused by handing items of value to voters in line, while the second quote was about whether the tabulation of votes (i.e., the election result) was “chaotic” and untrustworthy.

420. Some election officials encouraged and appreciated line warming activities in their counties. Ex. 63 (Kidd Dep. 131:2-135:10); Ex. 265 (Calhoun Decl. ¶ 18); Ex. 271 (Dennis Line Relief Decl. ¶ 9).

**RESPONSE:** Undisputed, but immaterial. In addition to voter complaints, other election officials expressed concern both about the chaos caused and the difficulty of determining whether the behavior was legal. Sterling 204:10–205:13 (Defs.’ Ex. VVV); Mashburn 3/14 126:12–127:3, 152:20–153:14 (Defs.’ Ex. KK & Defs.’ Ex. L hereto); Bailey 10/6 147:6–18 (Defs.’ Ex. FFF); Eveler 138:15–24, 144:1–8 (Defs.’ Ex. T); Germany 6/24/22 Decl. ¶ 31 (Defs.’ Ex. F). As a result, the General Assembly sought to provide

a more easily administrable rule. Mashburn 3/14 93:17–22, 181:17–182:2 (Defs.’ Ex. KK & Defs.’ Ex. L hereto); Sterling 204:25–205:13 (Defs.’ Ex. VVV); Harvey 148:16–149:18 (Defs.’ Ex. PPP).

421. Many county election officials did not oppose line warming activities in their counties. *E.g.*, Ex. 49 (Bailey 10/6/22 Dep. 140:7-142:10 (“[T]hose types of [line warming] activities are [] fine but they need to be 150 feet away.”)), *id.* at 146:14-23); Ex. 36 (Gwinnett Cnty. Williams Dep. 29:1-13, 30:22-32:21).

**RESPONSE:** Undisputed, but immaterial. In addition to voter complaints, many other election officials expressed concern both about the chaos caused and the difficulty of determining whether the behavior was legal. Sterling 204:10–205:13 (Defs.’ Ex. VVV); Mashburn 3/14 126:12–127:3, 152:20–153:14 (Defs.’ Ex. KK); Bailey 10/6 147:6–18 (Defs.’ Ex. FFF); Eveler 138:15–24, 144:1–8 (Defs.’ Ex. T); Germany 6/24/22 Decl. ¶ 31 (Defs.’ Ex. F). The General Assembly sought to remedy this with an easily administrable rule. Mashburn 3/14 93:17–22, 181:17–182:2 (Defs.’ Ex. KK); Sterling 204:25–205:13 (Defs.’ Ex. VVV); Harvey 148:16–149:18 (Defs.’ Ex. PPP).

422. Those election officials who favored a Buffer Zone ban distinguished it favorably from the Supplemental Zone ban. Ex. 49 (Bailey 10/6/22 Dep. 141:710); Ex. 13 (Athens-Clarke Cnty. Dep. 151:22-152:19).



**RESPONSE:** Undisputed, but immaterial. The buffer zone may be more necessary, but the supplemental zone also serves to protect voters, and use of a supplemental zone pre-dates SB 202, existing for non-solicitation since 2010. O.C.G.A. § 21-2-414(a) (2010); H.B. 540, 150th Gen. Assemb., Reg. Sess. (Ga. 2010).

423. No evidence suggested that the 150-foot buffer zone may have been “unsafe” prior to the enactment of SB 202. *E.g.*, Ex. 82 (Bailey 3/21/23 Dep. 127:22-129:12).

**RESPONSE:** Disputed, but immaterial. To protect voters from earlier (though much smaller scale) attempts to distribute items of value, the General Assembly found it necessary to establish this zone in 2010. Mashburn 3/7 at 104:7–105:7 (Defs.’ Ex. JJ); O.C.G.A. § 21-2-414(a) (2010); H.B. 540, 150th Gen. Assemb., Reg. Sess. (Ga. 2010). And even if this statement were true, it is immaterial, because “it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2348 (2021).

424. County officials have not received complaints about line relief activities in the Supplemental Zone. Ex. 13 (Athens-Clarke Cnty. Dep. 152:10-14).

**RESPONSE:** Undisputed, but immaterial. The state can preemptively address such concerns, and “it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2348 (2021).

425. Some county election officials had no concerns about line relief and did not understand the need for the ban. Ex. 63 (Kidd Dep. 137:5-10).

**RESPONSE:** Disputed in part, but immaterial. In addition to voter complaints, other election officials expressed concern both about the chaos caused and the difficulty of determining whether the behavior was legal. Sterling 204:10–205:13 (Defs.’ Ex. VVV); Mashburn 3/14 126:12–127:3, 152:20–153:14 (Defs.’ Ex. KK & Defs.’ Ex. L hereto); Bailey 10/6 147:6–18 (Defs.’ Ex. FFF); Eveler 138:15–24, 144:1–8 (Defs.’ Ex. T); Germany 6/24/22 Decl. ¶ 31 (Defs.’ Ex. F). As a result, the General Assembly sought to provide a more easily administrable rule. Mashburn 3/14 93:17–22, 181:17–182:2 (Defs.’ Ex. KK); Sterling 204:25–205:13 (Defs.’ Ex. VVV); Harvey 148:16–149:18 (Defs.’ Ex. PPP).

426. One former election official stated he never saw nor heard any evidence that volunteers who were providing water or food at a polling location attempted to influence individuals’ votes. Ex. 261 (Brower 5/23/22 Decl. ¶ 9).

**RESPONSE:** Disputed in part as to its accuracy and immaterial. One organization stated its activities were the “last chance to reach Georgians before they vote” in an election that could “determine control of the U.S. Senate.” Germany 6/24/22 Decl. ¶ 30(c) (Defs.’ Ex. F); *see also* Mashburn 3/7 116:15–18 (Defs.’ Ex. K hereto) (“[M]ost times the line relief take place in areas where the people have an . . . interest in the outcome of the election.”). Even if there were no attempts at influence, this is immaterial, because of the appearance and risk of impropriety. Many voters complained that this resembled unlawful vote-buying or electioneering, to the point they believed partisan groups were “running the line.” Mashburn 3/14 93:17–94:25, 111:23–113:1 (Defs.’ Ex. KK); Germany 6/24/22 Decl. ¶¶ 29–30 (Defs.’ Ex. F). And other officials had difficulty determining what activities qualified as “campaign activities.” Eveler 143:6–16 (Defs.’ Ex. T).

427. SB 202 still allows anyone to approach a voter in line for other reasons as long as they are not campaigning or offering food and water. Ex. 34 (SEB Dep. 250:21-251:2).

**RESPONSE:** Disputed, but immaterial. No items of value may be given to voters in line. Germany 6/15/23 Decl. ¶¶ 21–22, 28 (Defs.’ Ex. E). This would include items such as phone chargers and clothing that were distributed in 2020. Mashburn 3/14 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex.

T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ).

428. Under SB 202, it is still “very difficult” and requires a “very fact-dependent inquiry” to determine what is going on when a voter is approached in line. Ex. 253 (7/18/22 Prelim. Inj. Hr’g Tr. 108:25-109:11 (testimony from SEB member Matt Mashburn)).

**RESPONSE:** Undisputed, but immaterial. The difficulty in policing a bright-line rule shows the greater difficulty in policing a more subjective policy. Mashburn 3/14 93:17–22, 181:17–182:2 (Defs.’ Ex. KK); Sterling 204:25–205:13 (Defs.’ Ex. VVV); Harvey 148:16–149:18 (Defs.’ Ex. PPP).

429. Voters’ and State officials’ complaints about these line relief efforts during the 2020 elections frequently centered around precincts with many Black voters, in areas with significant Black populations, or precincts where Black-led organizations distributed food and water. *See, e.g.*, Def’s Ex. F (Germany 6/24/22 Decl. Ex. D (Nov. 2020 email chain including Frances Watson and Rick Barron regarding complaints near the CT Martin Recreation Center, located on MLK Jr. Drive in southwest Atlanta), Ex. E (SOS Investigation report about food trucks located at the East Cobb Government Center in Marietta during early voting for Jan. 2021 runoff, including Nakia Harris’ On the Move Catering Truck), Ex. F (Complaint on behalf of “older

voters” who felt intimidated by the “presence” of the group Black Voters Matter at Nov. 2020 early voting site in Albany, GA)).

**RESPONSE:** Plaintiffs’ characterization of these small number of complaints is disputed. Moreover, officials appeared to be most concerned “number one with militias and armed groups” eventually showing up to provide such activities, and next with ostentatious displays such as “food trucks at polling places . . . and pizzas being delivered,” Harvey 146:16–147:10 (Defs.’ Ex. PPP).

430. Citizen complaints were imbued with racial bias and coded language. For example, a white voter complained that she felt intimidated by Black line relief volunteers and their “hip hop music” and was ultimately referred to the Attorney General’s office for having brandished a gun at the polling location. Def’s Ex. F (Ex. F to 06/24/2022 Germany Decl.); Ex. 150 (Summary of SEB Meeting, Tuesday, February 7, 2023 [Pls. Dep. Ex. 218]); Ex. 173 (Ga. SEB Meeting Tr. (Feb. 7, 2023), 147:4-148:19 (referring to “hip hop music” and analogizing the volunteers to the “Black Panthers”), 191:5-192:7 (complainant referred to Attorney Generals’ office for carrying a firearm within 150 feet of a polling place, dismissing electioneering allegations)).

**RESPONSE:** Plaintiffs’ characterization of these small number of emails is disputed. The cited portions of the record do not support the

characterization that the complaints “were imbued with racial bias and coded language.”

431. None of the investigations into these complaints during the 2020 election cycle found sufficient evidence to suggest any violations of Georgia law. *See, e.g.*, Ex. 173 (Georgia State Election Board Meeting Transcript (Feb. 7, 2023), 191:5-192:7 (Black Voters Matter (BVM) cleared of wrongdoing, while older white voter who brandished a gun and claimed that she felt intimidated by BVM and their “hip hop music” was referred to the Attorney General’s office)); *see also* Ex. 59 (Germany Dep. 108:24-109:17 (investigations resulted in insufficient evidence to suggest violation of GA law)).

**RESPONSE:** Disputed, but immaterial. The record shows actions consistent with illegal electioneering, as third-party groups rarely offered their items to non-voters in the area, even if a prosecution was not initiated, Mashburn Decl. ¶ 24 (Defs.’ Ex. M), and many experienced “local election officials felt like was crossing the line into giving people food in exchange for voting.” Harvey 148:2 (Defs.’ Ex. PPP).

432. Prior to SB 202 no groups that participated in line-warming activities were referred to the State Attorney General for unlawful line warming activities. Ex. 34 (SEB Dep. 119:17-22).

**RESPONSE:** Disputed because misleading and immaterial. Sometimes disagreements led to police involvement. Mashburn 3/14 138:10–13, 152:20–

153:14 (Defs.’ Ex. KK & Defs.’ Ex. L hereto). In addition, such activities caused numerous complaints from voters. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.’ Ex. M); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F); Mashburn 3/14 111:23–113:1 (voters believed political parties were “running the line”), 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex. T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ).

433. Georgia has historically had a very bad problem with line length. Ex. 34 (SEB Dep. 95:12-18).

**RESPONSE:** Disputed to the extent that “very bad” is vague and unquantified, as is “historically.” Post-SB 202, line-wait times have significantly improved, with an extraordinarily small share of voters of any race waiting over 30 minutes. Shaw Rebuttal Rep. ¶ 38 (Defs.’ Ex. LLLL) (showing wait times averaged “0 minutes to approximately 10 minutes”); Germany 6/15/23 Decl. ¶¶ 10–11 (Defs.’ Ex. E) (average wait of 1 minute 45 seconds); Manifold 30:11–17 (Defs.’ Ex. MM) (stating that “we don’t have lines nearly as much as they used to have in the past[.]”).

434. In every general election where data exists, people of color in Georgia had an average wait time longer than the average for white Georgia voters. Ex. 107 (Pettigrew Rep. 19).

**RESPONSE:** Disputed, but immaterial. Dr. Pettigrew reaches his conclusion with a questionable methodology, Grimmer Rep. ¶¶ 205–215 (Defs.’

Ex. DDDD). And as Dr. Shaw explained, based on Congressional Election Study data from 2006 to 2020, “while there have certainly been differences in average wait times for Black and White voters in Georgia in the past, these differences have gone in both directions and have mostly been statistically insignificant.” Shaw Rebuttal Rep. ¶ 42 & fig. 10 (Defs.’ Ex. LLLL). And in 2022, White voters were twice as likely as Black voters to wait more than 60 minutes in line and were also more likely to have waited between 31 and 60 minutes. *Id.* ¶ 41 & fig. 9.

435. Since at least the 2006 general election, voters in Georgia have experienced polling place lines that are significantly longer than voters throughout the rest of the country. Ex. 107 (Pettigrew Rep. 13-16).

**RESPONSE:** Disputed in part. Following the enactment of SB 202, Georgia’s 2022 midterm elections had a much smaller share of voters waiting over 30 minutes than the national average wait time computed by Dr. Pettigrew, and with a share close to the national midterm average wait time. Shaw Rebuttal Rep. ¶ 41 & fig. 9 (Defs.’ Ex. LLLL) (4% of Black voters and 4.8% of White voters waited over 30 minutes); Pettigrew Rep. 16 tbl. 3.1 (Pls.’ Ex. 107) (9.5% of voters wait over 30 minutes on average in all elections nationwide, with 3.8% for midterms specifically).



436. Historically, lines tend to be shorter in precincts with higher proportions of white voters and longer in precincts with higher proportions of nonwhite voters. Ex. 107 (Pettigrew Rep. 17-20); Ex. 85 (Burden Rep. 20-22).

**RESPONSE:** Disputed. The cited sections of both reports discuss overall wait times rather than average time by precinct specifically, and as Dr. Shaw explained, based on Congressional Election Study data from 2006 to 2020, “while there have certainly been differences in average wait times for Black and White voters in Georgia in the past, these differences have gone in both directions and have mostly been statistically insignificant.” Shaw Rebuttal Rep. ¶ 42 & fig. 10 (Defs.’ Ex. LLL). And in 2022, White voters were twice as likely as Black voters to wait more than 60 minutes in line and were also more likely to have waited between 31 and 60 minutes. *Id.* ¶ 41 & fig. 9.

437. Lines are generally longer in presidential years than midterms. Ex. 81 (Pettigrew Dep. 187:21-188:1).

**RESPONSE:** Undisputed, but immaterial.

438. In all four federal general elections from 2014-2020, white voters were more likely to experience no wait at all, whereas Black voters were more likely than white voters to experience wait times of more than ten minutes. Ex. 85 (Burden Rep. 21). In three of the four elections, Black voters were more likely to wait over 60 minutes to vote. *Id.*

**RESPONSE:** Disputed in part. As Dr. Shaw explained, “while there have certainly been differences in average wait times for Black and White voters in Georgia in the past, these differences have gone in both directions and have mostly been statistically insignificant.” Shaw Rebuttal Rep. ¶ 42 & fig. 10 (Defs.’ Ex. LLLL). And more importantly, this difference no longer holds post-SB 202. In 2022, white voters were twice as likely as Black voters to wait more than 60 minutes in line, and they were also more likely to have waited between 31 and 60 minutes. *Id.* ¶ 41 & fig. 9.

439. Many metro-Atlanta counties experienced significantly long lines during the June 2020 primary. Ex. 9 (Jordan Decl. ¶ 9); Ex. 19 (Delta Dep. 95:1496:4); Ex. 37 (Hall Cnty. Dep. 58:4-17); Ex. 134 (H. Gov. Affairs Comm., *2020 Primary Election Investigation Report*, USA-03076-80).

**RESPONSE:** Undisputed to the extent that some counties experienced long lines, though the extent is unclear. Shaw Rebuttal Rep. ¶ 52 (Defs.’ Ex. LLLL) (“To be clear, the estimated wait times provided by Dr. Rodden for the June 2020 primary and December 2022 run-off elections in Georgia remain flawed and problematic.”).

440. During the November 2020 presidential election, approximately 319,000 Georgians waited longer than an hour and another 583,000 waited between 31 and 60 minutes. Ex. 107 (Pettigrew Rep. 43); Ex. 81 (Pettigrew Dep. 112:9-11).

**RESPONSE:** Undisputed.

441. In the November 2020 election, Black voters waited on average more than 10 minutes longer to vote than white voters. Ex. 107 (Pettigrew Rep. 24).

**RESPONSE:** Disputed, but immaterial. Dr. Pettigrew reaches his conclusion with a questionable methodology and so this claim is ultimately unsupported. Grimmer Rep. ¶¶ 205–215 (Defs.’ Ex. DDDD). And this statement is not true post-SB 202. In 2022, white voters were twice as likely as Black voters to wait more than 60 minutes in line and were also more likely to have waited between 31 and 60 minutes. Shaw Rebuttal Rep. ¶ 41 & fig. 9 (Defs.’ Ex. LLLL). Finally, this 8% difference is the sort of minor statistical difference that verges on the “statistical manipulation” the Supreme Court has cautioned against. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021); accord *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 936 (11th Cir.) (discussing “fatally imprecise” expert opinion that “‘24.8 [percent] of Black voters had wait times of 30 minutes or longer’ and ‘15.2 [percent] of White voters had wait times of 30 minutes or longer’”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

442. The racial gap in wait times during the November 2022 midterm election was larger than in the November 2018 midterm election. Ex. 81 (Pettigrew Dep. 131:14-22).

**RESPONSE:** Disputed, but immaterial. Even under Pettigrew’s analysis, the average wait time is down for both groups in 2022. Pettigrew 131:19–22 (Pls.’ Ex. 81). In addition, the supposed difference is approximately only two minutes. *Id.* at 131:14–22. Those two minutes are certainly not “of large magnitude” and thus immaterial. *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir. 2023)), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). But the overall statement is still disputed, due to the flaws in Pettigrew’s analysis of the wait time. Grimmer Rep. ¶¶ 205–215 (Defs.’ Ex. DDDD).

443. Long lines also plagued early voting locations in metro-Atlanta during the December 2022 runoff election. Ex. 21 (Fulton Cnty. Dep. 206:22-25 (wait times over one hour)); Ex. 15 (Cobb Cnty. Dep. 169:23-170:3 (wait times over two hours)); Ex. 107 (Pettigrew Rep. 35-36 (48 of 66 locations on Friday before runoff had an hour-line or longer line)); Ex. 57 (Evans Dep. 180:19-181:4); Ex. 35 (Gwinnett Cnty. Manifold Dep. 33:18-22, 41:12-14 (wait times extended over an hour, and runoff lines extending beyond 150 feet from the polls)).

**RESPONSE:** Disputed, as “plagued” is an imprecise and vague term, and to the extent the claim is based on Dr. Pettigrew’s analysis, it is unsupported. As Dr. Pettigrew admits in his report “more comprehensive data were not available” at the time. Pettigrew Rep. 35 (Pls.’ Ex. 107). In truth, the

actual wait times differed dramatically from this estimate. For instance, based on more comprehensive data, “Gwinnett has an average wait time of about 7 minutes, while Cobb is at about 3 minutes” and “DeKalb County’s average wait time is only a minute or so.” Shaw Rebuttal Rep. ¶ 38 (Defs.’ Ex. LLLL). This sort of gross misestimate is exactly why this type of analysis is immaterial. Dr. Pettigrew’s analysis collected 742 different updates, with no information on how they were spaced out. *Id.* This sort of data is exactly the sort that the Eleventh Circuit has warned is insufficient to support a claim, and thus immaterial. *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 936 (11th Cir.) (“But this evidence is fatally imprecise, as wait times at polling places can vary dramatically throughout the day. The length of a line at a given polling location at 3:00 p.m., for example, tells us nothing about the line voters face at 6:00 p.m., when many people stop to vote on the way home from work.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). For similar reasons, the long lines mentioned at certain points in the day from other depositions are immaterial.

444. Metro-Atlanta counties experienced long lines on the Friday of early voting during the December 2022 Senate runoff election. Every single one of Fulton County’s 24 early voting locations had a line of at least 30 minutes at some point, and 21 of 24 locations had a line at least 60 minutes. Ex. 107 (Pettigrew Rep. 35); Ex. 21 (Fulton Cnty. Dep. 206:22-25). In Gwinnett

County, all 11 early voting sites reported a wait of at least 45 minutes, with some polling locations experiencing wait times over an hour and lines extending beyond 150 feet from the polls. Ex. 107 (Pettigrew Rep. 35); Ex. 35 (Gwinnett Cnty. Manifold Dep. 41:214). Eleven of 16 early voting sites in DeKalb County reported a line over 1 hour. Voters at 8 of Cobb County's 12 early voting locations reported a line longer than 30 minutes, and at some locations lines of up to two hours. Ex. 107 (Pettigrew Rep. 35); Ex. 15 (Cobb Cnty. Dep. 135:5-6).

**RESPONSE:** Undisputed to the extent that some experienced long lines, though some of Plaintiffs' characterizations are flawed. Shaw Rebuttal Rep. ¶ 52 (Defs.' Ex. LLLL) ("To be clear, the estimated wait times provided by Dr. Rodden for the June 2020 primary and December 2022 run-off elections in Georgia remain flawed and problematic.").

445. In Fulton County, lines during the December 2022 Senate runoff election were over an hour. Ex. 21 (Fulton Cnty. Dep. 206:22-25).

**RESPONSE:** Undisputed that some lines were this long. However, such characterizations can be error-prone and are often of limited materiality. *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 936 (11th Cir.) ("But this evidence is fatally imprecise, as wait times at polling places can vary dramatically throughout the day. The length of a line at a given polling location at 3:00 p.m., for example, tells us nothing about the line voters

face at 6:00 p.m., when many people stop to vote on the way home from work.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

446. During the 2022 early runoff election period, 658,690 early voters located in Clayton, Cobb, DeKalb, Fulton, and Gwinnett Counties waited an average of 61 minutes to cast their ballots. Ex. 107 (Pettigrew Rep. 44-45 & Tbl. 43). That wait is twice as long as the average 27.4 minutes Georgia voters waited to cast their ballot in 2020. *Id.* at 20, Tbl. 2.2.

**RESPONSE:** Disputed, but immaterial. This statement appears to refer to the analysis on pages 35 and 36 of the Pettigrew report, and Dr. Pettigrew admits on those same pages that “more comprehensive data were not available” at the time. Pettigrew Rep. 35 (Pls.’ Ex. 107). In truth, the actual wait times differed dramatically from this estimate. For instance, based on more comprehensive data, “Gwinnett has an average wait time of about 7 minutes, while Cobb is at about 3 minutes” and “DeKalb County’s average wait time is only a minute or so.” Shaw Rebuttal Rep. ¶ 38 (Defs.’ Ex. LLLL). This sort of gross misestimate is exactly why this type of analysis is immaterial. Dr. Shaw’s analysis collected 742 different updates, with no information on how they were spaced out. *Id.* This is exactly the sort of data the Eleventh Circuit has warned is insufficient to support a claim, and is thus immaterial. *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 936 (11th Cir. 2023) (“But this evidence is fatally imprecise, as wait times at polling places

can vary dramatically throughout the day. The length of a line at a given polling location at 3:00 p.m., for example, tells us nothing about the line voters face at 6:00 p.m., when many people stop to vote on the way home from work.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

447. SB 202’s absentee voting, drop box, and compressed voting period restrictions have contributed to long lines, because these restrictions push voters toward voting in-person, resulting in increased wait times for early in-person and Election Day voters. Ex. 107 (Pettigrew Rep. 28-30, 38-45); Ex. 81 (Pettigrew Dep. 189:5-190:13).

**RESPONSE:** Disputed. “Dr. Pettigrew fails to follow standard practice when assessing the causal effect of SB 202 on time spent in line” and there were “several issues in Dr. Pettigrew’s approach to measuring time spent in line” and thus “the share of voters who waited more than 30 minutes” was in reality “lower than the share presented by Dr. Burden and Dr. Pettigrew....” Grimmer Rep. ¶ 188 (Defs.’ Ex. DDDD); *see also id.* at ¶¶ 189–223 (addressing the flaws in Dr. Pettigrew’s analysis).

448. SB 202 impacts line lengths in precincts in predominantly Black neighborhoods substantially more than those in predominantly white neighborhoods because precincts in predominantly Black neighborhoods are operating under more strain and closer to capacity. Ex. 107 (Pettigrew Rep. 24).



**RESPONSE:** Disputed, but immaterial. “Dr. Pettigrew fails to follow standard practice when assessing the causal effect of SB 202 on time spent in line” and there were “several issues in Dr. Pettigrew’s approach to measuring time spent in line” and thus “the share of voters who waited more than 30 minutes” was in reality “lower than the share presented by Dr. Burden and Dr. Pettigrew....” Grimmer Rep. ¶ 188 (Defs.’ Ex. DDDD); *see also id.* at ¶¶ 189–223 (addressing the flaws in Dr. Pettigrew’s analysis).

449. Plaintiff Elbert Solomon decided to vote in person for the December 2022 runoff election because the drop box he used during the 2020 election was no longer available. Ex. 70 (Deposition of Elbert Solomon [ECF 742] (“Solomon Dep.”) 31:9-24). He ended up standing in line for an hour and a half to vote. *Id.* 45:2-8.

**RESPONSE:** Disputed, but immaterial. Mr. Solomon’s drop box is still available, just “moved into the office” of his polling location. Solomon 48:5 (Defs.’ Ex. Z hereto); *see also id.* at 21:3–22:11 (noting the 2020 drop box was at the Spalding County election office). He originally quit using the drop box because, like many voters, he lost trust in its security ahead of the 2021 runoffs, at which point he began handing it to poll workers for delivery. *Id.* at 47:22–48:1. He then ceased doing that because he “didn’t trust the new people in 2022.” *Id.* at 48:22–25. In addition, he did not have to wait in line to vote in

person in either the 2022 general election or the 2022 primary. *Id.* at 54:16–22.

450. Sandra Reed, a voter from Atlanta, Georgia, had to wait almost two hours without food or water before voting, which was difficult because she felt ill, and she did not bring her own water because she did not know she was going to need it. Ex. 75 (Reed Dep. 13:6-7, 20:12-21:2, 28:18-29:3).

**RESPONSE:** Undisputed, but immaterial. SB 202 includes measures to reduce line time, which would require, if Reed’s description is accurate, that this precinct either add workers and poll equipment or split the precinct for future elections. Germany 6/24/22 Decl. ¶ 12 (Defs.’ Ex. F) (citing O.C.G.A. § 21-2-263(b)). Nor does her experience reflect that of 95% of voters, who waited in line 30 minutes or less. Survey Rsch. Ctr., Sch. of Pub. & Int’l Affs. Univ. of Ga., 2022 Georgia Post-Election Survey 5 (2023) (“SPIA Survey”) (Defs.’ Ex. YYYY); Grimmer 196:19–23 (Defs.’ Ex. OOO). Furthermore, such point-in-time samples do not necessarily reflect overall wait times, and so the Eleventh Circuit has criticized their use. *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 936 (11th Cir. 2023) (“But this evidence is fatally imprecise, as wait times at polling places can vary dramatically throughout the day. The length of a line at a given polling location at 3:00 p.m., for example, tells us nothing about the line voters face at 6:00 p.m., when many people stop to vote on the way home from work.”), *reh’g en banc denied*, 81

F.4th 1328 (11th Cir. 2023); Reed 24:6–16 (Defs.’ Ex. W hereto) (unsure if the Emory precinct caters to college students and if they may have schedules different from those with normal working hours). Additionally, Reed was unaware of options to request absentee ballots that would have allowed her to avoid lines altogether. Reed 27:23–28:17 (Pls.’ Ex. 75).

451. Jessica Owens, a voter in Gwinnett County, was not able to provide food or water to friend who was four months pregnant and who waited in line for five and a half hours during the 2022 election, even though she had been able to do so in the 2020 election when her friend waited in line for nine and half hours before voting. Ex. 73 (Owens Dep. 14:17-22, 22:2-6, 30:12-31:7).

**RESPONSE:** Disputed in part. She could have brought the friend food or water by standing a few feet away from the voting line. Mashburn 3/14 128:6–10 (Defs.’ Ex. KK).

452. Erendira Brumley, who chose to vote in person in the runoff election because she did not have enough time to request and return her absentee ballot before the deadline, encountered lines up to 3 hours long, which were difficult on her physically because she recently had back surgery. The waiting conditions were too arduous for her, and she only successfully voted after her third attempt waiting in a line she could finally bear. Ex. 50 (Brumley Dep. 25:4-19, 40:6-23).

**RESPONSE:** Undisputed, but immaterial as Brumley could have requested to move to the front of the line, given her disability. O.C.G.A. § 21-2-409.1.

453. Lorraine Rose, who has sciatica and has fused discs in her spine, struggled to stand in a line that wrapped around the precinct several times, and had to wait in line for over two hours before voting, during which time she had to sit in the gravel and stretch her spine to alleviate her pain. Ex. 76 (Rose Dep. 32:1534:4).

**RESPONSE:** Undisputed, but immaterial as Rose could have requested to move to the front of the line, given her disability. O.C.G.A. § 21-2-409.1.

454. Neither Ms. Brumley or Ms. Rose were offered a chair to use while waiting in line to alleviate their discomfort, as groups are concerned such relief is now criminalized under SB 202. *See* Ex. 50 (Brumley Dep. 40:6-23); Ex. 76 (Rose Dep. 32:15-34:4).

**RESPONSE:** Undisputed, but immaterial. Voters may still seek chairs from county officials. Wurtz 133:10–14 (Defs.’ Ex. NN) (“We provide chairs if someone needs to sit instead of stand in line. ... All of our locations ... have chairs available to do that.”). And disabled voters can request to move to the front of the line. O.C.G.A. § 21-2-409.1.

455. Voters do not always know they will be standing in line for a long time, and thus there is no guarantee they will bring food and water with them

when they go to vote. Ex. 262 (Brown Decl. ¶ 5-9); Ex. 75 (Reed Dep. 28:24-29:3); Ex. 73 (Owens Dep. 31:4-5).

**RESPONSE:** Undisputed, but immaterial.

456. Delta Sigma Theta believes that these line-relief efforts help reaffirm the dignity of Black voters, so many of whom are harmed by longer lines and should not be forced to wait in long lines without ready access to necessities like food and water. Otherwise, voters would be forced to leave line to get these necessities, losing their spots in line. The line-relief efforts also convey that there is a community of Black residents who are standing with them and supporting them in the most important civic act they can do. Ex. 259 (Briggins 5/20/22 Decl. ¶¶ 1218).

**RESPONSE:** Disputed in part. Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided. Durbin Decl. ¶ 6 (Defs.’ Ex. K). And voter complaints show these practices often conveyed other messages to voters, such as partisanship or harassment. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.’ Ex. M); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F). These complaints arose particularly when organizations began handing out items of increasing value and acting in increasingly intrusive ways. Mashburn 3/14 111:23–113:1 (voters believed political parties were “running the line”), 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex. T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7

104:12–105:7 (Defs.’ Ex. JJ). Given the volume of complaints and Georgia’s demographics, these complaints likely include many Black voters as well.

457. Voters receive more support from the receipt of food and water than from mere words of encouragement. Voters perceive messages of hope and support for voting. Ex. 258 (Bray Decl. ¶¶ 14-16); Ex. 267 (Clarke Decl. ¶ 9); Ex. 314 (Sutton Decl. ¶ 8); Ex. 312 (T. Scott Decl. ¶ 10).

**RESPONSE:** Disputed, but immaterial. Expressive conduct requires that a *reasonable observer* perceive some sort of message. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). The record does not show that any reasonable observer would perceive a message from a stranger approaching them in the voting line with food, drinks, cellphone chargers, or other things of value. And nothing distinguishes such conduct from the mere provision of water or snacks that is customary in any number of offices, venues, or waiting rooms. Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided. Durbin Decl. ¶ 6 (Defs.’ Ex. K). And the record shows that some instances of provision of items of value created a circus-like atmosphere. Bailey 10/6 140:25–141:5 (Defs.’ Ex. FFF). The conduct described falls short of being expressive based on the surrounding context and *Burns* and *Food Not Bombs* factors. *NetChoice, LLC v. Att’y Gen.* 34 F.4th 1196, 1212 (11th Cir. 2022), *cert. granted in part mem. sub nom. Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023),

*and cert. denied mem. sub nom. NetChoice, LLC v. Moody*, 144 S. Ct. 69 (2023); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242–43 (11th Cir. 2018); *Burns v. Town of Palm Beach*, 999 F.3d 1317, 1343–44 (11th Cir. 2021).

458. By providing voters with necessary supplies like food and water, volunteers are encouraging voters to stay in line and reminding them of the importance of casting a ballot. Ex. 258 (Bray Decl. ¶ 15); Ex. 265 (Calhoun Decl. ¶¶ 17-18, 38-39); Ex. 269 (Cotton Decl. ¶¶ 9-12, 23-24); Ex. 290 (Supp. Jackson Decl. ¶¶ 9-10); Ex. 285 (Hector 5/6/23 Decl. ¶ 7); Ex. 333 (Honor 6/3/22 Decl. ¶ 12); Ex. 268 (Cobham Decl. ¶¶ 4-6); Ex. 295 (Kilanko 5/12/22 Decl. ¶¶ 6, 8). For example, Voter Hope Sims Sutton explained that receiving snacks during early voting for the January 2021 runoff sent the message that she should “keep standing in line to make sure [her] voice was heard in the political process.” Ex. 314 (Sutton Decl. ¶¶ 5-9). In November 2020, voter Tamara Scott, who waited for four hours to vote with her autistic child and contemplated leaving, said, “[G]etting that food and water was one of the reasons that I decided to stay in line.” Ex. 312 (T. Scott Decl. ¶¶ 6-11). Cy Mayes, President of the Social Action Committee at Big Bethel AME Church, said, “The act of line relief is special because it sends a message about participation in democracy and the importance of humanitarian assistance in a way that words could not capture.” Ex. 304 (Mayes Decl. ¶ 7-8).

**RESPONSE:** Disputed, but immaterial. Expressive conduct requires that a *reasonable observer* perceive some sort of message. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). The record does not show that any reasonable observer would perceive a message from a stranger approaching them in the voting line with food, drinks, cellphone chargers, or other things of value. And nothing distinguishes such conduct from the mere provision of water or snacks that is customary in any number of offices, venues, or waiting rooms. Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided. Durbin Decl. ¶ 6 (Defs.’ Ex. K). And the record shows that some instances of provision of items of value created a circus-like atmosphere. Defs.’ Bailey 10/6 140:25–141:5 (Ex. FFF). The conduct described falls short of being expressive based on the surrounding context and *Burns* and *Food Not Bombs* factors. *NetChoice, LLC v. Att’y Gen., Fla.*, 34 F.4th 1196, 1212 (11th Cir. 2022), *cert. granted in part mem. sub nom. Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023), *and cert. denied mem. sub nom. NetChoice, LLC v. Moody*, 144 S. Ct. 69 (2023); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242–43 (11th Cir. 2018).

459. Leaving the voting line will typically require voters to forgo their place in the queue. Def’s Ex. M (Mashburn 6/13/23 Decl. ¶ 21).



**RESPONSE:** Disputed, as the challenged portion of SB 202 allows organizations to hand out water just steps away from a voting line. And voters may step a few feet away from the line to receive such provisions. Mashburn 3/14 128:6–10 (Defs.’ Ex. KK). This measure requires *voters* to approach the activists distributing food, drinks, and gifts; instead of being approached by the activists in line.

460. Providing food and water to voters in line can send a political message by showing the government that voters will help one another to overcome the barriers to the ballot box. Ex. 258 (Bray Decl. ¶ 18); Ex. 289 (Jackson Decl ¶¶ 15, 17); Ex. 259 (Briggins 5/20/22 Decl. ¶ 18); Ex. 307 (Paul Decl. ¶ 7).

**RESPONSE:** Disputed. Expressive conduct requires that a *reasonable observer* perceive some sort of message. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). The record does not show that any reasonable observer would perceive a message from a stranger approaching them in the voting line with food, drinks, cellphone chargers, or other things of value. And nothing distinguishes such conduct from the mere provision of water or snacks that is customary in any number of offices, venues, or waiting rooms. Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided. Durbin Decl. ¶ 6 (Defs.’ Ex. K). And the record shows that some instances of provision of items of value

created a circus-like atmosphere. Bailey 10/6 140:25–141:5 (Defs.’ Ex. FFF). The conduct described falls short of being expressive based on the surrounding context and *Burns* and *Food Not Bombs* factors. *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1212 (11th Cir. 2022), *cert. granted in part mem. sub nom. Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023), and *cert. denied mem. sub nom. NetChoice, LLC v. Moody*, 144 S. Ct. 69 (2023); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242–43 (11th Cir. 2018). Far from perceiving a message, voters complained of partisanship, electioneering, and harassment. Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F); Mashburn 3/14 94:15–25 (“poll managers were getting confused,” and “inundated with questions” about the legality of these activities), 111:23–113:1 (voters believed political parties were “running the line”) (Defs.’ Ex. KK); Eveler 138:15–24 (Defs.’ Ex. T).

461. Providing line relief is a core value of the AME Church, which acknowledges the effort and sacrifice it takes for people to exercise their basic right to vote. In that way, conducting line relief is a form of protest. Just saying “thank you” for voting would not convey the same message as actually providing food and water and other line relief. Ex. 278 (Gaymon Decl. ¶¶ 6, 8, 9); Ex. 289 (Jackson Decl. ¶ 16); Ex. 297 (Kinard Decl. ¶¶ 8-10).

**RESPONSE:** Disputed. Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided.

Durbin Decl. ¶ 6 (Defs.' Ex. K). Moreover, there is no evidence showing that conducting the same activities a few feet away from the voting line would not be equally effective at sending the same message.

462. Food and water can be seen as a symbol of Black political activism and it is a part of volunteer groups' cultural traditions in that way. Many Black voters also understand that those volunteer groups' line-relief activities provide those deeper principles and messages. Ex. 258 (Bray Decl. ¶¶ 19-20); Ex. 289 (Jackson Decl. ¶¶ 18-19).

**RESPONSE:** Disputed. Expressive conduct requires that a *reasonable observer* perceive some sort of message. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). The record does not show that any reasonable observer would perceive a message from a stranger approaching them in the voting line with food, drinks, cellphone chargers, or other things of value. And nothing distinguishes such conduct from the mere provision of water or snacks that is customary in any number of offices, venues, or waiting rooms. Even those voters who enjoyed the provided items differentiated the "encouragement and support" from the items provided. Durbin Decl. ¶ 6 (Defs.' Ex. K). And the record shows that some instances of provision of items of value created a circus-like atmosphere. Bailey 10/6 140:25–141:5 (Defs.' Ex. FFF). The conduct described falls short of being expressive based on the surrounding context and *Burns* and *Food Not Bombs* factors. *NetChoice, LLC v. Att'y Gen.*,

34 F.4th 1196, 1212 (11th Cir. 2022), *cert. granted in part mem. sub nom. Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023), and *cert. denied mem. sub nom. NetChoice, LLC v. Moody*, 144 S. Ct. 69 (2023); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242–43 (11th Cir. 2018). Far from perceiving a message, voters complained of partisanship, electioneering, and harassment. Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F); Mashburn 3/14 94:15–25 (“poll managers were getting confused,” and “inundated with questions” about the legality of these activities), 111:23–113:1 (voters believed political parties were “running the line”) (Defs.’ Ex. KK); Eveler 138:15–24 (Defs.’ Ex. T).

463. A former Fulton County election official testified that he never saw or heard any evidence that volunteers who were providing water or food at a polling location attempted to influence an individual’s vote. Ex. 261 (Brower 5/23/22 Decl. ¶ 9).

**RESPONSE:** Undisputed, but immaterial. Many of these efforts were consistent with attempts to influence votes. Third-party groups rarely offered their items to non-voters in the area, Mashburn Decl. ¶ 24 (Defs.’ Ex. M); “most times the line relief take place in areas where the people have an . . . interest in the outcome of the election[.]” Mashburn 3/7 116:15–18 (Defs.’ Ex. K hereto); and many experienced “local election officials felt like was crossing the line into giving people food in exchange for voting.” Harvey 148:2 (Defs.’ Ex. PPP). One

organization stated such activities were the “last chance to reach Georgians before they vote” in an election that could “determine control of the U.S. Senate.” Germany 6/24/22 Decl. ¶ 30(c) (Defs.’ Ex. F). Moreover, voters frequently understand these efforts to be improper, undermining confidence in the electoral system. *Id.* ¶ 29(d).

464. Several voters who received line relief testified that they did not feel pressured to vote for a particular candidate and volunteers were not trying to convince anyone to vote a particular way in exchange for food and water. Ex. 267 (Clarke Decl. ¶¶ 8, 9); Ex. 312 (T. Scott Decl. ¶ 80); Ex. 314 (Sutton Decl. ¶ 10).

**RESPONSE:** Disputed in part and immaterial. Many other voters felt they were being approached with partisan messages or harassed. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.’ Ex. M); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F). These complaints increased as organizations began handing out items of increasing value and acting in increasingly intrusive ways. Mashburn 3/14 111:23–113:1 (voters believed political parties were “running the line”), 143:22–144:6 (Defs.’ Ex. KK); Eveler 288:5–12 (Defs.’ Ex. T); Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ). Moreover, even if the voters who were approached did not feel pressured, other voters observing them tend to suspect partisan motives, thus undermining public confidence in elections. Germany 6/24/22 Decl. ¶ 29(d) (Defs.’ Ex. F).

465. Several line relief volunteers, including those affiliated with voting rights-organizations that organized line relief efforts, testified that they had never talked to any voters about their voting choices or discussed anything partisan while conducting line relief. Some noted specific training to refrain from wearing partisan material and to not engage or react to a candidate's name. Ex. 258 (Bray Decl. ¶ 11); Ex. 278 (Gaymon Decl. ¶ 15); Ex. 268 (Cobham Decl. ¶ 7); Ex. 299 (Khabani 4/13/23 Decl. ¶ 12); Ex. 295 (Kilanko 5/12/22 Decl. ¶ 7); Ex. 297 (Kinard Decl. ¶ 11); Ex. 307 (Paul Decl. ¶ 8); Ex. 309 (Ramirez Decl. ¶ 8); Ex. 281 (Griggs 5/24/22 Decl. ¶ 11).

**RESPONSE:** Disputed in part and immaterial. Many organizations did not avoid the appearance of partisanship. Mashburn 3/14 111:23–113:1 (Defs.' Ex. KK) (voters believed political parties were "running the line"); Germany 6/24/22 Decl. ¶ 30(c) (Defs.' Ex. F) (one organization stated these efforts were the "last chance to reach Georgians before they vote" in an election that could "determine control of the U.S. Senate.").

466. Line relief volunteers testified that they volunteered at polling locations where the voting line extended to the public sidewalk and street outside the polling location and beyond 150 feet from the outside of the polling place. Ex. 307 (Paul Decl. ¶ 12).

**RESPONSE:** Undisputed.

467. People waiting in line understand the expressive nature of the food and beverage offerings as messages of support for voting and that they are nonpartisan. Ex. 267 (Clarke Decl. ¶ 9); Ex. 268 (Cobham Decl. ¶ 7); Ex. 274 (Enriquez Decl. ¶¶ 7-8); Ex. 278 (Gaymon Decl. ¶¶ 14-16); Ex. 297 (Kinard Decl. ¶¶ 11, 16); Ex. 309 (Ramirez Decl. ¶ 9); Ex. 310 (Robinson Decl. ¶¶ 6-8); Ex. 312 (T. Scott Decl. ¶ 10); Ex. 314 (Sutton Decl. ¶ 8); Ex. 315 (Tharpe Decl. ¶¶ 8-10).

**RESPONSE:** Disputed. Expressive conduct requires that a *reasonable observer* perceive some sort of message. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). The record does not show that any reasonable observer would perceive a message from a stranger approaching them in the voting line with food, drinks, cellphone chargers, or other things of value. And nothing distinguishes such conduct from the mere provision of water or snacks that is customary in any number of offices, venues, or waiting rooms. Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided. Durbin Decl. ¶ 6 (Defs.’ Ex. K). And the record shows that some instances of provision of items of value created a circus-like atmosphere. Bailey 10/6 140:25–141:5 (Defs.’ Ex. FFF). The conduct described falls short of being expressive based on the surrounding context and *Burns* and *Food Not Bombs* factors. *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1212 (11th Cir. 2022), *cert. granted in part mem. sub nom.*

*Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023), and *cert. denied mem. sub nom. NetChoice, LLC v. Moody*, 144 S. Ct. 69 (2023); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242–43 (11th Cir. 2018). Far from perceiving a message, voters complained of partisanship, electioneering, and harassment. Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F); Mashburn 3/14 94:15–25 (“poll managers were getting confused,” and “inundated with questions” about the legality of these activities), 111:23–113:1 (voters believed political parties were “running the lines”) (Defs.’ Ex. KK); Eveler 138:15–24 (Defs.’ Ex. T).

468. Line relief sent the message to voters that their vote matters, that they had dignity as a voter, and that they should keep standing in line to make sure their voice was heard in the political process. For example, voter Hope Sutton said that line relief “sent the message that my vote matters, that I had dignity as a voter, and that I should keep standing in line to make sure my voice was heard in the political process.” Ex. 314 (Sutton Decl. ¶ 8).

**RESPONSE:** Disputed. Expressive conduct requires that a *reasonable observer* perceive some sort of message. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). The record does not show that any reasonable observer would perceive a message from a stranger approaching them in the voting line with food, drinks, cellphone chargers, or other things of value. And nothing distinguishes such conduct from the mere provision of



water or snacks that is customary in any number of offices, venues, or waiting rooms. Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided. Durbin Decl. ¶ 6 (Defs.’ Ex. K). And the record shows that some instances of provision of items of value created a circus-like atmosphere. Bailey 10/6 140:25–141:5 (Defs.’ Ex. FFF). The conduct described falls short of being expressive based on the surrounding context and *Burns* and *Food Not Bombs* factors. *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1212 (11th Cir. 2022), *cert. granted in part mem. sub nom. Moody v. NetChoice, LLC*, 144 S. Ct. 478 (2023), and *cert. denied mem. sub nom. NetChoice, LLC v. Moody*, 144 S. Ct. 69 (2023); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242–43 (11th Cir. 2018). Far from perceiving a message, voters complained of partisanship, electioneering, and harassment. Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F); Mashburn 3/14 94:15–25 (“poll managers were getting confused,” and “inundated with questions” about the legality of these activities), 111:23–113:1 (voters believed political parties were “running the line”) (Defs.’ Ex. KK); Eveler 138:15–24 (Defs.’ Ex. T). And voter complaints show these practices make many other voters feel unsafe, unwelcome, or unassured about electoral integrity. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.’ Ex. M); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F). This became particularly true as organizations began handing out items of increasing value and acting in increasingly intrusive

ways. Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ).

469. Voters felt line relief was not just about the food and water—it made them feel like their voice had value in the democratic process. For example, voter Scott said that line relief caused them to feel that their “voice had value in the democratic process.” Ex. 312 (T. Scott Decl. ¶ 10).

**RESPONSE:** Disputed in part and immaterial. Expressive conduct requires that a *reasonable observer* perceive some sort of message. *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004). The record does not show that any reasonable observer would perceive a message from a stranger approaching them in the voting line with food, drinks, cellphone chargers, or other things of value. And nothing distinguishes such conduct from the mere provision of water or snacks that is customary in any number of offices, venues, or waiting rooms. Even those voters who enjoyed the provided items differentiated the “encouragement and support” from the items provided. Durbin Decl. ¶ 6 (Defs.’ Ex. K). And the record shows that some instances of provision of items of value created a circus-like atmosphere. Bailey 10/6 140:25–141:5 (Defs.’ Ex. FFF). The conduct described falls short of being expressive based on the surrounding context and *Burns* and *Food Not Bombs* factors. *NetChoice, LLC v. Att’y Gen.*, 34 F.4th 1196, 1212 (11th Cir. 2022), *cert. granted in part mem. sub nom. Moody v. NetChoice, LLC*, 144 S. Ct. 478

(2023), and *cert. denied mem. sub nom. NetChoice, LLC v. Moody*, 144 S. Ct. 69 (2023); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242–43 (11th Cir. 2018). Far from perceiving a message, voters complained of partisanship, electioneering, and harassment. Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F); Mashburn 3/14 94:15–25 (“poll managers were getting confused,” and “inundated with questions” about the legality of these activities), 111:23–113:1 (voters believed political parties were “running the line”) (Defs.’ Ex. KK); Eveler 138:15–24 (Defs.’ Ex. T). And voter complaints show these practices make many other voters feel unsafe, unwelcome, or unassured about electoral integrity. Mashburn Decl. ¶¶ 19, 21, 25 (Defs.’ Ex. M); Germany 6/24/22 Decl. ¶¶ 29–31 (Defs.’ Ex. F). This became particularly true as organizations began handing out items of increasing value and acting in increasingly intrusive ways. Harvey 149:19–25 (Defs.’ Ex. PPP); Mashburn 3/7 104:12–105:7 (Defs.’ Ex. JJ).

470. According to voter Tonia Clarke, who was given a banana and water by a line relief volunteer, “[r]eceiving the water, in particular, was like receiving hope” and communicated that the line relief volunteer “appreciated that I was here and that I was expressing myself by voting and exercising my voice.” Ex. 267 (Clarke Decl. ¶¶ 7, 9).

**RESPONSE:** Undisputed that she stated this.

471. The line relief ban prohibits the provision of line relief to voters waiting in line to vote irrespective of how far they are away from the polling place. Def's Ex. E (Germany 6/15/23 Decl. ¶ 15).

**RESPONSE:** Disputed in part. While items of value may not be provided to voters in line, they may step a few feet away from the line to receive such provisions. Mashburn 3/14 128:6–10 (Defs.' Ex. M).

472. The line relief ban was primarily focused on addressing concerns related to the area that extends 150 feet from the outer edge of any building (the "Buffer Zone") rather than the Supplemental Zone. Ex. 59 (Germany Dep. 96:7-97:16); Ex. 65 (Mashburn Dep. 93:17-95:6).

**RESPONSE:** The cited portion of the record does not support the purported statement of fact. It does not address the "primary purpose" or similar subjects.

473. The line relief ban even for the Supplemental Zone prevented Plaintiffs from conducting line relief during the 2022 elections, and will prevent them from resuming line relief in 2024 and beyond. Ex. 260 (Briggins 4/17/23 Decl. ¶¶ 8-9); Ex. 290 (Supp. Jackson Decl. ¶¶ 12-15); Ex. 299 (Khabani 4/13/23 Decl. ¶¶ 14-15); Ex. 302 (Mattox 4/13/23 Decl. ¶¶ 7-8); Ex. 296 (Kilanko 4/19/23 Decl. ¶¶ 5, 10).

**RESPONSE:** Disputed and immaterial. These groups chose to cease their activities altogether rather than engage in them a short distance from

the line. Defs.' Ex. M, Mashburn Decl. ¶ 24 (Defs.' Ex. M); Germany 6/15/23 Decl. ¶ 28 (Defs.' Ex. E); Mashburn 3/14 128:6–10 (Defs.' Ex. KK). Even if their self-inflicted injury were not based on an unreasonable interpretation of the law, their cessation would be immaterial as it would be justified by the state's strong interest in preventing voter fraud and protecting public confidence, which is presumed and need not be proved in each case. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2342 (2021).

474. Because of SB 202, some groups that had previously engaged in line relief have completely eliminated their line relief programs to avoid criminal penalties. Ex. 291 (C. Johnson Decl. ¶ 11); Ex. 262 (Brown Decl. ¶ 12); Ex. 286 (Hector 6/3/22 Decl. ¶¶ 10, 15, 22).

**RESPONSE:** Disputed and immaterial. These groups chose to cease their activities altogether rather than engage in them a short distance from the line. Mashburn Decl. ¶ 24 (Defs.' Ex. M); Germany 6/15/23 Decl. ¶ 28 (Defs.' Ex. E); Mashburn 3/14 128:6–10 (Defs.' Ex. KK). Even if their self-inflicted injury were not based on an unreasonable interpretation of the law, their cessation would be immaterial as it would be justified by the state's strong interest in preventing voter fraud and protecting public confidence, which is presumed and need not be proved in each case. *See Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2342 (2021).

475. Fulton County became the first county in Georgia to deploy mobile voting units (“MVUs”) when it deployed two MVUs with eight polling stations each during the election cycle immediately preceding the enactment of SB 202. Ex. 21 (Fulton Cnty. Dep. 174:11-175:10).

**RESPONSE:** Undisputed, but immaterial because mobile voting units have no independent legal significance given the many alternative polling places and methods of absentee voting, and because emergency measures during the pandemic do not create new statutory or constitutional minimums.

476. Voter turnout at the MVUs was very high. Ex. 21 (Fulton Cnty. Dep. 177:5-18).

**RESPONSE:** Disputed because no quantification of “very high” was provided in the cited testimony. Immaterial because mobile voting units have no independent legal significance given the many alternative polling places and methods of absentee voting, and because emergency measures during the pandemic do not create new statutory or constitutional minimums.

477. MVUs, the unlimited use of which had been authorized under Georgia law for nearly 40 years, became a target only after Fulton County deployed them to great effect in the 2020 election cycle. Georgia Laws 1982, p. 1512, § 5(12); Ex. 21 (Fulton Cnty. Dep. 177:5-18 (stating that voter turnout at the MVUs was very high)).

**RESPONSE:** Disputed that Georgia law authorized MVUs for 40 years, let alone on an unlimited basis. There is no dispute that mobile voting units were unknown in the United States before 2010. *See* SOF ¶ 340 [Doc. 755] (citing Kennedy Rep. 39 (Defs.’ Ex. FFFF)). The undisputed understanding was that mobile facilities were authorized only in case of emergency. Mashburn 3/14 194:14–20 (Defs.’ Ex. KK). No Georgia county used bus-mounted mobile facilities until 2020. SOF ¶ 339 [Doc. 755] (citing N. Williams 30(b)(6) 174:11–175:2 (Defs.’ Ex. AA); Mashburn 3/14 194:14–20 (Defs.’ Ex. KK)).

478. When asked at his deposition if the SEB has the resources to require counties without a MVU to purchase one, Mr. Mashburn replied, “No.” Ex. 65 (Mashburn Dep. 195:2-5). When asked if there’s anything in SB 202 “that requires counties to get an equal distribution of mobile voting units,” Mr. Mashburn responded, “Not that I recall.” *Id.* at 57:20-23.

**RESPONSE:** Undisputed, but immaterial as mobile voting units have no independent legal significance given the many alternative polling places and methods of absentee voting, and because emergency measures during the pandemic do not create new statutory or constitutional minimums.

479. At his deposition, Chris Harvey, the former Elections Director in the Secretary of State’s office, testified as follows about MVUs: “It’s hard to drive away a courthouse. It’s easier to drive away something that has wheels.

So I think I would generally be more concerned about the security of a mobile voting unit than I would be of a stationary building, but I don't think—I don't think security was— was really a—a major issue.” Ex. 61 (Harvey Dep. 144:25-145:6).

**RESPONSE:** Undisputed, but immaterial as mobile voting units have no independent legal significance given the many alternative polling places and methods of absentee voting, and because emergency measures during the pandemic do not create new statutory or constitutional minimums.

480. Prior to SB 202's enactment, Fulton County deployed MVUs to assist at precincts facing emergency situations, including an outbreak of Legionnaire's disease, power outages, and malfunctioning air conditioning. Ex. 21 (Fulton Cnty. Dep. 183:15-184:2). Their deployment ensured that voters could still cast their ballots and spared the County from the arduous process of relocating a polling place on the fly. *Id.* at 184:3-15.

**RESPONSE:** Undisputed, but immaterial as merely proving that such units can be used in emergency circumstances. Immaterial because mobile voting units have no independent legal significance given the many alternative polling places, and because emergency measures during the pandemic do not create new statutory or constitutional minimums.

481. After SB 202, and during the 2022 election cycle, Fulton County was unable to deploy its MVUs to assist at a precinct experiencing a gas leak



that required voters and poll workers to evacuate the building, as well as to other precincts experiencing air conditioning outages in the June heat. Ex. 21 (Fulton Cnty. Dep. 186:24-188:11, 190:3-191:17). Fulton County, as well as Douglas County, have indicated they would “definitely” deploy (or in Fulton County’s case, redeploy) their mobile voting units if SB 202’s restrictions on mobile voting were eliminated. *Id.* 183:1-7; Ex. 63 (Kidd Dep. 174:24-5).

**RESPONSE:** Undisputed, but immaterial because mobile voting units have no independent legal significance given the many alternative polling places and methods of absentee voting, and because emergency measures during the pandemic do not create new statutory or constitutional minimums.

482. State and County election officials voiced concerns about the election administration challenges caused by a 4-week runoff period, such as lengthening Election Day lines. *E.g.*, Ex. 216 (Adams Survey at USA-ADAMS-000027.0014) (noting 36 surveyed county officials preferred a 5-week runoff period); Ex. 15 (Cobb Cnty. Dep. 168:24-169:7); Ex. 69 (Sterling Dep. 186:17-189:6). For example, in an email to legislators, Janine Eveler, Cobb County Director of Elections & Registration, warned that “eliminating all but a few days of early voting [for runoff elections] will be untenable. Please consider making runoffs at least 5 weeks after the election.” Ex. 217 (Email from Cobb County Elections Supervisor Janine Eveler to legislators (Mar. 11, 2021), CDR00009771-73). Ms. Eveler also warned that reduced early voting

opportunities would lengthen Election Day lines significantly. *Id.* Former Georgia Election Director confirmed the axiomatic principle that reduced early voting could result in more voters on Election Day. Ex. 61 (Harvey Dep. 117:2-14).

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible. The Adams Survey is hearsay with regard to comments allegedly received from other state officials, and so cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

483. Heard County Elections Supervisor Tonnie Adams advocated for a longer runoff period and cast doubt on even a five-week runoff period, noting, “[F]ive weeks after the election, it is a very big rush for all of us to prepare for an election in three weeks or in two-and-a-half weeks depending on how quickly we get databases for the runoff.” Ex. 128 (Feb. 19, 2021, H. EIC Hr’g Tr., AME\_000238:6-9).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. The fact is immaterial as to the alleged burden on Plaintiffs, as opposed to any alleged burden on local voting officials.

484. Keith Hollingsworth applied for his ballot within two or three days after the general election, but by late November, as the runoff election

approached, he still had not received anything in the mail. Ex. 66 (Deposition of Keith Hollingsworth [ECF 798] (“Hollingsworth Dep.”) 26:2-17).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. Hollingsworth testified that he was able to vote in the runoff election. (Hollingsworth Dep. 29:8-12.)

485. On November 26, Mr. Hollingsworth’s ballot was sent to his address in New Jersey, but he did not receive the ballot until Friday, December 2. Ex. 66 (Hollingsworth Dep. 29:1-12, 36:13-20, 37:20-23).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. Hollingsworth testified that he was able to vote in the runoff election. (Hollingsworth Dep. 29:8-12.)

486. In order to return the ballot in time to be counted during such a shortened time period, Mr. Hollingsworth had to spend money to FedEx his ballot to Georgia, an expense he would not have had to incur under the original runoff schedule. Ex. 66 (Hollingsworth Dep. 29:1-12, 36:13-20, 37:20-23).

**RESPONSE:** The evidence does not support the fact stated. The statement is argumentative (“such a shortened time period”). The cited testimony is also speculative as to what would have occurred under the original runoff schedule.

487. Mr. Hollingsworth expressed that his biggest concern was the timeline of having to get and return his absentee ballot in the span of four

weeks, with a major intervening holiday, as such a shortened runoff period adds to the burden of voting. Ex. 66 (Hollingsworth Dep. 33:20-34:13).

**RESPONSE:** Objection. The evidence does not support the fact stated. The statement also is argumentative (“such a shortened runoff period”) and mischaracterizes the witness’s testimony.

488. Erendira Brumley and her children feared they would not receive their absentee ballots in time given the shortened runoff period under SB 202, so Ms. Brumley and her daughter chose to vote in person. Ex. 50 (Brumley Dep. 25:426:6, 31:23-32:7).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. Ms. Brumley testified that she and her daughter were able to vote in the runoff election. (Brumley Dep. 31:23-32:3.)

489. County officials recognize voters may not have enough time to receive and return their ballots during a runoff, especially accounting for the time required for mail transmission, potential mail delays, and major holidays that fall between the two elections. Ex. 13 (Athens-Clarke Cnty. Dep. 129:11-25, 130:1121); Ex. 15 (Cobb Cnty. Dep. 168:17-23); Ex. 21 (Fulton Cnty. Dep. 145:1-3); *see also* Ex. 35 (Gwinnett Cnty. Manifold Dep. 123:3-124:2 (explaining why it is time intensive to process absentee ballot applications before a runoff election before ballots can be mailed out)).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

490. The shorter timeline means if a ballot has to be reissued or there is a problem with ballot transmission, there is little to no time to correct that issue, thus increasing the risk of disenfranchisement. Ex. 35 (Gwinnett Cnty. Manifold Dep. 122:10-123:2).

**RESPONSE:** Objection. The evidence does not support the fact stated. The statement mischaracterizes the witness's testimony. The witness did not testify to "increasing the risk of disenfranchisement."

491. When it is harder to vote absentee, voters may instead choose to vote in person, which increases lines at the precincts and can lead to voters cancelling their absentee ballots in order to vote in person. Ex. 217 (Email from Cobb County Elections Supervisor Janine Eveler to legislators (Mar. 11, 2021), CDR0000977173); Ex. 15 (Cobb Cnty. Dep. 168:24–169:7); Ex. 61 (Harvey Dep. 117:2-14).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. The fact is immaterial as to the alleged burden on Plaintiffs, as opposed to any alleged burden on local voting officials.

492. Lorraine Rose did not try to request an absentee ballot for the runoff election because she "did not believe that [she] would get it in time nor would [she] be able to return it in time." Ex. 76 (Rose Dep. 41:8-13).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case because the evidence in support of the fact is speculative.

493. Her only option to vote was to go in person where she ended up waiting to vote for nearly two hours in a line that wrapped twice around the voting precinct. Ex. 76 (Rose Dep. 32:15-34:4).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. Ms. Rose testified that she and her family members were able to vote in-person in the runoff election. (Rose Dep. 35:8-12.)

494. The SEB takeover provision was driven by purported concerns with Fulton County's administration of elections. Ex. 32 (30(b)(6) Deposition of the Georgia Republican Party, Inc., Vol. 1, taken Mar. 29, 2023 (Ryan Caudelle) [ECF 795] ("GOP Vol. 1 Dep.") 300:16-302:4); Ex. 47 (Adams Dep. 239:7-240:4); Ex. 118 (Mar. 18, 2021 H. EIC Comm. Hr'g Tr., AME\_001553:9-1559:25); Ex. 59 (Germany Dep. 79:1-80:19; 90:23-91:18 (identifying only Fulton County as warranting state intervention)); Ex. 49 (Bailey 10/6/22 Dep. 96:7-97:11 (testifying that the SEB takeover provision was directed at Fulton County as a means to "help mitigate some of the problems that were either perceived or real" with Fulton County's election administration)). However, the Georgia Republican Party's Rule 30(b)(6) designee could not identify what the specific concerns were with Fulton County's election administration that caused the Georgia GOP to propose the SEB takeover provision, testifying, "I

know the answer, but at the end of the day it's getting harder for me to recall the answer. Oh, gosh, what was it? The fact that there was—oh, what was it? I'm sorry. I thought I had it. At the very moment, I can't remember. I do know—have the answer in my head, but I can't recall at the moment.” Ex. 32 (GOP Vol. I Dep. 302:2-15); Ex. 203 (GAGOP\_0002908).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. The testimony of the Georgia Republican Party witness is not binding on the State Defendants. Further, the fact is not separately numbered.

495. At the time it was enacted, before this litigation, State's expert and then-Richmond County Elections Supervisor Lynn Bailey opposed the SEB takeover provisions. Specifically, Ms. Bailey described the SEB takeover provision as “punitive” in a March 2021 email to local election officials. Ex. 49 (Bailey 10/6/22 Dep. 96:7-97:11); Ex. 210 (Email thread L. Bailey to election officials, “Apologies!!” (Mar. 9, 2021), COBB032462). She voiced her opinion against the SEB takeover provision, writing: “I believe that there should be a course of action when a county election superintendent is deemed as underperforming, but this is not it.” Ex. 221 (Email from L. Bailey to Representative Fleming, “Input to Legislation” (Mar. 18, 2021), BAILEY-000028-29)). Ms. Bailey further wrote that “any decision on whether or not to remove or replace an election superintendent should rest solely with the local

governing authority and by the laws set forth by the local legislation that created the combined Boards of Elections and Registration and exists in the majority of counties in GA.” Ex. 221 (Email from L. Bailey to Representative Fleming, “Input to Legislation” (Mar. 18, 2021), BAILEY-00002829)). Even when called as a witness in this case, Ms. Bailey later testified that her position had not changed: “I feel the same way today as I did then.” Ex. 49 (Bailey 10/6/22 Dep. 165:7-20).

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible. The Bailey email is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macub v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact is also immaterial to the claims and defenses in the case and is not separately numbered. The opinions of local officials on the wisdom of SB 202 are not material to the issues in the case.

496. Several local election officials shared the opinion that it was dangerous to empower a single individual with the authority to determine which ballots are counted and which ballots are rejected. *E.g.*, Ex. 49 (Bailey 10/6/22 Dep. 96:7-97:21); Ex. 47 (Adams Dep. 53:24-54:7, 193:18-194:4).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. The opinions of local officials on the wisdom of SB 202 are not material to the issues in the case.



497. Of all the provisions of SB 202, the Georgia Association of Voter Registration and Election Officials (“GAVREO”), whose membership includes election officials from every county in Georgia, was most concerned with the SEB takeover provision. The Chair of GAVREO’s Legislative Committee, Charles Tonnie Adams, testified, “There were so many parts of that bill that concerned us. I believe more so than any other, the takeover provision is the one thing that concerned us the most. The fact that an appointed body could take over an— another appointed body that was appointed by the citizens of the county of which they represent. That was I think one of the—the one thing that really concerned us more than any other.” Ex. 47 (Adams Dep. 53:24-54:7). Specifically, GAVREO was concerned with the amount of state power potentially wielded over local election officials. *Id.* 194:5-10. Mr. Adams further testified about GAVREO’s primary concern that one person “has the authority to determine which ballots are counted and how they’re counted . . . . Because boards of elections and registration determine whether or not a provisional ballot is counted. They vote on those. So you essentially had one person that could say, well, I decide that this provisional ballot is not valid, so they don’t count it.” *Id.* 192:20-193:15. GAVREO believed “[i]t was dangerous to place that level of responsibility on one person over an appointed board, whether that board was appointed by the county, the grand jury, or the political parties, or a combination. And then in counties where the probate judge is the elections

superintendent, you were usurping the responsibilities of the probate judge and a board of registrars that's appointed by the grand jury. Not to mention Chatham County, who elects their board of elections." *Id.* 193:18-194:4.

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case and is not separately numbered. The opinion of an official of GAVREO on the wisdom of SB 202 is not material to any issue in the case.

498. The SEB does not believe the SEB takeover provision is necessary to ensure compliance by local election officials with the SEB's policies, rules, and regulations. Ex. 34 (SEB Dep. 195:11-18). SEB Rule 30(b)(6) designee, Matthew Mashburn, testified of the SEB takeover provision that "we have plenty of mechanisms to enforce code violations without this." *Id.* 195:22-23.

**RESPONSE:** Objection. The evidence cited does not support the fact stated. The statement mischaracterizes the witness's testimony, which more accurately is summarized as saying that the SEB takeover provision was not essential or the only way to ensure compliance with the SEB's policies, rules, and regulations.

499. Mr. Mashburn testified that he believed the SEB takeover provision was intended to address systemic problems, Ex. 34 (SEB Dep. 195:16-25), but he did not explain how the SEB's ability to ensure counties' compliance with the Georgia election code was insufficient to address such problems.

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

500. Mr. Mashburn, testified that “counties will do what they are told . . . I’ve found them to be very dedicated public servants by -- on the whole, by and large, and so they will do what they are told to do.” Ex. 34 (SEB Dep. 257:24258:4).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case.

501. In October 2022, in response to confusion at the polls when voters showed up to vote and learned for the first time that they had been challenged, the State Elections Director issued Official Election Bulletins (“OEBs”) providing limited guidance to counties for dealing with challenged voters at in-person voting locations, and the 2021 Poll Worker Manual also provides instructions for issuing a provisional challenged ballot. Ex. 242 (CDR01374757 (Oct. 11, 2022 OEB explaining that in-person voters should vote provisionally if they cannot resolve the challenge before checking in and that the “county has discretion within the law about the exact process that a challenged voter may follow to resolve the challenge once the voter arrives to vote”)); Ex. 243 (FULTON-COUNTY-SB202-00039219 (Oct. 13, 2022 OEB, clarifying that voter challenges may not be filed with a poll manager or poll worker)); Ex. 232 (Poll Worker Manual, May 2021, 83-85, CDR01369922).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. Additionally, the cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

502. Some counties developed their own procedures to manage the massive influx of voter challenges that followed enactment of the law with no training, funding, or additional resources; the State Election Board has not taken any action to implement any administrative rules, produce any trainings, or provide public education about voter challenges after SB 202. Ex. 49 (Bailey 10/6/22 Dep. 174:20-175:5, 177:7-178:1); Ex. 34 (SEB Dep. 222:21-223:1, 223:21-224:2, 234:1-235:10).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case and is not separately numbered.

503. Policies and procedures to handle voter challenges vary across counties in Georgia. See Ex. 240 (CDR01374686-90 (Gwinnett County voter challenge policy)); Ex. 21 (Fulton Cnty. Dep. 165:15-166:24); Ex. 338 (Forsyth County voter challenge policy); Ex. 239 (CDR01373466-69 (Athens-Clarke Section 229 voter challenge procedures)); Ex. 241 (CDR01376030-33 (DeKalb voter challenge procedures)); Ex. 49 (Bailey (10/6/2022) Dep. 178:17-179:1); Ex. 242 (CDR01374757-60 (final version of state OEB regarding challenged voters,

stressing that each county has discretion as to how to handle a challenged voter arriving at the poll)).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case.

504. Before the 2020 election cycle, voter challenges were used sparingly, if at all, and only in particular instances, such as when an individual personally knew that another registered voter did not live at a particular address. Ex. 33 (SOS Dep. 223:14-225:1); Ex. 35 (Gwinnett Cnty. Manifold Dep. 42:19-43:2); Ex. 15 (Cobb Cnty. Dep. 62:23-63:13); Ex. 21 (Fulton Cnty. Dep. 147:5-13).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case. Additionally, the cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

505. County officials across Georgia have experienced a significant increase in the number of voter challenges since SB 202 was enacted, with tens of thousands of voters having their eligibility challenged in largely frivolous challenges, as unlike the prior law, SB 202 specifically permits and encourages unlimited challenges. Ex. 35 (Gwinnett Cnty. Manifold Dep. 42:19-45:13); Ex. 18 (DeKalb Cnty. Dep. 113:3-18, 115:16-22); Ex. 15 (Cobb Cnty. Dep. 62:23-63:13, 148:6-19). Ex. 34 (SEB Dep. 223:2-13); Ex. 21 (Fulton Cnty. Dep. 170:2-

8, 173:11-174:10); Ex. 49 (Bailey 10/6/22 Dep. 171:6-10); Ex. 2 (SB 202 as passed (USA-03870, USA-03892, USA-03894)).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case and states a legal conclusion. The fact is also immaterial as to the alleged burden on Plaintiffs, as opposed to any alleged burden on local voting officials. Moreover, the evidence on which the statement relies is inadmissible. Ex. 21 is hearsay as to what the witness allegedly was told by other Fulton County officials, and so cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

506. Especially in the weeks leading up to an election, mass voter challenges, coupled with SB 202's 10-day notice deadline, distract county officials, divert resources from other election preparation activities, and are often duplicative of the work already being done in the course of the county's regular list maintenance activities. Ex. 49 (Bailey 10/6/22 Dep. 179:2-183:19); Ex. 18 (DeKalb Cnty. Dep. 137:6-144:8); Ex. 35 (Gwinnett Cnty. Manifold Dep. 44:22-46:9, 63:3-66:16, 68:2-71:13, 80:11-85:16); Ex. 36 (Gwinnett Cnty. Williams Dep. 38:16-39:16); Ex. 21 (Fulton Cnty. Dep. 160:19-161:17, 173:15-174:10, 278:24-282:7); Ex. 247 (Gwinnett Cnty. Board of Registrations & Elections Meeting Minutes (Sept. 21, 2022), GC013407-12); Sept. 21, 2022 Gwinnett County Board of Registrations & Elections Meeting at 1:09:01-

1:57:42,

<https://viewer.earthchannel.com/PlayerController.aspx?&PGD=gwinetcoga&ID=988> (describing research conducted by staff on short deadlines and negative impact on election preparation activities)).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case and is not separately numbered. The fact is immaterial as to the alleged burden on Plaintiffs, as opposed to any alleged burden on local voting officials. Additionally, the cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

507. There are no penalties for bad-faith or baseless mass voter challenges, even if they have a discriminatory motive or effect. Ex. 49 (Bailey 10/6/22 Dep. 175:19-176:4); Ex. 34 (SEB Dep. 235:25-236:21).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in the case and states a legal conclusion.

508. Challenged voters are often forced to overcome significant obstacles in order to maintain their right to vote—even when a county ultimately rejects a voter challenge—and challenges against eligible voters may be upheld without their knowledge or ability to provide evidence. *See, e.g.*, Ex. 335 (DeKalb Cnty. Board of Registration & Elections October 25, 2023 Meeting Minutes (describing hearing testimony of challenged voter, veteran

Mr. James Darnell McWhorter, who stated that he registered to vote at a commercial address where he was employed because he experienced homelessness when he registered to vote)); Ex. 246 ((Gwinnett Cnty. Board of Registrations & Elections Minutes (July 20, 2022), GC013446 (reflecting voters who appeared at a challenge hearing in person to defend their right to vote)); July 20, 2022 Gwinnett Cnty. Board of Registrations & Elections Meeting at 00:05:48-00:14:54, <https://viewer.earthchannel.com/PlayerController.aspx?PGD=gwinetcoga&ID=970> (testimony from two challenged voters forced to attend a hearing: one who stated she received notice of the hearing only hours earlier, had lived at her residence for 7 years, and had correct information on file, and another who lived in an adjoining building and said he suspected that the challenger incorrectly believed the address was invalid); Ex. 35 (Gwinnett Cnty. Manifold Dep. 49:17-51:24); Ex. 21 (Fulton Cnty. Dep. 165:15-166:24, 280:15-281:9); Ex. 25 (30(b)(6) Deposition of Georgia Coalition for the People's Agenda (Cynthia Battles) [ECF 752] ("GCPA Battles Dep.") 88:10-89:15); Ex. 16 (Common Cause Dep. 166:4-167:15); Ex. 334 (Michael Kaplan, *Eligible Voters Are Being Swept Up in Conservative Activists' Efforts to Purge Voter Rolls*, CBS News (Dec. 4, 2023) (quoting DeKalb County voter James McWhorter)).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as fact as to alleged "significant



obstacles” and relies on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

509. Voters in Georgia are permitted to register to vote where they reside, including at a commercial address, shelter, or other non-traditional residence if that is where they are residing at the time they are registered to vote, though numerous challenges have been filed alleging such residences are not legal for the purposes of voter registration. Ex. 34 (SEB Dep. 224:21-228:12, 231:8-232:17); Ex. 245 ((Gwinnett Cnty. Board of Registrations & Elections Meeting Minutes (Aug. 11, 2022), GC013403, GC013405 (placing voters in challenged status for registering at now closed extended stay or RV park)).

**RESPONSE:** Objection. The evidence cited does not support the fact stated with regard to “numerous challenges.” The statement cites to one instance of such a challenge in one county. Additionally, the cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

510. On September 21, 2022, the Gwinnett County Board of Registrations and Elections considered the mass challenge of approximately 37,500 voters filed by activist group VoterGA. Ex. 247 (Gwinnett Cnty. Board of Registrations & Elections Meeting Minutes (Sept. 21, 2022) GC013407, GC013410); Gwinnett Cnty. Board of Registrations & Elections Meeting (Sept.

21, 2022) at 01:09:01-01:57:42, <https://viewer.earthchannel.com/PlayerController.aspx?&PGD=gwinetcoga&eID=988>.

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. None of the Plaintiffs in this case claims an injury from this particular voter challenge.

511. At the September 21, 2022 meeting, election supervisor Zach Manifold explained that the Board staff determined, after extensive and timeconsuming research, that most of the challenges were either not properly characterized as Georgia Code Section 230 challenges or were based on inaccurate or outdated information, and many of the challenged voters' registrations were already being evaluated as part of the county's regular list maintenance activities. Ex. 247 (September 21, 2022 Gwinnett County Board of Registrations and Elections Meeting Minutes (Sept. 21, 2022), GC013407, GC013410); Gwinnett Cnty. Board of Registrations & Elections Meeting (Sept. 21, 2022) at 01:09:01-01:57:42, <https://viewer.earthchannel.com/PlayerController.aspx?&PGD=gwinetcoga&eID=988>. *See also* Ex. 35 (Gwinnett Cnty. Manifold Dep. 43:17-44:21, 54:21-57:8, 57:22-74:8).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. None of the Plaintiffs in this case claims an injury from this particular voter challenge.

512. On October 3, 2022, the Gwinnett County Board of Registrations and Elections convened a special meeting to address the VoterGA challenges remaining after the significant research conducted by the Board's staff, and the Board narrowly voted 3-2 to dismiss the remaining 776 challenges upon finding no probable cause to sustain them. Ex. 248 (GC013500, GC013501-02 (Gwinnett Cnty. Board of Registrations & Elections Meeting Minutes (Oct. 3, 2022))).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. None of the Plaintiffs in this case claims an injury from this particular voter challenge. Additionally, the evidence cited does not support the fact stated. The evidence cited does not mention "776 challenges." Moreover, the cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

513. The Fulton County Board of Registration and Elections voted unanimously to put approximately 4,000 voters into challenged status and stated that they would need to vote provisionally at the next election at its March 16, 2023, meeting. Ex. 336 (Fulton Cnty. Board of Registration &

Elections Meeting Minutes (Mar. 16, 2023) at 4-5); Fulton Cnty. Board of Registration & Elections Meeting (Mar. 16, 2023) at 00:25:24-2:21:13, <https://www.youtube.com/watch?v=AL8aSN57aoA>. *See also* Ex. 21 (Fulton Cnty. Dep. 279:15-283:1).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. None of the Plaintiffs in this case claims an injury from this particular voter challenge. Additionally, the cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

514. Challenged voters who testified at the March 16, 2023 Fulton County Board of Registration and Elections meeting were the victim of a clerical error, a road name change by the city, or simply bad data analysis by the challenger, and at least one voter who spoke at the hearing stated that they only received the notice the day before the hearing, which was held at 10:00 a.m. on a Thursday; other voters who did not attend the hearing to defend their right to vote were placed in challenged status. Ex. 336 (Fulton Cnty. Board of Registration & Elections Meeting Minutes (Mar. 16, 2023)); Fulton Cnty. Board of Registration & Elections Meeting (Mar. 16, 2023) at 00:25:24-2:21:13, <https://www.youtube.com/watch?v=AL8aSN57aoA>; Ex. 21 (Fulton Cnty. Dep. 279:15-283:1).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. None of the Plaintiffs in this case claims an injury from this particular voter challenge. Additionally, the cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

515. On September 6, 2022, the Forsyth County Board of Voter Registrations & Elections sustained hundreds of voter challenges within 90 days of a federal election. Ex. 337 (Forsyth Cnty. Board of Voter Registrations & Elections Regular Monthly Meeting (Sept. 6, 2022) at 8-28).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case. None of the Plaintiffs in this case claims an injury from this particular voter challenge. Additionally, the evidence cited does not support the fact stated. The evidence cited does not state a total of “hundreds” of voter challenges. Moreover, the cited evidence is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

516. Combining impacts across provisions of SB 202, over 1.6 million registered Georgians in 2022 faced increased barriers to voting as a result of SB 202. Ex. 96 (Fraga Rep. ¶¶ 174-75 & Tbl. 21).

**RESPONSE:** Objection. The evidence cited does not support the fact stated. State Defendants dispute Dr. Fraga’s opinion that the provisions of SB 202 cited in his Table 21 are “barriers” to voting for anyone.

517. Together, the challenged provisions of SB 202 have disenfranchised far more Black, AAPI, and Latino voters than the approximately 12,000 votes that would have changed the outcome of the 2020 presidential election in Georgia. Ex. 96 (Fraga Rep. ¶¶ 176-182 & Tbl. 21).

**RESPONSE:** Objection. The evidence cited does not support the fact stated. State Defendants dispute Dr. Fraga’s opinion that any provisions in SB 202 have “disenfranchised” anyone or prevented anyone from voting.

518. Dr. Fraga calculated that 717,368 Black voters (28.6% of all Black registered voters) faced increased barriers due to SB 202’s challenged provisions. Ex. 96 (Fraga Rep. Tbl. 21).

**RESPONSE:** The evidence cited does not support the fact stated. State Defendants dispute Dr. Fraga’s opinion that the provisions of SB 202 cited in his Table 21 are “barriers” to voting for anyone.

519. Dr. Fraga calculated that more than 62,512 AAPI voters (27.0% of all AAPI registered voters) faced increased barriers due to SB 202’s challenged provisions. Ex. 96 (Fraga Rep. Tbl. 21).

**RESPONSE:** Objection. The evidence cited does not support the fact stated. State Defendants dispute Dr. Fraga’s opinion that the provisions of SB 202 cited in his Table 21 are “barriers” to voting for anyone.

520. Compared to the 16.4% of white registered voters who faced increased barriers due to SB 202’s challenged provisions, Black, Latino, and AAPI voters were each disproportionately burdened by the challenged provisions of SB 202. Ex. 96 (Fraga Rep. Tbl. 21).

**RESPONSE:** Objection. The evidence cited does not support the fact stated. State Defendants dispute Dr. Fraga’s opinion that the provisions of SB 202 cited in his Table 21 are “barriers” to voting for anyone.

521. Procedures that discourage absentee voting will, in turn, push more people to vote in-person, provoking longer wait times at already crowded polling places. *See* Ex. 61 (Harvey Dep. 61:15-62:9); Ex. 257 (Brower 1/18/24 Decl. ¶ 16).

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Neither witness referred to “already crowded polling places” at the deposition pages cited.

522. In the wake of SB 202, Black voters, organizations, churches, and community groups undertook extra efforts to help voters of color mitigate SB 202’s discriminatory effects. *E.g.*, Ex. 265 (Calhoun Decl. ¶¶ 29-37 (describing statewide voter outreach efforts in response to SB 202)); Ex. 269 (Cotton Decl.

¶¶ 26-38 (same)); Ex. 292 (S. Johnson Decl. ¶¶ 25-27 (helping voters obtain ID)).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact; State Defendants dispute that SB 202 had “discriminatory effects.”

523. These third-party efforts kept some Black voters from being completely disenfranchised by SB 202/helped voters who would have otherwise been disenfranchised if not for third-party groups being involved. *E.g.*, Ex. 270 (Daniel Decl. ¶¶ 11-14 (third-party organization informed voter his absentee ballot was rejected for ID reasons)); Ex. 96 (Fraga Rep. ¶ 49).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact; State Defendants dispute that SB 202 “disenfranchised” anyone.

524. The costs that a voter must incur in order to vote—including the time, resources, and effort needed to overcome administrative requirements—are a crucial factor in determining whether individuals vote. Ex. 85 (Burden Rep. 22); Ex. 94 (Clark Rep. 13-14); Ex. 93 (Chatman Rep. ¶ 24); Ex. 83 (Grimmer Dep. 129:7-20, 275:10-16); Ex. 252 (9/22/23 Prelim. Inj. Hr’g Tr. 85:17-86:19 (Burden)).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact; State



Defendants dispute that a causal determination of voter behavior can be made by considering “costs.”

525. Socioeconomic conditions—such as educational attainment, income, and residential mobility—impact the weight of the costs of voting and one’s ability to navigate them. Ex. 85 (Burden Rep. 23, 25-26); Ex. 94 (Clark Rep. 14); Ex. 83 (Grimmer Dep. 275:10-275:23).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

526. Median annual household incomes for Black Georgians were only two-thirds of those reported by white Georgians. Ex. 85 (Burden Rep. 24).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

527. Black Georgians overall have less economic resources than do white Georgians. For example, Black Georgians are twice as likely as white Georgians to earn income below the poverty level as defined by the Census Bureau (20.1% compared to 9.8% for white Georgians). Ex. 106 (Palmer Rep. ¶ 30); Ex. 85 (Burden Rep. 24). Black Georgians have substantially less accumulated wealth than do white Georgians. Ex. 85 (Burden Rep. 24). Black Georgians are significantly more likely to receive SNAP benefits than white Georgians (22.2% compared to 7.1%), and they earn 40% less per capita income than that earned by white Georgians (\$24,114 per capita compared to \$39,850).

Ex. 106 (Palmer Rep. ¶ 30). Black Georgians have a civilian unemployment rate that is more than double that of white Georgians (8.8% compared to 4.2%). *Id.* Black Georgians are less likely to own their own homes than white Georgians (52.2% of Black households are in renter-occupied housing, compared to 25.3% of white households). *Id.*

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Burden admits in footnote 41, pg. 24, of Ex. 85 that he does not have Georgia-specific data to support the statement. Further, the fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

528. Black Georgians are also more likely than white Georgians to move over a 12-month period, increasing the likelihood they will need to update or initiate a new voter registration. Ex. 85 (Burden Rep. 24-25).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

529. Latino Georgians overall have less economic resources than do white Georgians. Specifically, Latino Georgians are more than twice as likely to earn income below the poverty level than white Georgians (21.0% compared to 9.8%). Ex. 106 (Palmer Rep. ¶ 31). Latino Georgians are more likely to receive SNAP benefits than are white Georgians (12.8% compared to 7.1%). Ex. 106 (Palmer Rep. ¶ 31). Latino Georgians earn 50% less per capita than white Georgians (\$19,944 compared to \$39,850). Ex. 106 (Palmer Rep. ¶ 31). Latino

Georgians are significantly less likely to own their own homes than white Georgians (50.0% of Latino households are in renter-occupied housing, compared to 25.3% of white households). Ex. 106 (Palmer Rep. ¶ 31).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

530. Poverty status is a strong indicator of whether a household has access to a personal vehicle. Ex. 93 (Chatman Rep. ¶ 62).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

531. Higher levels of education provide the skills to more easily understand the electoral process and complete voting forms, and the confidence and proficiency to facilitate participation even when rules change. Ex. 85 (Burden Rep. 22-23); *see also* Ex. 94 (Clark Rep. 5-6, 9).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

532. Black Georgians are less likely to have a high school diploma than white Georgians (88% compared to 91%), and significantly less likely to have a bachelor's degree (25% compared to 36%), which is particularly correlated with political participation. Ex. 85 (Burden Rep. 23 & Tbl. 8); Ex. 106 (Palmer Rep. ¶ 30).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

533. Latino Georgians are significantly less likely to have a high school diploma than white Georgians (64.2% compared to 91.2%) and are significantly less likely to have a bachelor's degree than white Georgians (19.0% compared to 35.8%). Ex. 106 (Palmer Rep. ¶ 31).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

534. Poor mental or physical health, and residential mobility tend to inhibit voter participation because they increase the burdens and costs associated with voting. Ex. 85 (Burden Rep. 24-25); *see* Ex. 64 (Lockette Dep. 9:23-11:17); Ex. 270 (Daniel Decl. ¶ 4).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

535. Black Georgians are also more likely to lack health insurance than white Georgians (13.3% compared to 9.7%). Ex. 106 (Palmer Rep. ¶ 30).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

536. Latino Georgians are much more likely to lack health insurance than white Georgians (31.2% compared to 9.7%). Ex. 106 (Palmer Rep. ¶ 31).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

537. Approximately 80% of Georgia's AAPI population live in households where a language other than English is spoken. Ex. 95 (Cobb Rep. 40).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

538. Among the Georgia AAPI population, a reported 33% to 44% speak English less than "very well" (compared to only 2% of white Georgians) although the share of those who fall in this category is much higher among those of Chinese (51%), Korean (53%), and Vietnamese (60%) origin or descent, and these groups account for roughly half of the state's AAPI population. Ex. 95 (Cobb Rep. 40); Ex. 106 (Palmer Rep. ¶ 18).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

539. Approximately 9% of AAPI citizens reported not registering to vote due to language barriers. Approximately 1.3% of all citizens reported not registering to vote due to language barriers. Less than 1% of white citizens reported not registering to vote due to language barriers. Ex. 100 (Lee Rep. 53, fig. 6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

540. In 2012, turnout among LEP voters nationally was 9 percentage points lower than voters without difficulty with English (approximately 75 percent of LEP voters compared to 84 percent of non-LEP voters). Ex. 100 (Lee Rep. 53-54).

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Lee does not provide the 75 percent and 84 percent figures in his Report. Without waiving this objection, and specifically subject thereto, State Defendants admit that the Court may consider the remaining evidence cited for purposes of the summary judgment motion.

541. Approximately 79% of LEP voters would utilize in-language election materials if provided. Ex. 100 (Lee Rep. 53).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

542. According to the 2012 National Asian American Survey, 55% of AAPI registrants who voted in person reported that “translated election documents or bilingual election workers” were available at the polls. Among AAPI registrants who voted by mail, 69% reported that in-language materials or other assistance were available. Ex. 100 (Lee Rep. 54).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

543. AAPI voters are more likely than other voters to require assistance in requesting an absentee ballot application due to language barriers and lack of inlanguage materials from the state or county. Lee Rep. 85. Voting has become “significantly harder for AAPI” registrants in Georgia due in part to language barriers and the lack of in-language election materials and translators. Ex. 12 (30(b)(6) Deposition of Asian Americans Advancing Justice-Atlanta (Phi Nguyen) [ECF 694] (“AAAJ Dep.”) 50:5-7; 51:11-18; 102:18-24; 120:2-5; 127:19-24; 128:8-17).

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible. Nguyen’s testimony is hearsay as to the “anecdotal data” to which he testifies, and so cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999). The fact also does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

544. Georgia’s longstanding history of discrimination against Black Georgians and other minorities in voting and many other areas of life is well documented and judicially recognized. *See, e.g., Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1323-24 (M.D. Ga. 2018); *See Wright v. Sumter Cnty. Bd. of Elections & Reg.*, 979 F.3d 1282, 1307-08 (11th

Cir. 2020); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, -- F. Supp. 3d --, No. 1:21-CV-05337-SCJ, 2023 WL 7037537, at \*59-\*64 (N.D. Ga. Oct. 26, 2023); Ex. 91 (Anderson Rep. 19-45, 57-63); Ex. 95 (Cobb Rep. 11-50); Ex. 195 (Tijerina Rep. 19-31).

**RESPONSE:** Undisputed but immaterial to the validity of SB 202. *See League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 923 (11th Cir.) (“[T]he principles of equal sovereignty counsel[] against ... disparate treatment of a state based on its history ‘and guide[] us to look at the precise circumstances surrounding the passing of the’ law in question.” (quoting *Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1325 (11th Cir. 2021))), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023); *Abbott v. Perez*, 585 U.S. 579, 603 (2018) (“The allocation of the burden of proof and the presumption of legislative good faith are not changed by a finding of past discrimination.”).

545. For most of its history, discrimination prevented Georgia’s Black residents from registering to vote, voting or otherwise participating in the democratic process. *See* Ex. 91 (Anderson Rep. 19-80); Ex. 105 (Minnite Rep. 5).

**RESPONSE:** Immaterial for reasons stated in response to ¶ 544, *supra*.

546. Georgia’s history of discrimination has contributed to suppressed political participation for Black and minority voters. *See* Ex. 105 (Minnite Rep.



5); Ex. 94 (Clark Rep. 2-13 (discussing impact of past official discrimination on political participation among Black Georgians)).

**RESPONSE:** Immaterial for reasons stated in response to ¶ 544, *supra*.

547. Because of discriminatory immigration and naturalization laws, including having been deemed “aliens ineligible for citizenship,” AAPIs have the shortest history of right to franchise of any racial group. *See* Ex. 92 (Chang Rep. 15-18, 39).

**RESPONSE:** Immaterial for reasons stated in response to ¶ 544, *supra*.

548. SB 202 relies on similar frameworks, understandings, logics, and goals as measures during the late-nineteenth and early-twentieth century that responded to concerns and fears about relatively rapid and concentrated increases in AAPI populations by seeking to discourage immigration, settlement, and civic and political participation. Ex. 92 (Chang Rep. 4).

**RESPONSE:** Disputed, vague, and in any event, this assertion is argumentative rather than factual and hence does not require a response.

549. SB 202 was passed when the nation was experiencing a rise in anti-AAPI racism and racist incidents. Ex. 92 (Chang Rep. 60-61); Ex. 100 (Lee Rep. 35-38); Ex. 294 (Khwaja Decl. ¶ 11).

**RESPONSE:** Disputed and immaterial. The cited portions of the record do not support the purported statement of fact. First, it is unclear what Plaintiffs mean by “when” (e.g., the same year, the same month, the same

week, etc.), and by “rise” (e.g., a rise compared to a month before SB 202’s passage, a rise compared to a year before SB 202’s passage, etc.). Second, the Khwaja Declaration paragraph cites no statistics, instead merely repeating Plaintiffs’ claim that “[t]he Georgia legislature passed SB 202 during a time period marked by a surge in anti-AAPI sentiment and rhetoric fueled by a number of factors ....” The cited pages of Dr. Chang’s declaration cite several statistics, as well as sources characterizing the rate of anti-AAPI hate “incidents” or “crime” as increasing, but identifies no statistics comparing rates of these occurrences across time. The cited pages of Dr. Lee’s declaration suffer from the same problem, except that he does cite one comparative statistic: “Between the first quarter of 2020 and the first quarter of 2021, this source reports that anti-Asian American hate crimes increased by 169%.” Lee Rep. 37 (Pls.’ Ex. 100). But he then notes that, “[e]ven prior to COVID-19, anti-Asian American hate crimes increased by 146% between 2019 and 2020 ....” *Id.* Regardless, the point is that one cannot say that SB 202 was passed “when” the nation was experiencing a “rise” in “anti-AAPI racism and racist incidents” without defining precisely the time periods being compared, and a consistent method of measuring “anti-AAPI racism and racist incidents.” Plaintiffs have done neither. More importantly, Plaintiffs’ generalization about nationwide crime trends is completely immaterial to this litigation over the General Assembly’s intent, as the issue “is largely unconnected to the passage of the

actual law in question.” *See Greater Birmingham Ministries v. Sec’y of State of Ala.*, 992 F.3d 1299, 1324 (11th Cir. 2021).

550. The rise in anti-AAPI racist incidents have been linked to the association of COVID-19 and the resulting pandemic to China, Chinese people, and people thought to be Chinese. Ex. 92 (Chang Rep. 60); Ex. 100 (Lee Rep. 3637 (summarizing reports and studies documenting increased rates of anti-AAPI harassment and hate in or around the time period when SB 202 was passed)).

**RESPONSE:** Disputed in part and immaterial. Undisputed that the cited portions of Plaintiffs’ expert reports make the claim that a rise in anti-AAPI bias is linked to COVID-19, though neither expert explains how he came to that conclusion. “Instead of properly bridging th[is] gap,” both “tr[y] to *ipse dixit* over it; but a bald assertion cannot carry the *Daubert* burden.” *See United States v. Pon*, 963 F.3d 1207, 1221 (11th Cir. 2020). Dr. Chang cites the claim of a nonprofit “organization [that] has linked the increase in AAPI racist incidents to the association of COVID-19 and the resulting pandemic to China,” but does not explain how this causal connection was identified. And Dr. Lee’s report mentions data that tend to undermine that connection: “Even prior to COVID-19, anti-Asian American hate crimes increased by 146% between 2019 and 2020 while the overall incidence nationally increased by only 2%.” Lee Rep. 37 (Pls.’ Ex. 100). In any event, the degree to which the putative rise in

anti-AAPI incidents nationwide is caused by COVID-19 is immaterial to this litigation over SB 202.

551. The anti-AAPI climate was stoked in substantial part by racist rhetoric such as then-President Trump's repeated references to COVID-19 as the "Chinese virus" and "kung flu." Ex. 103 (Lee Decl. ¶ 8); Ex. 100 (Lee Rep. 39-40).

**RESPONSE:** Disputed, unsupported by the cited portions of the record, and immaterial. The cited pages of Dr. Lee's report state in conclusory fashion that the purported "climate" for AAPI Americans was the "byproduct of the racial rhetoric related to COVID-19," Lee Rep. 40 (Pls.' Ex. 100), but does not have any empirical data to support that *causal* claim. "Instead of properly bridging th[is] gap," Dr. Lee "trie[s] to *ipse dixit* over it; but a bald assertion cannot carry the *Daubert* burden." See *United States v. Pon*, 963 F.3d 1207, 1221 (11th Cir. 2020). The cited paragraph of Dr. Lee's declaration suffers from the same problem. The cited portions of the record therefore cannot carry Plaintiffs' sweeping claim. Moreover, what President Trump said about the origins of COVID-19 is completely immaterial to this litigation over SB 202.

552. On March 16, 2021, a 21-year-old white man shot and killed eight people in the Atlanta, Georgia area, including six AAPI women. Ex. 92 (Chang Rep. 61-62); Ex. 103 (Lee Decl. ¶ 8).

**RESPONSE:** Undisputed, but immaterial.

553. Georgia State Senator Bruce Thompson minimized the nature of the March 16, 2021, mass shooting by questioning the legality of the businesses where the shootings occurred and the Cherokee County Sheriff's Department stated that the white shooter was struggling with "sex addiction" and having a "really bad day." Ex. 294 (Khwaja Decl. ¶ 11); Ex. 92 (Chang Rep. 62).

**RESPONSE:** Disputed in part, but immaterial. Undisputed that someone from the Sheriff's Department used the quoted language; disputed that Sen. Thompson "minimized" the shooting in any way whatsoever. According to Plaintiffs' own witness, Thompson stated that "[p]rostituting women and human trafficking is not legal in our state nor do we want it." Khwaja Decl. ¶ 11 (Pls.' Ex. 294). To express concern that the victims of the shooting might also have been victims of another crime is the opposite of "minimiz[ing]" the shooting. And again, the fact that this tragedy occurred is completely immaterial to the validity of SB 202.

554. Nationally, between the first quarter of 2020 and the first quarter of 2021, anti-Asian American hate crimes increased by 169 percent. Ex. 100 (Lee Rep. 37). Even prior to COVID-19, anti-AAPI hate crimes increased by 146 percent between 2019 and 2020 while the overall incidence nationally increased by only 2 percent. *Id.* 37-38.

**RESPONSE:** Undisputed, though immaterial for the reasons stated in response to ¶ 549, *supra*.

555. The blame placed on AAPIs for COVID-19 have roots in historical and persistent stereotypes of Asian Americans as “perpetually foreign.” Ex. 92 (Chang Rep. 60); Ex. 100 (Lee Rep. 40).

**RESPONSE:** Disputed, but immaterial. Also, the statement is unsupported by the cited portions of the record. This assertion is premised on a claim about the “blame ... for COVID-19,” a claim that suffers from the deficiencies mentioned in State Defendants’ responses to ¶¶ 550–51, *supra*. More broadly, this vague assertion is an argumentative conclusion rather than a fact and hence does not require a response.

556. Vis-à-vis the “perpetual foreigner” stereotype, AAPIs are especially likely to be suspected of disloyalty and being fraudulent voters. Ex. 100 (Lee Rep. 40); Ex. 92 (Chang Rep. 61).

**RESPONSE:** Disputed, and the cited portions of the record do not support the statement. The cited page of Dr. Chang’s report does not mention voting at all, and the cited page of Dr. Lee’s report baldly declares that “prejudice toward AAPIs is common in America and, vis-à-vis the perpetual foreigner stereotype, AAPIs are especially likely to be suspected of being fraudulent voters”; although Dr. Lee supports several statistics meant to show anti-AAPI bias in general, he does not substantiate his assertion that AAPI Americans are “are especially likely to be suspected of being fraudulent voters.”

557. According to the recent STAATUS (Social Tracking of Asian Americans in the U.S.), an index report from The Asian American Foundation (TAAF), an “increasing percentage of Americans in 2022 question the loyalty of Asian Americans and blame Asian Americans for the COVID-19 pandemic, fueling the ‘perpetual foreigner’ stereotype.” Ex. 92 (Chang Rep. 61).

**RESPONSE:** Disputed in part and immaterial. Undisputed that the report in question uses the quoted language. State Defendants note, however, that the STAATUS Report’s findings are immaterial to the validity of SB 202. In fact, the Report finds that 75% of Republicans said that Americans who said Asian Americans have “strongly benefited” or “benefited” the United States, compared to 71% of Democrats. See LAAUNCH Found., STAATUS Index 31, available at <https://tinyurl.com/7jad25uu>. Given that it was Republicans who generally supported SB 202 and Democrats who opposed it, such findings further undercut Plaintiffs’ baseless claim that the statute reflects anti-AAPI bias.

558. Anti-Asian tropes are often featured in election fraud claims. Ex. 100 (Lee Rep. 36).

**RESPONSE:** Disputed, and the cited portion of the record does not support the purported statement of fact. The cited page of Dr. Lee’s report “[a]nti-Asian tropes often feature prominently in such claims of election fraud,” but his one and only example is a conspiracy theory that the Chinese

Communist Party interfered with the U.S. elections in 2020. It is entirely speculative to attribute this theory to racism rather than to suspicion of a foreign government with interests often adverse to those of the United States, and even if Dr. Lee could narrow down the culprit to racism, this one example would come nowhere close to demonstrating that anti-AAPI tropes are “often” featured in election-fraud claims.

559. The racially-coded language used by Representative Barry Fleming, in his November 15, 2020 op-ed, describing the absentee ballot process as “the shady part of town down near the docks . . . [where] the chance of being shanghaied is significant” conjure the historical and persistent stereotype of Asian Americans as perpetually foreign. Terms like “shanghai” are “racial codewords” that allow a person to violate an accepted social norm (in this case, the norm against an explicitly racial charge against Asian American voters in Georgia) while lending deniability to their having violated that norm. Ex. 103 (Lee Decl. ¶¶ 2-12).

**RESPONSE:** Disputed in part, but immaterial. Undisputed that Rep. Fleming authored the op-ed that used the quoted language; disputed in all other respects. There is nothing “racially-coded” about the quoted language. To “shanghai” means “to put aboard a ship by force often with the help of liquor or a drug,” or “to put by trickery into an undesirable position”; the word is derived not from the wrongdoers’ ethnicity, but rather from “the former use of



this method to secure sailors for voyages to eastern Asia.” *Shanghai*, Merriam-Webster Online Dictionary (2023), <https://www.merriam-webster.com/dictionary/shanghai>; accord *Shanghai*, Collins English Dictionary, <https://tinyurl.com/nvjv9f95> (“from the city of Shanghai; from the forceful methods formerly used to collect crews for voyages to East Asia”). “The Chinese city’s name became attached to the process in the 1800s, seemingly because ships unwillingly manned by the kidnapped sailors were often bound for the East; the abductors themselves were not Asian.” Elizabeth Fajans & Mary R. Falk, *Hendiadys in the Language of the Law What Part of “And” Don’t You Understand?*, 17 Legal Comm. & Rhetoric: JALWD 39, 57 (2020). The verb “shanghai” is still widely used today by courts,<sup>9</sup> commentators, see 1 Robert Force & Martin J. Norris, *The Law of Seamen* § 10:16 (5th ed.) (Nov. 2023 update), media outlets,<sup>10</sup> and even the U.S. Code, see 18 U.S.C. § 2194

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<sup>9</sup> See *NLRB v. Sea-Land Serv., Inc.*, 837 F.2d 1387, 1394 (5th Cir. 1988); *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps.*, 138 S. Ct. 2448, 2466 (2018); *In re Zulick*, 832 A.2d 572, 582 (Pa. Commw. Ct. 2003), *aff’d*, 834 A.2d 1126 (Pa. 2003); *Azzia v. Royal Caribbean Cruises, Ltd.*, No. 15-CV-24776-JLK, 2016 WL 11395237, at \*3 (S.D. Fla. Aug. 31, 2016); *Black v. Del Webb Cmtys., Inc.*, No. CV058743SJOJWJX, 2006 WL 8446305, at \*2 (C.D. Cal. Oct. 27, 2006).

<sup>10</sup> See, e.g., Robert Lloyd, *Appreciation: Marty Krofft was integral to a creative partnership: ‘I get a dream and Marty gets it done’*, L.A. Times (Nov. 27, 2023), <https://tinyurl.com/jh9mcysr> (“They’re shanghaied by Witchiepoo ... to Living Island ...”); Linda McIntosh, *Newcomers group installs new officers*, San Diego Union-Tribune (July 10, 2019), <https://tinyurl.com/2xje6ktw> (“[T]he plot revolves around a bumbling actor and his crew getting shanghaied by the terror of the high seas.”); Jeanne Phillips, *Dear Abby: Dad of twins fears wife is suffering from depression*, Detroit News (Feb. 5, 2018),

(criminalizing “[s]hanghaiing sailors”). There is simply nothing racist about the word, and the conclusory declaration cited by Plaintiffs cannot change that.

Dr. Lee opines that “the term ‘shanghai’ inherently associates the act of ‘trickery’ or deception to the most populous city in China, a largely racially homogeneous country in Asia. Terms like ‘shanghai’ are ‘racial codewords’ that allow a person to violate an accepted social norm ... while lending deniability to their having violated that norm ....” Lee Rebuttal Rep. ¶ 6 (Pls.’ Ex. 101). But in light of ample authority regarding the term’s origin, Dr. Lee has no sound basis for inferring that Fleming’s use of the verb “shanghai” refers to the race of the people in that city rather than the fact that kidnapped sailors were often taken to East Asia. “Instead of properly bridging th[is] gap,” Lee “trie[s] to *ipse dixit* over it ....” See *United States v. Pon*, 963 F.3d 1207, 1221 (11th Cir. 2020). “Presenting a summary of a proffered expert’s testimony in the form of conclusory statements devoid of factual or analytical support is simply not enough.” *Cook ex rel. Est. of Tessier v. Sheriff of Monroe Cnty.*, 402 F.3d 1092, 1113 (11th Cir. 2005).

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<https://tinyurl.com/5n7a3v95> (“To shanghai your wife into a mental health intervention would be a mistake.”); Isaac Chotiner, *The Threat of Big Tech Is Real*, Slate (Oct. 5, 2017), <https://tinyurl.com/yhuu8aj6> (“The ways in which our attention gets shanghaied by these companies makes us less good as citizens.”); Bob Shaw, *A Minnesotan’s guide to delusional winter fun*, Pioneer Press (Jan. 6, 2017), <https://tinyurl.com/y5emfpn6> (“The idea of a summertime art festival has been shanghaied by the nonprofit Art Shanty Project.”).

Dr. Lee’s only other purported basis for his unfounded conclusion is that, nationwide, AAPI voters voted absentee at higher rates in 2020 than voters overall, and so Rep. Fleming must have been denigrating AAPI voters because he doubted the security of absentee voting. *See* Lee Rebuttal Rep. ¶ 10 (Pls.’ Ex. 101). But, in Georgia, 0.995% of voters in November 2020 were AAPI voters who voted by mail—and of those who voted by mail, just 3.8% were AAPI. *See* Asian Ams. Advancing Just.-Atl. & Asian Am. Advocacy Fund, *The Future of Voting: A Profile of Asian American and Pacific Islander Voters in Georgia* 24 fig. 15 (Aug. 2022); Grimmer Rep. ¶¶ 54 tbl. 7, 59 (Defs.’ Ex. DDDD). These small figures come nowhere close to transforming Fleming’s non-racist language into racist language.

560. Following the 2020 election, false and racialized claims regarding “bamboo ballots” were so prevalent that it prompted a response from the Georgia’s SOS office via a press release on August 9, 2021, stating, “Georgia’s elections have grown more competitive over the past decade, but bamboo ballots and the Chinese Communist Party aren’t the reason.” Ex. 100 (Lee Rep. 36).

**RESPONSE:** Disputed, but immaterial. For one, neither the press release itself nor the cited page of Dr. Lee’s report support the claim that the release was issued because the conspiracy theory was “so prevalent”; rather, the release was issued, as Dr. Lee correctly observes, in “respon[se] to the

dismissal of one ... lawsuit by the 11th Circuit Court of Appeals,” in which the plaintiff alleged this form of election meddling by the Chinese government. Lee Rep. 36 (Pls.’ Ex. 100). Moreover, as State Defendants explained in response to ¶ 558, *supra*, Plaintiffs’ characterization of this specific claim of election interference as “racialized” is disputed and inadequately supported.

561. Through the “perpetual foreigner” stereotype, AAPIs are vulnerable to accusations of disloyalty and wrongdoing especially during times of economic and political instability. Ex. 92 (Chang Rep. 5, 65). For example, an empirical analysis of the Economic Espionage Act, found that a significant 21 percent of Chinese defendants and 22 percent of all Asian defendants charged under the Economic Espionage Act were acquitted of charges, had charges dropped before trial, or pleaded guilty to making false statements during the investigation and received only probation. In contrast, the same can be said for only 11% of defendants with Western names. Ex. 92 (Chang Rep. 59-60).

**RESPONSE:** Disputed in part, unsupported by the cited portions of the record, and immaterial. The study cited by Plaintiffs regarding EEA prosecutions does not constitute evidence of anti-AAPI bias of the sort that could possibly impugn the motive of the General Assembly in passing SB 202. If anything, the study comes closer to impugning *Plaintiffs’* motives: “these statistically significant [racial] differences may suggest that *the DOJ* is

prosecuting innocent Asian defendants far more frequently than those of other races.” Andrew Chongseh Kim, *Prosecuting Chinese “Spies”: An Empirical Analysis of the Economic Espionage Act*, 40 Cardozo L. Rev. 749, 754 (2018) (emphasis added). At any rate, the study goes on to admit its own limitations: “it is possible that the DOJ is legitimately more concerned about spying by and for China than other spying. If so, the disparities revealed by this Study could be a byproduct of a legitimate focus on crimes that benefit China, which disproportionately involve defendants of Chinese descent.” *Id.* at 754–55.

562. Within a year of SB 202’s passage, a number of bills were introduced in the Georgia state legislature that explicitly targeted China and people of Asian descent. For example, the legislature passed a bill that prohibits Chinese companies from bidding for state contracts, invoking inflammatory and racial rhetoric blaming the COVID-19 pandemic on China. That bill shares 13 cosponsors with SB 202. The state legislature recently considered another bill, which shares 6 cosponsors with SB 202, to restrict land ownership by certain Asian immigrants (e.g., Chinese immigrants), including those holding unexpired visas. While purportedly targeting non-Americans, these pieces of legislation harm AAPIs, Asians, and immigrants more broadly. Ex. 294 (Khwaja Decl. ¶ 13).

**RESPONSE:** Disputed in part, but immaterial. Undisputed that the Legislature passed the statute regulating State contracting with Chinese-

government-owned or -controlled firms (ostensibly a reference to SB 346) and that a bill restricting ownership of land with a connection to national security or critical infrastructure was introduced in the Legislature (ostensibly a reference to HB 246); disputed in all other respects. For one, there is no basis for asserting that SB 346, a reasonable piece of legislation that restricts State contracting with entities controlled by a foreign government whose interests are often adverse to those of the United States, “invok[es] inflammatory and racial rhetoric blaming the COVID-19 pandemic on China.” The portions of the record cited by Plaintiffs for this proposition do not support, instead merely restating the proposition with no evidence whatsoever. As for HB 246, this measure would *not* restrict land ownership by “certain Asian immigrants (e.g., Chinese immigrants)”; it would prohibit any entity headquartered in (or owned or controlled by the government of) China, Iran, North Korea, or Russia—or any citizen of those countries—from owning certain parcels of real property with a connection to vital industry or infrastructure—such as food, pharmaceuticals, roads, or military bases. The notion that either this bill or SB 346 “explicitly targeted ... people of Asian descent,” or that either of them “harm[s] AAPIs, Asians, and immigrants more broadly,” is false and unsupported by the bare-bones declaration on which Plaintiffs rely.

563. Mr. Germany admitted in his deposition that he cannot speak to the General Assembly’s rationales in passing SB 202. Ex. 59 (Germany Dep.

159:1021 (noting he could not speak to the Legislature's rationales), 174:16-22 (same)); *see also* Ex. 252 (9/22/23 Prelim. Inj. Hr'g Tr. 200:14-20 (Counsel for the State stating that Germany is testifying about the specific provisions in his individual capacity only, not speaking for the Legislature), 195:5-196:6 (Counsel for the State making clear Germany was not being offered as an expert)).

**RESPONSE:** Disputed, but immaterial. Mr. Germany conceded only that he did not know the legislators' subjective rationale for restricting the number of dropboxes per county or MVUs. Regardless, this issue is immaterial because State Defendants' relevant motion for summary judgment did not rely exclusively (or even primarily) on Germany's declaration or deposition to explain the rationale for either provision. *See* State Defs.' MSJ at 7, 19 [Doc. 759].

564. The State's expert admitted in his deposition that there is no evidence of meaningful fraud in the 2020 elections in Georgia, including in Fulton County and with respect to absentee ballots. Ex. 83 (Grimmer Dep. 37:9-23, 43:21-44:3).

**RESPONSE:** Undisputed.

565. The changes to absentee voting, advance voting, banning line relief activities, limiting provisional voting, and restricting the use of drop boxes and

mobile voting units do not enhance the security of Georgia elections. Ex. 98 (Kennedy Rep. 42).

**RESPONSE:** Disputed, but immaterial. Additionally, this statement consists of argument, rather than a statement of fact. Moreover, the cited portion of the record does not support the statement. The single page of Dr. Kennedy's report cited for this proposition does little more than baldly state the proposition with no supporting explanation or evidence. At any rate, this assertion is an argumentative conclusion rather than a statement of purported fact. State Defendants' explanation as to how the listed provisions of SB 202 serve important State interests (whether in election "security" or in achieving other important objectives) is laid out in State Defendants' summary-judgment motion and reply in support thereof. *See* State Defs.' MSJ 4–23 [Doc. 759]; State Defs.' Reply in Support MSJ on Discriminatory Intent Claims at 15–34.

566. The confidence of Georgia voters has been affected by experiences from voting in person, shared party affiliation with electoral winners, and messages from elites, including a narrative that votes were changed during an election, whether true or false. Ex. 99 (King Rep. 3); Ex. 80 (King Dep. 96:9-24).

**RESPONSE:** Undisputed only that Dr. King's regression model found correlations between these factors and voter confidence.



567. Voter confidence in Georgia is stable over time, consistent with national trends; voters confirm their beliefs as well as understand administrative and policy changes through messaging from partisan elites, including beliefs about the prevalence of election fraud (officials changing the vote count). Ex. 99 (King Rep. 3, 44-45).

**RESPONSE:** Disputed, but immaterial. Dr. King's report does not in fact support the claim that "[v]oter confidence in Georgia is stable over time." Rather, Figure 2 of the report indicates that, from 2008 to 2020, Georgia voters' confidence that the statewide, countywide, and nationwide vote—as well as their own personal votes—were counted accurately has fluctuated from election to election, with the Georgia voters' in the 2020 election dropping markedly. The other assertion in this paragraph ("voters confirm their beliefs ...") is hard to understand—but inasmuch Plaintiffs merely mean to say here that, generally speaking, "messaging from partisan elites" can affect voter confidence, State Defendants do not dispute that claim.

568. In 2012 and 2020, absentee voters in Georgia were more confident that their ballots were being counted as intended than those who voted in person. Ex. 80 (King Dep. 139:7-140:16); Ex. 99 (King Rep. 16, 24).

**RESPONSE:** Undisputed.

569. When voters perceive problems with the voting process, such as long lines, challenges to voter qualifications, disputes over voter intent from

stray marks on a ballot, negative evaluations of poll workers, the type of voting machines used, or the outcome of electoral contests, that can cause increased distrust in the voting process. Ex. 99 (King Rep. 7-8).

**RESPONSE:** Undisputed that, generally speaking, it is possible for these factors to affect voter confidence.

570. To address voter confidence concerns, the consensus among election administrators has been to distribute more information to the public that explains how elections are conducted and how election administrators address those challenges rather than adding restrictions that sacrifice voting opportunity and increase demands on voters' time and attention. Ex. 79 (Deposition of Kevin Kennedy [ECF 748] ("Kennedy Dep.") 185:18-186:1).

**RESPONSE:** Disputed in part, immaterial, and the cited portion of the record does not support the statement. Plaintiffs cite part of Dr. Kennedy's deposition in which he says that "the consensus that I've seen has been information needs to be distributed to the public that explains this is how elections are conducted, here are the challenges to it, here's how we address, you know, specific concerns[.]" Kennedy 185:18–23 (Pls.' Ex. 79). Whether "the consensus that [Dr. Kennedy] [has] seen" in fact represents a true "consensus among election administrators" more broadly is not a question addressed in the cited portion of his deposition. Nor does that portion of his deposition say anything about "restrictions that sacrifice voting opportunity and increase

demands on voters' time and attention," or whether SB 202 fits that description, or even what other measures may be prudent in addition to providing voters with information.

571. The University of Georgia's School of Public & International Affairs Survey's ("SPIA Survey") was an English-only telephone survey with a sample size of 1,253 Georgia registrants who self-reported as having voted in the 2022 general election ("SPIA Survey"). Defs.' Ex. YYYY at 2. The Survey respondents consisted of 63.5% white voters, 29.1% Black voters, and 7.4% "Other" voters. Defs.' Ex. YYYY at 20.

**RESPONSE:** Undisputed.

572. The SPIA Survey's results are unreliable because of several methodological problems, including that the sample of respondents is both very small and unrepresentative. Among other things, the demographic makeup of survey respondents does not align with the demographic makeup of actual November 2022 voters. Ex. 108 (Pettigrew Sur-Rebuttal Rep. 6); Ex. 81 (Pettigrew Dep. 139:11-141:16 (noting the Survey's sample is not representative of Georgia's population and that "the racial composition of this poll was well outside the margin of error of what we know to be the truth based on actual voting records"), 142:16-22 ("I don't see this data as -- as -- as standing up to the standard of academic rigor that would allow us to draw scientifically valid conclusions.")).

**RESPONSE:** Disputed, but immaterial. The SPIA Survey is not rendered “unreliable” by any of the considerations Plaintiffs cite. First, when Plaintiffs say, “the demographic makeup of survey respondents does not align with the demographic makeup of actual November 2022 voters,” Plaintiffs apparently mean the demographic numbers they derived from the SOS’s website. But as the SPIA Survey itself explains, “results were weighted using iterative proportional raking in order to ensure the sample was representative of the 2022 electorate in terms of education, race, sex, and age.” SPIA Survey at 2. What is more, despite Dr. Pettigrew’s claims that the SPIA Survey’s age breakdown of Georgia voters is outside margin of error when compared with the SOS data, *see* Pettigrew Sur-Rebuttal Rep. 6 (Pls.’ Ex. 108), the Survey’s age breakdown *is* within margin of error of the figures given by the 2022 CES, *see* Supp. Grimmer Decl ¶ 15 (Defs.’ Ex. HH hereto). Given that the CES is a source that Plaintiffs’ expert apparently considers trustworthy enough to rely on, *see* Pettigrew Rep. at 4 (“Data from the CES is a standard tool for helping political scientists to understand and study American elections.”), Plaintiffs cannot write off the SPIA survey on this basis while also affirmatively relying on the CES, *see* Supp. Grimmer Decl. ¶ 15. At any rate, many of the conclusions made using the SPIA survey are conditioned on a respondent’s self-identified race. For this kind of inference, the survey only needs a representative sample of Black and white voters. In other words, since the

present case calls for comparisons across racial groups, the particular share of the survey from different racial groups does not, absent other evidence of systematic sampling bias (of which Plaintiffs have none), affect whether those comparisons are biased in any relevant respect. *See id.* ¶ 16.

573. Because the number of Black respondents is so small, these issues make it particularly inappropriate to use the survey to draw conclusions about the experiences of Black voters. Ex. 252 (9/22/23 Prelim. Inj. Hr’g Tr. 116:23-117:3 (Burden)).

**RESPONSE:** Disputed. Plaintiffs’ citations fail to undermine the sufficiency of the SPIA Survey’s sample size. Out of 1,253 respondents, 365 were Black. That is plenty, provided any disparities are viewed in light of the Survey’s margin of error. Indeed, another of Plaintiffs’ experts relies on the RECS to show disparities in Georgia, even though that survey only included 417 *total* Georgia respondents. *See* Meredith Rep. ¶ 47 (Defs.’ Ex. HHHH). For comparison, the report of Plaintiffs’ own expert—Dr. Burden—draws affirmative conclusions from various CES surveys; his CES-based calculations rely on samples of Black voters in Georgia that range from 176 to 376 total Black voters—all numbers very close to the SPIA Survey’s sample of 365 Black respondents. *See* Burden Rep. 21 (Pls.’ Ex. 85). If these sample sizes are large enough that Plaintiffs may rely on the CES and RECS, then SPIA’s sample

sizes are not too small for Defendants to rely on the SPIA Survey. *See* Supp. Grimmer Decl. ¶ 18 (Defs.' Ex. HH hereto).

574. The SPIA Survey only includes people who reported that they successfully voted in the 2022 general election, thereby skewing responses by excluding anyone who was unable to vote. Ex. 108 (Pettigrew Sur-Rebuttal Rep. 6); Ex. 81 (Pettigrew Dep. 142:16-22); Ex. 252 (9/22/23 Prelim. Inj. Hr'g Tr. 116:23-117:3 (Burden)); Defs.' Ex. YYYY.

**RESPONSE:** Disputed in part. Undisputed that the SPIA Survey includes only voters; disputed insofar as Plaintiffs imply that this renders the SPIA Survey unreliable. Plaintiffs' expert on line length repeatedly draws conclusions from CES data derived from responses of those who voted, *see generally* Pettigrew Rep. 3–28 (Pls. Ex. 107), so this portion of the record is not a legitimate basis for discounting the SPIA survey's findings. Moreover, Plaintiffs provide no analysis to support the claim that excluding individuals who attempted to vote would meaningfully change any of the SPIA survey results. In fact, the 2022 CES data allows for measurement of the potential consequences of excluding voters who attempted to vote but were then unable to ultimately cast a ballot using the 2022 CES. Using this comparison, one finds that including individuals who attempted to vote but then did not would have essentially no effect on the calculations of wait times. *See* Supp. Grimmer Decl. ¶¶ 19-20 (Defs.' Ex. HH hereto).

575. The survey does not state which findings are statistically significant and the Defendants have no expert testimony opining on this topic. Defs.' Ex. YYYY at 2.

**RESPONSE:** Disputed. The *SPIA Survey* (Defs.' Ex. YYYY) reports the margin of error at the 95% confidence level, which is sufficient information to determine which of any disparities identified by the Survey are statistically significant. *See Shaw 2/24 Rep. ¶ 29 n.12* (Defs.' Ex. LLLL).; *see also Shaw 99:2–4* (Defs.' Ex. Y hereto) (“By using it, I think I am acknowledging that I consider it a professional and statistically valid report.”). At any rate, State Defendants primarily rely on the SPIA Survey to show high levels of voter satisfaction in absolute terms rather than the levels of one group compared with those of another. The only arguable exception is SPIA data on wait times, but State Defendants rely primarily on the CES to measure wait times and hence do not exclusively base their reasons for summary judgment on SPIA’s numbers.

576. At least 16.4% of voting-eligible people in Georgia, or at least 1.3 million people, have disabilities, including 680,300 people with mobility impairments, 479,700 with cognitive impairments, 335,900 with hearing impairments, 258,400 with vision impairments, 242,500 with difficulty dressing or bathing, and 483,700 with difficulty going outside alone due to a physical or mental condition. Ex. 111 (Schur Rep. ¶¶ 9, 40, 42).

**RESPONSE:** Disputed in part as misleading. Many of these disabilities are correlated with greater electoral participation or lowered difficulty. *See* Schur 198:13–18 (Defs.’ Ex. X hereto) (“Q. ... They [Dr. Schur’s data] point toward the direction of nondisabled having more trouble [getting to or finding the polling place] than people with disabilities generally, but people with visual impairments and cognitive impairments having more trouble than people without any impairment? A. Yes.”).

577. More than 10% of Georgians have difficulty with physical activities such as walking, climbing stairs, lifting, and standing, and nearly one-sixth of Georgians (15.5%) have difficulty with one or more basic activities of daily living such as getting into a bed or chair, taking a bath or shower, or preparing meals. The abilities needed for several of these activities are also needed in the act of voting, both in person and by mail. Ex. 111 (Schur Rep. ¶ 45).

**RESPONSE:** Disputed in part because misleading. Many of these disabilities are correlated with greater electoral participation or lowered difficulty. *See* Schur 198:13–18 (Defs.’ Ex. X hereto) (“Q. ... They [Dr. Schur’s data] point toward the direction of nondisabled having more trouble [getting to or finding the polling place] than people with disabilities generally, but people with visual impairments and cognitive impairments having more trouble than people without any impairment? A. Yes.”).



578. The disability rate climbs strongly with age, from 8.0% among those aged 18-34 to 26.4% among those aged 65-74, 43.7% among those aged 75-84, and 70.5% among those aged 85 or older. Ex. 111 (Schur Rep. ¶ 46).

**RESPONSE:** Undisputed, but immaterial. Indeed, this suggests some claimed burdens would be due to age, rather than disability specifically, thus making them immaterial for an ADA claim. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) (“The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.” (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997))). And, in any event, Georgia has expanded convenience voting options for the disabled or elderly, including the option to move to the front of the line, O.C.G.A. § 21-2-409.1, and allows the disabled or elderly use a single absentee application to request absentee ballots for an entire election cycle, *id.* § 21-2-381(a)(1)(G).

579. People with disabilities experience significant transportation barriers. Ex. 111 (Schur Rep. ¶¶ 60-63). Approximately 733,000 adults in Georgia (9.6% of the population) have disabilities that make it more difficult to travel outside the home. Georgians with disabilities are four times more likely to live in zero-vehicle households (16.3% compared to 3.7%), less likely to be drivers (61.6% compared to 91.9%), and more likely to be financially

burdened by travel (58.3% compared to 42.9%) than Georgians without disabilities. *Id.* ¶ 60. 733,000 Georgians aged 18 or older (9.6%) have travel-limiting disabilities, defined as a “temporary or permanent condition or handicap that makes it difficult to travel outside the home.” *Id.*

**RESPONSE:** Disputed in part because of lacking context and being immaterial. “Significant transportation barriers” is vague and undefined, and voters with certain disabilities report finding aspects of the voting process easier than the general population. *See* Schur 198:13–18 (Defs.’Ex. X hereto). In addition, to the extent SB 202 places a burden on those who lack transportation, “all that has been demonstrated is a discriminatory effect on [those who lack transportation.]” *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008); *see also* Schur 43:11–15 (Defs.’ Ex. X hereto) (“measures to increase voter turnout among people with disabilities lie outside the election system, such as increasing employment, accessible transportation, educational opportunities.” (quoting Schur’s past literature)).

580. People with disabilities are significantly more likely than people without disabilities to live alone in the community (18.5% compared to 12.4%), are three times more likely to live in institutional group quarters, and are less likely to be currently married with a spouse present (42.3% compared to 49.4%). Ex. 111 (Schur Rep. ¶ 50).

**RESPONSE:** Undisputed, but immaterial. Even if this resulted in some difficulty voting due to SB 202's law, it would mean that SB 202 discriminated against those who live alone, not those with a disability. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) ("The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living." (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997))).

581. People with disabilities are three times more likely than people without disabilities to live in institutions such as nursing homes or assisted living settings, and those who do generally have more significant disabilities and are more likely to require assistance from staff and administrators in voting and daily activities. Ex. 111 (Schur Rep. ¶¶ 50, 93).

**RESPONSE:** Disputed in part, and immaterial. SB 202 left unchanged longstanding Georgia law allowing for assistance in absentee voting by caregivers such as the staff and administrators in institutions and nursing homes mitigating any potential impact. O.C.G.A. § 21-2-385(a) ("The absentee ballot of a disabled elector may be mailed or delivered by the caregiver of such disabled elector, regardless of whether such caregiver resides in such disabled elector's household."). Additionally, "[a] physically disabled or illiterate elector

may receive assistance in preparing his or her ballot from any person of the elector's choice[.]” *Id.* § 21-2-385(b).

Finally, this statement is immaterial as this does not present the kind of statistical evidence needed to support a disparate impact claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008); *Hallmark Devs., Inc. v. Fulton County*, 466 F.3d 1276, 1286 (11th Cir. 2006). Additionally, even if this were true, this is still immaterial, because it at most shows a burden on those who live in institutions, not the disabled. *See Schwarz*, 544 F.3d at 1217 (“The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.” (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997))).

582. Among Georgia citizens with disabilities who are eligible to vote, 87.7% live in homes with Internet access, compared to 95.2% for people without disabilities. This means that an estimated 157,000 citizens with disabilities who are eligible to vote in Georgia live in homes without Internet access. Ex. 111 (Schur Rep. ¶ 56).

**RESPONSE:** Undisputed, but immaterial. Internet access is not needed to vote in Georgia and SB 202 provides disabled individuals with several ways to vote which do not require such access. *See Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one

method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore). Even if this resulted in some difficulty voting due to SB 202's law, it would mean that SB 202 discriminated against those who live in a home without internet access, not those with a disability. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) ("The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.").

583. People with disabilities in Georgia are less likely to use the Internet at home (59.6% compared to 79.1% of people without disabilities), and only 60.0% of people with disabilities use the Internet in any location compared to 81.9% of people without disabilities. Ex. 111 (Schur Rep. ¶ 57).

**RESPONSE:** Undisputed, but immaterial. Internet access is not needed to vote in Georgia and SB 202 provides disabled individuals with several ways to vote which do not require such access. *See Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore). Even if this resulted in some difficulty voting due to SB 202's law, it would mean that SB 202 discriminated against those who live

in a home without internet access, not those with a disability. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) (“The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.”).

584. Lack of computer and Internet access can impact the ability of citizens with disabilities to obtain necessary resources for voting by making it more difficult to register to vote, find out how and where to vote, particularly if polling places have been changed, gather information on candidates and issues in order to make informed decisions in voting, and cure issues with mail-in ballot applications. Ex. 111 (Schur Rep. ¶ 59).

**RESPONSE:** Disputed, but immaterial. Internet access is not needed to vote in Georgia and SB 202 provides disabled individuals with several ways to vote which do not require such access. *See Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore). Even if this resulted in some difficulty voting due to SB 202’s law, it would mean that SB 202 discriminated against those who lack internet access, not those with a disability. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) (“The relevant comparison group

to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.”).

585. Over two-fifths of Georgians with disabilities (44.4%, or approximately 1.1 million people) need assistance with one or more activities of daily living, with especially high rates needing assistance for going outside of the home for errands (24.6%), preparing meals (18.4%), doing light housework (18.4%), keeping track of money (13.5%), and accessing the Internet (13.4%). Ex. 111 (Schur Rep. ¶¶ 52-53, 96).

**RESPONSE:** Undisputed, but immaterial. The reliance of disabled voters on assistance from other is why SB 202 left unchanged longstanding Georgia law allowing for assistance in absentee voting by caregivers such as the staff and administrators in institutions and nursing homes ensuring that such voters have meaningful access. O.C.G.A. § 21-2-385(a) (“The absentee ballot of a disabled elector may be mailed or delivered by the caregiver of such disabled elector, regardless of whether such caregiver resides in such disabled elector’s household.”).

586. Because a large number of people with disabilities live alone, many who need assistance must rely on non-household members. Over one-third (39.1%, or an estimated 973,200 people) of Georgians with disabilities receive assistance in daily activities from family members, while 8.7% (216,400)

receive assistance from any non-relative. 4.2% (105,400) receive assistance from friends or neighbors, 2.4% (58,800) from paid help, 0.5% (12,800) from partners or companions, and 2.6% (63,400) from other non-relatives. Ex. 111 (Schur Rep. ¶ 54).

**RESPONSE:** Undisputed, but immaterial. SB 202 does not change who may assist a disabled individual in mailing or delivering their ballot. O.C.G.A. § 21-2-385(a). As further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999) (discussing 1984 Attorney General opinion); *see also* 2016 Op. Att’y Gen. No. 2016-2 (Ga. Att’y Gen.).

587. Lower employment levels, greater likelihood of living alone, lower Internet access, and transportation barriers among people with disabilities contribute to social isolation. This social isolation limits the support network upon which people with disabilities may rely for assistance with fundamental daily activities, including accessing the right to vote. Ex. 111 (Schur Rep. ¶ 64).

**RESPONSE:** Undisputed, but immaterial. SB 202 does not change the substantive law regulating who may assist a disabled individual in mailing or delivering their ballot. O.C.G.A. § 21-2-385(a). As further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both held



that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999); 2016 Op. Att’y Gen. No. 2016-2 (Ga. Att’y Gen.).

588. People with disabilities in Georgia and nationwide are less likely to vote than their nondisabled counterparts. If the rate of voter turnout had been the same between people with and without disabilities, an additional 28,600 people with disabilities would have voted in Georgia in 2020. Ex. 111 (Schur Rep. ¶ 66). Voting barriers faced by disabled voters play a role in the voter turnout gap between voters with and without disabilities. *Id.* ¶ 75.

**RESPONSE:** Disputed in part, but immaterial. Georgia has been acknowledged by Dr. Schur as “an early leader[]” in ensuring voting accessibility, Lisa Schur et al., *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 15 Election L.J. 1, 5 (2015) (Schur Dep., Ex. 5) (Defs.’ Ex. EE hereto), and both the registration and turnout gap in Georgia are much lower than nationwide, Schur 28:9–21 (Defs.’ Ex. X hereto). In addition, the actual gap is small, with less than a 1.5% turnout gap. Schur 27:9–16 (Defs.’ Ex. X hereto). This is immaterial “statistical manipulation” the Supreme Court has warned about in voting rights cases. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021); *see also League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir.)

(holding that differences of 3.89% and 2.21% were “neither of large magnitude nor statistically significant.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023)

Moreover, part of this small gap is due to factors such as education that may be correlated with disabilities but are not themselves part of disabilities. Schur 43:11–15 (Defs.’ Ex. X hereto) (“measures to increase voter turnout among people with disabilities lie outside the election system, such as increasing employment, accessible transportation, educational opportunities.” (quoting Schur’s past literature)). And burdens incident to those reasons are not burdens because of a disability for ADA purposes. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) (11th Cir. 2008).

589. Part of the disability voting participation gap can be traced to inaccessible voting systems, which not only make voting more physically difficult but can have psychological effects that discourage voting. Ex. 111 (Schur Rep. ¶ 69).

**RESPONSE:** Disputed in part and immaterial in part. Disputed to the extent that it deals with Georgia, which Dr. Schur has praised as “an early leader[]” in ensuring voting accessibility, Lisa Schur et al., *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 15 Election L.J. 1, 5 (2015) (Schur Dep., Ex. 5) (Defs.’ Ex. EE hereto), resulting in a registration and turnout gap in Georgia that are much lower than nationwide,

Schur 28:9–21 (Defs.’ Ex. X hereto). In addition, the actual gap is small, with less than a 1.5% turnout gap. Schur 27:9–16 (Defs.’ Ex. X hereto). This is immaterial “statistical manipulation” the Supreme Court has warned about in voting rights cases. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021); *see also League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were “neither of large magnitude nor statistically significant.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

590. People with disabilities face myriad barriers in voting related to their disabilities, including the need for assistance in their daily life activities, a greater likelihood of living alone, a lower likelihood of having a vehicle or other access to transportation, high poverty rates, social stigma, and inaccessible voting systems, leading to lower voter participation rates than nondisabled eligible counterparts. Ex. 111 (Schur Rep. ¶¶ 10, 39, 66-71).

**RESPONSE:** Disputed in part, but immaterial. To the extent this deals with “inaccessible voting systems,” it is disputed, as Georgia has long been recognized as a leader in accessible voting systems by Dr. Schur. Lisa Schur et al., *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 15 Election L.J. 1, 5 (2015) (Schur Dep., Ex. 5) (Defs.’ Ex. EE hereto). As for the rest, SB 202 makes significant efforts to avoid social stigma for those with disabilities, including by allowing them to go to the front of the

line. O.C.G.A. § 21-2-409.1 (noting that this option is available “upon request”). Even if this resulted in some difficulty voting due to SB 202’s law, it would mean that SB 202 discriminated against those who lack transportation, lived alone, or suffer from other listed difficulties, not those with a disability. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008).

591. People with disabilities can face extra barriers to in-person voting in: 1) Finding or getting to the polling place, particularly for those facing transportation barriers and Internet-access limitations; 2) Getting inside the polling place, particularly for those in wheelchairs or with visual impairments; 3) Standing in line, particularly for those with chronic illnesses or health conditions that cause pain when standing or limit their endurance; 4) Being prevented from voting by poll workers, particularly for those who appear to have a cognitive disability; 5) Reading or seeing the ballot, particularly for those with cognitive or vision impairments; 6) Understanding how to vote or use the equipment, particularly for those with cognitive, vision, or upper-arm-mobility impairments; 7) Communicating with poll workers, particularly for those with hearing, speech, or cognitive impairments; 8) Writing on the ballot, particularly for those with vision disabilities or disabilities that limit upper-body mobility; 9) Physically operating the voting machine, particularly for

those with vision disabilities or disabilities that limit upper-body mobility. Ex. 111 (Schur Rep. ¶¶ 75-77).

**RESPONSE:** Disputed in part, but immaterial. Those with some disabilities report facing less difficulty with certain aspects of the voting process than the normal population. *See* Schur 198:13–18 (Defs.’ Ex. X hereto) (“Q. ... They [Dr. Schur’s data] point toward the direction of nondisabled having more trouble [getting to or finding the polling place] than people with disabilities generally, but people with visual impairments and cognitive impairments having more trouble than people without any impairment? A. Yes.”). This statement is also disputed to the extent it deals with “inaccessible voting systems,” as Georgia has long been recognized as a leader in accessible voting systems by Dr. Schur. Lisa Schur et al., *Accessible Democracy: Reducing Voting Obstacles for People with Disabilities*, 15 Election L.J. 1, 5 (2015) (Schur Dep., Ex. 5) (Defs.’ Ex. EE hereto). Other factors are immaterial; for instance, if lack of internet access or transportation in some difficulty voting due to SB 202’s law, it would mean that SB 202 discriminated against those who lack transportation or internet access, not those with a disability. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). And even if they weren’t, SB 202 makes significant efforts to avoid social stigma for those with disabilities, including by allowing them to go to the front of the line, thus providing meaningful access. *See Todd v. Carstarphen*, 236 F. Supp. 3d 1311,

1329 (N.D. Ga. 2017) (holding that meaningful access doesn't require absence of all burdens).

592. Across the United States, when voters with disabilities vote in person, they commonly face difficulties waiting in line or getting inside the polling place, especially for those with vision and mobility impairments. Ex. 111 (Schur Rep. ¶ 80). The most common polling place barriers people with disabilities faced were difficulty waiting in line (7.4% among all polling place voters with disabilities). *Id.*; see also *id.* at ¶ 81 (discussing news reports of long lines as barrier for disabled voters).

**RESPONSE:** Undisputed, but immaterial. While this may be true nationwide, Georgia performs significantly better than the national average according to Plaintiffs' expert Dr. Schur. Schur 28:9–21 (Defs.' Ex. X hereto). In addition, the actual gap is small, with less than a 1.5% turnout gap. Schur 27:9–16 (Defs.' Ex. X hereto). This is immaterial "statistical manipulation" the Supreme Court has warned about in voting rights cases. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2345 (2021); see also *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were "neither of large magnitude nor statistically significant."), *reh'g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

Additionally, Georgia's SB 202 has taken multiple steps to improve line wait times, resulting in general improvements in wait time and widespread voter satisfaction. State Defs.' MSJ (Absentee Ballot) at 10–11 [Doc. 763]; Survey Rsch. Ctr., Sch. of Pub. & Int'l Affs. Univ. of Ga., *2022 Georgia Post-Election Survey* 5, 13 (2023) ("*SPIA Survey*") (Defs.' Ex. YYYY); SOF ¶¶ 360–62 [Doc. 755]; Shaw 2/24 Rep. ¶ 38 (Defs.' Ex. LLLL); Germany 6/15/23 Decl. ¶¶ 10–11 (Defs.' Ex. E); Manifold 30:11–17 (Defs.' Ex. MM); Wurtz 59:15–19 (Defs. Ex. NN). And, even beyond the general improvements in wait time, SB 202 provided measures to improve the voting experience for the disabled in particular, including provisions to move them to the front of the line. O.C.G.A. § 21-2-409.1.

593. In 2020, 5.4% of Georgia registered voters with disabilities said they did not vote because they tried but were not allowed to vote, it was too much trouble, or they were dissuaded by the long lines, compared to 0.7% of registered voters without disabilities who did not vote for any of those three reasons. Applied to the population of eligible Georgia citizens with disabilities, this means 48,300 Georgians with disabilities did not vote for one of these three reasons. Ex. 111 (Schur Rep. ¶ 77). After the 2020 election, 3.2% of all registered voters with disabilities in Georgia said they did not vote because "I tried to vote, but was not allowed to when I tried" compared to 0.2% of people without disabilities. This disparity could be due to legal barriers such as

having their eligibility challenged, having a mail ballot rejected, not having proper ID, or being at the wrong polling place. *Id.*

**RESPONSE:** Disputed, but immaterial. Studies show that respondents are likely to pick socially encouraged outcomes, a phenomenon known as desirability bias, and thus frequently list outside factors as reasons they did not vote when this is not the case. Grimmer Rep. ¶ 221 (Defs.’ Ex. DDDD). Even if this were true, plaintiffs have not presented non-speculative evidence that shows these failures to voter were actually because of disabilities. Finally, even if both the amount and claimed reasons were accurate, this is a small statistical disparity, the sort of “statistical manipulation” that is immaterial. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021); *see also League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 934 (11th Cir.) (holding that differences of 3.89% and 2.21% were “neither of large magnitude nor statistically significant.”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

594. Long lines deter Georgia voters with disabilities from voting at higher rates (0.8%) than voters without disabilities (0.4%). Ex. 111 (Schur Rep. ¶ 77). According to unrebutted expert testimony by Plaintiffs’ expert, Dr. Lisa Schur, “Waiting in line can be onerous for many people with disabilities. I conclude with a reasonable degree of certainty, based on the above data, that close to 1% of registered voters with disabilities in Georgia, representing about



7,800 people, reported that they were dissuaded from voting in 2020 by the prospect of long lines at the polls that were well documented, indicating that their voter turnout could have been almost a full percentage point higher if long lines were not an issue.” Id. ¶ 101.

**RESPONSE:** Disputed, but immaterial. Due to desirability bias, many of these voters in either group may have chosen not to vote for other reasons. Grimmer Rep. ¶ 221 (Defs.’ Ex. DDDD). And immaterial because SB 202 specifically provides that disabled voters may immediately go to the front of lines in polling places. O.C.G.A. § 21-2-409.1.

In addition, if those with disabilities were dissuaded due to long lines, this may be due to other conditions mentioned, such as lack of transportation, if this were true it would be immaterial. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). In addition, this is irrelevant to SB 202 if true, because SB 202 has taken (successful) efforts to reduce long lines, SOF ¶¶ 360–62 [Doc. 755]; Survey Rsch. Ctr., Sch. of Pub. & Int’l Affs. Univ. of Ga., *2022 Georgia Post-Election Survey 5* (2023) (“*SPIA Survey*”) (Defs.’ Ex. YYYY); Shaw 2/24 Rep. ¶ 38 (Defs.’ Ex. LLLL); Germany 6/15/23 Decl. ¶¶ 10–11 (Defs.’ Ex. E); Manifold 30:11–17 (Defs.’ Ex. MM); Wurtz 59:15–19 (Defs.’ Ex. NN). Finally, this extraordinarily small statistical difference is legally immaterial, the sort of “statistical manipulation” the Supreme Court has warned against. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021).

595. Disabled voters only know they can skip the line if they read the signs or ask polling staff, or if they do their own independent research. Ex. 35 (Gwinnett Cnty. Manifold Dep. 182:10-183:23).

**RESPONSE:** Disputed, but immaterial. It is questionable to characterize visiting a county website, which contains information on elections, as “independent research.” *See* Germany 4/13 168:11–22 (Defs.’ Ex. I hereto) (noting “there’s a page on our website that talks about voters with disabilities and seeks to provide information for them”); Kidd 165:3–6 (Defs.’ Ex. G hereto) (noting information for voters with disabilities provided on website); Gay 93:17–20 (Defs.’ Ex. E hereto) (“We still run newspaper ads, and then, of course, Facebook, our website, general information like that. We have gone out, depending on the election, and sent out a flyer” to provide election information). At least some counties have line monitors walk up and down the line with signs informing voters of this, to catch disabled and elderly voters’ attention. Wurtz 135:3–13 (Defs.’ Ex. N hereto). Voters may hear this from friends, family members, or voter education organizations. Even if this were true, this is one of the ordinary burdens of voting true of any voting measure. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion).

596. Earnestine Floyd is a 74-year-old registered voter in Muscogee County who has chronic asthma and arthritis, which prevent her from walking

or standing for long periods of time. She cannot risk going to vote in person and waiting in a long line, which could be painful and risky for her health; in-person voting is therefore not accessible to her due to her health conditions and needs. Ex. 275 (Floyd Decl. ¶¶ 1-4, 6).

**RESPONSE:** Disputed in part, but immaterial. Immaterial because SB 202 specifically provides that disabled voters may immediately go to the front of lines in polling places such that Ms. Floyd would not have to wait in line. O.C.G.A. § 21-2-409.1. And post-SB 202 reductions in line length and measures specifically aimed at reducing line wait time (including for the disabled), in person voting is increasingly accessible, with shorter lines and greater voter satisfaction. SOF ¶¶ 360–62 [Doc. 755]; Survey Rsch. Ctr., Sch. of Pub. & Int’l Affs. Univ. of Ga., *2022 Georgia Post-Election Survey* 5, 13 (2023) (“*SPIA Survey*”) (Defs.’ Ex. YYYY); Shaw 2/24 Rep. ¶ 38 (Defs.’ Ex. LLLL); Germany 6/15/23 Decl. ¶¶ 10–11 (Defs.’ Ex. E); Manifold 30:11–17 (Defs.’ Ex. MM); Wurtz 59:15–19 (Defs.’ Ex. NN). In addition, SB 202 has made absentee voting increasingly accessible, particularly for those with disabilities, by eliminating the signature matching requirement. *See* ADAPT 2/20 99:2–16 (Defs.’ Ex. CC) (describing difficulty with signature match).

597. Desaree Green is a 59-year-old registered voter in Cobb County who has cancer and lupus, which limit her ability to walk or stand and prevent

her from leaving her house, driving to her polling place, or waiting in line to vote in person during flare-ups. Ex. 280 (Green Decl. ¶ 3).

**RESPONSE:** Undisputed, but immaterial. SB 202 has made significant efforts to increase ease and reliability of absentee voting, and taken additional measures to increase meaningful access to in-person voting, such as allowing those with disabilities to move to the front of the line. O.C.G.A. § 21-2-409.1. And there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA).

598. Ms. Green votes by mail because these substantial limitations in her ability to walk or stand prevent her from leaving her house, driving to her polling place, or waiting in line to vote in person. Ex. 280 (Green Decl. ¶ 3).

**RESPONSE:** Undisputed, but immaterial. SB 202 has increased the accessibility of voting by mail while also increasing its trustworthiness, thus ensuring legitimate absentee votes are counted, and that the disabled “hav[e]

a voice in the election” and may “participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system.” *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (citation omitted from first quotation).

And there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA).

599. Patricia Chicoine is 76-years-old and is a registered voter in Fulton County who has arthritis in her back and two replaced knees, which make walking and standing difficult and painful. Ex. 266 (Chicoine Decl. ¶¶ 1-3).

**RESPONSE:** Undisputed.

600. Because of difficulties with an inaccessible drop box and other problems with absentee voting due to SB 202, Ms. Chicoine voted in person three times in 2022. Ex. 266 (Chicoine Decl. ¶¶ 10-12).

**RESPONSE:** Disputed in part and immaterial. The cited declaration does not establish that these problems were caused by SB 202, which has taken steps to increase both the accessibility and trustworthiness of absentee voting. And when it comes to absentee-by-mail voting Ms. Chicoine was wary of it because she was worried about the quality of her physical signature, Chicoine Decl. ¶ 11 (Pls.' Ex. 818-16), but SB 202 eliminated signature matching, so her worries are based on a misunderstanding of the controlling law. *See* O.C.G.A. § 21-2-385(a) (requiring ID for identity verification).

Significantly Ms. Chicoine successfully voted in each election in 2022. Chicoine Decl. ¶¶ 10–12 (Pls.' Ex. 818-16). Even if voting was difficult, the fact SB 202 provides voters with disabilities multiple ways to participate means there is no violation of Title II. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

601. In May and November 2022, Ms. Chicoine waited in line for about 20 minutes before asking a poll worker if she could sit down; she was not offered a seat and she did not see any signage indicating she had a right to sit or skip the line due to her disabilities. Ex. 266 (Chicoine Decl. ¶¶ 10-11).

**RESPONSE:** Undisputed but immaterial. SB 202 specifically provides the right to disabled and elderly voters to skip the line. O.C.G.A. § 21-2-409.1. And it explicitly requires that “[n]otice of the provisions of this Code section shall be prominently displayed in the voting place.” *Id.* The Counties failure to have signage informing her of her rights under SB 202 then cannot be traced to SB 202, which explicitly requires such signage. She was able to obtain a seat when asked, but to avoid stigmatizing those with disabilities, Georgia law does not allow poll workers to ask voters if they are disabled. *Id.* (requiring that accommodations be made at the voter’s request).

602. Jessica Mathis is a 39-year-old registered voter in Chatham County who has several health conditions, including cerebral palsy, causing muscle weakness and spasms in her legs, and uses a wheelchair outside the home. Ex. 301 (Mathis Decl. ¶¶ 1-2, 5).

**RESPONSE:** Undisputed.

603. Because of her health conditions, Ms. Mathis cannot stand in line for more than 30 minutes without having extreme muscle weakness and spasms. Ex. 301 (Mathis Decl. ¶ 20).

**RESPONSE:** Undisputed but immaterial. SB 202 specifically provides the right to disabled and elderly voters to skip the line. O.C.G.A. § 21-2-409.1. SB 202 has also shortened lines, making wait times of over 30 minutes increasingly rare. SOF ¶¶ 288, 360, 423 [Doc. 755]; Grimmer Report ¶ 218 (Defs.’ Ex. DDDD); Survey Rsch. Ctr., Sch. of Pub. & Int’l Affs. Univ. of Ga., *2022 Georgia Post-Election Survey* 5, 13 (2023) (“*SPIA Survey*”) (Defs.’ Ex. YYYY); Grimmer 196:19–23 (Defs.’ Ex. OOOO); Germany 6/15/23 Decl. ¶ 13 (Defs.’ Ex. E). In addition, SB 202 has made absentee voting both increasingly accessible and trustworthy through its efforts to reduce fraud, streamlining registration, and eliminating signature matching, thus facilitating an acceptable level of accessibility for those with disabilities. *See* ADAPT 2/20 99:2–16 (Defs. Ex. CC) (describing difficulty with signature match).

604. Ms. Mathis has significant difficulties with transportation due to her disabilities. She relies on her parents to drive her, but that is burdensome due to her spasticity and physical limitations, the difficulty transporting her wheelchair, and her parents’ health conditions. Ex. 301 (Mathis Decl. ¶¶ 9-10). She regularly experiences difficulties with Teleride, the paratransit service for people with disabilities. *Id.* ¶ 8. Specifically, she must reserve a ride at least the day before, and sometimes the driver fails to show up, or the ride is canceled, or the bus is full, or she has to wait much longer than the scheduled ride time. *Id.*



**RESPONSE:** Undisputed.

605. To vote in person typically takes Ms. Mathis about four hours, assuming Teleride adheres to the 30-minute window it provides. Ex. 301 (Mathis Decl. ¶ 7). However, she has waited between 3-5 hours for Teleride to pick her up after voting at a polling place, including during the 2018 primary election when it felt like over 100 degrees outside, which made waiting outside very difficult. *Id.* ¶ 8.

**RESPONSE:** Undisputed but immaterial. The timing does not establish a unique difficulty beyond those without disabilities who lack transportation (and the presence of Teleride suggests it is alleviated), and thus it is immaterial to an ADA claim, *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) (“The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.” (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997))). In addition, SB 202 does not cause or even relate to Ms. Mathis’s problems with Teleride, and SB 202 has made mail-in voting more accessible for those who suffer from “spasticity,” *supra* ¶ 604, by providing an alternative to signature verification, ADAPT 2/20 99:2–16 (Defs.’ Ex. CC) (describing difficulty with signature match).

606. Voting-eligible people with disabilities vote by mail significantly more often than those without disabilities, and experience barriers to voting—both in person and by mail—more frequently than people without disabilities. People with disabilities who are almost twice as likely to rely on absentee voting compared to people without disabilities. Among Georgia voters in 2020, 44.7% of people with disabilities and 26.7% of people without disabilities voted using an absentee ballot. Only 12.4% of disabled voters in Georgia voted in person that year. Ex. 111 (Schur Rep. ¶¶ 8, 12, 73, 74, 98(b), & Tbl. 8).

**RESPONSE:** Undisputed but immaterial. First, the 2020 election was a unique outlier because the “COVID-19 pandemic caused many states, including Georgia, to alter how it administered its elections.” Grimmer Rep. ¶ 37 & n.8 (citing Stanford-MIT Healthy Elections Project, *The Virus and the Vote: Administering the 2020 Election in a Pandemic* (July 1, 2021, <https://tinyurl.com/2p98hn69>), ¶ 39 (noting that “the coronavirus was salient and disrupting many Americans’ routines”) (Defs.’ Ex. DDDD). Second, this is a raw percentage analysis that: 1) does not account for factors such as age that might be correlated with disability but independently increase rates of absentee voting; or 2) link any provision of SB 202 to any particular disparate impact borne by disabled voters; and thus is immaterial for an ADA claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) (“The relevant comparison group to determine a discriminatory effect on the

physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.” (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997)). In addition, an impact on those who vote absentee, if there were one, would merely discriminate against those who vote absentee, not those who have disabilities. *Id.* And merely stating that many disabled voters vote absentee without any evidence that such voters lack meaningful access because of their disability is inadequate to state a claim under Title II. *See Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1083 (11th Cir. 2007) (requiring both proof of discrimination and that the discrimination was because of a disability).

607. Any impediments to the vote by mail process, such as those that SB 202 imposes, increase the burden on voting for people with disabilities, because voting by mail is often the most accessible – or only accessible – means of voting for them. For many people with mobility restrictions, transportation barriers, and difficulty standing in long lines, voting by mail is effectively the only option they have to vote. Ex. 111 (Schur Rep. ¶¶ 8, 63, 73); Ex. 35 (Gwinnett Cnty. Manifold Dep. 186:21-25).

**RESPONSE:** Disputed and immaterial. SB 202 has streamlined the vote by mail process, particularly for those with disabilities. ADAPT 2/20 99:2–16 (Defs.’ Ex. CC) (describing difficulty with signature match). And, “[t]he relevant comparison group to determine a discriminatory effect on the

physically disabled is other groups of [absentee voters]. Otherwise, all that has been demonstrated is a discriminatory effect on [absentee voting].” *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008).

Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

Further, merely stating that many disabled voters vote absentee without any evidence that such voters lack meaningful access because of their disability is inadequate to state a claim under Title II. *See Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1083 (11th Cir. 2007) (requiring both proof of discrimination and that the discrimination was because of a disability).

608. According to un rebutted expert testimony of Plaintiffs' expert witness Dr. Lisa Schur: "any impediments to the vote by mail process, such as those that SB 202 implements, increase the burden on voting for people with disabilities, because voting by mail is often the most accessible—or only accessible—means of voting for them." Ex. 111 (Schur Rep. ¶ 8).

**RESPONSE:** Disputed in part and immaterial. Undisputed that Dr. Schur stated this, but such a generic claim does not establish any fact that SB 202's absentee-ballot provisions, singularly or in combination deny voters with disabilities meaningful access to absentee-by-mail voting. This claim, if true, would only establish that the measure increases burdens on those who vote absentee, not necessarily those who are disabled, and thus it is irrelevant to an ADA claim under Eleventh Circuit law. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*,

236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

609. Earnestine Floyd must vote by absentee ballot due to her chronic asthma and arthritis, which has been aggravated by multiple car accidents and affects her ability to walk and stand for long periods of time. Ex. 275 (Floyd Decl. ¶ 3-5).

**RESPONSE:** Undisputed.

610. Declarant Nikolaos Papadopoulos, a member of the Arc Georgia, has multiple disabilities including cerebral palsy and right-eye blindness due to glaucoma. He uses a power wheelchair for mobility. He requires assistance with many daily activities including dressing and bathing; as a result, he lives in a nursing facility and is unable to leave to vote in person unless he can hire a driver and a personal care attendant. He resides in Royston and is registered to vote in Franklin County. Ex. 306 (Papadopoulos Decl. ¶¶ 1-3); Ex. 303 (Mattox 5/11/23 Decl. ¶ 21).

**RESPONSE:** Undisputed.

611. Papadopoulos previously received assistance from the nursing facility staff in completing, sealing, and mailing an absentee ballot; however, since the enactment of SB 202, nursing facility staff have been confused

whether they can provide assistance, without which Papadopoulos is unable to vote. Ex. 306 (Papadopoulos Decl. (ECF 594-3) ¶¶ 9, 11-14); Ex. 303 (Mattox 5/11/23 Decl. ¶ 21).

**RESPONSE:** Disputed in part and immaterial. Mr. Papadopoulos claims that the Ballot Harvesting Penalty would prevent someone from assisting him by opening his mailbox so that he can mail a ballot, Papadopoulos Decl. ¶ 9 (Pls.' Ex. 306), but the provision does not prevent anyone from assisting a disabled voter in this manner.

Additionally, SB 202 does not change who may assist voters, but merely increases the penalty for violating pre-existing laws against ballot harvesting. O.C.G.A. § 21-2-385(a). As further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999); 2016 Op. Att'y Gen. No. 2016-2 (Ga. Att'y Gen.). To the extent they are confused, this is likely a non-cognizable self-inflicted injury. *See, e.g., Swann v. Secretary*, 668 F.3d 1285, 1288 (11th Cir. 2012).

612. Approximately 733,000 Georgians have a temporary or permanent condition or handicap that makes it difficult to travel outside of the home. Ex. 111 (Schur Rep. ¶ 60).

**RESPONSE:** Undisputed but immaterial. “The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of [those who may have difficulty traveling outside of the home]. Otherwise, all that has been demonstrated is a discriminatory effect on [those who have difficulty traveling.]” *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008).

Additionally, there are still multiple ways for voters with disabilities to request and return an absentee-by-mail ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

613. According to un rebutted expert testimony by Plaintiffs’ expert witness, Dr. Lisa Schur, “[m]easures that make it more difficult to vote by mail



will likely increase the number of people with disabilities going to polling places (if they vote at all) and will exacerbate problems of long lines.” Ex. 111 (Schur Rep. ¶ 80).

**RESPONSE:** Disputed and immaterial. Schur provides no causal analysis for her claims. Grimmer Rep. ¶ 186 (Defs.’ Ex. DDDD). And SB 202’s vote by mail provisions, even if they increase burdens in some ways, also relieve it in other ways, and take additional measures to ensure that line length is decreased, which have been successful. MSJ at 10–11; Survey Rsch. Ctr., Sch. of Pub. & Int’l Affs. Univ. of Ga., 2022 Georgia Post-Election Survey 13 (2023) (“SPIA Survey”); SOF ¶¶ 360–62 ((SPIA Survey 5) Shaw Rebuttal Rep. ¶ 38; Germany 6/15/23 Decl. ¶¶ 10–11; Manifold 30:11–17; Wurtz 59:15–19). In addition, this is immaterial if true, because lines are part of the ordinary burdens of voting, *see Crawford*, 553 U.S. at 191, 197–98 (controlling opinion, and this does nothing to establish that the burden of long lines is specifically because of their disability, *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008), nor does it contain the sort of statistical analysis required for an ADA claim in the Eleventh Circuit, *id.* at 1218.

614. According to un rebutted expert testimony by Plaintiffs’ expert witness, Dr. Lisa Schur, “[t]he combined additional restrictions on mail-in voting in SB 202 are likely to push more people to vote in person at polling places, which will in turn exacerbate problems of long lines at polling places

and consequently make it harder for many people with disabilities to wait in line to vote in person. While older voters and those with physical disabilities may ask to be moved to the front of a line, it may be hard to get the attention of poll workers and convince them that one is entitled to do so, and this practice would not be available to individuals with different disabilities, such as cognitive or other less-visible impairments, who may now need to vote in person.” Ex. 111 (Schur Rep. ¶ 26).

**RESPONSE:** Disputed and immaterial. Defendants’ expert has pointed out that Dr. Schur’s opinion is unfounded and provides no causal analysis. Grimmer Rep. ¶ 186 (Defs.’ Ex. DDDD). Moreover, this is immaterial if true. Getting the attention of poll workers is part of the ordinary burdens of voting. *See Crawford*, 553 U.S. at 191, 197–98 (controlling opinion). Furthermore, those with non-visible impairments are also entitled to move to the front of the line, and poll workers are not allowed to inquire further about their disability status. SB 202’s vote by mail provisions, even if they increase burdens in some ways, also relieve it in other ways, *see, e.g.,* Zan Thornton Vol. I 99:2-16 (Pls.’ Ex. 22) (describing difficulty with signature match). SB 202 also takes additional measures to ensure that line length is decreased, which have been successful, SOF ¶¶ 360–62 ((SPIA Survey 5) Shaw Rebuttal Rep. ¶ 38; Germany 6/15/23 Decl. ¶¶ 10–11; Manifold 30:11–17; Wurtz 59:15–19). In addition, does not contain the sort of statistical analysis required for an ADA

claim in the Eleventh circuit, *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008).

Additionally, there are still multiple ways for voters with disabilities to request and return an absentee-by-mail ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

615. SB 202 creates barriers to the absentee ballot voting process such that voters with disabilities do not feel that it is accessible. Ex. 316 (Thomas Decl. ¶¶ 9, 38); Ex. 303 (Mattox 5/11/23 Decl. ¶ 21).

**RESPONSE:** Disputed. SB 202 includes measures to ensure the overall voting process and absentee voting specifically are more accessible, particularly for the disabled. *See, e.g., ADAPT 2/20 99:2–16* (Defs.' Ex. CC)

(describing difficulty with signature match). Further, subjective impressions do not make the actual provisions of the law discriminatory or burdensome on voters with disabilities.

Additionally, there are still multiple ways for voters with disabilities to request and return an absentee-by-mail ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

616. People with disabilities have difficulties with absentee voting due to SB 202 restrictions, thereby causing them to vote in person, where they also face difficulties. Ex. 316 (Thomas Decl. 7-12) (Empish Thomas votes in person despite difficulties due to inaccessibility and denial of assistance at the polls, but because of SB 202 increased barriers, including criminal penalties on

unauthorized ballot return assistance, she is not willing to vote absentee); Ex. 266 (Chicoine Decl. ¶¶ 10-12) (Patricia Chicoine faced inaccessible drop boxes and other problems related to absentee voting, so voted in person three times in 2022 despite also facing difficulties due to her mobility impairments).

**RESPONSE:** Disputed, and immaterial in part. Further, Plaintiffs' cited declaration only shows that voters have applied limitations *to themselves* that are *not* based on the law. Empish Thomas, a blind voter, puts her own personal limitation on the term caregiver by excluding someone who is clearly a caregiver—her assistant whom she pays to assist her with daily tasks she cannot complete because of her disability—from the scope of the statute. Thomas Decl. ¶¶ 14–15 (Defs.' Ex. O). She also notes that she prefers to vote in-person, then complains about transportation to an absentee ballot drop box that is available at the same place she would vote in person and during the same voting hours. *Id.* ¶¶ 3, 5, 17. And though she claims it was difficult to vote in 2022, the hardship she claims she experienced was caused by poll workers, not the provisions of SB 202—and not the State Defendants. *Id.* ¶¶ 24–36.

SB 202 also increases accessibility of the overall voting process, including absentee voting, and especially absentee voting for those with disabilities. ADAPT 2/20 99:2–16 (Defs.' Ex. CC) (describing difficulty with signature match). SB 202 does not change what sort of caregivers may give

help or what help they may give. O.C.G.A. § 21-2-385(a). As further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999); 2016 Op. Att’y Gen. No. 2016-2 (Ga. Att’y Gen.). Further, many of these claimed burdens are not material if true; for instance, if people with disabilities face an increased burden solely because of their lack of transportation, this is immaterial because it merely discriminates against those who lack transportation, not those with a disability specifically. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008).

617. In 2016, about 80,000 Georgians with disabilities did not have a driver’s license or other government issued-photo ID, which creates a barrier to accessing absentee voting and reduces a voter’s ability to vote absentee. Ex. 111 (Schur Rep. ¶¶ 43, 98(c)); Ex. 21 (Fulton Cnty. Dep. 125:8-11); Ex. 96 (Fraga Rep. ¶ 81). People with disabilities are less likely than people without disabilities to have access to a printer or photocopier that can be used to copy documentation. Only 67% of eligible voters with disabilities reported having a printer at home or easy access to one, compared to 82% of those without disabilities. Ex. 111 (Schur Rep. ¶¶ 58, 98); Ex. 35 (Gwinnett Cnty. Manifold Dep. 150:1-5, 150:18-151:10).

**RESPONSE:** Disputed but immaterial. Even if SB 202 increases burdens on those without driver's licenses—a voting requirement the Eleventh Circuit has upheld, *see Greater Birmingham Ministries v. Sec'y of State of Ala.*, 992 F.3d 1299, 1329–30 (11th Cir. 2021)—and even if the burden rose to the level of disenfranchisement, this would merely affect those without a driver's license, not those who are disabled. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). Similar analysis applies to issues such as printer access.

Additionally, there are still multiple ways for voters with disabilities to request and return an absentee-by-mail ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

618. Some Georgia voters with disabilities have not voted because of the SB 202 identification requirements and others have had difficulty complying with SB 202 identification requirements because they cannot print out and send in the needed paperwork to access an absentee ballot. Ex. 303 (Mattox 5/11/23 Decl. ¶ 21). Between the 2020 and 2022 elections, the Fulton County Board of Registrations and Elections' office received an increased number of non-compliant absentee ballot applications due to insufficient identification information. Ex. 21 (Fulton Cnty. Dep. 123: 5-8).

**RESPONSE:** Disputed and immaterial. As Dr. Grimmer has explained, it is extraordinarily difficult to trace nonvoting due to a particular provision. *See, e.g.*, Grimmer Rep. ¶¶ 198, 221, 240 (Defs.' Ex. DDDD). Furthermore, there is no difference between someone with a disability who does not meet identification requirements and someone without a disability who does not meet the requirements, so this is immaterial to an ADA claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). There are no challenges to the process by which voters obtain a valid DDS ID and disabled voters have the same access to obtaining such an ID as non-disabled voters, which over 97% of all Georgia voters possess. Sterling 239:8–20 (Defs.' Ex. VVV) (2020: 98.6% have DL or state ID numbers and 99.2% who voted in 2020 had one or the other); Evans 79:6–80:4 (Defs.' Ex. KKK) (97 to 99 percent have DL or ID number in record). It is likely that a similar number of voters with



disabilities have such an ID—indeed, *all adults with disabilities* appear to have a similar rate of possession to *registered voters*. Dr. Schur estimates that either 1,273,300 or 2,483,000 adults in Georgia have disabilities, *see* Schur Rep. 53 tbl. 1, 54 tbl. 2 (Pls.’ Ex. 111), while 80,000 of them lack two specific forms of photo ID, *see id.* ¶ 98(c). This would mean anywhere from 93.7% to 96.7% of all adults with disabilities—not just registered voters—have such an ID. In addition, SB 202 even makes the application process easier for voters with disabilities, by eliminating the signature match process. ADAPT 2/20 99:2–16 (Defs.’ Ex. CC) (describing difficulty with signature match). Finally, the non-compliant absentee ballots do not account for other noncompliance issues solved by SB 202, such as confusion from receiving multiple unsolicited absentee ballot applications. *See, e.g.,* SOF ¶ 443 [Doc. 755]; Germany 10/30/23 Decl. ¶ 47–48, 89 (Defs.’ Ex. B); Bailey 10/6 124:23–126:7 (Defs.’ Ex. FFF) (2020–9,700 duplicate absentee ballot applications); Eveler 185:2–11 (Defs.’ Ex. T); K. Smith 66:13–67:2 (Defs.’ Ex. W); Kidd 188:24–191:5 (Defs.’ Ex. Y); Germany 3/7 183:3–9 (Defs.’ Ex. HH).

Additionally, there are still multiple ways for voters with disabilities to request and return an absentee-by-mail ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding

that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

619. Defendant representatives have admitted that they would not need to undertake any changes if voter ID requirements were lifted. Ex. 13 (Athens-Clarke Cnty. Dep. 112:17-23).

**RESPONSE:** Disputed. Defendants would need to implement signature matching if the prior statute were reimplemented. *See* O.C.G.A. § 21-2-381(a)(1)(C)(i); Mashburn 3/7 60:5–21 (Defs.’ Ex. JJ); Mashburn 3/14 67:25–68:20 (Defs.’ Ex. KK). This could be extraordinarily time-consuming for the counties. Bailey 3/21 122:14–123:4, 125:22–126:12 (Defs.’ Ex. GGG). Plaintiffs’ claim would only be true if the court rewrote the law into a chimera statute, that neither restores the existing law (with signature matching) nor allows SB 202’s full comprehensive scheme to take place.

620. According to un rebutted expert testimony of Plaintiffs’ expert witness Dr. Lisa Schur, limiting the time window and process for obtaining an

absentee ballot burdens many people with disabilities who either need to vote by mail due to their disabilities or find it less difficult to vote by mail due to their disabilities. Ex. 111 (Schur Rep. ¶¶ 18, 98).

**RESPONSE:** Disputed and immaterial. An extended time window makes it more difficult for some people to vote absentee-by-mail because they may forget they applied for a ballot, leading to confusion and suspicion. *See, e.g.,* SOF ¶ 443 [Doc. 755]; Germany 10/30/23 Decl. ¶ 47–48, 89 (Defs.’ Ex. B); Bailey 10/6 124:23–126:7 (Defs.’ Ex. FFF) (2020–9,700 duplicate absentee ballot applications); Eveler 185:2–11 (Defs.’ Ex. T); K. Smith 66:13–67:2 (Defs.’ Ex. W); Kidd 188:24–191:5 (Defs.’ Ex. Y); Germany 3/7 183:3–9 (Defs.’ Ex. HH). Some voters even forgot they voted due to the long window, leading to further confusion and suspicion. SOF ¶ 186; Germany 3/7 132:9–133:4 (Defs.’ Ex. HH). Further, there is no evidence that the window for requesting absentee-by-mail ballots prevented anyone from voting. Shaw 2/14 Rep. ¶ 57 (Defs.’ Ex. KKKK) (“there is no evidence that voters who are anxious enough and politically engaged enough to request an absentee ballot more than two and a half months before the election will be dissuaded from casting a ballot by timing specifications such as those directed by SB 202.”). Furthermore, as Dr. Grimmer explained, the share of applications rejected after the deadline—which is not equivalent to preventing someone from voting—is extraordinarily

small across all racial and ethnic groups. Grimmer Rep. ¶ 89 & tbl. 12 (Defs.' Ex. DDDD) (reproduced below).

Race	Share Applications Rejected After Deadline
American Indian	0.0025
Asian	0.0027
Black	0.0027
Hispanic	0.0037
White	0.0022
Overall	0.0025

Table 12: Share of Absentee ballot applications rejected for arriving after the SB 202 deadline, by self-identified racial group and overall.

621. As Zan Thornton of Georgia ADAPT testified, some people with disabilities have had problems receiving their absentee ballots and now have less time to request another one so they are forced to vote in person, even though the reason they prefer to vote absentee is because of the barriers they face getting to and waiting at the polls. Georgia ADAPT assisted 10-15 voters with disabilities who encountered this issue. Ex. 317 (Thornton Decl. ¶ 17). One voter took a bus from North Carolina to Fulton County so that ADAPT could drive her to the polls to vote because her absentee ballot never arrived. A woman in Savannah applied for, but did not receive, her absentee ballot and needed ADAPT's help to get to the polls. *Id.* ¶ 18.

**RESPONSE:** Undisputed, but immaterial. Anecdotal claims such as this do not rise to the sort of statistical analysis needed to make out a disparate impact claim under Eleventh Circuit precedent. *Schwarz v. City of Treasure*

*Island*, 544 F.3d 1201, 1218 (11th Cir. 2008). Also, there is no evidence that SB 202 caused any of these cited difficulties. *See Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1083 (11th Cir. 2007) (requiring both proof of discrimination and that the discrimination was because of a disability). A few uncommon administrative failings do not undermine the provisions of the statute.

622. According to un rebutted expert testimony of Plaintiffs' expert witness Dr. Lisa Schur "The Section 25 provision shortening the time frame for absentee ballot applications is likely to cause some people with disabilities to miss the deadline for applying for an absentee ballot, particularly those who lack Internet access or face disability-related barriers for which they cannot obtain assistance." Ex. 111 (Schur Rep. ¶ 98(c)(iii)).

**RESPONSE:** Disputed in part and immaterial in part. To the extent it implies that SB 202 makes it more difficult to obtain assistance, this is disputed; SB 202 does not change any substantive provisions regarding assistance. O.C.G.A. § 21-2-385(a). To the extent it supposedly causes timing difficulties, which it does not, this is immaterial; it only discriminates against those who lack internet access or are untimely, not those with a disability specifically. *See Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). Further, there is no evidence that the window for requesting absentee-by-mail ballots prevented anyone from voting. Shaw 2/14 Rep. ¶ 57

(Defs.’ Ex. KKKK) (“there is no evidence that voters who are anxious enough and politically engaged enough to request an absentee ballot more than two and a half months before the election will be dissuaded from casting a ballot by timing specifications such as those directed by SB 202.”). Furthermore, as Dr. Grimmer explained, the share of applications rejected after the deadline—which is not equivalent to preventing someone from voting—is extraordinarily small across all racial and ethnic groups. Grimmer Rep. ¶ 89 & tbl. 12 (Defs.’ Ex. DDDD) (reproduced below).

Race	Share Applications Rejected After Deadline
American Indian	0.0025
Asian	0.0027
Black	0.0027
Hispanic	0.0037
White	0.0022
Overall	0.0025

Table 12: Share of Absentee ballot applications rejected for arriving after the SB 202 deadline, by self-identified racial group and overall.

Additionally, there are still multiple ways for voters with disabilities to request and return an absentee-by-mail ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail,

there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

623. According to unrebutted expert testimony of Plaintiffs' expert witness Dr. Lisa Schur, the new barriers and penalties on absentee voting imposed by Section 25 on top of existing restrictions, make it harder for people with disabilities to vote. Ex. 111 (Schur Rep. ¶ 98(e)(iii)).

**RESPONSE:** Disputed and immaterial. Zan Thornton admitted in her testimony that some provisions would make it easier for those with disabilities to vote. *Zan Thornton Vol. I* 99:2-16 (Pls.' Ex. 22) (describing difficulty with signature match). In addition, Dr. Schur's burden theory incorporates burdens that would incidentally affect the disabled, such as burdens on those who lack transportation and internet access, and thus are immaterial under Eleventh Circuit precedent. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008).

624. Defendants were notified of the harms that these provisions would cause to voters with disabilities. GAO joined with other organizations to submit comments on S.B. 202 and other voting rights bills during SB 202's legislative session. Additionally, GAO submitted comments to the United

States Senate Committee on Rules and Administration for a field hearing in Atlanta on S.B. 202, outlining several issues affecting voters with disabilities, including: new strict identification requirements for absentee ballots; reduction in time to request absentee ballots; and lack of access to drop boxes to cast their absentee ballots due to new restrictions. Ex. 305 (Orland Decl. ¶¶ 15, 20).

**RESPONSE:** Undisputed to the extent that GAO and other organizations claimed this. However, Georgia was “warned” of “harms” from multiple solutions. Indeed, there were even more “warnings” about the risk of fraud due to absentee ballot insecurities. Germany 10/30/23 Decl. ¶¶ 17, 23 (Defs.’ Ex. B); The Carter Ctr., 2022 General Election Observation: Fulton County, Georgia 16 (2022) (Germany 7/27/23 Decl., Ex. 34 (Defs.’ Ex. C)); U.S. Election Assistance Comm’n, Election Crimes: An Initial Review and Recommendations for Future Study 8, 10, 12, 18–19 (Dec. 2006) (Defs.’ Ex. ZZZZ); Germany 3/7 90:1–11 (Defs.’ Ex. HH); Sterling 102:11–18 (Defs.’ Ex. VVV). Yet, the results of the 2022 elections under SB 202 shows fewer absentee-by-mail applications and returned ballots were rejected for missing or incorrect identification than under the previous system, and voters were happier with the process and displayed much less distrust of the electoral system. *See, e.g., supra* Resp. ¶ 255 (noting lower rate of rejections for identification issues among all groups), ¶ 596 (noting voters reported they



found voting easier in 2022 and lines were shortened); SOF ¶ 322 [Doc. 755] (noting absence of complaints about dropboxes); Germany 6/29/23 Decl. ¶ 21 (Defs.' Ex. D); Mashburn 3/7 83:18–21 (Defs.' Ex. K hereto); SOF ¶ 528 [Doc. 755] (The State did not receive the same complaints after the 2022 elections that it received after the 2018 and 2020 elections.); Eveler 197:7–14 (Defs.' Ex. T); Germany 10/30/23 Decl. ¶ 99 (Defs.' Ex. B).

625. Defendants have confirmed that SB 202's impact on voters with disabilities "would be something that comes up in public comment fairly regularly." Ex. 34 (SEB Dep. 47:17-21).

**RESPONSE:** Undisputed but immaterial. Georgia must balance this against other matters that frequently come up in public comment, including concerns about the vulnerability of the absentee voting process, Germany 10/30/23 Decl. ¶¶ 17, 23 (Defs.' Ex. B); The Carter Ctr., 2022 General Election Observation: Fulton County, Georgia 16 (2022) (Germany 7/27/23 Decl., Ex. 34 (Defs.' Ex. C)); U.S. Election Assistance Comm'n, Election Crimes: An Initial Review and Recommendations for Future Study 8, 10, 12, 18–19 (Dec. 2006) (Defs.' Ex. ZZZZ); Germany 3/7 90:1–11 (Defs.' Ex. HH); Sterling 102:11–18 (Defs.' Ex. VVV), and voter complaints about confusion and fear of fraud, Germany 5/20/22 VoteAmerica Decl. ¶ 42 (Defs.' Ex. G); VoteAmerica Hr'g Tr. 20:3–5 (Defs.' Ex. ZZZ); Kidd 190:6–22 (Defs.' Ex. Y); Bailey 10/6 50:3–24 (Defs.' Ex. FFF). Yet, the results of the 2022 elections under SB 202 shows fewer

absentee-by-mail applications and returned ballots were rejected than under the previous system, and voters were happier with the process and displayed much less distrust of the electoral system. *See, e.g., supra*, Resp. ¶ 255 (noting lower rate of rejections for identification issues among all groups), ¶ 596 (noting voters reported they found voting easier in 2022 and lines were shortened); SOF ¶ 322 [Doc. 755] (noting absence of complaints about dropboxes); Germany 6/29/23 Decl. ¶ 21 (Defs.' Ex. D); Mashburn 3/7 83:18–21 (Defs.' Ex. JJ); SOF ¶ 528 [Doc. 755] (The State did not receive the same complaints after the 2022 elections that it received after the 2018 and 2020 elections.); Eveler 197:7–14 (Defs.' Ex. T); Germany 10/30/23 Decl. ¶ 99 (Defs.' Ex. B). Georgia ADAPT testified that some of the people that ADAPT provided rides to the polls had been unable to obtain an absentee ballot because of the shortened time period, so they had to vote in person even though they prefer to vote absentee because of the barriers they face to in-person voting. Thornton Decl. ¶ 17 (Pls.' Ex. 317). It is difficult and burdensome for people with disabilities to request a ballot, get it back from the County, get copies of their identification and send it back within the timeframe. Additionally, some voters were confused about the time limits, others thought that they would automatically receive the ballot as they had in years prior, and others simply never received their ballots. ADAPT 2/22 25:6–26:15 (Pls.' Ex. 23).

626. Georgia ADAPT testified that some of the people that ADAPT provided rides to the polls had been unable to obtain an absentee ballot because of the shortened time period, so they had to vote in person even though they prefer to vote absentee because of the barriers they face to in-person voting. Ex. 317 (Thornton Decl. ¶ 17). It is difficult and burdensome for people with disabilities to request a ballot, get it back from the County, get copies of their identification and send it back within the timeframe. Additionally, some voters were confused about the time limits, others thought that they would automatically receive the ballot as they had in years prior, and others simply never received their ballots. Ex. 23 (30(b)(6) Deposition of Georgia ADAPT Vol. II (Suzanne Thornton) taken Feb. 22, 2023 [ECF 729] (“ADAPT Vol. II Dep.”) 25:6-26:15).

**RESPONSE:** Disputed in part and immaterial. SB 202’s timeframe provides ample time for the absentee ballot process, resulting in large scale voter satisfaction. State Defs.’ Ballot MSJ (Absentee Ballot) at 10–11 [Doc. 763]; Survey Rsch. Ctr., Sch. of Pub. & Int’l Affs. Univ. of Ga., *2022 Georgia Post-Election Survey* 13 (2023) (“*SPIA Survey*”) (Defs.’ Ex. YYYY). The alleged anecdotal confusion is immaterial, and if anything, speaks to the imprudence of ordering yet another change in Georgia voting laws.

And these difficulties are immaterial because there are still multiple ways for voters with disabilities to request and return an absentee-by-mail

ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

627. Georgia ADAPT testified that they knew at least ten voters with disabilities who wanted to but were unable to request their absentee ballot within ten days of the election due to SB 202. Thornton testified that these voters had struggled because "the process is burdensome, having to make copies . . . not having a printer, not having a computer, having to go out and get the . . . information, and then following the procedures . . . . And if you're blind you have to get somebody to read it to you and follow along." Ex. 23 (ADAPT Vol. II Dep. 27:3-25).

**RESPONSE:** Disputed in part and immaterial in part. SB 202 has eased the burden of the absentee ballot process, in part by eliminating signature matching, which is of particular importance for the disabled. ADAPT 2/20 99:2–16 (Defs.’ Ex. CC) (describing difficulty with signature match). No printer or computer is necessary, because an application can be requested with a quick phone call. To the extent that this is burdensome for those who lack a printer or computer, this is not by reason of disability. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). Finally, there is no evidence that voters are unaware or are unable to determine when an absentee-by-mail application is due such that they cannot plan to complete the process in a timely fashion.

628. Georgia ADAPT was aware of ADAPT members who were unable to vote because they ran out of time to submit their absentee ballots by mail and were unable to get a ride to drop it off at a drop box. Ex. 22 (30(b)(6) Deposition of Georgia ADAPT Vol. I (Suzanne Thornton) taken Feb. 20, 2023 [ECF 726] (“ADAPT Vol. I Dep.”) 109:23-110:3).

**RESPONSE:** Undisputed, but immaterial. In addition to timing requirements being one of the ordinary burdens of voting, see *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion), this does not impose a burden by reason of disability over and above anyone else unable to obtain a ride who also missed the deadline. *Schwarz v.*

*City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008); *see also Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1083 (11th Cir. 2007) (requiring both proof of discrimination and that the discrimination was because of a disability). Indeed, the allegation sets out a consequence of voter choice and not a burden imposed by SB 202.

629. Counties were concerned about being able to process absentee ballots in the new shortened time period, could not process rollover applications sooner and had to increase their staffing levels in order to accommodate the condensed timeline. Ex. 35 (Gwinnett Cnty. Manifold Dep. 29:12-16; 30:2-5); Ex. 18 (DeKalb Cnty. Dep. 84:5-85:16); Ex. 37 (Hall Cnty. Dep. 80:18-81:3).

**RESPONSE:** Disputed in part and immaterial. This change also saved the counties efforts due to lack of duplicate applications and lack of voter complaints. Evans 102:18–103:21 (Defs.’ Ex. KKK); Germany 10/30/23 Decl. ¶¶ 45, 49, 88 (Defs.’ Ex. B); VoteAmerica Hr’g Tr. 28:5–30:4 (Defs.’ Ex. ZZZ); Bailey 3/21 99:25–101:1 (Defs.’ Ex. GGG). And in any event, States can make reasonable efforts to increase election integrity and efficiency even if they incidentally do not succeed. “[Plaintiffs] requirement also would have the potential to invalidate just about any voting rule a State adopts. ... Nothing about equal openness and equal opportunity dictates such a high bar for States

to pursue their legitimate interests.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2343 (2021).

630. Election officials in Gwinnett County have had people with disabilities who have contacted them in the final days and the final week before an election who indicated it would be hard for them to vote on Election Day and that they were impacted by the change of the deadline for absentee voting. Ex. 35 (Gwinnett Cnty. Manifold Dep. 186:21-187:10).

**RESPONSE:** Undisputed, but immaterial. In addition to timing requirements being one of the ordinary burdens of voting, this does not impose a burden by reason of disability over and above anyone else who also missed the deadline. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008); *see also Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1083 (11th Cir. 2007) (requiring both proof of discrimination and that the discrimination was because of a disability). SB 202 continues to provide an extensive time period to request and return absentee-by-mail ballots with multiple ways for disabled voters to participate, and if needed, obtain assistance in the process.

631. Cobb County failed to issue absentee ballots for the November 2022 general election and the December 2022 runoff election to over one thousand voters with enough time for the voters to be able to complete and mail them back. Ex. 339 (Consent Order, *Cook v. Cobb Cnty. Bd. of Elections & Registration* (Ga. Super. Ct. Nov. 7, 2022)); Ex. 340 (Interlocutory

Injunction, *Crowell v. Cobb Cnty. Bd. Of Elections & Registration* (Ga. Super. Ct. Dec. 2, 2022)).

**RESPONSE:** Undisputed, but immaterial. Timing requirements are one of the ordinary burdens of voting, *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion). Furthermore, this does not impose a burden by reason of disability over and above anyone else who also missed the deadline. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008); *see also Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1083 (11th Cir. 2007). This also represents a miniscule percentage of absentee voters, verging on the sort of “statistical manipulation” the Supreme Court has warned against. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021). Finally, a county administrative error is not due to SB 202 as is evident from this limited circumstance.

632. In advance of the November 2022 election, Desaree Green requested her absentee ballot on August 25, 2022, and would have requested it earlier but for SB 202’s new restrictions on the timing to request and return an absentee ballot application and ballot itself. When she checked her online voter portal, her absentee ballot was issued on October 11, 2022 but as of November 11, 2022 days after the election, the ballot still had not arrived. Ex. 280 (Green Decl. ¶ 6). Because her ballot did not arrive prior to the election and, because the election coincided with her experiencing a lupus flare up and



she was unable to leave her house, she was unable to vote in the November 2022 election. *Id.* ¶ 8. She was unable to vote in person because the election coincided with her experiencing a lupus flare up and she was unable to leave her house to vote. *Id.* Ms. Green believed that “by requesting my ballot months in advance, I would have plenty of time to receive, complete, and return that ballot” but instead the ballot never arrived to her home at all. *Id.* ¶ 7. Because her ballot did not arrive in a timely manner and the time to remedy any issues was curtailed, she was unable to vote in the November 2022 election. *Id.* Even had her ballot arrived but without enough time to mail it back, she would have been unable to drop off the ballot without the help of a friend or neighbor. *Id.* ¶ 9. She worries she will be again disenfranchised by the compressed timeframe in future elections. *Id.* ¶¶ 5-11.

**RESPONSE:** Disputed in part and immaterial. It cannot be reliably determined, using social science standards, if she would have requested the ballot sooner but for SB 202’s timing measures. Grimmer Rep. ¶ 221 (Defs.’ Ex. DDDD) (“it is not standard practice to infer the causal effect of an intervention from voters’ self-reported reflection on why they did not vote.”). Moreover, it is speculative to assume that a relaxed timing requirement would have resolved the County’s timing issues—which had nothing to do with SB 202 or Ms. Green’s disability—and thus are immaterial. *See Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1083 (11th Cir. 2007). As noted in the allegation,

the ballot was issued timely as required by SB 202. Any delay was due to an unusual circumstance with the U.S. Postal Service and not the provisions of SB 202.

633. According to Dr. Schur, “limits on advance voting days for runoff elections constrain the voting opportunities for a large portion of Georgian voters with disabilities, as over two-fifths (43.4%) of them voted early at a polling place or election office in 2020.” Ex. 111 (Schur Rep. ¶ 103).

**RESPONSE:** Disputed and immaterial. Without any data on timing of voting, this does not show that voters with disability actually would have voted earlier, much less that this constrains their absentee voting. See Grimmer Rep. ¶¶ 190–194 (Defs.’ Ex. DDDD) (discussing difficulty of causal inference around a specific provision). Even if both were true, this is immaterial, as this is one of the ordinary burdens of voting. See *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion). And it would be further immaterial because it does not burden those with disabilities specifically, but rather anyone who would have voted outside the slightly changed window. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008).

634. According to Dr. Schur, this shortened timeframe can “create extra scheduling difficulties for those who need to coordinate with family or non-family members to obtain assistance in voting in runoff elections, or who need

to arrange paratransit services that may be difficult to schedule (e.g., such services typically must be arranged at least one day in advance with a fixed time for return that may be difficult to predict, and the services are often a first-come/first-serve basis). It is also likely to contribute to longer lines on the days advance voting is available, which in turn will discourage voting in runoff elections.” Ex. 111 (Schur Rep. ¶ 103).

**RESPONSE:** Disputed in part, but immaterial. This does not account for the easing of administrative burdens evidenced by the lack of complaints about duplicate or cancelled ballot requests that caused chaos prior to SB 202. Evans 102:18–103:21 (Defs.’ Ex. KKK); Germany 10/30/23 Decl. ¶¶ 45, 49, 88 (Defs.’ Ex. B); VoteAmerica Hr’g Tr. 28:5–30:4 (Defs.’ Ex. ZZZ); Bailey 3/21 99:25–101:1 (Defs.’ Ex. GGG). And in any event, states can make reasonable efforts to increase election integrity and efficiency even if they incidentally do not succeed. “[Plaintiffs’] requirement also would have the potential to invalidate just about any voting rule a State adopts. ... Nothing about equal openness and equal opportunity dictates such a high bar for States to pursue their legitimate interests.” *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2343 (2021).

And these difficulties are immaterial because there are still multiple ways for voters with disabilities to request and return their ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of

authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore). SB 202 implemented means to monitor and shorten lines for in-person voting as well. Plaintiffs' allegation simply fails to suggest how the time period for early in-person voting would have to be modified to meet such hypothetical needs or why the extensive time period and multiple means of voting are insufficient to provide meaningful access to voters with disabilities.

635. County officials from Gwinnett County testified that the reduced time period has changed election offices' operations and it is difficult for them to process large volumes of requests because the processing time for runoff is very tight. "I think being only a four-week window, and essentially one week is spent certifying the first election, then usually a handful of days are spent, you know, programming and starting to get everything back together for the

next election. You're in a really tight window of maybe one week to get everything entered and into the system where we need it. So that's just a very...tight window for us to turn a ballot around." Staff had to work seven days a week during runoff between 12 to 16 hours a day. Ex. 35 (Gwinnett Cnty. Manifold Dep. 140:16-142:6).

**RESPONSE:** Disputed in part and immaterial. This does not account for the easing of administrative burdens evidenced by the lack of complaints about duplicate or cancelled ballot requests that caused chaos prior to SB 202. Evans 102:18–103:21 (Defs.' Ex. KKK); Germany 10/30/23 Decl. ¶¶ 45, 49, 88 (Defs.' Ex. B); VoteAmerica Hr'g Tr. 28:5–30:4 (Defs.' Ex. ZZZ); Bailey 3/21 99:25–101:1 (Defs.' Ex. GGG). And in any event, states can make reasonable efforts to increase election integrity and efficiency even if they incidentally do not succeed. "[Plaintiffs'] requirement also would have the potential to invalidate just about any voting rule a State adopts. ... Nothing about equal openness and equal opportunity dictates such a high bar for States to pursue their legitimate interests." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2343 (2021).

636. Cobb County election officials testified that "compressing the time frame from the previous nine weeks to four weeks means that a lot of things are going at the same time, and there aren't a lot of days to get everything done. By the time you certify the original election, there's -- there is very little

time to get all the mail ballots out and to get prepared for early voting.” Ex. 15 (Cobb Cnty. Dep. 91:25-92:15).

**RESPONSE:** Disputed in part and immaterial. This does not account for the easing of administrative burdens evidenced by the lack of complaints about duplicate or cancelled ballot requests that caused chaos prior to SB 202. Evans 102:18–103:21 (Defs.’ Ex. KKK); Germany 10/30/23 Decl. ¶¶ 45, 49, 88 (Defs.’ Ex. B); VoteAmerica Hr’g Tr. 28:5–30:4 (Defs.’ Ex. ZZZ); Bailey 3/21 99:25–101:1 (Defs.’ Ex. GGG). Furthermore, the 2022 election had near-record turnout for a midterm election, and was higher relative to 2018 than in other states. Shaw 2/14 Rep. ¶¶ 10, 12, 13–14, 17, 23 (Defs.’ Ex. KKKK); SOF ¶ 287 [Doc. 755]. In addition, timing requirements are one of the ordinary burdens of voting—the same logic would apply to the original timeframe. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion).

637. Georgia ADAPT testified that “because of the compressed runoff period, we have less time to schedule rides in each location, whereas previously, we could plan to be in a geographic area for a few days during early voting and schedule rides over that time. People have gotten confused about new absentee ballot rules and timelines, or didn’t have or couldn’t get proper ID, and have ended up needing our support to vote in person, which meant we have needed to provide more rides to the polls.” Ex. 317 (Thornton Decl. ¶ 15).

**RESPONSE:** Undisputed, but immaterial. Timing requirements are one of the ordinary burdens of voting—and the same logic would apply to the original timeframe or any timeframe. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion).

And these difficulties are also immaterial because there are still multiple ways for voters with disabilities to request and return their ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

638. Georgia ADAPT testified that the compressed runoff period makes it very difficult for voters with disabilities to vote since “you can't even schedule a bus, you can't even schedule mobility vans within that time period, and if you don't know if it's going to be open or not on Saturday or Sunday, it's very

difficult for us to find a way to get there.” Zan Thornton added that during the 2022 runoff elections ADAPT “have out 459 rides in that one week...and we had to pray for a miracle to get the rides out there and get people to help us.” Ex. 22 (ADAPT Vol. I Dep. 111:6-21).

**RESPONSE:** Undisputed, but immaterial. Timing requirements are one of the ordinary burdens of voting, *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion). Moreover, the same logic would apply to any time window. Furthermore, to the extent it deals with work, this burden applies similarly to all who must work and lack transportation, and thus does not discriminate by reason of disability, thus making it immaterial to a disability claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). Furthermore, confusion about a new law is immaterial to the law and requesting another (but judicially imposed) change in the law will not remedy confusion but increase it.

And these difficulties are immaterial because there are still multiple ways for voters with disabilities to request and return their ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by



returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

639. Georgia ADAPT further testified that voters with disabilities were prevented from using early in-person voting instead because of “work or the attendants” and the fact that people with disabilities have to schedule [their] attendant to help [them] go places. And so not being able to schedule their attendants, not able to have access to transportation, and not knowing the law and the confusion in the law did result in that.” Ex. 23 (ADAPT Vol. II Dep. 34:9-17).

**RESPONSE:** Disputed, but immaterial. It is difficult to establish a causal connection between the new law and her lack of voting, particularly not the county failing to mail the ballot in time. Grimmer Rep. ¶ 221 (Defs.’ Ex. DDDD). Furthermore, timing requirements are one of the ordinary burdens of voting, *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion). Moreover, the same logic would apply to any time window.

And these difficulties are immaterial because there are still multiple ways for voters with disabilities to request and return their ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

640. In the December 2022 runoff election, Earnestine Floyd was unable to vote at all due to the compressed runoff timeline. She requested a ballot application, which did not arrive, and by the time she found out that there was going to be a runoff election, it was too late to receive a ballot by mail with time to return it. Due to her disabilities, she was uncomfortable and unable to vote in person and as a result she was unable to vote in the 2022 US Senate Runoff Election. Ex. 275 (Floyd Decl. ¶¶ 8, 12-14). She believed she submitted an absentee ballot application, but the ballot never arrived. *Id.* ¶ 10.

She contacted the County Elections Office three or four days before the election and learned that she would not be receiving a ballot and that it was too late to request one. *Id.* Due to her disabilities, Ms. Floyd was unable to vote in person and as a result she was unable to vote in the December 2022 Election. *Id.* ¶¶ 12-14. She is unsure if she will be able to vote in upcoming elections that have a short timeline. *Id.* ¶¶ 5, 8, 10, 12-15.

**RESPONSE:** Disputed in part, and immaterial. Ms. Floyd did not receive her ballot for the 2022 runoff election due to her confusion about how the rollover list works, not because of SB 202. Floyd Decl. ¶ 9 (Pls.’ Ex. 275) (“I also was confused by a statement made on [the County election] website, which made me believe that because I had received an absentee ballot in the November 2022 General Election, I would also receive a ballot in the runoff election.”), ¶ 10 (“When I called to ask about my ballot, a representative from the Muscogee County Elections Office told me that if I did not check a box to be included automatically, I would need to reapply for a ballot.”). Thus, her problems with receiving an absentee-by-mail ballot for the December 2022 runoff were not caused by SB 202.

Additionally, the 2020 election was a unique outlier and cannot be used to provide a baseline because the “COVID-19 pandemic caused many states, including Georgia, to alter how it administered its elections.” Grimmer Rep. ¶ 37 & n.8 (Defs.’ Ex. DDDD) (citing Stanford-MIT Healthy Elections Project,

*The Virus and the Vote: Administering the 2020 Election in a Pandemic* 39 (July 1, 2021), <https://tinyurl.com/2p98hn69> (noting that “the coronavirus was salient and disrupting many Americans’ routines”)).

641. Close to one-sixth (15.7%) of voters with disabilities in the United States used a drop box in 2020. Ex. 111 (Schur Rep. ¶¶ 19, 99).

**RESPONSE:** Disputed, but immaterial. SB 202’s drop box restrictions make dropboxes more available in many counties, particularly rural counties where transportation difficulties are exacerbated. Shaw 2/14 Rep. ¶ 58 (Defs.’ Ex. KKKK) (noting that the small correlation between voting and distance means they may be more useful in rural areas). In addition, to the extent that this imposes a burden due to transportation difficulties, this merely burdens those who lack transportation, not those with disabilities. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). Further immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting; specifically, voters may also return their ballot by mail or by someone authorized to provide such assistance.

642. SB 202’s restrictions on drop boxes will make it harder for many people with disabilities to vote, due to transportation difficulties and mobility challenges in getting to and going inside an election office to deliver a ballot. Ex. 111 (Schur Rep. ¶ 19).

**RESPONSE:** Disputed, but immaterial. Plaintiffs have presented no statistical evidence showing this is more difficult, as required for an ADA disparate impact claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008). In addition, this is one of the ordinary burdens of voting. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion). Further immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting, and multiple alternate means of voting are in place. Additionally, counties can offer accommodations that obviate the need for them to go inside the office. Wurtz 108:2–25 (Defs.’ Ex. N hereto) (Voters may request a poll worker pick up the ballot from their car, without finding parking). Of course, this is one of the ordinary burdens of voting. *See Crawford*, 553 U.S. at 191, 197–98 (controlling opinion).

643. Requiring that drop boxes be located inside election offices, and only during limited hours, means many people with disabilities face additional transportation and mobility challenges associated with reaching a drop box. Ex. 111 (Schur Rep. ¶ 99).

**RESPONSE:** Disputed, but immaterial. Plaintiffs have presented no statistical evidence showing this is more difficult, as required for an ADA claim, much less of disenfranchisement. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008). In addition, to the extent the difficulty is

caused by factors associated with the disability but not the disability itself, such as lack of transportation, it is immaterial to an ADA claim. *Id.* at 1217. Further immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting, as Voters may also return an absentee-by-mail ballot via the postal service or with the help of a person authorized by law to assist in this process, and multiple alternate means of voting are in place.

644. Drop box restrictions create barriers for Georgians with disabilities in several ways, make it harder for people with disabilities to vote, and cause some Georgians with disabilities to be disenfranchised and a further substantial number to face significant difficulties in voting. Ex. 111 (Schur Rep. ¶ 99).

**RESPONSE:** Disputed, but immaterial. Plaintiffs provide no non-speculative evidence for this cascading effect theory, *see* Grimmer Rep. ¶ 186 (Defs.' Ex. DDDD), much less the statistical evidence required for an ADA claim, *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008). In addition, many of the claimed existing voting barriers are either part of the ordinary burdens of voting or are due to factors other than disabilities. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion). Further immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting, and

multiple alternate means of voting are in place. Under Plaintiffs' premise, the same persons with disabilities were entirely disenfranchised until the first use of drop boxes in Georgia in 2020.

645. The challenged provisions taken together, including the drop box restrictions, create a burden "on top of existing voting barriers for many Georgians with disabilities" with a "cascading effect that compounds the burden on people with disabilities to cast a ballot." Ex. 111 (Schur Rep. ¶ 108).

**RESPONSE:** Disputed, as there was no evidence that any voters with disabilities were prevented from voting absentee in 2022 due to the location and hours of the drop boxes. *See* Schur 75:16–25 (cited in SOF ¶ 346 [Doc. 755]), 77:16–25 (admitting she did not analyze whether disabled voters know where drop boxes in their county are located), 78:11–15 (admitting she did not take into account the availability of mailboxes when assessing the impact of SB 202's drop box provisions), 103:15–18 (admitting she has no data on the use of dropboxes by people with disabilities in Georgia) (Defs.' Ex. X hereto; Defs.' Ex. UUU); *see also* Grimmer Rep. ¶ 186 (Defs.' Ex. DDDD) ("Again, Dr. Schur cites no study that shows Georgia's drop box regulations will cause disabled voters to be less likely to vote."). Immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting, and multiple alternate means of voting are in place.

646. The purpose of the drop boxes included “having drop boxes available outdoors” and providing “the convenience of being able to drive by and deposit [a] ballot.” *See, e.g.*, Ex. 37 (Hall Cnty. Dep. 66:1-11); Ex. 69 (Sterling Dep. 157:16-158:19 (Chief Operating Officer in SOS’s Office testifying that “the whole point of the drop box is to have it outside.”)). Counties acknowledge that because of mail delays compounded with the drop box restrictions, voters may have more problems using absentee ballots via mail than if they were able to use a drop box. Ex. 37 (Hall Cnty. Dep. 72:6-73:17).

**RESPONSE:** Disputed, as there was no evidence that any voters with disabilities were prevented from voting absentee in 2022 due to the location and hours of the drop boxes. *See* Schur 75:16–25, 103:15–18 (Defs.’ Ex. X hereto; Defs.’ Ex. UUU) (cited in SOF ¶ 346 [Doc. 755]); *see also, supra*, Resp. ¶ 645. Furthermore, Plaintiffs present no evidence of the number of dropboxes accessible by car, much less actual use of them, and they were not generally designed to be accessible by car. K. Williams 60:9–65:25 (Defs.’ Ex. M hereto) (“Pre S.B. 202, there may have been some boxes that voters would have been able to deposit a ballot without leaving their car, but it was not a requirement that we were looking for, that the voter would not have to exit their vehicle.”).

647. Defendant representatives have admitted that lifting the drop box restrictions would not create a major burden or undermine the purpose of the program. Ex. 37 (Hall Cnty. Dep. 69:16-22, 72:6-12 (pre-SB 202 drop boxes



were secure)); Ex. 13 (Athens-Clarke Cnty. Dep. 114:23-116:11, 121:9-122:21 (same)); *id.* 123:5-17 (would take only “about two days” to return drop boxes to pre-SB 202 locations).

**RESPONSE:** Disputed, as physical placement of the drop boxes was only one element of their management, which became personnel-and-resource intensive to manage. SOF ¶ 302 [Doc. 755]; Germany 7/27/23 Decl. ¶ 76 (Defs.’ Ex. C); Eveler 156:25–157:13 (Defs.’ Ex. T); Germany 6/29/23 Decl. ¶ 18 (Defs.’ Ex. D); Harvey 123:23–124:7 (Defs.’ Ex. PPP). Additionally, dealing with voter concerns, ranging from complaints to loss of faith in the system to vigilantes outside drop boxes, would consume more resources. *See supra*, Resp. ¶¶ 297, 314 (security concerns); SOF ¶ 303 [Doc. 755]; Germany 6/29/23 Decl. ¶ 18 (Defs.’ Ex. D) (vigilantes).

648. Counties cannot modify the SB 202 drop box rules as a reasonable modification. *See, e.g.,* Ex. 21 (Fulton Cnty. Dep. 258:25-260:19); Ex. 37 (Hall Cnty. Dep. 152:7-16); Ex. 51 (Columbia Cnty. Dep. 156:14-23). In fact, the record shows that counties do not know if they are permitted to waive SB 202’s restrictions as a reasonable modification more generally. Ex. 37 (Hall Cnty. Dep. 110:15-23).

**RESPONSE:** This paragraph contains speculation, rather than statements of fact. Even if certain drop box placement restrictions may not be modified, counties may provide other reasonable accommodations to assist

voters using dropboxes. *See, e.g.,* Wurtz 108:2–25 (Voters may request a poll worker pick up the ballot from their car, without finding parking), 133:10–14 (“We provide chairs if someone needs to sit instead of stand in line . . . All of our locations have chairs available to do that.”) (Defs.’ Ex. N hereto; Defs.’ Ex. NN).

649. Difficulties taking ballots to a drop box for people with mobility impairments or difficulty going outside alone are magnified when drop box locations are restricted. Ex. 111 (Schur Rep. ¶ 83(g)).

**RESPONSE:** Disputed as unsupported by the cited portions of the record, but also immaterial. The “magnification” is speculative, and lacks the sort of statistical evidence required for an ADA claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008). And as Dr. Grimmer noted, Dr. Schur does not provide any supporting studies or causal analysis. Grimmer Rep. ¶ 186 (Defs.’ Ex. DDDD). Further, voters with such disabilities may still return their absentee-by-mail ballot by mail or receive assistance from any number of people as defined by statute.

650. People with disabilities often have compromised immune systems that make it risky to go into a public building, and many people with visual impairments find it challenging to navigate into a building and find the drop box. Ex. 112 (Schur Rebuttal Rep. ¶ 11).

**RESPONSE:** Undisputed, but immaterial. Going into a public building is one of the ordinary burdens of voting, and Plaintiffs' claims lacks the sort of statistical evidence required for an ADA claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008). And as Dr. Grimmer noted, Dr. Schur does not provide any supporting studies or causal analysis. Grimmer Rep. ¶ 186 (Defs.' Ex. DDDD). Further immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting, voters with such disabilities may still return their absentee-by-mail ballot by mail or receive assistance from any number of people as defined by statute, and multiple alternate means of voting are in place.

651. Plaintiff GAO is aware that many registrar's offices where drop boxes may be located are physically inaccessible, and that accessible routes may be poorly marked or otherwise difficult to locate. Ex. 305 (Orland Decl. ¶ 26).

**RESPONSE:** Disputed, but immaterial. The Counties regularly audit locations for ADA compliance and continually improve accessibility. *See, e.g.*, Wurtz 120:20–121:6, 123:4–9, 123:13–124:20 (Defs.' Ex. N hereto) (discussing ADA coordinator and update of voting site to ensure compliance). To the extent this were not true, this is immaterial to a claim against SB 202, but rather would require redress of individual ADA violations.

Additionally, there are still multiple ways for voters with disabilities to return their absentee-by-mail ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

652. According to unrebutted expert testimony from plaintiffs' expert Dr. Lisa Schur, even in buildings that are ADA compliant, it is still an extra burden for people with mobility impairments to be forced to get out of their vehicles and go inside an office to deliver a ballot. Ex. 111 (Schur Rep. ¶ 99(a)).

**RESPONSE:** Undisputed that Dr. Schur states this, but immaterial. Going inside ADA compliant buildings is one of the ordinary burdens of voting, *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008) (controlling opinion), and ADA compliance ensures meaningful access. Those

with disabilities were not “forced to wait in line” in the ordinary sense, because they have the option to go to the front of the line. O.C.G.A. § 21-2-409.1. In addition, lines are both one of the ordinary burdens of voting that has been reduced post-SB 202. SOF ¶¶ 360–62 [Doc. 755]; Survey Rsch. Ctr., Sch. of Pub. & Int’l Affs. Univ. of Ga., 2022 Georgia Post-Election Survey 5 (2023) (“SPIA Survey”) (Defs.’ Ex. YYYY); Shaw 2/24 Rep. ¶ 38 (Defs.’ Ex. LLLL); Germany 6/15/23 Decl. ¶¶ 10–11 (Defs.’ Ex. E); Manifold 30:11–17 (Defs.’ Ex. MM); Wurtz 59:15–19 (Defs. Ex. NN). Moreover, there is no statistical evidence of a burden as required to support a disparate impact claim, *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008). Further, because drop boxes are now known to be inside—after multiple election cycles—this confusion cannot be expected to occur again, so it is immaterial to any kind of prospective relief. At least some counties have line monitors walk up and down the line with signs informing voters of this, to catch disabled and elderly voters’ attention. Wurtz 135:3–13 (Defs.’ Ex. N hereto). And voters may request a poll worker pick up the ballot from their car, without finding parking. *Id.* 108:2–25. Finally, voters with such disabilities may still return their absentee-by-mail ballot by mail or receive assistance from any number of people as defined by statute.

Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections’ office, or

obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

653. People with disabilities in 2022 were forced to wait in line to access indoor drop boxes, along with those waiting to vote in person, because it was not clear to voters that the drop box was located inside. Ex. 317 (Thornton Decl. ¶ 21); *see also* Ex. 112 (Schur Rebuttal Rep. ¶ 11).

**RESPONSE:** Disputed, but immaterial. Those with disabilities were not “forced to wait in line” in the ordinary sense, because they have the option to go to the front of the line. In addition, lines are both one of the ordinary burdens of voting and have been reduced post-SB 202. SOF ¶¶ 360–62 [Doc. 755]; Survey Rsch. Ctr., Sch. of Pub. & Int’l Affs. Univ. of Ga., 2022 Georgia Post-Election Survey 5 (2023) (“SPIA Survey”) (Defs.’ Ex. YYYY); Shaw

Rebuttal Rep. ¶ 38 (Defs.' Ex. LLLL); Germany 6/15/23 Decl. ¶¶ 10–11 (Defs.' Ex. E); Manifold 30:11–17 (Defs.' Ex. MM); Wurtz 59:15–19 (Defs.' Ex. NN). Moreover, there is no statistical evidence of a burden as required to support an ADA claim, *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008). This is also a county administrative issue unrelated to SB 202 for nothing in the law requires voters seeking to return an absentee-by-mail ballot to a drop box to wait in line with in-person early voters. *See, e.g.*, Adams 155:8–12 (Defs.' Ex. O hereto) (“Now, in larger counties, if you have a room the size of a small gym that you’re doing early voting in and you want to walk in the door and drop in your ballot and walk out because you don’t want to stand in line for two hours, then they’re useful.”). Finally, because drop boxes are now known to be inside for multiple election cycles, this confusion cannot be expected to occur again, so it is immaterial to any kind of prospective relief.

654. Many members of The Arc Georgia do not drive or have access to reliable transportation; it is difficult for them to access transportation to a drop box generally, but even harder when drop box locations are limited and only available during business hours, when family and other supporters are at work and unable to drive them. Ex. 303 (Mattox 5/11/23 Decl. ¶ 21).

**RESPONSE:** Undisputed, but immaterial. This statement, if true, would apply equally to anyone who lacked transportation during business hours, and thus is immaterial for an ADA claim. *Schwarz v. City of Treasure*

*Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) (“The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.” (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997))).

In addition, having a smaller number of dropboxes, but more efficiently distributed to also include areas where transportation distances are even greater, as in rural counties (which previously had no drop boxes), arguably increases accessibility to the disabled. *See* Shaw 2/14 Rep. ¶¶ 60–62 (Defs.’ Ex. KKKK) (discussing impact of distance); Grimmer Rep. ¶ 14 (Defs.’ Ex. DDDD) (“drop box use is concentrated on a small number of drop boxes . . . within each county . . . In DeKalb County, for example, a single drop box received 42.3% of the mail-in absentee ballots in the county returned by drop box”). Finally, the main benefit that drop boxes were designed to provide was avoiding the spread of COVID during the pandemic, SOF ¶ 339 [Doc. 755]; N. Williams 174:12–16 (Defs.’ Ex. AA); Germany 3/7 171:21–172:3 (Defs.’ Ex. HH), which is no longer a primary concern since the pandemic subsided.

Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F.



Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

655. Given the transportation barriers faced by people with disabilities, having a smaller number of drop boxes increases the difficulty in delivering a ballot and eliminates the benefit that drop boxes were designed to provide. Ex. 111 (Schur Rep. ¶ 99(a)).

**RESPONSE:** Disputed, but immaterial. To the extent that it increases the burden on those with transportation difficulties, it does so regardless of disability status and thus is immaterial to an ADA claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). (“The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.” (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997))). In addition, having

a smaller number of dropboxes, but spread out in areas where transportation distances are even greater, as in rural counties (which previously had no drop boxes), arguably increases accessibility to the disabled. *See Shaw* 2/14/23 Rep. ¶¶ 60–62 (Defs.’ Ex. KKKK) (discussing impact of distance); Grimmer Rep. ¶ 14 (Defs.’ Ex. DDDD) (“drop box use is concentrated on a small number of drop boxes . . . within each county . . . In DeKalb County, for example, a single drop box received 42.3% of the mail-in absentee ballots in the county returned by drop box”). Finally, the main benefit drop boxes were designed to provide was avoiding the spread of covid during the pandemic, SOF ¶ 339 [Doc. 755]; *N. Williams* 174:12–16 (Defs.’ Ex. AA); *Germany* 3/7 171:21–172:3 (Defs.’ Ex. HH), which has been achieved as the pandemic subsided.

Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a

benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

656. Transportation difficulties can have a negative impact on voting. There is a significantly higher likelihood of voting among individuals who have access to a vehicle they can drive compared to those who do not. Ex. 111 (Schur Rep. ¶ 62).

**RESPONSE:** Undisputed, but immaterial. The report does not discuss how this might vary with other factors, such as living in an urban, walkable environment as opposed to a rural environment with long distances between locations. Further, the new distribution of ballot drop boxes places them “uniformly in every county,” providing a more efficient distribution, Bailey 3/21 115:18–116:10 (Defs.’ Ex. Q hereto), and ensuring “everybody would be operating by the same system.” Sterling 79:5–12 (Defs.’ Ex. AA hereto). This also places them where transportation difficulties are at their starkest, in rural areas with long distances to voting centers (which previously did not have any drop boxes), which benefits voters in those areas. *See* Shaw 2/14 Rep. ¶¶ 60–62 (Defs.’ Ex. KKKK) (discussing impact of distance). In addition, it is immaterial to an ADA claim, as it addresses difficulties for those who cannot drive, not those who are disabled. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). (“The relevant comparison group to determine a

discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.” (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997)).

Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

657. Distribution of ballot drop boxes places a more substantial travel burden—having to travel more than an hour round trip—on citizens of voting age without access to a vehicle, which is more commonly found among people with disabilities than in the rest of the population. The travel burden increase

with the reduction in drop boxes is disproportionately borne by people with disabilities—who are two to three times more likely to have travel burdens in reaching drop boxes as compared to people without disabilities. Ex. 93 (Chatman Rep. ¶¶ 3, 5).

**RESPONSE:** Disputed and immaterial. The new distribution of ballot dropboxes places them where transportation difficulties are at their starkest, in rural areas with long distances to voting centers. Shaw 2/14 Rep. ¶¶ 60–62 (Defs.’ Ex. KKKK) (discussing impact of distance). Indeed, the vast majority of Georgia’s counties either saw no change in the number of dropboxes or saw an increase in availability. SOF ¶ 323 [Doc. 755] (“In 133 counties comprising 34.7% of Georgia’s black population, there were the same number or more drop boxes in 2022 than in 2020.”); 10/11/23 Order at 14, 32–33 [Doc. 686-1]; Burden Rep. 28–29 (Defs.’ Ex. TTTT). And all counties had an increase in the number of permanently legally authorized drop boxes, as SB 202 codified drop boxes into law. *See supra*, Resp. ¶ 317. Moreover, the relationship between distance and drop box usage in urban areas is questionable, *see supra*, Resp. ¶ 339 (drop box voters often do not use the drop box closest to their home). There is also no evidence to support the assumption that large numbers of drop boxes meaningfully increase actual voting by drop box or ability to do so, as “drop box use is concentrated on a small number of drop boxes: voters tend to return their ballots to a few drop boxes within each county, while many other drop boxes

receive a smaller share of ballots returned via drop box. . . . In DeKalb County, for example, a single drop box received 42.3% of the mail-in absentee ballots in the county returned by drop box.” Grimmer Rep. ¶ 14 (Defs.’ Ex. DDDD). And as this statement concedes, it focuses on a claimed burden borne disproportionately but not exclusively by the disabled, and thus burdens based on that aspect (difficulty with transportation) rather than by reason of disability, and so it is immaterial to an ADA claim. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008) (“The relevant comparison group to determine a discriminatory effect on the physically disabled is other groups of similar sizes living together. Otherwise, all that has been demonstrated is a discriminatory effect on group living.” (quoting *Gamble v. City of Escondido*, 104 F.3d 300, 306–07 (9th Cir. 1997))). Further immaterial because there is no independent legal significance to drop boxes in light of the many alternative methods of voting available.

658. Studies show that travel distance increases to a drop box cause decreases in voter participation, demonstrating that the increased travel time for voters with disabilities will harm voter participation by raising the cost of voting. Ex. 112 (Schur Rebuttal Rep. ¶ 4). Extra travel time and inconvenience also harms voters with disabilities by creating additional costs for them to vote that voters without disabilities do not face. *Id.* ¶ 5.

**RESPONSE:** Disputed to the extent this claims that SB 202 will harm voter participation, and immaterial. SB 202 alleviates voter travel time by ensuring dropboxes are distributed in counties where transportation needs are greatest, such as rural counties. In addition, the report does not contain the kind of statistical evidence necessary to support an ADA claim, and harm to voters due to increased travel time harms those who must travel, not those with disabilities specifically, and thus is immaterial to an ADA claim. Further, drop box usage was generally not available prior to SB 202, but began in 2020, SOF ¶ 2 [Doc. 755]; 1st Am. Compl. ¶ 85, *The New Ga. Project v. Raffensperger*, No. 1:21-cv-01229-JPB [Doc. 39]; 1st Am. Compl. ¶ 153, *Ga. State Conf. of NAACP v. Raffensperger*, No. 1:21-cv-01259-JPB [Doc. 35]; 1st Am. Compl. ¶¶ 264–67, *Sixth Dist. of the Afr. Methodist Episcopal Church v. Kemp*, No. 1:21-cv-01284-JPB [Doc. 83]; 1st Am. Compl. ¶¶ 97–99, *Asian Ams. Advancing Just.-Atl. v. Raffensperger*, No. 1:21-cv-01333-JPB [Doc. 27]; Am. Compl. ¶¶ 125, 127–29, *The Concerned Black Clergy of Metro. Atl., Inc. v. Raffensperger*, No. 1:21-cv-01728-JPB [Doc. 1].

Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina

law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

659. Before SB 202, voters with disabilities in Hall County could access drop boxes available outdoors, without having to go inside. But after the passage of SB 202, county officials have observed that voters with disabilities are impacted because they can no longer use an outdoor drop box. Ex. 37 (Hall Cnty. Dep. 65:22-66:11, 68:8-12, 132:9-16).

**RESPONSE:** Disputed, but immaterial. Dropbox usage was generally not available prior to SB 202, but began in 2020, SOF ¶ 2 [Doc. 755]; 1st Am. Compl. ¶ 85, *The New Ga. Project v. Raffensperger*, No. 1:21-cv-01229-JPB [Doc. 39]; 1st Am. Compl. ¶ 153, *Ga. State Conf. of NAACP v. Raffensperger*, No. 1:21-cv-01259-JPB [Doc. 35]; 1st Am. Compl. ¶¶ 264–67, *Sixth Dist. of the Afr. Methodist Episcopal Church v. Kemp*, No. 1:21-cv-01284-JPB [Doc. 83]; 1st Am. Compl. ¶¶ 125, 127–29, *Asian Ams. Advancing Just.-Atl. v. Raffensperger*, No. 1:21-cv-01333-JPB [Doc. 27]; Am. Compl. ¶¶ 125, 127–29, *The Concerned*



*Black Clergy of Metro. Atl., Inc. v. Raffensperger*, No. 1:21-cv-01728-JPB [Doc. 1]. In addition, this is one of the ordinary burdens of voting, and Georgia provides meaningful access through dropboxes, ADA compliant buildings, N. Williams 177:23–178:3, 178:22–25, 267:19–268:8 (Defs.’ Ex. AA), and other voting options. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

660. Voters in Hall County, Athens-Clarke County, and Douglas County have expressed that they would prefer to be able to drop off their ballots outside. At least one voter in Hall County was not able to access the county’s indoor drop box. Ex. 37 (Hall Cnty. Dep. 70:6-18, 153:2-6). County officials are aware in Athens Clarke County that voters have had difficulties accessing drop boxes because they are located inside. Ex. 13 (Athens-Clarke Cnty. Dep. 124:6-17). County officials are aware in Douglas County that voters with disabilities

have had difficulties accessing the drop boxes because of the hours and the placement of the drop boxes indoors. Ex. 63 (Kidd Dep. 128:23-129:18).

**RESPONSE:** Undisputed, but immaterial. Voters may request a poll worker pick up the ballot from their car, without finding parking. Wurtz 108:2–25 (Defs.’ Ex. N hereto). This is one of the ordinary burdens of voting, *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008), and Georgia provides meaningful access through ADA compliant buildings, N. Williams 177:23–178:3, 178:22–25, 267:19–268:8 (Defs.’ Ex. AA), and other voting options. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore). Further, voters with such disabilities may still return their absentee-by-mail ballot by mail or receive assistance from any number of people as defined by statute.

661. For someone in a manual wheelchair or walker, reaching a drop box in Douglas County requires “a lot of effort,” because drop boxes are located “on the basement floor of [a] courthouse.” Finding accessible parking to reach the drop box is another barrier. Ex. 63 (Kidd Dep. 160:19-161:4; 161:10-20).

**RESPONSE:** Disputed in part, but immaterial. Voters may request a poll worker pick up the ballot from their car, without finding parking. Wurtz 108:2–25 (Defs.’ Ex. N hereto). In addition, reaching a dropbox is one of the ordinary burdens of voting, and Georgia provides meaningful access through ADA compliant buildings, N. Williams 177:23–178:3, 178:22–25, 267:19–268:8 (Defs.’ Ex. AA), and other voting options. *See Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore). Further, voters with such disabilities may still return their absentee-by-mail ballot by mail or receive assistance from any number of people as defined by statute.

662. Patricia Chicoine, a voter in Fulton County with arthritis that causes difficulty and pain with walking and standing, prefers to vote absentee via drop box because it offers assurance her vote will be received and will not be lost in the mail. Ex. 266 (Chicoine Decl. ¶¶ 3-4). In 2020, this was easy to do because the drop box was outside and available at all hours. *Id.* ¶ 5.

**RESPONSE:** Disputed in part and immaterial. Plaintiffs have presented no statistical evidence showing increased ease from dropbox voting as is required for an ADA claim, *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1218 (11th Cir. 2008), nor evidence for the unreliability of mail. In addition, this is one of the ordinary burdens of voting, *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191, 197–98 (2008), and Georgia provides meaningful access through ADA-compliant buildings, N. Williams 177:23–178:3, 178:22–25, 267:19–268:8 (Defs.’ Ex. AA), and other voting options. *See Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 233 (M.D.N.C. 2020) (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd v. Carstarphen*, 236 F. Supp. 3d 1311, 1330 (N.D. Ga. 2017) (finding that the unavailability of one method of accessing a benefit did not

demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

663. In 2021 drop box locations were reduced and Ms. Chicoine had to drive further to reach the drop box. Ex. 266 (Chicoine Decl. ¶¶ 5-6).

**RESPONSE:** Disputed in part, but immaterial. Dropbox locations were not reduced, but rather spread more evenly throughout counties, thus increasing overall drop box opportunities, particularly to rural counties, where they are most likely to have an impact. Shaw 2/14 Rep. ¶¶ 60–62 (Defs.’ Ex. KKKK) (discussing impact of distance); Sterling 163:10–12 (Defs.’ Ex. AA hereto) (explaining that legislators intended that voters “ha[ve] relatively similar access to the drop boxes regardless of where they were in the State.”) Moreover, the number of dropboxes was increased compared to non-2020 elections. SOF ¶ 2 [Doc. 755]; 1st Am. Compl. ¶ 85, *The New Ga. Project v. Raffensperger*, No. 1:21-cv-01229-JPB [Doc. 39]; 1st Am. Compl. ¶ 153, *Ga. State Conf. of NAACP v. Raffensperger*, No. 1:21-cv-01259-JPB [Doc. 35]; 1st Am. Compl. ¶¶ 264–67, *Sixth Dist. of the Afr. Methodist Episcopal Church v. Kemp*, No. 1:21-cv-01284-JPB [Doc. 83]; 1st Am. Compl. ¶¶ 97–99, *Asian Ams. Advancing Just.-Atl. v. Raffensperger*, No. 1:21-cv-01333-JPB [Doc. 27]; Am. Compl. ¶¶ 125, 127–29, *The Concerned Black Clergy of Metro. Atl., Inc. v. Raffensperger*, No. 1:21-cv-01728-JPB [Doc. 1]. Further immaterial because

there is no independent legal significance to drop boxes in light of the many alternative methods of voting available.

664. In 2021, once SB 202 required the placement of drop boxes indoors, Ms. Chicoine had to walk down an extremely long hall, without handrails, and could only reach the drop box by supporting herself holding onto chairs and taking breaks along the way. A poll worker told Ms. Chicoine that she was not the first person to report inaccessibility with the drop box. Ex. 266 (Chicoine Decl. ¶¶ 7-9).

**RESPONSE:** Disputed in part and immaterial. The alleged statement from the poll worker is inadmissible hearsay because it is used to support the truth of the matter asserted rather than any impression on Ms. Chicoine or any other permissible purpose, and thus is effectively disputed. Fed. R. Civ. P. 801–802. In addition, she may obtain assistance by dropping off his ballot rather than using a dropbox, thus allowing her to stay in her car. Wurtz 108:2–25 (Defs.’ Ex. N hereto).

665. One GAO constituent who had previously been able to drive to a drop box and submit his absentee ballot without leaving his car encountered a drop box in 2022 that was no longer accessible to him. Ex. 305 (Orland Decl. ¶ 17).

**RESPONSE:** The story at issue did not happen to the author of the cited affidavit, but happened to another individual, and is based on

inadmissible hearsay, and does not need a response. Even if the story was admissible, the voter in question did not claim that he did not vote, or could not vote in the future, and he may obtain assistance by dropping off his ballot rather than using a drop box, thus allowing him to stay in his car, or return his absentee ballot by mail. Wurtz 108:2–25 (Defs.’ Ex. N hereto). In addition, apart from this anecdote, there was no evidence that Georgia drop boxes were accessible without leaving one’s vehicle. Schur 75:16–25 (Defs.’ Ex. X hereto).

Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections’ office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C.*, 476 F. Supp. 3d at 233 (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd*, 236 F. Supp. 3d at 1330 (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

666. This individual can ambulate about 10 yards but could not ascertain whether the drop box was reachable to him because it was inside the building, and poll workers refused to assist him. Ex. 305 (Orland Decl. ¶ 17).

**RESPONSE:** The story at issue did not happen to the author of the cited affidavit, but happened to another individual, and is based on inadmissible hearsay, and does not need a response. Even if the story was admissible, the voter in question did not claim that he did not vote, or could not vote in the future, and he may obtain assistance by dropping off his ballot rather than using a drop box, thus allowing him to stay in his car, or return his absentee ballot by mail. Wurtz 108:2–25 (Defs.’ Ex. N hereto). That a County worker acted improperly cannot be traced back to SB 202’s provisions. Finally, there was no evidence that any voters with disabilities were prevented from voting absentee in 2022 due to the location and hours of the drop boxes. See Schur 75:16–25, 103:15–18 (Defs.’ Ex. X hereto; Defs.’ Ex. UUU).

667. Plaintiff ADAPT is aware of several people who were not able to use drop boxes in 2022 because they are located inside. Ex. 317 (Thornton Decl. ¶¶ 16, 23).

**RESPONSE:** Disputed, but immaterial. Georgia poll workers may assist those who cannot enter the building, and this includes taking ballots from a voter in a car, eliminating any supposed advantage of a drop box. Wurtz 108:2–25 (Defs.’ Ex. N hereto). Moreover, Georgia provides additional meaningful access through other options. Finally, there was no evidence that any voters with disabilities were prevented from voting absentee in 2022 due to the location and hours of the drop boxes. See Schur 75:16–25, 103:15–18



(Defs.' Ex. X hereto; Defs.' Ex. UUU). Further immaterial because there is no independent legal significance to drop boxes in light of the many alternative methods of voting available.

668. Wendell Halsell, a voter in DeKalb County who has lost the use of his right leg and has COPD and breathing problems, voted via drop box in November and December 2022, seeing a benefit in avoiding using the unreliable mail in his area. Ex. 283 (Halsell Decl. ¶¶ 1, 3, 7).

**RESPONSE:** Disputed, but immaterial. Disputed to the extent that mail is characterized as "unreliable," which is not supported by any outside evidence, statistical or otherwise. Furthermore, this is an immaterial self-inflicted injury, as Halsell declined his nephew's assistance in returning his ballot, Halsell Decl. ¶ 5 (Defs.' Ex. AAAAA), even though his nephew is expressly authorized to return ballots under O.C.G.A. § 21-2-385(a).

Additionally, there are still multiple ways for voters with disabilities to return their ballot (mail, drop box, return by hand to an elections' office, or obtain assistance from a variety of authorized individuals). Title II of the ADA requires nothing more. *Democracy N.C.*, 476 F. Supp. 3d at 233 (finding that even though North Carolina law specifically prohibited nursing home staff from assisting a resident with a disability by returning an absentee ballot, because the residents with disabilities could still return the ballot by U.S. mail, there was no violation of Title II of the ADA); *see also Todd*, 236 F. Supp. 3d at

1330 (finding that the unavailability of one method of accessing a benefit did not demonstrate a lack of meaningful access where there were alternative options available to the plaintiff that she did not meaningfully explore).

669. Entering the building where the drop box was located was very exhausting for Mr. Halsell, and after having someone assist him up the ramp, Mr. Halsell needed several minutes to recuperate. Ex. 283 (Halsell Decl. ¶¶ 8, 9).

**RESPONSE:** Undisputed but immaterial for the reasons noted in response to ¶ 668.

670. Empish Thomas, a voter in DeKalb County who is completely blind, cannot get to drop boxes easily because she needs to set up two trips with MARTA to drop off her ballot, or pay a driver; having to reach a drop box within a shorter limit of time makes the program less accessible. Ex. 316 (Thomas Decl. ¶¶ 1, 4, 5, 17-18). SB 202's multiple new barriers to absentee voting, including the felony provision, have compounded to prevent her from using the absentee ballot program, including because she doesn't have a family member or "caregiver" nearby to return her ballot. *Id.* ¶¶ 15-16, 19.

**RESPONSE:** Disputed in part, but immaterial. SB 202 does not change who may help her as a caregiver, O.C.G.A. § 21-2-385(a), and does not raise any new barriers to absentee voting. In addition, to the extent that the time limit affects her because she must schedule a driver or use MARTA, this is not

alleged to be specifically by reason of her disability, but rather would burden anyone who could not drive and wished to use a drop box, and so it is immaterial to an ADA claim under Eleventh Circuit precedent. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1217 (11th Cir. 2008). Furthermore, the record confirms that many of Thomas's burdens are self-inflicted. She excludes someone who is clearly a caregiver—her assistant whom she pays to assist her with daily tasks she cannot complete because of her disability—from the scope of the statute. Thomas Decl. ¶¶ 14–15 (Defs.' Ex. O). She also notes that she prefers to vote in-person, yet did not do so even though in-person voting was available at the same place and time she used a drop box. *Id.* ¶¶ 3, 5, 17. And though she claims it was difficult to vote in 2022, the hardship she claims she experienced was caused by poll workers, not the provisions of SB 202—and not the State Defendants. *Id.* ¶¶ 24–36.

671. People with disabilities are less likely to be able to vote without assistance with no difficulties. Ex. 111 (Schur Rep. ¶ 92).

**RESPONSE:** Undisputed, but immaterial. This is why Georgia has preserved the ability of those with disabilities to receive help from caregivers while protecting their voice in elections by deterring unscrupulous ballot harvesters. O.C.G.A. § 21-2-385(a).

672. Because a large number of people with disabilities live alone, many who need assistance must rely on non-household members. An estimated

168,800 Georgians with disabilities receive assistance in activities of daily living from friends, neighbors, or other non-relatives who would not be eligible to help with an absentee ballot under this section (unless they happen to be poll workers). Ex. 111 (Schur Rep. ¶¶ 7, 54).

**RESPONSE:** This paragraph contains a legal conclusion, not a statement of fact, to which no response is required. Nonetheless, it is disputed. Under any common understanding of the term “caregiver,” none of the groups referenced by Plaintiffs are categorically excluded and most individuals within those classifications fall squarely within a common definition of caregiver. Indeed, O.C.G.A. § 21-2-385(a) specifically states that the caregiver of the disabled elector may mail or deliver the absentee ballot, “regardless of whether such caregiver resides in such disabled elector's household.” Of course, no one within these categories has even been questioned, let alone prosecuted for helping a disabled voter return an absentee-by-mail ballot. Finally, there was no evidence that any voters with disabilities were prevented from voting absentee in 2022 due to the location and hours of the drop boxes. *See* Schur 75:16–25 (Defs.’ Ex. X hereto); *id.* 103:15–18 (Defs.’ Ex. UUU).

673. Assistance in voting can take many forms, including but not limited to: driving someone to the polls, helping them get inside the polling place, providing support as they wait in line, helping them understand how to vote, reading and explaining words on the ballot, helping with the physical act

of marking a ballot or operating the voting machine, and requesting and returning a mail ballot. When people with disabilities receive assistance in various aspects of the voting process, this does not suggest the assistor is “voting for” the person with a disability or exercising improper influence over the voter. Ex. 111 (Schur Rep. ¶ 94).

**RESPONSE:** Undisputed, but immaterial. The record confirms that while a caregiver may assist someone without voting for them, the State of Georgia is concerned that unscrupulous ballot harvesters may take advantage of disabled voters to vote for them, with the ballot reflecting the ballot harvester’s wish rather than the voter’s. Indeed, Georgia election officials received numerous complaints from voters regarding unlawful ballot harvesting during the 2020 election cycle. Watson 131:5–12, 203:20–204:10, 174:5–176:19 (Defs.’ Ex. XXX; Defs.’ Ex. BB hereto); Sterling 161:21–24 (Defs.’ Ex. VVV). To protect against this, Georgia has strengthened its anti-ballot harvesting provisions in SB 202. Germany 10/30/23 Decl. ¶¶ 96–98 (Defs.’ Ex. B). This will protect the rights of voters with disabilities to maintain their independent voice in elections. *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (discussing the relationship between election integrity and ensuring voters have a meaningful voice).

674. People with disabilities may need assistance from non-family or household members to vote by absentee ballot. Ex. 37 (Hall Cnty. Dep. 153:7-

10); Ex. 111 (Schur Rep. ¶¶ 7, 54); Ex. 306 (Papadopoulos Decl. ¶ 9); Ex. 316 (Thomas Decl. ¶ 16).

**RESPONSE:** Undisputed. Georgia law makes provisions for such assistance, the scope of which is not in dispute in this case.

675. Nationally, in 2020, among those who needed assistance in voting absentee, assistance was provided by friends, neighbors, or other non-relatives apart from health aides in 14% of the instances (8% by friends and neighbors and 6% by other non-relatives). Ex. 111 (Schur Rep. ¶ 91).

**RESPONSE:** Undisputed. Georgia law makes provisions for such assistance, the scope of which is not in dispute in this case.

676. Prior to the passage of SB 202, voters with disabilities and their assistors were not concerned about violating the state law providing that only family or household members or “caregivers” of disabled voters could provide absentee ballot return assistance (O.C.G.A § 21-2-385(a)) because the misdemeanor penalty for violating state election law generally contained in O.C.G.A § 21-2-598 included an exception (“Except as otherwise provided by law...”) and two state Attorney General opinions provided reassurance voters with disabilities were legally permitted to choose their assistor for ballot return assistance, notwithstanding section 21-2-385(a). Ex. 305 (Orland Decl. ¶¶ 22-23 & Exs. B-C); Ex. 284 (Hargroves Decl. ¶ 9).

**RESPONSE:** Undisputed, but relies on speculation of whether someone was unconcerned about a misdemeanor penalty for violating the provisions of the statute. The assistance provisions have not changed, only the penalty for violating the ballot harvesting prohibition.

677. SB 202's new felony penalties for violating restrictions on absentee ballot return assistance for voters with disabilities removed the assurances that chosen assistors who are not family or household members may legally provide such assistance because the new Felony Provision (O.C.G.A. § 21-2-598(a)(5)) contains no exception for otherwise legal actions and because the Attorney General has not issued any updated opinion or clarification that its previous opinions remain in effect. Ex. 305 (Orland Decl. ¶ 24).

**RESPONSE:** Disputed, but immaterial. The State of Georgia has provided guidance on the term "caregiver" that is still in force post-SB 202, and SB 202 does not change this. O.C.G.A. § 21-2-385(a). As further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999) (discussing attorney general's opinion from 1984 allowing assistance to disabled voters); *see also* 2016 Op. Att'y Gen. No. 2016-2 (Ga. Att'y Gen.). And

if this were not enough, the State of Georgia has repeatedly represented in this litigation that SB 202 does not change who may serve as a caregiver.

678. State law does not define the terms “caregiver” and the Secretary of State’s Office has not provided direction or guidance to counties on what “caregiver” means. Ex. 111 (Schur Rep. ¶ 96); Ex. 33 (SOS Dep. 195:8-198:12, 200:11-201:6); *see also* Ex. 37 (Hall Cnty. Dep. 155:3-22, 157:7-10); Ex. 51 (Columbia Cnty. Dep. 161:10-17); Ex. 18 (DeKalb Cnty. Dep. 226:7-229:6); Ex. 72 (Watson Dep. 183:6-15); Ex. 305 (Orland Decl. ¶ 24**b**) & Ex. D (statutorily mandated instructions that are required to include a list of authorized persons who may return another voter’s completed absentee ballot do not include any exceptions to the categories listed in O.C.G.A. § 21-2-385(a) and do not define “caregiver.”)).

**RESPONSE:** Disputed, but immaterial. The State of Georgia has provided guidance on the term “caregiver” that is still in force post-SB 202, and SB 202 does not change this. O.C.G.A. § 21-2-385(a). As further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999) (discussing attorney general’s opinion from 1984 allowing assistance to disabled voters); 2016 Op. Att’y Gen. No. 2016-2 (Ga. Att’y Gen.). And if this



were not enough, the State of Georgia has repeatedly represented in this litigation that SB 202 does not change who may serve as a caregiver.

679. SB 202's Felony Provision, without the exception in the prior misdemeanor statute or clarity about who is authorized to provide assistance, deters well-meaning and potentially legally permissible assistors who fear being charged with a felony, which may deprive some disabled Georgians of the only means they have to vote absentee or at all. Ex. 111 (Schur Rep. ¶¶ 7, 98); Ex. 284 (Hargroves Decl. ¶¶ 10-11, 13); Ex. 316 (Thomas Decl. ¶¶ 11-12, 16); Ex. 318 (J. Wiley Decl. ¶ 10); Ex. 317 (Thornton Decl. ¶ 22); Ex. 306 (Papadopoulos Decl. ¶ 11); Ex. 22 (ADAPT Vol. I Dep. 112:23-113:12).

**RESPONSE:** Disputed, but immaterial. SB 202 does not substantively change who may assist those with disabilities. O.C.G.A. § 21-2-385(a). And the state cannot be held responsible for fearmongering by outside groups—such as that conducted by Plaintiffs here—that increases caregiver confusion. *See, e.g., Swann v. Secretary*, 668 F.3d 1285, 1288 (11th Cir. 2012) (inmate caused own claimed injury—not being given a mail ballot—by failing to request mail ballot from prison).

680. Voters and assistors are confused about what “caregiver” means under SB 202 and are concerned about the criminal penalties for even inadvertent violations. Ex. 316 (Thomas Decl. ¶¶ 13-15); Ex. 284 (Hargroves Decl. ¶¶ 10, 13) (homeless shelter staff “cannot take the risk of helping clients

with their absentee ballots” without knowing who qualifies as caregiver); Ex. 305 (Orland Decl. ¶ 24); Ex. 306 (Papadopoulos Decl. ¶¶ 12, 14); Ex. 303 (Mattox 5/11/23 Decl. ¶ 21).

**RESPONSE:** Disputed in part, but immaterial. SB 202 does not substantively change who may assist those with disabilities. O.C.G.A. § 21-2-385(a). And the State cannot be held responsible for fearmongering by outside groups—such as that conducted by Plaintiffs here—that increases caregiver confusion. *See, e.g., Swann v. Secretary*, 668 F.3d 1285, 1288 (11th Cir. 2012) (inmate caused own claimed injury—not being given a mail ballot—by failing to request mail ballot from prison). And Orland implicitly admits that any issues on this front must be a result of individuals not properly understanding the controlling substantive law—unchanged by SB 202—stating that his organization “ha[s] assisted them to understand and comply with the new rules[.]” Orland Decl. ¶ 25(a) (Defs.’ Ex. N).

Additionally, Matt Hargroves suggests that that homeless-shelter staff regularly returned ballots for homeless voters with disabilities under O.C.G.A. § 21-2-385(a) before SB 202 without any issue. Only now, Hargroves claims he is confused by the provision and will not return ballots for homeless voters with disabilities, even though part of his job appears to be assisting with the care of the voter. Hargroves Decl. ¶¶ 8–11, 13 (Defs.’ Ex. L). But he provides no answer as to why SB 202’s making violations of this law a felony—while

maintaining the same statutory term “caregiver” that has been the law for years—has contributed to his confusion. *Compare* O.C.G.A. § 21-2-385(a) (2021) (post-SB 202) *with* O.C.G.A. § 21-2-385(a) (2019) (pre-SB 202, using identical language for the caregiver and assistance provisions).

Further, the other declarations Plaintiffs rely on only show that voters have applied limitations *to themselves* that are *not* based on the law. Empish Thomas, a blind voter, puts her own personal limitation on the term caregiver by excluding someone who is clearly a caregiver—her assistant whom she pays to assist her with daily tasks she cannot complete because of her disability—from the scope of the statute. Thomas Decl. ¶¶ 14–15 (Defs.’ Ex. O). She also notes that she prefers to vote in-person, then complains about transportation to an absentee ballot drop box that is available at the same place she would vote in person and during the same voting hours. *Id.* ¶¶ 3, 5, 17. And though she claims it was difficult to vote in 2022, the hardship she claims she experienced was caused by poll workers, not the provisions of SB 202—and not the State Defendants. *Id.* ¶¶ 24–36.

So too, Nikolas Papadopoulos claims that it would prevent someone from assisting him by opening his mailbox so that he can mail a ballot, Papadopoulos Decl. ¶ 9 (Pls.’ Ex. 306), but the provision does not prevent anyone from assisting a disabled voter in this manner. And Shannon Mattox recounts the story of a disabled voter who lives in a nursing facility who was

concerned that his social worker at the facility—who also assists him in daily tasks—would not qualify as a caregiver. Mattox 5/11/23 Decl. ¶ 21(a) (Pls.’ Ex. 303). But of course, such people are included in the ordinary and plain meaning of the term caregiver. *See Stubbs v. Hall*, 840 S.E.2d 407, 415 (Ga. 2020) (“we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would” (quoting *Fed. Deposit Ins. Corp. v. Loudermilk*, 826 S.E.2d 116, 120 (Ga. 2019))).

681. For example, at least one member of The Arc Georgia is unable to vote without assistance, Ex. 303 (Mattox 5/11/23 Decl. ¶ 21). This member has cerebral palsy and glaucoma, lives in a nursing facilities and needs assistance with many activities of daily living, including voting. *Id.* Since the enactment of SB 202, the nursing facility staff and member have been confused about whether the staff can provide assistance. *Id.*

**RESPONSE:** Undisputed, but immaterial. SB 202 does not substantively change who may assist those with disabilities. O.C.G.A. § 21-2-385(a). And Mattox’s caregiver is included in the ordinary and plain meaning of the term caregiver. *See Stubbs v. Hall*, 840 S.E.2d 407, 415 (Ga. 2020) (“we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would” (quoting *Fed. Deposit Ins. Corp. v. Loudermilk*, 826 S.E.2d 116, 120 (Ga. 2019))). As further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both

held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999); 2016 Op. Att’y Gen. No. 2016-2 (Ga. Att’y Gen.). And the State cannot be held responsible for fearmongering by outside groups—such as that conducted by Plaintiffs here—that increases caregiver confusion. *See, e.g., Swann v. Secretary*, 668 F.3d 1285, 1288 (11th Cir. 2012) (inmate caused own claimed injury—not being given a mail ballot—by failing to request mail ballot from prison).

682. That SB 202 now makes it a felony for someone other than a family or household member or undefined “caregiver” to return an absentee ballot for a disabled voter imposes additional burdens on disabled voters who need assistance to return their ballots, and may prevent them from voting absentee or at all. These burdens may especially affect people of color. Ex. 303 (Mattox 5/11/23 Decl. ¶ 21); Ex. 305 (Orland Decl. ¶¶ 24-25); Ex. 306 (Papadopoulos Decl. ¶¶ 11-14); Ex. 284 (Hargroves Decl. ¶¶ 13-14); Ex. 316 (Thomas Decl. ¶¶ 15-16); Ex. 283 (Halsell Decl. ¶ 8); Ex. 24 (30(b)(6) Deposition of the Georgia Advocacy Office (Devon Orland) [ECF 739] (“GAO Dep.”) 161:25-162:11); Ex. 23 (ADAPT Vol. II Dep. 40:5-23).

**RESPONSE:** Disputed, but immaterial. SB 202 does not substantively change who may assist those with disabilities. O.C.G.A. § 21-2-385(a). As

further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999); 2016 Op. Att’y Gen. No. 2016-2 (Ga. Att’y Gen.).. There is no evidence that providing accommodation to voters with disabilities somehow has a disparate impact on voters of color as alleged.

683. Some Georgia voters with disabilities have been unable to vote because they did not have a family member or caregiver to assist them. Ex. 23 (ADAPT Vol. II Dep. 40:5-9).

**RESPONSE:** Undisputed, but immaterial. None of these instances can be traced to SB 202. *See, e.g.*, ADAPT 2/22 40:10–12 (Defs.’ Ex. CC) (“Q. And why did they -- why were they unable to find a family member or caregiver to assist? A. They were working. Family was working.”). As she subsequently admitted, these members could have mailed their absentee ballots. *Id.* at 40:24–25 (“Q. Could they have mailed it? A. Possibly.”). SB 202 does not change who may provide care. O.C.G.A. § 21-2-385(a). As further assurance, the Georgia Attorney General (twice) and Georgia Supreme Court have both held that, in federal elections, voters with disabilities are entitled to assistance consistent with Section 208 of the Voting Rights Act, even if Georgia statutory

law is more restrictive. *Holton v. Hollingsworth*, 270 Ga. 591, 593 (1999); 2016 Op. Att’y Gen. No. 2016-2 (Ga. Att’y Gen.).

684. Defendant representatives have admitted that they would not need to undertake any changes if the Felony Provision was lifted. *See, e.g.*, Ex. 57 (Evans Dep. 228:4-12 (Elections Director in SOS’s Office testifying that he was unaware of any changes the office would need to make if the Felony Provision were removed)); Ex. 13 (Athens-Clarke Cnty. Dep. 127:19-128:4 (“very minimal changes” would be required if Felony provision were removed)).

**RESPONSE:** Disputed, but immaterial. Because SB 202 does not change any substantive laws around who may assist a disabled voter, this statement is largely accurate regarding first order effects. However, the record confirms that this could lead to increased voter concerns about election integrity being compromised by “ballot harvesting,” and this may lead to the need to address voter complaints, thus consuming state resources. *See, e.g.*, Watson 203:24–204:10 (Defs.’ Ex. XXX) (investigated claims of ballot harvesting in 2020); Sterling 161:21–24 (Defs.’ Ex. VVV) (referring to the film “2000 Mules”); Germany 10/30/23 Decl. ¶ 95 (Defs.’ Ex. B).

685. It is possible that a voter’s polling place may change even if their precinct remains the same. Ex. 21 (Fulton Cnty. Dep. 197:10-198:13).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

686. Polling locations and precincts may change from one election to another and sometimes with little notice. Ex. 21 (Fulton Cnty. Dep. 198:20-200:5); Ex. 15 (Cobb Cnty. Dep. 152:7-11); Ex. 111 (Schur Rep. ¶ 102 n. 48).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence cited does not support the second fact stated regarding “little notice” because none of the depositions reference the length of time for notice of a change. Finally, the portion of the expert report cited is hearsay because it relies on a newspaper article for the truth of the matter asserted. *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F. 2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

687. Drawing new precinct boundaries can create voter confusion and mistakes, which also exacerbates long lines at polling places. Ex. 107 (Pettigrew Rep. 41).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence cited does not support the second fact stated regarding an action “exacerbating long lines” because the report only admits the possibility, not a causal connection.

688. Allowing voters to vote a provisional ballot if they arrive at the wrong polling place on Election Day was intended to help and offer “compassion” for people who would not be able to get to the correct polling place



and would otherwise be unable to vote. Ex. 34 (SEB Dep. 90:2-13), Ex. 65 (Mashburn Dep. 85:19-86:7).

**RESPONSE:** Objection. The evidence cited does not support the fact stated because the cited references relate to situations prior to allowing any out of precinct ballots and do not include sections dealing with changes in out of precinct provisional balloting.

689. The SEB did not conduct any studies on the effects of limiting out-of-precinct provisional voting to 5:00 to 7:00 p.m. on Election Day or which voters would be most likely to vote out-of-precinct on Election Day. Ex. 34 (SEB Dep. 179:6-13).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

690. County election officials favored leaving the pre-SB 202 rules regarding out-of-precinct provisional ballots in place, or allowing them for people who could not travel to their assigned polling place by poll closure time in order to prevent voters from being unable to vote. Ex. 47 (Adams Dep. 181:5-182:13 (describing survey in which 31 county officials favored leaving pre-SB 202 rules in place or allowing out-of-precinct voting for voters who could not reach their assigned polling place by 7:00 p.m.)); Ex. 15 (Cobb Cnty. Dep. 103:8-104:8); Ex. 63 (Kidd Dep. 152:4-154:5 (expressing opposition to “arbitrary” out-of-precinct restriction because it removes a “tool” for people who lack

transportation), 154:25155:12 (recounting that pre-passage of SB 202, he spoke to Secretary of State's office about his "non-understanding of why this nonissue is an issue. And trying to get an understanding of what the perceived problem was.")).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case and does not comply with L.R. 56.1(B)(1) because it is not separately numbered. What county officials wanted when they have no ability to create or modify state law is not relevant to any claim.

691. Allowing voters to cast an out-of-precinct provisional ballot served the interests of voters and public safety by avoiding voters rushing to drive long distances in potentially unsafe conditions to get to the correct polling place. The "balance" struck by SB 202 in allowing provisional ballots only between 5 p.m. and 7 p.m. on Election Day assumed that most voters could drive to the correct polling place within two hours and did not consider whether voters who use public transportation would have enough time to make it to the correct polling place. Ex. 47 (Adams Dep. 184:25-188:6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is not based on the deponent's personal knowledge and is hearsay. Finally, the evidence cited does not

support the fact stated because the deponent did not have knowledge related to timing of use of public transportation.

692. Requirements of SB 202 related to out of precinct provisional ballots “make it harder for a citizen to vote if they show up at the wrong polling place. If the polling place location has been changed, people with disabilities are less likely to be aware of this given their lower rates of Internet access. Also, for those people with disabilities who arrive at the wrong polling place, the cost of getting to the correct polling place is likely to be high given the transportation difficulties many of them face and their lower likelihood of having a car they can drive.” Ex. 111 (Schur Rep. ¶ 22). “I conclude with a reasonable degree of certainty, based on the above data, that the new barriers imposed by Section 34 will make it harder for people with disabilities to vote. Therefore, I conclude that this section will cause some Georgians with disabilities to be disenfranchised and a further substantial number to face significant difficulties in voting that they would not otherwise face but for SB 202.” *Id.* ¶ 102.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and is stated as argument rather than fact because it restates expert conclusions as facts.

693. Plaintiff ADAPT is aware of one voter who was unable to vote because they could not cast a provisional ballot at an out-of-precinct polling

place before 5:00 p.m. on Election Day. The individual was blind and did not get “good directions or supports” to get to the correct polling place. Ex. 23 (ADAPT Vol. II Dep. 39:3-40:4).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is not based on the deponent’s personal knowledge and is hearsay.

694. Plaintiff ADAPT had to take one 93-year-old woman who used a wheelchair to three polling places because her polling place had changed. No one else could drive her because she needed assistance getting from inside her house to the van. ADAPT had to provide a lot of advocacy and assistance to make sure she was able to cast her ballot. Ex. 317 (Thornton Decl. ¶ 16).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is not based on the declarant’s personal knowledge and is hearsay. Finally, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

695. Plaintiff The Arc of Georgia testified that many of its members require assistance with activities of daily living and do not drive. Many lack

access to reliable transportation and are unable to afford to pay someone to drive them to a polling place. Ex. 303 (Mattox 5/11/23 Decl. ¶ 21).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is not based on the declarant's personal knowledge and is hearsay.

696. County election officials do not have authority to waive the rules about out-of-precinct voting on election day as a reasonable modification for a voter with a disability. Ex. 37 (Hall Cnty. Dep. 151:7-12); Ex. 15 (Cobb Cnty. Dep. 104:3-8, 153:9-18); Ex. 33 (SOS Dep. 211:4-212:15 (no specific accommodations for a disabled voter)).

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible because it is not based on the declarant's personal knowledge and is a legal conclusion.

697. If SB 202 restrictions on out-of-precinct voting were rolled back, neither the state nor counties would need to undertake significant difficulty or expense to reinstate the former rules. Ex. 37 (Hall Cnty. Dep. 65:10-16 (if SB 202 out-of-precinct restrictions were rolled back, no changes would have to be made other than processing more provisional ballots)); Ex. 15 (Cobb Cnty. Dep. 153:19-23 (explaining that educating poll workers is the only thing that would need to occur if SB 202's out-of-precinct restrictions were rolled back)); Ex. 21

(Fulton Cnty. Dep. 196:1-9 (testifying that it would be easier to administer a process similar to advance voting where voting machine is programmed for voter's correct precinct)); Ex. 63 (Kidd Dep. 156:14-157:8 (rolling back out-of-precinct restrictions would not result in voter confusion, and would only involve instructing voters)); Ex. 33 (SOS Dep. 285:21-288:14 (describing changes to revert back to pre-SB 202 procedures, specifically, informing and training counties, and revising and distributing provisional ballot forms)).

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible because it is not based on the personal knowledge of the deponent and requires speculation and is immaterial to the claims in this case. Further, the fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as a statement of fact by characterizing the nature of any difficulties. Finally, the evidence cited does not support the fact stated because the cited portions of deposition transcripts reference a number of changes required, some of which could be difficult and/or expensive.

698. Asian Americans Advancing Justice-Atlanta ("Advancing Justice Atlanta") engages in election protection during every election cycle, including poll monitoring at various polling locations to observe and document issues at precincts (e.g., if voters show up at the wrong precinct, or voters erroneously think they can drop off their ballot at a location but cannot). Ex. 12 (AAAJ Dep. 42:6-8, 46:847:10).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

699. Advancing Justice-Atlanta does voter outreach in multiple languages because it works specifically with communities that have a high percentage of limited-English proficient (“LEP”) people. Ex. 12 (AAAJ Dep. 42:15-18). For example, Advancing Justice’s voter hotline has in-language capacity in Korean, Chinese, Vietnamese, Spanish and Hindi. Ex. 100 (Lee Rep. 62). Advancing Justice-Atlanta also works with a demographic that historically has less civic engagement and familiarity with elections processes. Ex. 12 (AAAJ Dep. 49:2250:17).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Defendants further object because the statement is stated as argument rather than as fact, which does not comply with L.R. 56.1(B)(1).

700. Advancing Justice-Atlanta has a policy department that engages in policy advocacy work. The policy staff will track and monitor bills in the Georgia State Legislature in its priority areas of voting rights and immigrant justice, monitoring and analyzing the bills to determine the impact on communities and advocating for or against depending on whether they are helpful or harmful to community members. This advocacy may include direct conversations with lawmakers, giving testimony to lawmakers, educating the

community, or putting out a call to action for community members to engage with their lawmakers. The policy department also advocates with County Boards of Elections to talk to them about ways to make voting more accessible, including specifically for AAPI voters. Ex. 12 (AAAJ Dep. 41:9-13, 42:25-44:4).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

701. Advancing Justice-Atlanta engages in litigation in the area of voting rights. Ex. 12 (AAAJ Dep. 42:15-14).

**RESPONSE:** Defendants admit that the Court may consider this fact for purposes the summary judgment motion.

702. Advancing Justice-Atlanta engaged in efforts to stop SB 202 from passing, as well as efforts to address the predecessor election bills that were introduced in the same legislative cycle. This included the policy and litigation staff analyzing the bills, preparing remarks to the legislature, giving testimony to lawmakers about concerns and harmful effects it would have on AAPI voters. Advancing Justice-Atlanta had conversations and mobilized with community partners during this timeframe. Ex. 12 (AAAJ Dep. 35:4-21, 44:17-46:3).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Defendants further object because it is stated as argument rather than as a statement of fact.



703. Advancing Justice-Atlanta does not always communicate changes to election laws to the community every time it happens. But given AAPIs in Georgia's use and reliance on absentee-by-mail voting at a disproportionately higher rate than the state's voters as a whole, SB 202's numerous changes to absentee voting forced Advancing Justice-Atlanta to pivot away from other organizational activities in order to assist community members in understanding the effects of the law. Advancing Justice-Atlanta had to divert its resources, including reducing its advocacy work, so that it could engage in more civic engagement and education to address the many changes created by SB 202. Ex. 12 (AAAJ Dep. 44:20-25). Advancing Justice-Atlanta also had to undertake significant efforts to first educate staff and then community members about the various restrictions to absentee voting imposed by SB 202. *Id.* 50:8-11.

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Defendants further object because it is stated as argument rather than as a statement of fact. Defendants further object because it is a legal conclusion (i.e. references to "divert[ing] its resources."

704. Advancing Justice-Atlanta staff that had to divert resources as a result of SB 202 include community organizers and canvassers who lead its civic engagement work, the Director of Civic Engagement and Organizing,

volunteers, litigation staff, communications staff, policy staff and the Executive Director. Staff with different language abilities who do not regularly work on voting rights issues were also needed to help with translations to update materials. Ex. 12 (AAAJ Dep. 72:6-73:24).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Defendants further object because it is stated as argument rather than as a statement of fact. Defendants further object because it is a legal conclusion (i.e. references to “divert[ing] resources.”

705. Advancing Justice-Atlanta spent significantly more nonfinancial resources towards updating the substance of its educational and training materials because of SB 202 than it has needed to in past election cycles. Compared to the work done to update materials in previous election cycles, the effects of SB 202 meant that more staff members were needed to work on updates and more materials required updates. Ex. 12 (AAAJ Dep. 55:22-56:12, 56:21-57:7).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

706. When Advancing Justice-Atlanta updated its Voter FAQ, the entire resource had to be revisited because of all the changes created by SB 202. This required staff to read and analyze the bill, distill its contents and

craft language that is easily understandable by voters. Then, Advancing Justice-Atlanta had to translate the updated resource into four other languages, which requires two levels of review. To account for all of the changes, it took significant staff time to review the document, review the translation, and work with external translation services given the breadth and depth of the resource. At times, staff who would not normally work on a materials update, were needed to review the changes, for example the Executive Director. Ex. 12 (AAAJ Dep. 57:8-58:14); Ex. 294 (Khwaja Decl. ¶ 21).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

707. Advancing Justice-Atlanta was particularly concerned about all of the changes brought on by SB 202, so it 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. This type of educational event would not routinely have happened when there are changes to election laws. This panel happened specifically because of the number and types of changes brought on by SB 202. Ex. 12 (AAAJ Dep. 69:13-70:20).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

708. Advancing Justice-Atlanta has diverted resources to ensure that staff and canvassers are educated on all the provisions of SB 202, that community partners understand the law, and that voters understand the restrictions under SB 202. To do this, Advancing Justice-Atlanta held meetings and conversations with staff, updated election protection training materials provided to staff and volunteers, updated and changed many public-facing elections materials and resources that the organization provides in multiple languages, and increased the number of locations covered for its poll monitoring work to have a presence at precincts that no longer have drop boxes because of SB 202. Ex. 12 (AAAJ Dep. 65:22-66:24).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and is a legal conclusion in that it classifies tasks that the staff of the organization undertakes as “diverted resources,” which is a term that carries legal significance. The Defendants further object because the statement is stated as argument rather than as fact in that it assumes (incorrectly) that the law provided for drop box locations prior to the enactment of SB 202.

709. Advancing Justice-Atlanta was concerned about a higher risk of disenfranchisement with voting by mail compared to other methods of voting because of SB 202’s numerous restrictions. Because AAPI voters prefer to vote by mail, Advancing Justice-Atlanta had to have many internal conversations

about how to navigate the tension between the accessibility of voting by mail with the potential for disenfranchisement and determining the messaging and recommendations that would go out to its communities. It took a lot of staff time to decide on the messaging and figuring out how to communicate that to voters. Ex. 12 (AAAJ Dep. 67:1-22).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and because it is based on hearsay.

710. Staff and canvassers generally spend a significant amount of time reaching out to voters via door knocking, phone calls and text messages. Because of SB 202, time that could be dedicated to this kind of voter outreach had to be allocated towards understanding SB 202, educating others on the harmful impacts of SB 202 and fighting those harmful effects. Ex. 12 (AAAJ Dep. 64:10-23).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

711. One community organizer had to spend more time at one of the senior centers helping LEP Korean voters because they had a lot of questions around the new restrictions and steps to voting. Ex. 12 (AAAJ Dep. 74:13-18).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed R. Evid. 802, *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999).

712. After SB 202, Advancing Justice-Atlanta staff generally encountered more questions from voters with respect to absentee voting and helping voters navigate those issues. Ex. 12 (AAAJ Dep. 74:12-32).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed R. Evid. 802, *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999).

713. 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. Ex. 294 (Khwaja Decl. ¶ 22).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed R. Evid. 802, *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999). Defendants further object because the statement is stated as argument rather than fact, in that it argues drop boxes were "eliminated" by SB 202 when they were never authorized by statute in the first place, but rather temporarily permitted by a statewide emergency rule in response to the COVID-19 pandemic that was no longer in effect.

714. Immigrant justice is another major priority for Advancing Justice Atlanta, and because of the significant staff time that had to be dedicated to combating the harmful impact of SB 202, there were and are opportunity costs

to the immigrant justice work. The work that has been needed to combat the effects of SB 202 has skewed the vision of the work towards addressing voting rights issues at the cost of engaging proactively in immigrant justice work. For example, the litigation team handles both voting rights and immigrant justice, and because SB 202 has taken up a lot of the department's time, the team slowed down its immigration work, including being unable to take on as many habeas corpus petitions to fight against the detention of immigrants in Georgia, and delaying working on a pardon request for a client. Ex. 12 (AAAJ Dep. 60:7-61:11).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Defendants further object because the statement is stated as argument rather than as fact.

715. Advancing Justice-Atlanta was deeply involved with responding to the Atlanta spa shooting, but SB 202 passed shortly after that incident and some staff had to divert their attention to SB 202 instead of being able to fully engaged in taking care of its community in the aftermath of a crisis. Ex. 12 (AAAJ Dep. 62:10-21).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

716. Around the same time SB 202 passed, Advancing Justice-Atlanta was involved in responding to a deportation flight of Vietnamese refugees.

Fighting against the detention and deportation of the southeast Asians is a priority area for the organization, and had resources not been taken up by fighting SB 202, staff could have done more to respond to that issue. Ex. 12 (AAAJ Dep. 62:21-5).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case because it refers to alleged circumstances occurring before the passage of SB 202.

717. If SB 202 were enjoined, Advancing Justice-Atlanta would not have had to divert some of its resources to combating the harmful impacts of the provisions the organization is challenging. Ex. 12 (AAAJ Dep. 121:8-13).

**RESPONSE:** The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion in that it classifies tasks that the staff of the organization undertakes as a diversion of resources, which is a term that carries legal significance.

718. Steven Paik became a U.S. citizen in 2004, but only registered to vote for the first time in 2019 when he moved to Georgia and received in-language assistance from Advancing Justice-Atlanta after receiving a state-provided absentee ballot application in the mail. Ex. 68 (Deposition of Steven Paik [ECF 751] (“Paik Dep.”) 20:5-21:21; 26:5-9).

**RESPONSE:** Objection. The evidence cited does not support the fact. Mr. Paik never said he received translation assistance from Advancing Justice-



Atlanta for the specific task of translating the ballot in the cited excerpt of the transcript. Further, it is unclear from the cited portions of the transcript that Mr. Paik became a citizen in 2004 (or precisely when he did become a citizen) because he's referring to process that "renew[s]" every ten years. (Paik Dep. 20:5-8).

719. Mr. Paik has required in-language assistance from Advancing Justice Atlanta in every election he has voted in. He received in-language assistance to request and understand his absentee ballot, a process which takes substantial time. Because Mr. Paik does not speak English and no one in his household speaks English, he has never been able to request an absentee ballot himself. Ex. 68 (Paik Dep. 21:13-16, 24:5-25:4, 43:6-18, 44:5-12, 47:18-48:6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence cited does not support the fact.

720. Nora Aquino is dependent on her daughter or someone else to help her vote in person or by absentee because she does not drive and needs assistance getting to the polling location, interpreting, or explaining the election process so that Ms. Aquino understands what she is doing. Ex. 48 (Deposition of Nora Aquino [ECF 750] ("Aquino Dep.") 29:23-30:11, 44:12-15, 52:7-14). For these reasons, casting a ballot takes longer for Ms. Aquino. SB

202's shortened time frame to return absentee ballots makes it more difficult for voters like Ms. Aquino to complete the voting process. *Id.* at 28:7-29:8 (“[T]he time frame for when you can drop your ballots has been decreased . . . making it shorter and making it more difficult for voters to fill out their information and to complete the process.”).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Defendants further object because the evidence cited does not support the fact. Defendants further object because it relies on hearsay.

721. In 2020, Nora Aquino requested an absentee ballot a few times, but never received it, so her daughter had to leave work in the middle of the day to drive Ms. Aquino to the polling location, and the whole process of driving to pick up Ms. Aquino, driving to the polling location and waiting to vote took well over an hour out of her daughter's day. Ms. Aquino was dependent on her daughter's availability to vote. Aquino Dep. 37:20-41:7, 42:13-43:13, 44:12-15. For the runoff election in 2020, Ms. Aquino was able to vote by absentee ballot with the assistance of her daughter, who helped her apply for the ballot and drove Ms. Aquino to drop her ballot off at a drop box outside Brookhaven City Hall, after business hours. *Id.* 45:17-46:9.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

722. Angelina Thuy Uddullah prefers to vote by mail and drop box because she is a busy mom who is in law school while working full time, and this method of voting is more convenient. She voted absentee by mail and a drop box for the 2021 run-off because she was working two jobs and had unpredictable hours. Ms. Uddullah also spends time assisting her mother with voting because she is limited-English proficient. Ex. 71 (Deposition of Angelina Thuy Uddullah [ECF 740] (“Uddullah Dep.”) 22:16-23, 33:6-23, 34:13-16, 35:7-18, 37:16-21). Ms. Uddullah also prefers to vote by absentee ballot out of a greater fear of in-person voting due to a dangerous rise in anti-Asian violence. *Id.* at 35:19-24.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the fact does not comply with L.R. 56.1(B)(1) because the cited evidence is hearsay, which cannot be relied on at summary judgment. Fed R. Evid. 802, *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999).

723. Ms. Uddullah was unable to vote by absentee ballot after SB 202 because she missed the deadline for the 2022 General Election due to the shortened time frame. So, on Election Day, in order to cast her vote, Ms. Uddullah had to stop work and her studies, and bring her newborn and two-year-old nephew with her to the polls—an experience so hectic that she forgot

to put on her shoes. When she got to the polling place, the line was so long it extended outside of the building. Ex. 71 (Uddullah Dep. 37:22-39:12).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as fact. Further, the evidence cited does not support the fact because Ms. Uddullah noted only that she “believe[s]” she missed the deadline for applying for an absentee ballot, rather than definitively stating that as the reason for not voting by mail. Further, it is not clear from the cited evidence exactly when she attempted to request the absentee by mail ballot, so the evidence doesn’t support the alleged fact that Ms. Uddullah could have voted by mail under the timeframe provided for before the passage of SB 202.

724. Ms. Uddullah struggled to vote in person for the 2022 Runoff Election because while she had planned to vote during the early voting period, she was working and did not have enough time. She almost missed voting on election day for the Runoff because she had school. She faced a dilemma of whether she would have enough time to make it to the polls, but was ultimately able to vote due to her husband leaving work early to drive her to the polling place. Ex. 71 (Uddullah Dep. 40:8-41:7).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

725. Anjali Enjeti-Sydow's preference is to vote by absentee ballot and drop boxes because she believes they are secure, convenient and reliable. She prefers to use a drop box over U.S. mail because she feels more assured that her ballot will get returned and counted if she uses a drop box. When drop boxes were available during non-polling place hours, she felt it was more convenient because she did not have to drop off her absentee ballot during the work day and could avoid driving during rush out. Ex. 56 (Deposition of Anjali Enjeti-Sydow [ECF 741] ("Enjeti-Sydow Dep.") 41:15-42:15, 72:4-7, 73:4-15).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

726. Ms. Enjeti-Sydow was also turned off by the absentee ballot application process because it became much more onerous after SB 202 passed. Before SB 202, she could request her absentee ballot online, but after SB 202, she would have to complete several more steps. Ex. 56 (Enjeti-Sydow Dep. 50:14-51:1, 57:10-22, 58:1-7).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as fact. Further, the evidence cited does not support the fact because Ms. Enjeti-Sydow did not clearly remember the process in which she filled out an absentee ballot prior to the passage of SB 202.

727. Ms. Enjeti-Sydow has served as a poll worker since August 2020, which prevents her from voting in-person on Election Day. Prior to that, she could vote in person on election day. Ex. 56 (Enjeti-Sydow Dep. 46:10-16; 72:14-18). In 2020, she voted absentee by mail. *Id.* at 68:11-15.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

728. Ms. Enjeti-Sydow has a disability that limits her mobility. Ex. 56 (Enjeti-Sydow Dep. 47:2-3).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

729. 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 shuttered. Ex. 56 (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.* at 46:21-47:11; 73:18-22.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because the evidence is stated as argument rather than as fact.

730. 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.” Ex. 56 (Enjeti-Sydow Dep. 41:8-10; 105:18-106:9).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because the evidence is stated as argument rather than as fact. Defendants further object because the evidence is not separately numbered.

731. Once when Ms. Enjeti-Sydow requested her absentee ballot, she was “sweating bullets because [she] had not received [her] ballot yet, and it was getting closer to the election.” She emailed Fulton County because she was concerned she would not receive her absentee ballot in time. She stated there was a quick turnaround to drop off her completed absentee ballot, that it might have been possible to vote early (but that her preference was to vote absentee), and that she could not vote in person on election day because she was a poll worker at a location that was not her precinct. Ex. 56 (Enjeti-Sydow Dep. 69:15-72:18).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because the evidence is stated as argument rather than as fact. Defendants further object because the evidence is not separately numbered.

732. The Arc Georgia is a nonpartisan, non-profit membership organization located in Smyrna, Georgia that serves people with intellectual and/or developmental disabilities (“IDD”) statewide, both directly and through ten affiliated member chapters located throughout the state. Ex. 303 (Mattox 5/11/23 Decl. ¶¶ 4-5).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

733. 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 lifetime. Ex. 303 (Mattox 5/11/23 Decl. ¶ 7).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

734. The Arc Georgia engages in public policy advocacy and develops programs to support people with IDD to learn, live, participate in recreational activities, and work in their communities with the supports they need to thrive. Through its work, The Arc Georgia has identified protecting the rights of voters with IDD through voter outreach, education, and registration as a priority. Ex. 303 (Mattox 5/11/23 Decl. ¶¶ 8-9).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.



735. SB 202 has forced, and will continue to force, The Arc Georgia to divert non-financial resources, including employee time, effort, and attention from other programming and core organizational goals. Ex. 303 (Mattox 5/11/23 Decl. ¶¶ 13-23).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument rather than as fact. Defendants further object on the basis that it fails to comply with L.R. 56.1(B)(1) because it is a legal conclusion to extent it purports to establish diversion of non-financial legal resources, which is a term that carries legal significance.

736. Before the passage of SB 202, The Arc Georgia engaged in public policy and implemented programs to support the inclusion of people with IDD into the community. This included, but was not limited to, trainings, outreach, and activities to: advance the rights of students with IDD in special education; help Georgians with IDD access adequate Medicaid services through federal Medicaid Waivers so that they could live in the community; promote integrated employment and post-secondary educational opportunities for people with IDD; ensure that people with IDD have access to transportation and assistive technology; and address stigma within the IDD community. Ex. 303 (Mattox 5/11/23 Decl. ¶ 13).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

737. Prior to SB 202, The Arc Georgia provided education and outreach to people with IDD to help them understand the voting process, including resources to explain things like voter registration, and assist with voter mobilization for Georgia ID requirements, transportation, guardianship and voting law, voting by mail, and ballot access for deaf, hard-of-hearing, blind, and low-vision voters. Ex. 303 (Mattox 5/11/23 Decl. ¶ 14).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

738. Prior to the passage of SB 202, The Arc Georgia also regularly convened a group of “Grassroots Connectors” consisting of volunteer disability rights advocates from across the state to support and advocate for voters with IDD, with a particular focus on supporting Black voters with IDD in rural communities. Ex. 303 (Mattox 5/11/23 Decl. ¶ 14).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

739. Due to the passage of SB 202, 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. The Arc Georgia has had to train its volunteers and partners on the legislation to ensure that they are providing accurate information. Ex. 303 (Mattox 5/11/23 Decl. ¶ 16).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

740. As a result of SB 202, The Arc Georgia has spent time and resources developing new and costly training materials, educational programs and a documentary to help educate its members who are burdened by these changes in the law, as well as conducted widespread trainings by holding town halls, virtual events, multi-day trainings, and other grassroots activities for people with IDD about SB 202. Its outreach and educational programming on SB 202 rose to levels that well exceeded its typical work on voting pre-SB 202. Ex. 303 (Mattox 5/11/23 Decl. ¶¶ 18, 20); *see also* Ex. 11 (30(b)(6) Deposition of The Arc of the United States (Shannon Mattox) [ECF 695] (“Arc Dep.”) 27:16-28:19).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

741. Additionally, because of SB 202, The Arc Georgia has responded to an increased number of calls from its members with questions about voting and SB 202. Ex. 303 (Mattox 5/11/23 Decl. ¶ 18); *see also* Ex. 11 (Arc Dep. 27:16-28:19).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

742. The Arc Georgia also has had to divert resources to educate people about the limitations on drop boxes and consequences for a person who is not a “caregiver” or family member returning a ballot for a person with a disability as a result of SB 202. Ex. 303 (Mattox 5/11/23 Decl. ¶¶ 16, 19, 20); *see also* Ex. 11 (Arc Dep. 27:16-28:19).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

743. Since SB 202 passed, there are many activities that are priorities for The Arc Georgia to which it has not been able to dedicate resources due to SB 202. 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 waiting list for Medicaid home and community-based services, services they need to live in their own homes in the community; to implement programs to help families advocate for children with IDD in special education; or to provide more support and leadership on issues other than voting to its 10 local chapters. It also would like to be advocating to address the shortage of direct support professionals who provide critical personal care services to people with IDD and have a high staff turnover due to low wages. This shortage has had a crucial impact in the community and leads to people with IDD being at risk of institutionalization, neglect, and abuse. Due to the passage of SB 202 and all the work The Arc Georgia has had to do associated with it, it has not been able

to dedicate sufficient resources to address this important and time sensitive issue. Ex. 303 (Mattox 5/11/23 Decl. ¶ 22).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

744. 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 the community. Ex. 303 (Mattox 5/11/23 Decl. ¶ 23).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

745. As a result of SB 202, several members of the Arc Georgia have had difficulty voting. At least one member is unable to vote because individuals who previously helped him no longer know whether they qualify as “caregivers.” 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. Ex. Ex. 303 (Mattox 5/11/23 Decl. ¶ 21).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment and is not separately numbered. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999).

746. Since its founding, the Sixth District has been engaged in improving and enhancing the lives of its people and communities. This means engagement on issues of social justice, including those that relate to voter education and voter registration. Ex. 45 (30(b)(6) Deposition of Sixth District AME Church (Reginald T. Jackson) [ECF 691] (“Sixth District AME Dep.”) 23:8-21, 24:6-20).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

747. Encouraging and supporting civic participation among its members as well as the broader community is a core aspect of the Sixth District’s work. 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. These goals are especially important to the Sixth District because of the persistent discrimination that Black Americans have historically faced when trying to exercise their fundamental right to vote. Ex. 289 (Jackson Decl. ¶ 8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

748. The Sixth District has over 500 member-churches and approximately 96,000 individual church members. Ex. 45 (Sixth District AME Dep. 22:1-7). All ministers fall under the authority of the Sixth District;

however, local churches determine some aspects of how ministers are governed, such as compensation matters. *Id.* at 22:8-18.

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

749. One of the Sixth District's civic engagement programs is called Operation Voter Turnout. Operation Voter Turnout is a voter mobilization program organized by our church to educate, register, and mobilize our members to vote. Ex. 289 (Jackson Decl. ¶ 10).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

750. One of the many activities the Sixth District organizes as part of Operation Voter Turnout is "Souls to the Polls." Ex. 289 (Jackson Decl. ¶ 10).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

751. The "Souls to the Polls" initiative is an effort to transport churchgoers to polling locations during advance voting periods after they have attended worship services. Ex. 289 (Jackson Decl. ¶ 10).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

752. The Sixth District also holds "Get Out the Vote" efforts to increase voter participation. Ex. 289 (Jackson Decl. ¶ 10).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

753. The Sixth District coordinates civic engagement efforts such as Operation Voter Turnout. Ex. 289 (Jackson Decl. ¶ 10). For example, although local churches implement Get Out the Vote efforts, the Sixth District provides churches with instructions on how to carry out these efforts. Ex. 45 (Sixth District AME Dep. 33:14-33:19; 32:8-33:19). Thus, Sixth District staff, including the Bishop of the Church, are involved with voting-related efforts. Ex. 45 (Sixth District AME Dep. 33:14-23).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

754. Another activity that the Sixth District's 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"). Most of the Sixth District's line relief activities have taken place in predominantly Black neighborhoods. Ex. 289 (Jackson Decl. ¶ 11).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.



755. The Sixth District's member churches across the state have no plans to engage in any line relief activities in the upcoming election because of the new bans that SB 202 has introduced. Ex. 289 (Jackson Decl. ¶ 20).

**RESPONSE:** Objection. The evidence cited does not support the fact because the portion of the declaration cited is more equivocal, and begins with the caveat "for the most part..."

756. After the passage of SB 202, the Sixth District devoted time and resources to refining and reeducating its congregations about how SB 202 changed voting laws. Ex. 45 (Sixth District AME Dep. 27:5-29:13).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

757. After 2020, the Sixth District staff's workload around voter education increased. This included voter education efforts at each church to make sure voters were informed about SB 202 voting law changes. Ex. 45 (Sixth District AME Dep. 37:2-17).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

758. The Sixth District had to divert resources from programs in Malawi, Zimbabwe, Tanzania and church after-school programs that provided tutoring services to students to support voter education efforts about the changes in SB 202. Ex. 45 (Sixth District AME Dep. 38:23-41:3).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion in that it classifies activities the organization undertakes as “divert[ed] resources,” which is a term that carries legal significance.

759. The Sixth District engaged in more than just generalized voter education efforts to combat SB 202, including organizing boycotts and speaking with legislators and governmental officials about the bill. Ex. 45 (Sixth District AME Dep. 61:7-10; 68:16-23). The Sixth District also had to refine and reeducate congregations about the provisions of election law that SB 202 changed. *Id.* at 27:20-22.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

760. The Sixth District noted that part of its reeducation efforts involved informing members about the changes in absentee voting, the changes in ballot drop boxes, the changes in voter ID requirements, and the area where volunteers could not participate in line relief efforts. Ex. 45 (Sixth District AME Dep. 29:913).

**RESPONSE:** Disputed in part. This is in tension with claims (at ¶ 755) of having “no plans to engage in any line relief activities in the upcoming election because of the new bans that SB 202 has introduced.”

761. Between 2020 and 2022, the voter education workload of Sixth District staff members increased. Ex. 45 (Sixth District AME Dep. 37:2-17). The Sixth District noted that it had to refine and reeducate members after the passage of SB 202 because of provisions of the law that changed relating to drop boxes, absentee voting, and mobile voting units. *Id.* at 27:5-29:13.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

762. The voting law changes enacted by SB 202 forced the Georgia Muslim Voter Project (GAMVP) to prioritize get-out-the-vote (GOTV) and voter education efforts and increase staff time to learn about SB 202. As a result, GAMVP had to divert resources away from: redistricting advocacy; programs GAMVP had planned to launch prior to SB 202's passage like translation services and education workshops in languages commonly used by 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. Ex. 30 (GAMVP Dep. 57:21-58:8; 98:20-101:21; 102:25-103:7).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Defendants further object on the basis that it is a legal conclusion because it characterizes certain actions as a diversion of resources, which is a legal term.

763. Prior to SB 202, GAMVP conducted line warming activities. As a result of SB 202, GAMVP stopped conducting line warming activities. Ex. 30 (GAMVP Dep. 110:8-19, 113:3-11).

**RESPONSE:** Disputed to the extent that “prior to SB 202” extends beyond 2020. *See* Kabani Dep. 111:20–23 (“Right before the 2020 runoffs, we actually planned our first line warming activity.”). In addition, because they can still provide items of value a few feet away from the supplemental zone, disputed to the extent GAMVP claims SB 202 caused cessation of the activity.

764. GAMVP allocated more staff time to focus on policy and advocacy and communications work as a result of SB 202’s passage. Ex. 30 (GAMVP Dep. 116:9-117:7, 125:3-25).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

765. GAMVP was also aware of community members who had difficulty getting absentee ballots mailed to them on time to vote. Ex. 30 (GAMVP Dep. 171:4-11). Furthermore, another community member went to the precinct indicated on GAMVP’s website to vote, which was give minutes from his home, and was told it was the wrong precinct. *Id.* at 131:4-6. Because he went to vote after 5 p.m. he was unable to obtain a provisional ballot. *Id.* at 131:9-17. The precinct he was told to vote at was another 20 minutes from his house, so he did not vote at all. *Id.* at 131:9-17.

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed R. Evid. 802, *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999). Defendants further object to the cited evidence because it is not separately numbered.

766. Women Watch Afrika (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. Ex. 46 (30(b)(6) Deposition of Women Watch Afrika (Glory Kilanko) [ECF 738] (“WWA Dep.”) 78:11-22).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

767. Women Watch Afrika’s voting-related work increased after the passage of SB 202. Ex. 46 (WWA Dep. 16:4-12).

**RESPONSE:** Objection. The evidence cited does not support the fact. The cited portion of the deposition excerpt does not note an increase of work on account of voting-related work.

768. As a result of SB 202, Women Watch Afrika 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 assisting new citizens with obtaining voter ID. To ensure voters understood these changes, WWA increased the amount of time it spent talking to voters. For instance, prior to

SB 202, WWA's advocates were instructed to disseminate information to at least seven families per shift. 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. Ex. 46 (WWA Dep. 18:14-21:11, 74:5-75:12).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Defendants further object on the basis that it is a legal conclusion because it characterizes certain actions as a diversion of resources, which is a legal term.

769. WWA 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. Ex. 46 (WWA Dep. 88:25-91:20).

**RESPONSE:** Defendants object to the fact because it is a legal conclusion to the extent it refers to "diverted resources," which is a legal term.

770. WWA's increased voter education efforts resulting from SB 202 included updated information about drop boxes, absentee voting, and early voting. Some of this information was disseminated through announcements on the radio. WWA did not previously do voter education announcements on the radio or did not do such announcements with such frequency prior to SB 202. Ex. 46 (WWA Dep. 32:10-33:20, 119:12-121:9).

**RESPONSE:** Objection. The fact cited does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

771. WWA 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. Ex. 46 (WWA Dep. 91:21-93:11; 119:21-121:9).

**RESPONSE:** Defendants admit the court may consider this evidence for purposes of the summary judgment motion.

772. Latino Community Fund Georgia ("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. Ex. 39 (Deposition of Latino Community Fund Georgia (Gilda Pedraza) [ECF 728] ("LCF Dep.") 36:1-21).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

773. In 2021, when SB 202 was first enacted, LCF diverted all of its civic participation staff time, the Executive Director's time, and part of LCF's communications team's time to understanding SB 202 and how it would impact the community that LCF serves. LCF's civic participation program was only one of three programs that LCF operated at the time. Ex. 39 (LCF Dep. 28:18-30:14).

**RESPONSE:** Defendants object to the fact because it is a legal conclusion to the extent it refers to “divert[ed]” resources, which is a legal term. Defendants further object because the fact is not separately numbered and because the evidence cited does not support the fact.

774. In 2021, one-third to one-half of LCF’s staff prioritized work surrounding SB 202. Ex. 39 (LCF Dep. 33:13-35:1).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

775. 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. Ex. 39 (LCF Dep. 33:13-35:1).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

776. As a result of SB 202, LCF redesigned content on their website in both English and Spanish and redesigned, printed, and redistributed printed community education materials detailing the changes enacted by SB 202. LCF also devoted resources to new digital campaigns, including time and resources



to educate community members through Spanish-speaking media. Ex. 39 (LCF Dep. 60:7-62:6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

777. Delta Sigma Theta Sorority, Inc. (“DST”) operates five programs to advance its mission: education, mental health, physical health, social action, and economic development. Each of these programs is designed to support children, women, and members. Ex. 19 (Delta Dep. 35:9-36:5, 36:16-24).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

778. In addition to the materials DST sends to voters periodically to educate and encourage voting, DST expended additional resources to making sure people understood the changes to SB 202, including changes to voting by absentee ballot. Ex. 19 (Delta Dep. 51:6-25).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

779. To ensure the communities DST serves were well-educated about SB 202, DST shifted resources between its committees and added resources and volunteer time to voter education through additional phone banking, providing transportation, and election protection. This included re-allocating

volunteer time to election day work from volunteers that do not usually work on election day. Ex. 19 (Delta Dep. 57:8-58:2, 85:1-16).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

780. 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. Ex. 19 (Delta Dep. 45:2-23, 114:11-16, 25). Through a significant expenditure of volunteer outreach and engagement efforts, DST was able to assuage these members' concerns. *Id.* at 45:2-23, 114:11-16, 25. *See also id.* at 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).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed R. Evid. 802, *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999). Defendants further object to the cited evidence because it is stated as argument rather than as fact and is not separately numbered.

781. Georgia ADAPT is a nonpartisan, statewide disability rights organization, that is fiscally sponsored by the Fund for Southern Communities and New Disabled South and whose mission includes two primary aims: 1) to use civil resistance and principled nonviolence to end institutional bias against

Georgians with disabilities, and 2) to empower the disability community by encouraging use of their voice and vote, as well as to educate candidates about how to reach and serve the disability community. Ex. 317 (Thornton Decl. ¶¶ 4-5); Ex. 22 (ADAPT Vol. I Dep. 48:12-23).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

782. SB 202 has forced, and will continue to force, Georgia ADAPT to divert non-financial resources including employee time, effort, and attention from other programming and core organizational goals. Ex. 317 (Thornton Decl. ¶¶ 7-25).

**RESPONSE:** Objection. The fact stated does not comply with L.R. 56.1(B)(1) because it is not separately numbered and cites to numerous independent paragraphs from a declaration without any effort to link the paragraphs cited to the purported fact.

783. Prior to the passage of SB 202, Georgia ADAPT spent about 80 percent of its time helping Georgians with disabilities get access to Medicaid services through federal Medicaid Waivers to help them get out of nursing facilities and other institutions and live in the community with the supports they need. The remainder of its time (about 20 percent) was spent on election-related activities. Ex. 317 (Thornton Decl. ¶ 7); Ex. 22 (ADAPT Vol. I Dep. 23:4-24:1).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

784. Since SB 202 passed, because of the challenges it created for voters with disabilities, especially in absentee voting, Georgia ADAPT has put more energy into offering individuals with disabilities rides to the polls and helping people drop off absentee ballots. Now, about 80 percent of Georgia ADAPT's energy and time goes to helping people request and receive their absentee ballots, following up if they do not get their absentee ballots, and getting to people to the polls who have been confused about new absentee ballot rules and timelines, who did not have or could not get proper identification, or who otherwise needed to vote in person. Ex. 317 (Thornton Decl. ¶¶ 11, 15-18); Ex. 22 (ADAPT Vol. I Dep. 32:16-33:5).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

785. Prior to SB 202, Georgia ADAPT would receive about 200 calls in a major election cycle and provide about 150 rides. In 2022, after SB 202 passed, Georgia ADAPT received about 2,000 calls, and provided about 788 rides between the primary, the general election, and then the runoff, including about 450 rides for the runoff alone. This increased demand for rides required finding and training additional volunteer and paid drivers. Ex. 317 (Thornton Decl. ¶¶ 11-12); Ex. 22 (ADAPT Vol. I Dep. 27:3-20).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

786. Part of the change to Georgia ADAPT's work has been that it and its volunteers need to understand the restrictive new rules in SB 202, particularly because inadvertently providing someone with unauthorized food or water or assistance could result in criminal penalties. Ex. 317 (Thornton Decl. ¶ 14).

**RESPONSE:** Defendants admit the Court may consider this evidence for the purposes of the summary judgment motion.

787. Because of SB 202, Georgia ADAPT has ceased providing line relief and helping people apply for absentee ballots. Ex. 317 (Thornton Decl. ¶¶ 22-24).

**RESPONSE:** Disputed, but immaterial. Because SB 202 allows provision of items of value outside of the supplemental zone, and allows certain forms of assistance with absentee ballots (particularly for designated caregivers, it is unclear that SB 202 caused this cessation. Furthermore, ADAPT still engages in provision of food and drink to its riders outside of polling lines. ADAPT Dep. Vol. I 29:15–23.

788. Since SB 202 was passed, there are activities that are a priority for Georgia ADAPT that it has not been able to engage in because of its focus on election work. Normally, Georgia ADAPT would be doing work to remove

the institutional bias in Medicaid and the services that people with disabilities need to live at home. But Georgia ADAPT has not been able to be in Washington, D.C. doing that grassroots lobbying work due to its diminished capacity. Ex. 317 (Thornton Decl. ¶ 25); Ex. 22 (ADAPT Vol. I Dep. 71:1-12).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

789. Members of Georgia ADAPT were unable to return their absentee ballots because of a lack of drop boxes or access to the drop box. Ex. 22 (ADAPT Vol. I Dep. 109:12-15); Ex. 23 (ADAPT Vol. II Dep. 40:5-23).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed R. Evid. 802, *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999).

790. Georgia Advocacy Office (“GAO”) is incorporated as a non-profit organization in the State of Georgia and has been designated by the State of Georgia since 1977 as the State’s protection and advocacy system (“P&A”) to protect the legal and human rights of individuals with disabilities in the state of Georgia. Ex. 305 (Orland Decl. ¶¶ 3-4).

**RESPONSE:** Defendants admit the Court may consider this evidence for purposes of the summary judgment motion.

791. 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. Central to its mission is empowering Georgians with disabilities to participate fully and independently as active and engaged citizens. GAO has the authority to prosecute actions in its own name and on behalf of its constituents. Ex. 305 (Orland Decl. ¶ 5).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and is a legal conclusion purporting to interpret the provisions of the United States Code.

792. GAO is the designated agency in Georgia to receive an annual grant, called Protection and Advocacy for Voting Access (“PAVA”) pursuant to the Help America Vote Act (“HAVA”). GAO receives a set amount of funding each year from this grant requiring them to promote access and engagement in the electoral process for voters with disabilities. Ex. 305 (Orland Decl. ¶¶ 9, 13); Ex. 24 (GAO Dep. 167:13-15).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and is a legal conclusion purporting to interpret the provisions of the United States Code.

793. 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. Ex. 305 (Orland Decl. ¶ 10); Ex. 24 (GAO Dep. 146:23-147:9).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

794. 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 work. Ex. 305 (Orland Decl. ¶ 13).

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Specifically, the declaration paragraph cited does not solely attribute the purported diminished time to SB 202, but rather the more broad category of "voting issue[s]" generally, "such as... SB 202."

795. SB 202 has forced, and will continue to force, GAO to divert resources, including financial, employee time, effort, and attention, from its other core activities including investigating and addressing allegations of abuse and neglect, advocating for appropriate assistive technology, and providing information and resources related to employment, inclusive education and other civil rights for Georgians with disabilities. Ex. 305 (Orland Decl. ¶¶ 14, 19, 25, 27).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

796. Prior to the passage of 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. Ex. 305 (Orland Decl. ¶ 14).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

797. Since the passage of SB 202, GAO has modified and expanded its voter education program, including updating a detailed PowerPoint presentation entitled Reminding You to Vote. Ex. 305 (Orland Decl. ¶ 19); *see also* Ex. 24 (GAO Dep. 169:1-9).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

798. Additionally, since the passage of SB 202, 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, which has reduced the amount of time GAO's 8 staff members can spend advising people about their other rights and monitoring conditions in those settings. Ex. 305 (Orland Decl. ¶ 19); *see also* Ex. 24 (GAO Dep. 153:11-24). Since the passage of SB 202, GAO has hosted webinars and educational events specifically to help explain the changes to the voting process for Georgians with disabilities due to SB 202, including new ID requirements and limitations and penalties for violations of voter assistance provisions. Ex. 305 (Orland Decl. ¶ 19).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

799. Further, since the passage of SB 202, GAO has called nursing facilities and attempted to speak to staff about voting access and practices for assisting residents, in light of the changes in SB 202. Ex. 305 (Orland Decl. ¶ 19); *see also* Ex. 24 (GAO Dep. 153:11-24).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

800. As a result of SB 202, GAO has also 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. Ex. 305 (Orland Decl. ¶ 19); *see also* Ex. 24 (GAO Dep. 169:19).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

801. Moreover, since the passage of SB 202, GAO has discontinued some voter support efforts including providing absentee ballot applications to voters with disabilities, including nursing facility residents, for fear of being charged with criminal penalties. Ex. 305 (Orland Decl. ¶ 19).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

802. As a result of the Felony Provision, GAO is fielding queries and complaints from individuals who could not get the people of their choosing to help them vote, and has assisted them to understand and comply with the new rules, or addressing complaints that poll workers are not well-trained and are not able or willing to assist voters with disabilities because the workers mistakenly felt it to be a violation of the law, and providing education to help voters and poll workers understand the rules and their rights. Ex. 305 (Orland Decl. ¶ 25); *see also* Ex. 24 (GAO Dep. 93:18-94:2, 151:2-152:9).

**RESPONSE:** Objection. The cited evidence is hearsay, which cannot be considered at summary judgment. Fed R. Evid. 802, *Macuba v. DeBoer*, 193 F. 3d 1316, 1322 (11th Cir. 1999). Defendants further object to the cited evidence because it is not separately numbered.

803. Additionally, as a result of the Felony Provision, GAO has had to educate individual residents in nursing facilities about assistance requirements as well as steps in the absentee voting process, and helped them formulate and execute plans to vote, which means spending less time advising them about their other rights. Ex. 305 (Orland Decl. ¶ 25); *see also* Ex. 24 (GAO Dep. 151:2-152:9).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

804. Further, the Felony Provision, has impacted GAO's work such that GAO has 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. Ex. 305 (Orland Decl. ¶ 25); *see also* Ex. 24 (GAO Dep. 151:2-152:9).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

805. Moreover, as a result of the Felony Provision, GAO no longer takes absentee ballot applications to residents of congregate living environments as a result of the inability to facilitate returning or mailing them. Ex. 305 (Orland Decl. ¶ 25).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

806. The time and resources GAO has expended ensuring that voters are not denied their access to the franchise because of SB 202 has directly reduced its other advocacy work and resources it can devote to its other core organizational goals and will continue to do so unless there is a change in the law. Ex. 305 (Orland Decl. ¶¶ 19(f), 27).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

807. Metropolitan Atlanta Baptist Ministers Union, Inc. (“MABMU”) is a Georgia nonprofit corporation founded in 1917. It is a service organization and network of over 80 clergy of Baptist churches in the greater Atlanta area that minister to largely Black congregants. MABMU’s mission is to help make the greater Atlanta area a better place to live religiously, educationally, economically, politically, socially, financially, and in all other areas that impact people’s lives. Ex. 313 (Declaration of Rev. Stanley Smith (“Rev. S. Smith Decl.”) ¶ 2).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

808. MABMU has various committees that focus on education, civic and social action, and empowerment. MABMU holds weekly meetings of approximately two hours during which, among other things, reports are given on current events, political empowerment, and community members who are sick and in need of visitation. Time is also spent at the weekly meetings in active worship and on Christian education. Ex. 313 (Rev. S. Smith Decl. ¶ 3).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

809. Voting and social justice ministry have been a component of MABMU’s work for decades. MABMU’s core voting rights activities in recent years include: providing transportation for seniors during early voting;

participating in the Lawyers & Collars Voter Protection Campaign, which places clergy at polling sites in underserved communities to provide a moral presence and support to voters; providing voter education, training, and empowerment; and encouraging voter turnout. Ex. 313 (Rev. S. Smith Decl. ¶ 4).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

810. As a result of the enactment of SB 202, MABMU has had to divert resources to help educate its membership and their constituent congregations on the additional obstacles to voting imposed by SB 202. Ex. 313 (Rev. S. Smith Decl. ¶ 6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion to the extent it purports to define diversion of resources, which is a legal term.

811. MABMU has had to divert a significant portion of its weekly meetings to SB 202 so that its membership can be well-informed about the restrictions on voting imposed by the law and thereby help their respective congregants educate themselves. Prior to SB 202, MABMU's weekly meetings included a 7-minute report on voter encouragement, empowerment, and education. After SB 202, MAMBU dedicated between 45 minutes and one hour

every two weeks exclusively to a discussion of SB 202. Ex. 313 (Rev. S. Smith Decl. ¶ 6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. The fact also does not comply with L.R. 56.1(B)(1) because it is a legal conclusion to the extent it purports to define diversion of resources, which is a legal term.

812. Because of the added time spent addressing SB 202, MABMU has had less time for its Christian education programming and even less time for worship. Some Bible study items and current event reports have been taken off the agenda as have reports on sick community members in need of visitation. Ex. 313 (Rev. S. Smith Decl. ¶ 6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. The fact also does not comply with L.R. 56.1(B)(1) because it is a legal conclusion to the extent it purports to define diversion of resources, which is a legal term.

813. As a result of SB 202, MABMU has been forced to create new materials for its members to share with their respective congregations, including a flyer with a QR code that can be scanned to provide information related to voting. Ex. 313 (Rev. S. Smith Decl. ¶ 7).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the

statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

814. As a result of SB 202, MABMU has engaged more actively in Souls to the Polls events and the Lawyers and Collars program, as more members have expressed interest in participating in and organizing those events and MABMU has been called upon to educate and advise its members as to how to do so. Ex. 313 (Rev. S. Smith Decl. ¶ 7).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

815. During the 2020 General Election, MABMU encouraged people to vote early by using absentee ballots and ballot drop boxes. Following the passage of SB 202, MABMU is no longer recommending the use of absentee ballots and ballot drop boxes due to the confusion and disruption SB 202 has created among its member congregations. MABMU must dedicate additional time and resources to re-educating its membership about these new provisions, explaining why its prior recommendations regarding voting absentee and utilizing drop boxes no longer hold, so that they can inform their respective congregants, who routinely turn to MABMU for this kind of information. Ex. 313 (Rev. S. Smith Decl. ¶ 8).



**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

816. As part of its voting and social justice ministry, MABMU provides transportation to seniors so they can vote early in-person, including early voting for runoff elections. As a result of SB 202's shortening of the early voting period for runoff elections, MABMU could not transport as many seniors to early voting locations in 2022 as it had in January 2021. Ex. 313 (Rev. S. Smith Decl. ¶ 9).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

817. Part of MABMU's mission is to empower Black communities and to help them understand that their vote counts and that it impacts their communities. MABMU must dedicate additional resources to encourage people to overcome the resignation that results from the knowledge that outside sources can come in and take over the running of elections from locally-elected

officials, as if their vote really doesn't count. Such resignation counteracts MABMU's mission, making it harder to achieve MABMU's goal of community empowerment. Ex. 313 (Rev. S. Smith Decl. ¶ 10).

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case because it does claim to have anything to do with SB 202.

818. The mission of Concerned Black Clergy of Metropolitan Atlanta, Inc. ("CBC") is to serve as a community gathering place for civic leaders, educators, businesses, and elected officials, all centered around issues of concern to the African American church and the African American faith community at large. Ex. 17 (30(b)(6) Deposition of Concerned Black Clergy (Sophia Burns and Rev. Shanan Jones) [ECF 692] ("CBC Dep.") 56:22-57:4).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

819. CBC has several committees, including political education; health; and economic development. Ex. 17 (CBC Dep. 62:2-12).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

820. A primary focus of CBC's work has related to housing, including issues around affordable housing and support for those facing eviction. Ex. 17 (CBC Dep. 62:2-24, 100:1-6).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of the summary judgment motion.

821. Since its founding, CBC, in partnership with other organizations, has engaged in activities designed to support voters in the exercise of the franchise. Such activities include: get out the vote (“GOTV”) efforts; providing transportation to the polls; voter registration; voter education; and “line warming,” including providing food and water to voters standing in line to vote. Ex. 17 (CBC Dep. 67:23-68:4).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

822. As a result of the changes introduced by SB 202, CBC has had to divert resources to help educate its membership on the additional obstacles to voting imposed by SB 202. CBC has had to explain that “it’s not that black folks are not going to be able to vote, but it’s going to be much harder to vote.” Ex. 17 (CBC Dep. 77:5-7, 94:9-95:5).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion to the extent it purports to define diversion of resources, which is a legal term. Defendants further object because the statement is stated as argument rather than as fact.

823. CBC has had to divert resources to address concerns expressed by many in the community about the rationale offered for SB 202—that the bill

made it easier to vote and harder to steal elections. Many members of the community served by CBC did not understand how restricting the time frames for absentee voting, reducing the number of drop boxes and no longer making drop boxes available outside and on a 24/7 basis, made voting easier. This confusion was further compounded by the repeated assurances given by State election officials that there had been no voter fraud in Georgia during the 2020 election cycle. Ex. 17 (CBC Dep. 77:2-11, 101:24-102:12).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion to the extent it purports to define diversion of resources, which is a legal term. Defendants further object because the statement is stated as argument rather than as fact, and because the purported fact is based on hearsay, which is not admissible at summary judgment.

824. Prior to the passage of SB 202, approximately 30 percent of CBC's work related to voting, with the balance addressing issues related to health, housing, and other matters of interest to the Black community. Ex. 17 (CBC Dep. 63:5-15, 62:2-24, 100:1-6).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

825. After passage of SB 202, the community served by CBC became singularly focused on voting and the new restrictions imposed by SB 202. Whereas roughly half the phone calls received by CBC prior to SB 202

concerned housing issues, after enactment of SB 202, nearly all the calls received—the number of which increased significantly—pertained to voting. Ex. 17 (CBC Dep. 99:9-100:8).

**RESPONSE:** Defendants object to this purported fact because it relies on hearsay from “the community,” which is not admissible at summary judgment, and the fact is not separately numbered.

826. CBC had to hire two additional interns in 2022 to help with the influx of calls related to SB 202. Ex. 17 (CBC Dep. 100:1-8).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

827. As a result of SB 202, CBC’s weekly forums no longer discussed health or other issues; the forums were dedicated exclusively to issues around voting. CBC had to become, in essence, a voter education organization, as concerns about SB 202 “became Def-Con 4.” Ex. 17 (CBC Dep. 64:7-20, 66:8-20; 75:5-17, 93:23-95:5, 100:11-15).

**RESPONSE:** Objection The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument and not fact, and because it is not separately numbered.

828. SB 202 caused CBC to have to use all its resources to focus on voter education and re-education, explaining to its members that the way they have

voted in the past, particularly by utilizing drop boxes to vote absentee ballots, might no longer be a viable option. Ex. 17 (CBC Dep. 73:21-74:20).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

829. As compared to the 2020 election cycle, and as a result of SB 202, CBC spent more time during the 2022 election cycle coordinating and providing transportation for voters to get to the polls because many community members no longer wished to vote absentee given SB 202's restrictions on requesting and casting an absentee ballot. Ex. 17 (CBC Dep. 84:13-85:20, 157:10-158:4).

**RESPONSE:** Objection The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument and not fact, and because it is not separately numbered.

830. As a result of SB 202, CBC's line warming activities have been greatly diminished in efficacy, as its members are prohibited from approaching voters standing in line to offer them water and snacks; CBC members must instead stay behind established buffer lines. Ex. 17 (CBC Dep. 150:21-151:8).

**RESPONSE:** Objection The fact does not comply with L.R. 56.1(B)(1) because it is stated as argument and not fact, because it is based on speculation, and because it is not separately numbered.

831. The mission of Georgia Latino Alliance for Human Rights, Inc. ("GLAHR") is to educate, organize, and train the Latinx community in Georgia

to defend and promote their civil and human rights. Ex. 29 (30(b)(6) Deposition of Georgia Latino Alliance for Human Rights, Inc. (Adelina Conception Nicholls) [ECF 693] (“GLAHR Dep.”) 27:22-28:7).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

832. Part of GLAHR’s mission is to educate voters about how to vote, encourage them to vote, and to provide them with information about where and when they can vote. Ex. 29 (GLAHR Dep. 34:8-16).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

833. Among other initiatives, GLAHR has been engaged in GOTV efforts since 2018. It has continued these efforts since then, including during the 2022 election. 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. Ex. 29 (GLAHR Dep. 31:1-11; 34:20-36:1; 39:12-17).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

834. 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 these staff, and develop more materials. Ex. 29 (GLAHR Dep. 46:15-47:5).

**RESPONSE:** Objection The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

835. Prior to the passage of SB 202, in 2020, GLAHR canvassed approximately 5,000 households. In 2022, because of SB 202's passage, 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. Ex. 29 (GLAHR Dep. 40:141:10).

**RESPONSE:** Objection The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

836. As a result of SB 202, 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—many of whom are involved in civic engagement. Ex. 29 (GLAHR Dep. 41:18-42:3).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

837. As a result of SB 202, GLAHR has had to devote approximately 50 to 75 percent of its time to civic engagement and community reeducation. It has had to divert this time away from other initiatives, commitments, and



causes, including those dealing with deportations, detentions, arrests, and racial profiling. GLAHR had to completely cancel a conference in Philadelphia due to the amount of canvassing and outreach work done in the Georgia Latinx community. Had SB 202 not been enacted, GLAHR would have developed more digital content rather than engage in its ramp up of door-to-door canvassing. Ex. 29 (GLAHR Dep. 42:1343:11, 105:13-106:20, 48:20-25).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

838. The mission of The Justice Initiative, Inc. (“JI”) is to support and empower citizens to exercise their right to vote and to combat injustice. Ex. 38 (JI Dep. 43:16-20, 46:7-20).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

839. In addition to its voting-related activities, JI is involved in policing issues and other issues of importance to the communities it serves, which are predominantly Black communities Ex. 38 (JI Dep. 47:9-15, 49:20-50:14).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

840. Prior to SB 202, JI’s voting-related initiatives focused on registration, and providing voters with a general overview of the voting process. Ex. 38 (JI Dep. 29:12-14, 38:15-24).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

841. Prior to SB 202, JI undertook extended GOTV bus tours through south Georgia, stopping in up to five counties per day to educate and register voters. Ex. 38 (JI Dep. 31:12-32:1).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

842. Since the passage of SB 202, JI has shifted the focus and scope of its bus tours. Rather than engaging in car caravans, JI now conducts town hall-style lectures that provide intensive training around SB 202's requirements. Ex. 38 (JI Dep. 29:7-20; 31:12-32:8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

843. As a result of instituting a more intensive training program in the aftermath of the enactment of SB 202, rather than stopping in up to five counties per day, JI's bus tours now typically stop in just one county per day, thereby limiting their reach. Ex. 38 (JI Dep. 31:12-32:8).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

844. As a result of SB 202, JI has had to spend more time recruiting, educating, and organizing ministers to be present at the polls to serve as a

source of moral support to those voters standing in line to vote. Ex. 38 (JI Dep. 59:11-60:5).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

845. First Congregational Church, United Church of Christ Incorporated (“First Church”) is a holistic ministry that tends to the well-being of the person— mind, body, and soul. Among other initiatives, First Church is active in addressing food insecurity and it partners with students at Georgia State University to provide a food pantry. First Church also works with various educational and arts nonprofits to provide educational activities and after-school programs. First Church has financial assistance programs and has sponsored seminars on policing and community violence. Ex. 20 (30(b)(6) Deposition of First Congregational Church, United Church of Christ, Inc. (Rev. Dwight Andrews ) [ECF 735] (“UCOC Dep.”) 20:13-23, 33:10-22, 35:12-19).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

846. Since its founding, First Church has engaged in activities designed to support voters in the exercise of the franchise. Recent voting-related activities include: get out the vote (“GOTV”) efforts, including coordinating Souls to the Polls events; providing transportation to the polls; voter

registration; and voter education. Ex. 20 (UCOC Dep. 21:13-19, 34:23-35:4, 36:21-37:13).

**RESPONSE:** Objection. The statement does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

847. As a result of the changes introduced by SB 202, First Church has had to divert resources to help educate its membership on the additional obstacles to voting imposed by SB 202. Ex. 20 (UCOC Dep. 25:6-16, 27:2-28:2).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion to the extent it purports to define diversion of resources, which is a legal term.

848. First Church's social justice committee, which oversees the church's voting-related initiatives, was compelled to increase the size of its membership to address the need for education and understanding regarding all the changes introduced by SB 202. Ex. 20 (UCOC Dep. 70:1-9).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

849. First Church held community forums to discuss SB 202 and created educational flyers concerning all the new requirements. Ex. 20 (UCOC Dep. 28:316, 69:6-11).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

850. Many of First Church's congregants were confused by the provisions of SB 202, wondering why new laws were being created that give voters less time to vote, less access to ballot drop boxes, and no ability to accept water or snacks while waiting in long lines to vote. Given the lack of evidence of voter fraud, as repeatedly communicated by State election officials, many congregants did not understand what problems these laws were designed to address. Ex. 20 (UCOC Dep. 62:13-63:11, 64:9-66:11).

**RESPONSE:** This paragraph contains a legal conclusion to which no response is required and is based on hearsay and speculation. The sole factual assertion, of a lack of evidence of voter fraud, is immaterial. In addition to the interest in preserving public faith in elections, "it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2348 (2021).

851. While First Church continued to minister to its members in the ways it deemed most critical even after passage of SB 202, were it not forced to divert portions of its limited resources to address SB 202, those limited resources would have been directed to other aspects of First Church's ministry. Ex. 20 (UCOC Dep. 45:4-8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion to the extent it purports to define diversion of resources, which is a legal term.

852. The Ga. NAACP's mission is "eliminating racial discrimination through democratic processes such as public advocacy, direct action, and litigation, and thus ensuring the equal political, educational, social, and economic rights of all persons, in particular African Americans." Ex. 282 (Declaration of Gerald Griggs dated May 16, 2023 ("Griggs 5/16/23 Decl.") ¶ 2). It commits resources to voting rights by investing in voter education, registration, and mobilization. *Id.* ¶ 3.

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

853. Educating voters about SB 202's provisions forced the Ga. NAACP to reorganize staff roles, reduce voter registration and get-out-the-vote activities, and divert resources from preexisting projects, including projects addressing climate justice, environmental issues, and housing discrimination. Ex. 31 (GA NAACP Dep. 58:10-12, 77:3-8, 62:13-24). As part of this effort, for the first time in its history, the Ga. NAACP organized a statewide, 22-city voter education campaign. Ex. 282 (Griggs 5/16/23 Decl. ¶ 9).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the

statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

854. Many of the Ga. NAACP's volunteers and its committee chairs—including the housing, political action, veterans' affairs, education, and membership chairs—"had to shift their focus" Ex. 31 (GA NAACP Dep. 65:7-18) from projects related to their committees to ensure voters were aware of SB 202's restrictions, including its onerous absentee voting requirements, drop box limitations, compressed voting periods, unlimited voter challenges, and disenfranchisement of out-of-precinct voters. *Id.* 56:1-17, 60-62, 66:2-67:12, 82:15-83:3, 137:12-138:19, 151:11-25, 166:7-19, 175; Ex. 282 (Griggs 5/16/23 Decl. ¶¶ 7-10)).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

855. Several committee chair members had to entirely forsake their committee duties to focus solely on SB 202 initiatives. Ex. 31 (GA NAACP Dep. 65:7-18). Housing Chair Penny Poole's responsibilities shifted from managing housing discrimination issues to addressing voter challenges in Gwinnett County, attending election board meetings, testifying before local education boards to keep polling precincts open, partnering with churches to educate voters and establish get-out-the-vote programs, and contacting local elected

officials to discuss voter issues related to the implementation of SB 202. *Id.* 60:22-61:6, 62:9-21; Ex. 282 (Griggs 5/16/23 Decl. ¶ 10).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984). Defendants further object because the statement is stated as argument rather than as fact.

856. Likewise, the Ga. NAACP's Veteran Affairs Committee had to divert attention from its existing areas of focus to "address the effects of SB 202 on veterans who may be overseas, and who accordingly may not fly back [to Georgia] to vote in-person and had to cast absentee ballots," and the Education Committee had to shift its focus to "address issues for students who would not be able to vote because they were off at college." Ex. 282 (Griggs 5/16/23 Decl. ¶ 10).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).



857. Before 2021, the Ga. NAACP's voter registration, education, and participation activities covered twelve to thirteen counties, which accounted for approximately 75 percent of the African American vote in Georgia. Ex. 282 (Griggs 5/16/23 Decl. ¶ 11). After the passage of SB 202, however, the Ga. NAACP had to invest resources to expand its strategy to 59 counties and cover approximately 90 percent of the African American in an effort to combat any negative effects of SB 202. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

858. After the enactment of SB 202, the Ga. NAACP experienced a marked increase in calls to its voter hotline. Ex. 31 (GA NAACP Dep. 37:5-17); Ex. 282 (Griggs 5/16/23 Decl. ¶ 8). This increased demand—coupled with the need to divert existing resources to SB 202 education efforts—required the Ga. NAACP to hire two paid attorneys as well as a paid State Director to spearhead the Ga. NAACP's election protection, voter mobilization, and voter education efforts for the 2022 election cycle. Ex. 282 (Griggs 5/16/23 Decl. ¶ 8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the

statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984). The fact does not comply with L.R. 56.1(B)(1) because it is a legal conclusion to the extent it purports to define diversion of resources, which is a legal term.

859. Because SB 202 criminalizes the handling of absentee ballot applications, the Ga. NAACP no longer assists voters with copying, scanning, or digitizing ID documents required to submit a ballot application as it did prior to March 2021. Ex. 31 (GA NAACP Dep. 73-75).

**RESPONSE:** Defendants admit the court may consider this fact for purposes of summary judgment.

860. The Ga. NAACP used to send unsolicited absentee ballot applications to voters and respond to requests for absentee ballots, but ceased doing so in response to SB 202. Ex. 31 (GA NAACP Dep. 106:9-11, 106:16-22).

**RESPONSE:** Defendants admit the Court may consider this fact for purposes of the summary judgment motion.

861. Before the passage of SB 202, Ga. NAACP staff and volunteers provided free food, water, and PPE to voters standing in line and in the vicinity of polling locations, focusing their line relief efforts at polling locations within Black and other communities of color, which often experienced long lines. Ex. 282 (Griggs 5/16/23 Decl. ¶¶ 10-17). In 2020, these activities “spanned across

nineteen (19) counties which, collectively, included about 80% of the Black voter population in Georgia.” *Id.* ¶ 13. The Ga. NAACP no longer engages in line relief efforts because SB 202 criminalizes the activity. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

862. Following the enactment of SB 202, the Ga. NAACP experienced a surge in voter demand for transportation to polling places. Ex. 31 (GA NAACP Dep. 56:1-17). To meet this demand, the Ga. NAACP had to expand its transportation programs and partner with additional organizations to assist members and voters. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

863. The Ga. NAACP received hundreds of communications from voters expressing concern about SB 202’s unlimited voter challenges, mobile voting restrictions, drop box limitations, and voting timeline compression. Ex. 31 (GA NAACP Dep. 137:12-138:19). Several voters also indicated they no longer felt comfortable using drop boxes because the presence of law enforcement and licensed security guards intimidated them. *Id.* 151:11-25.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it relies on inadmissible hearsay.

864. The Georgia Coalition for the People's Agenda ("GCPA") is an umbrella organization for many different human rights, civil rights, labor, women's, youth, and peace and justice groups that perform advocacy work in the State of Georgia. Ex. 263 (Declaration of Helen Butler dated May 14, 2023 ("Butler 5/14/23 Decl.") ¶ 2). With over 5,000 individual members across the state, the GCPA aims to improve the quality of governance in Georgia, help create a more informed and active electorate, and have responsive and accountable elected officials. *Id.* ¶¶ 2-3.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

865. Since the enactment of SB 202, the GCPA has invested significantly more resources into voter education than it did in previous years. Ex. 263 (Butler 5/14/23 Decl. ¶¶ 6-7). These efforts have included leading a virtual SB-202education tour in five Georgia counties, organizing an in-person tour with seven stops across different counties, and engaging extensively with government officials and legislatures to address issues and confusion regarding SB 202's requirements. *Id.* ¶¶ 7, 10-11.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the

statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

866. The GCPA also enlisted additional volunteers and expanded its “Rides to the Polls” initiative to better serve seniors and other vulnerable communities who experienced difficulty traveling to the ballot box after SB 202’s restrictions went into effect. Ex. 263 (Butler 5/14/23 Decl. ¶¶ 10-11); Ex. 26 (30(b)(6) Deposition of Georgia Coalition for the People's Agenda (Helen Butler) [ECF 724] (“GCPA Butler Dep.”) 105-06).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

867. The GCPA typically “performs a lot of work on matters outside of the voting process—namely, criminal justice reform, equity in education, economic empowerment for Black-owned businesses, environmental justice, and elder issues.” Ex. 263 (Butler 5/14/23 Decl. ¶ 8). Educating voters about the changes implemented by SB 202—including its new rules regarding absentee voting, outof-precinct voting, drop box availability, compressed voting periods, and unlimited voter challenge procedures (*id.* ¶¶ 5, 7, 10-11; Ex. 26 (GCPA Butler Dep. 90, 10506, 179:17-23); Ex. 25 (GCPA Battles Dep. 53, 55, 87:4-15); Ex. 264 (Declaration of Helen Butler dated January 11, 2024 (“Butler Authentication Decl.”) at 43 (GCPA00000856) (GCPA pamphlet outlining SB

202's changes)))—prevented the GCPA from advancing these initiatives and forced it to divert time and resources away from its voter registration and get-out-the-vote activities. Ex. 263 (Butler 5/14/23 Decl. ¶¶ 6-8); Ex. 26 (GCPA Butler Dep. 20-23, 36:6-10).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

868. Instead of attending to the activities associated with their typical roles, GCPA staff had to dedicate substantial time to helping members and voters who were subject to voter challenges navigate the reinstatement process ever since the enactment of SB 202. Ex. 26 (GCPA Butler Dep. 179:17-23); Ex. 25 (GCPA Battles Dep. 87:4-15). These efforts included identifying challenged voters, operating phone banks to discuss challenge procedures and content with voters and counties, attending hearings, and liaising with local officials to facilitate reinstatement. Ex. 26 (GCPA Butler Dep. 179:17-23); Ex. 25 (GCPA Battles Dep. 87:4-15). One such voter—GCPA member Carry Smith—had to personally attend a hearing to reinstate her right to vote after a stranger challenged her eligibility to vote based on outdated information. Ex. 25 (GCPA Battles Dep. 88:10-89:5); Ex. (GCPA Butler Dep. 133:11-134:24).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

869. After learning that at least 500 voters did not have their votes counted due to SB 202's changes to out-of-precinct voting provisions, GCPA staff also began obtaining and analyzing information about rejected out-of-precinct provisional ballots. Ex. 25 (GCPA Battles Dep. 37-38). This process was onerous, as it involved filing numerous Open Records Act requests, liaising with the Secretary of State, and reviewing thousands of pages of records. *Id.* 75, 86.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. The evidence also does not support the fact stated in the second sentence of the statement; the cited deposition pages do not refer to the subject matter of the second sentence of the statement.

870. GCPA Policy & Engagement Director Cindy Battles had to divert so much of her time to SB 202 education efforts that she could no longer collaborate with community school boards to improve the quality of education in underperforming schools, secure better access to state and local contracts for Black-owned businesses, negotiate utility bills for seniors, or create citizen oversight boards—the very tasks for which the GCPA hired her. Ex. 263 (Butler 5/14/23 Decl. ¶ 9); Ex. 26 (GCPA Butler Dep. 105:23-106:14).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

871. Likewise, GCPA Executive Director Helen Butler could no longer fulfill her directorial duties due to the substantial time she had to personally dedicate to SB 202 voter outreach and education activities, including by preparing and giving presentations about SB 202, engaging with government officials and legislators about the law, and even giving testimony about SB 202's absentee voting restrictions before the United States House Judiciary Committee. Ex. 263 (Butler 5/14/23 Decl. ¶ 11).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

872. The GCPA had to entirely cease work on its citizen review board, community school board, same-day-voter-registration, utility processing, and contract facilitation initiatives as a result of redirecting resources and time to



SB-202-activities. Ex. 26 (GCPA Butler Dep. 98-99, 101:7-15, 107:15-19); Ex. 263 (Butler 5/14/23 Decl. ¶ 9); Ex. 25 (GCPA Battles Dep. 33-34).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

873. The GCPA used to assist voters with copying, scanning, or digitizing identity documents, but no longer does so because SB 202 criminalizes the handling of absentee ballot applications. Ex. 26 (GCPA Butler Dep. 95:12-96:2).

**RESPONSE:** Objection. The evidence does not support the fact stated; the cited deposition pages do not refer to the subject matter of the statement.

874. Before 2021, the GCPA used to send hundreds of unsolicited absentee ballot applications to voters—some of whom were illiterate—and to help voters complete those applications. Ex. 264 (Butler Authentication Decl. at 21-41 (GCPA00001061-GCPA00001081) (Butler U.S. Senate Testimony, July 19, 2021)); *id.* at 4-19 (GCPA00004788-GCPA00004803 (Butler U.S. House of Representatives Testimony, Jan. 20, 2022)). The GCPA no longer provides this assistance due to SB 202's prohibitions. Ex. 26 (GCPA Butler Dep. 118:6-10).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

875. Before the passage of SB 202, GCPA staff and volunteers provided free food, water, and personal protective equipment to voters waiting in line near polling locations. Ex. 26 (GCPA Butler Dep. 40:5-22, 181). The GCPA ceased these line relief efforts when SB 202 criminalized them. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

876. After SB 202 went into effect many members and voters—including elderly citizens and citizens with disabilities—sought transportation to polling places from the GCPA because they were unable to meet SB 202’s new absentee ballot application requirements and could therefore not vote by mail. Ex. 26 (GCPA Butler Dep. 91:17-22, 113:13-15).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered and relies on hearsay and speculation about the reasons for voters requesting transportation.

877. During the 2022 elections, GCPA staff, including Cindy Battles, intervened at a polling place where, because of SB 202’s changes to out-of-precinct voting provisions, a group of senior citizens was almost prevented from voting. Ex. 25 (GCPA Battles Dep. 55-57).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

878. Common Cause is a national, nonpartisan, nonprofit organization with the mission of making government more open, honest, and accountable for its 24,000+ Georgian members and for voters at large. Ex. 272 (Declaration of Treaunna (“Aunna”) Dennis dated May 16, 2023 (“Dennis 5/16/23 Decl.”) ¶¶ 2-3). To further these goals, Common Cause carries out campaigns directed at voter protection and education, gerrymandering and representation, ethics and accountability, and the democratic process. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

879. SB 202’s restrictions on absentee voting required Common Cause to invest time and resources in mass education campaigns “at a scale unlike those the organization had previously conducted.” Ex. 272 (Dennis 5/16/23 Decl. ¶ 7). These efforts involved organizing additional meetings, in-person community engagement panels, town halls, and other outward-facing events for voters and local communities 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.* ¶ 8; Ex. 16 (Common Cause Dep. 102-03, 119, 163-65, 166-67).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

880. Before 2021, Common Cause contacted voters on provisional ballot lists to advise them of their provisional status and help them cure their ballots. Ex. 16 (Common Cause Dep. 98, 117-18). These efforts became significantly more onerous after SB 202 was enacted due to the sharp increase in provisional votes caused by the law. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

881. Given its limited staff, diverting resources to SB 202 initiatives forced Common Cause to not only terminate its sheriff accountability program, but also abandon its goal of building an advisory board and discontinue its procurement and real estate activities in all but one local jurisdiction. Ex. 16 (Common Cause Dep. 107:13-108:21, 116:1-5); Ex. 272 (Dennis 5/16/23 Decl. ¶ 8). Common Cause would have continued to engage in these activities if SB 202 had not been enacted. Ex. 16 (Common Cause Dep. 108:19-21, 113:14-16); Ex. 272 (Dennis 5/16/23 Decl. ¶ 8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

882. Before the enactment of SB 202, Common Cause staff and volunteers provided free food, water, and personal protective equipment (“PPE”) to voters waiting in line at polling locations and provided subgrants to two organizations in rural Georgia to furnish voters with PPE. Ex. 16 (Common Cause Dep. 168-69); Ex. 271 (Declaration of Treaunna (“Aunna”) Dennis dated May 24, 2022 [ECF 171-26] (“Dennis Line Relief Decl.”) ¶¶ 6-8). Common Cause entirely ceased its line relief activities on account of SB 202’s criminal penalties. *Id.* at ¶ 15.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

883. County election officials also indicated that they needed mobile voting units, Ex. 16 (Common Cause Dep. 190), and that expanding early voting hours in future election cycles was feasible. *Id.* 191.

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

884. Several Common Cause members had their registration eligibility challenged after SB 202 was enacted. Ex. 16 (Common Cause Dep. 166-67). Though those challenges were ultimately dismissed, the impacted members

had to spend considerable time and effort advocating for themselves (including by seeking support from Common Cause) to reinstate their ability to vote. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

885. Common Cause member, Sherrill Gammon, had her absentee ballot for the 2022 runoff election initially rejected by Cobb County because the date of birth entered on the back of her ballot return envelope did not match their records. Ex. 277 (Declaration of Sherrill Gammon dated Dec. 12, 2024 (“Gammon Decl.”) Gammon Decl. ¶ 6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it relies on hearsay. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999)

886. Several Common Cause members indicated they had difficulty voting in the 2022 elections due to reduced weekend voting opportunities. Ex. 16 (Common Cause Dep. 201-02).

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible. The witness testified based on what she was told by Common Cause members, which is hearsay and cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

887. Common Cause received complaints from and assisted community members regarding SB 202's "confusi[ng]" requirements and shortened voting timeline. Ex. 16 (Common Cause Dep. 30-31). Some voters, including college students, traveled back to their home counties to vote because they were confused by SB 202's absentee voting requirements. *Id.* 141:6-19.

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible. The witness testified based on "complaints" by third parties, which are hearsay and cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

888. Since SB 202 went into effect, an increased number of voters reported to Common Cause that they could no longer use drop boxes. Ex. 16 (Common Cause Dep. 153:15-22). In particular, voters who worked outside city centers and had long commutes indicated that drop box sites closed so early they could not reach them in time. *Id.* 155.

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible. The witness testified based on "reports" by third parties, which are hearsay and cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

889. GALEO's mission is to increase civic engagement and leadership development of the Latino/Hispanic community across Georgia. Ex. 279 (Declaration of Jerry Gonzalez dated May 15, 2023 ("Gonzalez Decl.") ¶ 2). To

that end, GALEO advocates on many issues of particular interest to the Latino/Hispanic community, including immigrant rights, voting rights, and participation in the census. *Id.* ¶ 3.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

890. Before SB 202 went into effect, GALEO's voter education efforts focused on motivating and teaching citizens to vote. Ex. 27 (30(b)(6) Deposition of GALEO Latino Community Development Fund (Jerry Gonzales) [ECF 723] ("GALEO Dep.") 102:13-22). The implementation of SB 202 forced GALEO to "narrow the scope of [voting] options" it taught and focus instead on explaining the substance of SB 202's provisions, with particular emphasis on new absentee voting restrictions. *Id.* 99:8-23, 103:10-25; Ex. 279 (Gonzalez Decl. ¶¶ 5-8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

891. Educating voters and GALEO's 225 active Georgian members about SB 202's provisions required making substantial changes to GALEO's civic engagement and voter education programs, including by creating and



sending mailers, flyers, and other voter education materials addressing SB 202's changes to election laws; engaging in grassroots mobilization efforts; running tailored language assistance programs; and recruiting and training additional volunteers. Ex. 279 (Gonzalez Decl. ¶¶ 4, 7-8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

892. SB 202's changes forced GALEO to divert time, energy, and resources from initiatives important to the Latino community such as get-out-the vote campaigns, naturalization paperwork trainings, and voting walkthroughs. Ex. (GALEO Dep. 94-98).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

893. Many Latino voters do not have utility bills in their name because they cohabitate in large households. Ex. 27 (GALEO Dep. 118). Accordingly, SB 202's new identification requirements make it harder for them to vote if they also lack an identity document. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

894. Except for Gwinnett County, all Georgia counties only provide ballot applications, instructions, and ballots in English. Ex. 27 (GALEO Dep. 100). SB 202's complex ballot application requirements—including the Birthdate requirement—frustrate Latino voters' ability to vote because many of these voters are not proficient in English, making GALEO's educational activities around SB 202 even more important to its members and the Spanish-speaking community in general. *Id.* 100, 123:17-23; Ex. 279 (Gonzalez Decl. ¶ 6).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

895. Georgia has closed many voting precincts over time. Ex. 27 (GALEO Dep. 152:18-19). The majority of these precincts were located in minority communities. *Id.* 152:18-24. This phenomenon has contributed to longer wait times for voters assigned to minority community precincts. *Id.* Several GALEO members reported waiting in line for three to four hours when they attempted to vote in the 2022 general election. *Id.* 155. Discouraged by the long lines, some of those members left without voting. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Additionally, the evidence on which the statement relies is inadmissible. The witness testified based on what was “reported” by third parties, which is hearsay and cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

896. Other voters indicated their international travel plans would likely prevent them from meeting SB 202’s shortened absentee ballot mailing deadline. Ex. 27 (GALEO Dep. 132-33). These voters contacted GALEO to seek guidance— which GALEO provided—regarding SB 202’s absentee ballot application deadline and expressed concern about their ability to receive and return ballots within SB 202’s compressed timeline. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Additionally, the evidence on which the statement relies is inadmissible. The witness testified based on what was “indicated” by third parties, which is hearsay and cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

897. The League of Women Voters of Georgia (“LWV”) is a state subsidiary of the League of Women Voters nonpartisan membership organization with 624 members in the State of Georgia as of May 15, 2023. Ex.

311 (Declaration of Susannah Scott dated May 15, 2023 (“S. Scott Decl.”) ¶¶ 2-3). The LWV encourages informed and active participation in government by voters and influences public policy through education and advocacy. *Id.* ¶ 2. To carry out its mission, the LWV not only educates voters and citizens about elections, the voting process, and public policy issues, but also studies issues under consideration by lawmakers and then advances particular policies in the public interest through grassroots advocacy. *Id.* The LWV has no paid full-time employees and traditionally performs its work on a voluntary basis. *Id.* ¶ 4.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

898. Due to SB 202’s extensive changes to Georgia’s election laws, the LWV had to entirely rework the voting materials and online guide it provides, including detailing SB 202’s changes to the absentee and out-of-precinct voting process, compressed voting timeline, and availability of drop boxes. Ex. 311 (S. Scott Decl. ¶ 6); Vote411.org. This process required LWV to divert resources from its traditional candidate survey program. *Id.* ¶¶ 6, 9.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

899. The LWV's efforts to educate voters about SB 202's provisions also involved hiring paid interns, attending media interviews and candidate forums, circulating e-mails, postcards, and social media posts, and hosting town halls, information sessions, and trainings for local leaders. Ex. 40 (30(b)(6) Deposition of League of Women Voters of Georgia (Susannah Scott) [ECF 732] ("LWV Dep.") 51-52, 67:10-17, 69:8-20).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

900. Carrying out activities to educate voters about SB 202's provisions strained the LWV's limited resources, forcing it to reduce the number of covered electoral races, limit work on redistricting issues, reduce voter registration drives, and entirely discontinue certain voter registration work typically done. Ex. 40 (LWV Dep. 62-63, 70-71); Ex. 311 (S. Scott Decl. ¶ 8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

901. Before SB 202 went into effect, LWV staff and volunteers provided free food and water to voters waiting in line at polling locations. Ex. 40 (LWV

Dep. 64:9-22). The LWV ceased these line relief efforts as a result of the associated penalties in SB 202. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

902. The LWV is aware of voters who were unable to meet SB 202's shortened deadline for returning absentee ballots due to County and/or United States Postal Service ballot mailing delays. Ex. 40 (LWV Dep. 76:2-12). These voters only received their ballots a few days before—or even after—SB 202's absentee ballot return deadline. *Id.*

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Additionally, the evidence on which the statement relies is inadmissible. The witness testified based on reports by third parties, which are hearsay and cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

903. The Lower Muskogee Creek Tribe ("LMCT") did not devote any resources to voter education before 2021. Ex. 41 (30(b)(6) Deposition of Lower Muskogee Creek Tribe (Marian McCormick) [ECF 730] ("LMCT Dep.") 41:1619). After SB 202 went into effect, LMCT Chief Marian McCormick began devoting approximately 25% of her time to voter education efforts. *Id.* 41-43. These efforts included creating and distributing flyers that outlined SB 202's

changes as well as calling LMCT's 2,700 members to encourage them to vote. *Id.* 37-38, 41-43.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

904. SB 202 burdens the many LMCT members who lack computers, printers, and/or scanners because identity documents are now required to submit absentee ballot applications. Ex. 41 (LMCT Dep. 61:24-62:4).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as a legal conclusion.

905. The LMCT does not assist voters with copying, scanning, or digitizing identity documents because SB 202 criminalizes the handling of absentee ballot applications. Ex. 41 (LMCT Dep. 49, 52).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

906. SB 202's early voting and weekend voting limitations frustrate LMCT members' ability to vote because most members are construction workers who work six or seven days per week. Ex. 41 (LMCT Dep. 64:4-10).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as a legal conclusion and relies on hearsay.

907. Many LMCT members cannot meet SB 202's shorter absentee ballot mailing deadlines because they "work out of state, commuting back and forth." Ex. 41 (LMCT Dep. 63:8-16).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it relies on speculation and hearsay.

908. After SB 202 went into effect, voting in person—rather than by absentee ballot—also became more difficult for LMCT members because the limited number of permitted drop boxes and polling places are far from the Tribe, and many members do not have access to a vehicle. Ex. 41 (LMCT Dep. 40, 43:2244:9, 59:12-16, 64). As a result, the LMCT received an increased number of requests for transportation assistance. *Id.* 40, 43:22-44:9.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

909. The Georgia Secretary of State has agreed to recognize tribal identity documents for voting purposes. Ex. 41 (LMCT Dep. 61). Despite this, poll workers refused to recognize three LMCT members' tribal IDs when they attempted to vote in the 2022 elections. *Id.* 39:18-24, 45:14-46:20, 47.

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Additionally, the evidence on which the statement relies is inadmissible. The witness's testimony summarized in the second sentence of the statement is based on reports by third parties, which



are hearsay and cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999).

910. Plaintiff New Georgia Project (“NGP”) was founded in 2014 as an organization to help “high opportunity voters,” a constituency of Black, brown, young, LGBTQ+, and rural Georgians, build their grassroots political power. Ex. 43 (NGP Dep. 21:6-11, 21:25-22:12); *see also* Ex. 269 (Kendra Cotton Decl. (“Cotton Decl.”) ¶ 3).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

911. NGP operationalizes its mission by first pursuing issue- and constituent-specific initiatives aimed at engaging their constituency in topics they care deeply about, including public safety, employment, healthcare, and family life. Ex. 269 (Cotton Decl. ¶ 6); Ex. 43 (NGP Dep. 24:23-25:7).

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

912. NGP then mobilizes voters to vote through voter registration, organizing, and advocacy efforts centered around these high-priority issues. Ex. 269 (Cotton Decl. ¶ 405); Ex. 43 (NGP Dep. 25:8-11).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

913. 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 Polls program, which saw demands for rides double during early and election day voting for the 2022 general election. Ex. 43 (NGP Dep. 61:4-22, 63:25-64:20, 66:2-6, 120:16-23, 121:9-13, 122:17-20).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

914. As a result of these changes, Party at the Polls has been "whittled down almost entirely" and now only operates in a small number of precinct locations. Ex. 43 (NGP Dep. 61:14-16; 122:6-8; 124:10-22).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

915. 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. Ex. 43 (NGP Dep. 57:15-19).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

916. As part of this effort, NGP established its Voter Protection (“VoPro”) program. Ex. 43 (NGP Dep. 55:17-22, 57:20-58:2).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

917. To staff the VoPro program, NGP reassigned one full-time staff and around 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. Ex. 43 (NGP Dep. 57:4-19, 58:7-25, 59:22-60:2).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

918. NGP also spent additional resources to hire a director and a C-Suite officer to launch and manage VoPro. Ex. 43 (NGP Dep. 60:2-5, 60:17-61:3).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

919. NGP was forced to spend more money and staff time on training and recruiting volunteers for this program because prospective volunteers were increasingly worried that they would be exposed to legal liability under SB 202 for helping voters receive or cast their ballots. Ex. 43 (NGP Dep. 60:6-13).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

920. As a result, NGP curtailed its Poll Chaplains program from serving 40 precincts in 2018 and 120 precincts in 2020 to approximately a dozen in 2022, and the program is now limited to thanking and encouraging voters in line without distributing support items. Ex. 43 (NGP Dep. 58:4-6, 59:6-16).

**RESPONSE:** Objection. The evidence cited does not support the fact stated with regard to “120 precincts in 2020.” The deposition testimony cited refers to 100 precincts in 2020.

921. NGP also reconfigured its congregational organizing activities around absentee ballots by reallocating two staff members from existing faith programs to new efforts to educate congregational constituents about how to successfully vote under the new law. Ex. 43 (NGP Dep. 61:23-62:7).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

922. NGP does not have unlimited resources, and thus inevitably has to reallocate resources in response to the needs of voters after SB 202 was enacted. Ex. 43 (NGP Dep. 65:13-18).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

923. Plaintiff Black Voters Matter Fund (“BVMF”), which operates in nine states, was founded in 2016 to build power within marginalized, predominantly Black communities by engaging voters on issues of importance, increasing voter registration and turnout, and converting “nonvoters into voters.” Ex. 265 (Calhoun Decl. ¶ 2); Ex. 14 (BVMF Dep. 21:14-17, 29:21-25).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

924. BVMF communicates with the community it serves through a number of tools including text messaging, phone calls, emails, and public events such as concerts and town hall meetings. Ex. 14 (BVMF Dep. 42:12-18).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

925. BVMF also provides grants to smaller groups that have deep roots in the communities they serve, and most of BVMF’s events, like town halls, are hosted by those groups, which BVMF describes as its “partners.” Ex. 14 (BVMF Dep. 42:20-25); Ex. 265 (Calhoun Decl. ¶ 22).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

926. In response to SB 202, BVMF has had to divert “time, energy, and resources” away from its core mission of converting nonvoters to voters, and

toward assisting established voters navigate the increasingly complex voting process. Ex. 14 (BVMF Dep. 50:18-21).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it states a legal conclusion regarding the diversion of resources.

927. BVMF took 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. Ex. 14 (BVMF Dep. 82:9-23).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

928. BVMF also 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 towards 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. Ex. 14 (BVMF Dep. 42:12-18, 82:24-83:4).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

929. 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. Ex. 265 (Calhoun Decl. ¶ 35). BVMF was also forced to wind down its partner training programs on communications, fundraising, and voter outreach, and instead funneled those resources into trainings on 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 hungry or thirsty voters waiting in line. Ex. 14 (BVMF Dep. 50:12-21, 68:10-69:2; 72:22-73:11).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it conflicts with the testimony provided by the organization in its 30(b)(6) deposition. *Van T. Junkins & Assocs., Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657 (11th Cir. 1984).

930. The line relief ban also forced BVMF to abandon its practice of quietly handing out food and water to voters in line and instead spend additional personnel time and money on setting up large, attention-grabbing aid stations far from the polling lines that make food and water available to voters in long lines. Ex. 14 (BVMF Dep. 84:3-86:5).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

931. Plaintiff Rise, Inc. is a student-led nonprofit organization with a mission to fight for free higher education by eliminating tuition and fees at public colleges and universities, ending college student housing and food insecurity, and increasing voting access for college students. Ex. 286 (Hector 6/3/22 Decl. ¶ 4).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

932. Rise operates student-led advocacy campaigns, training programs, and volunteer networks across Georgia to further its mission. Ex. 44 (30(b)(6) Deposition of Rise Incorporated (Mary Hector) [ECF 734] (“Rise Dep.”) 37:1216); Ex. 286 (Hector 6/3/22 Decl. ¶ 4).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

933. Rise’s student organizers and volunteers engage in grassroots voter registration, education, 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. Ex. 286 (Hector 6/3/22 Decl. ¶ 6).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.



934. In response to SB 202, Rise abandoned several initiatives, including: (1) a fellowship for students attending historically Black colleges and universities. Ex. 44 (Rise Dep. 37:22-5, 59:15-19, 60:4-8); E Ex. 286 (Hector 6/3/22 Decl. ¶ 25); (2) advocacy on the issue of on-campus housing crises (including supporting Rise Fellows attending Spelman College who were engaged in protests for better student housing), food insecurity, and student debt issues, Ex. 44 (Rise Dep. 38:714; 60:21-61:8); Ex. 286 (Hector 6/3/22 Decl. ¶¶ 26-27); and (3) education of Georgia's lawmakers about scholarship programs that are critical for access to higher education in Georgia. Ex. 44 (Rise Dep. 59:21-60:8).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is not separately numbered.

935. Resources from these ceased efforts, and resources initially allocated to Rise's programming in Pennsylvania, New Mexico, and Arizona, were diverted to Georgia to support Rise's get-out-the-vote and student training programs to assist young voters in navigating SB 202's voting restrictions. Ex. 44 (Rise Dep. 37:25-38:5; 38:15-19; 38:23-39:24, 60:4-8, 124:3-24).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

936. Rise hosted seven “Black the Vote” training sessions in Georgia, each of which cost between \$10,000 and \$30,000, in response to SB 202, and between 2020 and 2022 Rise increased by four- or five-fold the number of paid fellows and canvassers responsible for assisting young voters in Georgia overcome the burdens imposed by SB 202. Ex. 44 (Rise Dep. 47:8-14, 127:18-128:2).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

937. Plaintiff Elbert Solomon’s health issues that make it difficult to stand in line for long periods of time without access to food or a restroom, and therefore Mr. Solomon prefers voting by absentee ballot. Ex. 70 (Solomon Dep. 24:7-13).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion. Additionally, under disability laws, voters are not “entitled to the accommodation of [their] choice, but only to a reasonable accommodation.” *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997). “[W]hen an individual already has ‘meaningful access’ to a benefit to which he or she is entitled, no additional accommodation, ‘reasonable’ or not, need be provided[.]” *Medina v. City of Cape Coral*, 72 F. Supp. 3d 1274, 1278 (M.D. Fla. 2014).

938. Mr. Solomon has had problems with mail being delayed, lost, or erroneously delivered, so he lacks trust in the mail as a reliable method of returning his ballot. Ex. 70 (Solomon Dep. 24:15-25:22).

**RESPONSE:** Undisputed that this was Mr. Solomon's testimony, but the period of time he was talking about was during the pandemic, when the mail system was under stress. Further, the point is immaterial, as voter preference does not determine statutory or constitutional standards. Under disability laws, voters are not "entitled to the accommodation of [their] choice, but only to a reasonable accommodation." *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997). "[W]hen an individual already has 'meaningful access' to a benefit to which he or she is entitled, no additional accommodation, 'reasonable' or not, need be provided[.]" *Medina v. City of Cape Coral*, 72 F. Supp. 3d 1274, 1278 (M.D. Fla. 2014).

939. Because of his age, health issues, and concerns about the mail, Mr. Solomon previously voted by absentee ballot using a drive-up drop box in front of the Spaulding County elections office. Ex. 70 (Solomon Dep. 21:22-22:15, 30:16-21, 31:9-15).

**RESPONSE:** Undisputed that this was Mr. Solomon's testimony, but immaterial, as voter preference does not determine statutory or constitutional standards. Under disability laws, voters are not "entitled to the accommodation of [their] choice, but only to a reasonable accommodation."

*Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997). “[W]hen an individual already has ‘meaningful access’ to a benefit to which he or she is entitled, no additional accommodation, ‘reasonable’ or not, need be provided[.]” *Medina v. City of Cape Coral*, 72 F. Supp. 3d 1274, 1278 (M.D. Fla. 2014). Further immaterial because there is no independent legal significance to drop boxes in light of the many alternative methods of voting available.

940. Changes to drop box accessibility in SB 202 meant Mr. Solomon could no longer just drive up to a drop box and deposit his ballot like he did in 2020, and as a result, Mr. Solomon was forced to switch to in-person voting. Ex. 70 (Solomon Dep. 31:9-24).

**RESPONSE:** Undisputed, but immaterial, as voter preference does not determine statutory or constitutional standards. Under disability laws, voters are not “entitled to the accommodation of [their] choice, but only to a reasonable accommodation.” *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997). “[W]hen an individual already has ‘meaningful access’ to a benefit to which he or she is entitled, no additional accommodation, ‘reasonable’ or not, need be provided[.]” *Medina v. City of Cape Coral*, 72 F. Supp. 3d 1274, 1278 (M.D. Fla. 2014). Further, in his testimony Mr. Solomon indicated that these changes did not prevent him from voting or make it substantially or meaningfully more difficult. “It hasn’t

restricted me,” he testified, “I just don’t like the process.” Def. Ex. 70 (Solomon Dep. 32:24-25 – 33:1). Further immaterial because there is no independent legal significance to drop boxes in light of the many alternative methods of voting available.

941. 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—a stark contrast to his previous experiences when he never had to wait longer than fifteen minutes to vote, Ex. 70 (Solomon Dep. 45:2-8).

**RESPONSE:** Undisputed, but immaterial, as voter preference does not determine statutory or constitutional standards. Under disability laws, voters are not “entitled to the accommodation of [their] choice, but only to a reasonable accommodation.” *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997). “[W]hen an individual already has ‘meaningful access’ to a benefit to which he or she is entitled, no additional accommodation, ‘reasonable’ or not, need be provided[.]” *Medina v. City of Cape Coral*, 72 F. Supp. 3d 1274, 1278 (M.D. Fla. 2014).

942. Plaintiff Fannie Marie Jackson 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.

Ex. 62 (Deposition of Fannie Marie Jackson Gibbs [ECF 744] (“Gibbs Dep.”) 19:15-18, 75:11-76:14).

**RESPONSE:** Undisputed, but immaterial, as voter preference does not determine statutory or constitutional standards. Under disability laws, voters are not “entitled to the accommodation of [their] choice, but only to a reasonable accommodation.” *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997). “[W]hen an individual already has ‘meaningful access’ to a benefit to which he or she is entitled, no additional accommodation, ‘reasonable’ or not, need be provided[.]” *Medina v. City of Cape Coral*, 72 F. Supp. 3d 1274, 1278 (M.D. Fla. 2014). Further, it is immaterial as there was no evidence that any voters with disabilities were prevented from voting absentee in 2022 due to the location and hours of the drop boxes.

943. Because of her condition, Ms. Gibbs voted by mail in the November 2020 and January 2021 runoff election and deposited her absentee ballot off in an outdoor, drive-up drop box during the June 2020 primary. Ex. 62 (Gibbs Dep. 29:2-13).

**RESPONSE:** Undisputed, but immaterial as the emergency pandemic voting rules did not create a new statutory or constitutional standard, as further discussed in the State Defendants’ briefing.

944. The drop box Ms. Gibbs used in 2020 was located outside and easily accessible by a car. Ex. 62 (Gibbs Dep. 31:4-9, 31:21-24).

**RESPONSE:** Undisputed, but immaterial as the emergency pandemic voting rules did not create a new statutory or constitutional standard, as further discussed in the State Defendants' briefing.

945. 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. Ex. 62 (Gibbs Dep. 29:14-30:15, 30:21-31:9).

**RESPONSE:** Undisputed, but immaterial, as voter preference does not determine statutory or constitutional standards. Under disability laws, voters are not "entitled to the accommodation of [their] choice, but only to a reasonable accommodation." *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997). "[W]hen an individual already has 'meaningful access' to a benefit to which he or she is entitled, no additional accommodation, 'reasonable' or not, need be provided[.]" *Medina v. City of Cape Coral*, 72 F. Supp. 3d 1274, 1278 (M.D. Fla. 2014). Further, it is immaterial as there was no evidence that any voters with disabilities were prevented from voting absentee in 2022 due to the location and hours of the

drop boxes. SOF ¶ 346; *see* Schur 75:16–25, 103:15–18 (Defs.’ Ex. UUU; Defs.’ Ex. X hereto).

946. Plaintiff Jauan Durbin (Mr./they) voted in the primary, general, and runoff elections in 2022. Ex. 53 (Deposition of Jauan Durbin [ECF 746] (“Durbin Dep.”) 17:5-7, 37:3-23).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

947. Mr. Durbin previously handed out food and water to voters waiting in line during the 2020 election cycle, but is no longer able to engage in the same types of voter support activities because of SB 202. Ex. 53 (Durbin Dep. 17:1618:19, 52:3-13).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

948. Mr. Durbin testified that their driver’s license was rejected when they went to vote in person as inadequate proof of voter identification after SB 202 was enacted. Ex. 53 (Durbin Dep. 34:2-22).

**RESPONSE:** State Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

949. These prohibitions under SB 202 have silenced Mr. Durbin from expressing messages of solidarity and encouragement that were critical to



supporting Georgians standing in long lines to vote in 2020. Ex. 273 (Durbin Decl. ¶¶ 4–6); Ex. 53 (Durbin Dep. 36:11-13).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as a legal conclusion.

950. Because of socioeconomic disparities in areas such as education, income, and residential mobility, among other measures, navigating administrative hurdles in the voting process will be more burdensome for Black voters, on average, than white voters. Ex. 85 (Burden Rep. 22, 25-26); Ex. 94 (Clark Rep. 13-14); Ex. 88 (Meredith Rep. ¶¶ 39-40).

**RESPONSE:** Objection. The fact does not comply with L.R. 56.1(B)(1) because it is stated as a legal conclusion. Additionally, this statement is speculation, rather than a statement of fact.

951. County election administrators need to tailor advance voting opportunities to the needs of their voters. Ex. 98 (Kennedy Rep. 29).

**RESPONSE:**

952. When testifying before the Legislature on legislation that became SB 202, election officials described the different needs of their counties and impacts of the legislation based on their respective counties' unique characteristics and demographics." Ex. 98 (Kennedy Rep. 29).

**RESPONSE:** Undisputed, but immaterial.

953. Georgia is the most restrictive state in the country regarding the legislative regulation of drop boxes and limits on counties' ability to manage drop boxes. Ex. 97 (Fraga Sur-Rebuttal Rep. ¶ 42 & Tbl. 2); *see also* Ex. 83 (Grimmer Dep. 121-15-122:11 (testifying he has no basis to disagree with Dr. Fraga's comparison of state drop box regulations)).

**RESPONSE:** The statements in this paragraph are legal observations and conclusions for which no factual response is required.

954. AAPI voter turnout decreased by 22.8 percentage points between the general elections directly before and after SB 202, compared to a 14.1 percentage point decrease among white voters. Ex. 96 (Fraga Rep. Tbl. 1).

**RESPONSE:** Disputed, but immaterial. First, this statement takes the 2020 election as the proper baseline for turnout, but that is improper because it compares a presidential election year to a midterm election. *See* Grimmer Rep. ¶ 28 (Defs.' Ex. DDDD) ("Because the first statewide election after SB 202 is a midterm election, I will first focus on turnout in midterm elections.); *see also* Shaw 2/24 Rep. ¶ 13 (Defs.' Ex. LLLL) ("But 2020 and (especially) 2018 are high-water marks for turnout in Georgia[.]"). Second, turnout in both the 2022 general election and 2022 general runoff election was very high, with the turnout rate for the 2022 midterm approximately 81% higher than the turnout rate for the 2014 midterm, which is larger than the increase of the 2020 general election turnout rate over the 2016 general election turnout rate. Grimmer

Rep. ¶¶ 27–28 (Defs.’ Ex. DDDD). This change was also consistent with increases in turnout among all racial groups from 2014 to 2022. *Id.* ¶ 32 (“Across all racial groups, I find that the turnout rate has increased relative to the 2014 election[.]”).

Third, the turnout gap—using Plaintiffs preferred figures—between white voters and other ethnic groups did not significantly vary from 2020 to 2022. The gap between white and AAPI voters changed from 5.1% to 14.9% (a change of 9.8%), but this was a *narrowing* of the pre-2020 gap for midterm election turnout, which was 29.8% in 2018. Fraga Rep. tbl. 1 (Defs.’ Ex. BBBB). And turnout by AAPI voters “increased 24.9% percentage points from the 2014 to 2022 general election[.]” Grimmer Rep. ¶ 35 (Defs.’ Ex. DDDD).

Fourth, “[AAPI] voters saw their highest midterm turnout rate in the 2022 midterm election,” specifically “a 3.9 percentage point increase relative to 2018[.]” *Id.* ¶ 32. Indeed, after SB 202, voter participation, including the use of absentee-by-mail voting of Black, white, AAPI, Latino, Native American, and all voters remained near record high especially for a midterm election. *Id.* ¶¶ 27–28, 31–35 & tbl. 2 (turnout rates), 41–42, 44–45, 58–64; Shaw 2/24 Rep. ¶¶ 20–22 (Defs.’ Ex. LLLL).

955. AAPI voter turnout decreased by 18.6 percentage points between the runoff elections directly before and after SB 202, compared to a 12.7 percentage point decrease among white voters. Ex. 96 (Fraga Rep. Tbl. 1).

**RESPONSE:** Disputed, but immaterial. First, this statement takes the 2020 election as the proper baseline for turnout, but that is improper because it compares a presidential election year to a midterm election. *See* Grimmer Rep. ¶ 28 (Defs.’ Ex. DDDD) (“Because the first statewide election after SB 202 is a midterm election, I will first focus on turnout in midterm elections.”); *see also* Shaw 2/24 Rep. ¶ 13 (Defs.’ Ex. LLLL) (“But 2020 and (especially) 2018 are high-water marks for turnout in Georgia[.]”). Second, turnout in both the 2022 general election and 2022 general runoff election was very high, with the turnout rate for the 2022 midterm approximately 81% higher than the turnout rate for the 2014 midterm, which is larger than the increase of the 2020 general election turnout rate over the 2016 general election turnout rate. Grimmer Rep. ¶¶ 27–28 (Defs.’ Ex. DDDD). This change was also consistent with increases in turnout among all racial groups from 2014 to 2022. *Id.* ¶ 32 (“Across all racial groups, I find that the turnout rate has increased relative to the 2014 election[.]”).

Third, the turnout gap—using Plaintiffs preferred figures—between white voters and other ethnic groups did not significantly vary from 2020 to 2022. The gap between white and AAPI voters changed from 5.1% to 14.9% (a change of 9.8%), but this was a *narrowing* of the pre-2020 gap for midterm election turnout, which was 29.8% in 2018. Fraga Rep. 15 tbl. 1 (Defs.’ Ex. BBBB). And in the runoff election that gap actually further narrowed to 14.5%.

*Id.* And turnout by AAPI voters “increased 24.9% percentage points from the 2014 to 2022 general election[.]” Grimmer Rep. ¶ 35 (Defs.’ Ex. DDDD).

Fourth, the percentage decrease among AAPI and white voters from the 2022 general election to the runoff elections were very similar. White voter turnout underwent a percentage decrease of 11.57% and AAPI voter turnout experienced a 14.77% percentage decrease.<sup>11</sup> Fraga Rep. 15 tbl. 1 (Defs.’ Ex. BBBB). This difference of 3.20% is statistically insignificant. *See League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

956. While AAPI voters’ use of absentee ballots declined by 30.6 percentage points between the general elections directly before and after SB 202, white voters’ rates declined by only 18.3 percentage points. Ex. 96 (Fraga Rep. Tbl. 2).

**RESPONSE:** Disputed. *See supra*, Resp. ¶ 41. Plaintiffs’ proffered numbers are inaccurate because they do not show the percentage decrease of AAPI and white voters’ use of absentee-by-mail voting and they ignore that the numbers from 2020 were unique due to the Covid-19 pandemic. Grimmer Rep.

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<sup>11</sup> *See* Will Kenton, *How to Calculate the Percentage Change*, Investopedia (Jan. 23, 2024), <https://www.investopedia.com/terms/p/percentage-change.asp>.

¶ 37 & n.8 (citing Stanford-MIT Healthy Elections Project, *The Virus and the Vote: Administering the 2020 Election in a Pandemic* (Jul. 1, 2021), <https://tinyurl.com/2p98hn69>), ¶ 39 (noting that “the coronavirus was salient and disrupting many Americans’ routines”) (Defs.’ Ex. DDDD). Plaintiffs’ claim that there was an 18.9% drop in absentee voting for white voters compared to 30.5% for AAPI voters is just “statistical manipulation.” *Brnovich, v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021). The correct comparison is not 18.9% to 30.5% but to the respective *percentage decrease*, not *the difference between* the pre-SB 202 and post-SB 202 values.<sup>12</sup> When this is done, it reveals a 77.07% drop-off for AAPI voters and an 76.57% drop-off for white voters. Fraga Rep. ¶ 23 tbl. 2 (Defs.’ Ex. BBBB); *accord* Grimmer Rep. ¶ 64 (Defs.’ Ex. DDDD) (finding similar declines of 76.6% for whites and 76.8% for AAPIs). Thus, there was only a .2%-.5% difference between the decline among AAPI and white voters. Fraga Rep. ¶ 23 tbl. 2 (Defs.’ Ex. BBBB). And Black voters had the *smallest* percent decrease at 74.6%. *Id.* In fact, While AAPI and Latino turnout following SB 202 declined slightly more than white turnout, Native American turnout actually increased after SB 202. *See* Grimmer Rep. ¶¶ 31–35 & tbl. 2 (Defs.’ Ex. DDDD).

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<sup>12</sup> *See* Will Kenton, *How to Calculate the Percentage Change*, Investopedia (Jan. 23, 2024), <https://www.investopedia.com/terms/p/percentage-change.asp>.

And all racial groups had an increase in turnout from the 2014 to 2022 general elections, with some racial groups like AAPIs and Native Americans outpacing the increase in white turnout from that period. *Id.* ¶ 35. Thus, when each group’s usage of absentee-by-mail voting from the 2020 general election to the 2022 general election is calculated, it shows similar declines. *Id.* ¶ 64. The difference in decline then for each ethnic group was not statistically significant. *See League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

957. While AAPI voters’ use of absentee ballots declined by 28.7 percentage points between the runoff elections immediately before and after SB 202, white voters’ rates declined by only 16.5 percentage points. Ex. 96 (Fraga Rep. Tbl. 2).

**RESPONSE:** Disputed because these claims are out of context. Plaintiffs’ own expert’s data shows that, consistent with pre-SB 202 trends, a greater share of AAPI voters voted absentee by mail than any other racial or ethnic group in every election post-SB 202. *See* Fraga Rep. 23 tbl. 2 (Defs.’ Ex. BBBB); *accord* Grimmer Rep. 50 fig. 2 (Defs.’ Ex. DDDD); *see also id.* ¶ 64 (“Compared to the 2020 election, I find that the change in mail-in absentee ballot usage among [AAPI] voters is similar to the change in mail-in absentee ballot usage among white voters and the change overall.”). Indeed, Dr. Fraga’s

own data shows that a greater percentage of AAPI voters submitted absentee ballot applications and vote absentee by mail than white voters both *before* (2020 general election) and *after* SB 202 (2022 general election and runoff). Fraga Rep. 23 tbl. 2, 28 tbl. 3 (Defs.' Ex. BBBB). And, as explained previously in Resp. ¶¶ 41–44, none of these changes between white and AAPI voters' rates of requesting and voting absentee applications is significant. And Plaintiffs omit that, according to their own expert, AAPI voters still voted absentee by mail at a greater rate than whites, and any other racial or ethnic group, in the 2022 runoff election. *See* Fraga Rep. 23 tbl. 2 (Defs.' Ex. BBBB); *accord* Grimmer Rep. 50 fig. 2 (Defs.' Ex. DDDD).

958. In the general and runoff elections prior to SB 202, 34.8% and 22.9%, respectively, of AAPI registrants applied for absentee-by-mail ballots. In the general and runoff elections after SB 202, only 4.3% and 2.8%, respectively, of AAPI voters requested absentee ballots, reflecting differences of 30.5 and 20.1 percentage points. Ex. 96 (Fraga Rep. Tbl. 3).

**RESPONSE:** Disputed because these claims are out of context and misleading. AAPI voters' use of absentee-by-mail ballots shrank at a similar rate post-SB 202 to that of white voters. Grimmer Rep. ¶ 64 (Defs.' Ex. DDDD) ("The decrease in mail-in absentee ballot usage among white voters was 76.6%, while the decrease in mail-in absentee ballot usage among AAPI voters was 76.8%."). And, as noted *supra*, Resp. ¶ 42, there was no significant difference



in the decline in absentee ballot applications between white and AAPI voters following SB 202. And, as Dr. Grimmer has shown, AAPI voters in Georgia have consistently—since 2016—cast the largest share of absentee-by-mail ballots. Grimmer Rep. 50 fig. 2 (Defs.’ Ex. DDDD). Indeed, Dr. Fraga’s own data shows that a greater percentage of AAPI voters submitted absentee ballot applications and voted absentee by mail than white voters both *before* (2020 general election) and *after* SB 202 (2022 general election). Fraga. Rep. 23 tbl. 2, 28 tbl. 3 (Defs.’ Ex. BBBB).

959. In the general and runoff elections prior to SB 202, 22.5% and 17.0%, respectively, of white registrants applied for absentee-by-mail ballots. In the general and runoff elections after SB 202, 3.6% and 3.2% of white registrants applied for absentee ballots, reflecting differences of 11.6 and 6.3 percentage points between the absentee ballot request decline rate for AAPI and white voters. Ex. 96 (Fraga Rep. Tbl. 3).

**RESPONSE:** Disputed because these claims are out of context and misleading. The figures from the 2020 election are not reliable metrics because of the changes in behavior caused by the COVID-19 pandemic. Grimmer Rep. ¶ 37 & n.8 (citing Stanford-MIT Healthy Elections Project, *The Virus and the Vote: Administering the 2020 Election in a Pandemic* (Jul. 1, 2021), <https://tinyurl.com/2p98hn69>), ¶ 39 (noting that “the coronavirus was salient and disrupting many Americans’ routines”) (Defs.’ Ex. DDDD). And Plaintiffs’

own expert's data do not support this statement. See Fraga Rep. 28 tbl. 3 (Defs.' Ex. BBBB) (reproduced below).

	<i>Pre-SB202</i>			<i>Post-SB202</i>	
	Nov 2018	Nov 2020	Jan 2021	Nov 2022	Dec 2022
<b>Total</b>	4.1%	22.8%	17.3%	3.5%	2.9%
<b>White</b>	3.3%	22.5%	17.0%	3.6%	3.2%
<b>Black</b>	5.5%	24.3%	19.1%	3.7%	2.8%
<b>Hispanic</b>	4.2%	18.2%	11.2%	1.6%	1.0%
<b>Asian/PI</b>	7.6%	34.8%	22.9%	4.3%	2.8%

Using the data provided in this chart, the *percentage decrease* in white voters applying for absentee ballots from the 2020 to 2022 general election was 84% and for AAPI voters it was 87.64% (a difference of 3.64%). *Id.* Similarly, from the January 2021 runoff to the December 2022 runoff, the percentage decrease for AAPI voters was 87.77% and for white voters was 81.18% (a 6.59% difference). And such small differences are insignificant. See *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh'g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). Notably, Dr. Fraga's report shows that AAPI voters post-SB 202 applied for absentee ballots at a higher rate than white voters and all other ethnicities in the general election with a slight dip in the runoff. Fraga Rep. 28 tbl. 3 (Defs.' Ex. BBBB). And, even more

significantly, Plaintiffs' expert's data shows that consistent with pre-SB 202 trends, a greater share of AAPI voters *voted* absentee-by-mail than any other ethnic group in every election post-SB 202. *Id.* at 23 tbl. 2; *accord* Grimmer Rep. 50 fig. 2 (Defs.' Ex. DDDD); *see also id.* ¶ 64 ("Compared to the 2020 election, I find that the change in mail-in absentee ballot usage among [AAPI] voters is similar to the change in mail-in absentee ballot usage among white voters and the change overall.").

960. Gregory Edwards, the District Attorney for Dougherty County, has testified that no official or entity can prevent him from bringing a prosecution for a violation of the line relief ban under his authority. Ex. 54 (Deposition of Gregory W. Edwards [ECF 754] ("G. Edwards Dep.") 43:15-22; 50:19-51:3; 51:15-19; 46:16-25).

**RESPONSE:** Undisputed that this statement was made. However, this paragraph contains a legal conclusion, rather than a statement of fact.

961. Similarly, Keith Gammage, Solicitor General of Fulton County, has also testified that he "cannot categorically state that [he]'ll never bring a prosecution for the offenses contained in the [Food and Water] statute." Ex. 58 (Deposition of Keith E. Gammage [ECF 801] ("Gammage Dep.") 61:7-21).

**RESPONSE:** Undisputed, but immaterial.

962. Former Secretary of State Cox expressed her concern that a bill like SB 202 that required driver's license identification would impose an undue

burden on many Georgia voters, especially the poor and elderly who are less likely to own or drive a car and therefore, may lack a driver's license. Ex. 105 (Minnite Rep. 25).

**RESPONSE:** Undisputed that this statement was made, but immaterial.

963. An analysis of Dr. Grimmer's code and data related to the 2020 Cooperative Elections Study (CES), which he used in both of his reports, demonstrates that Black voters in 2020 were 42% more likely to use drop boxes than white voters in 2020. The difference is approximately 6 percentage points (20.2% for Black voters versus 14.2% for white voters statewide). Ex. 341 (Fraga Supp. Decl. ¶¶ 3, 5).

**RESPONSE:** Disputed. See Updated Grimmer Rep. 6–21 (Defs.' Ex. EEEE [Doc. 756–24]). Immaterial because there is no independent significance to drop boxes in light of the many alternative methods of voting available.

964. Dr. Grimmer's findings that CES Study showed that black voters statewide in 2020 and 2022 used drop boxes less frequently or no more frequently than white voters are based on errors and not statistically significant. Ex. 341 (Fraga Supp. Decl. ¶¶ 6-9).

**RESPONSE:** Disputed. See Updated Grimmer Rep. 6–21 (Defs.' Ex. EEEE [Doc. 756–24]).

965. Moreover, Dr. Grimmer’s testimony at the September 22, 2023 Preliminary Injunction Hearing, *see* Ex. 252 (9/22/23 Prelim. Inj. Hr’g Tr. 233:20234:14), does not support the conclusion that white voters used drop boxes more than Black voters in 2020 because it was limited to a comparison between white and Black mail-in voters, not all voters, which produces fundamentally flawed assessments of racial differences in drop box use. Ex. 341 (Fraga Supp. Decl. ¶¶ 1216).

**RESPONSE:** Disputed for the reasons explained in Updated Grimmer Rep. 6–21 (Defs.’ Ex. EEEE [Doc. 756–24]).

966. Dr. Grimmer’s calculations show that the Black and white voter turnout gap increased from 9.9 percentage points in 2020 to 12 percentage points in 2022, Hispanic and white voter turnout gap increased from 28.8 percentage points in 2020 to 29.6 CVAP or 31.4 CVAP trend percentage points in 2022, and AAPI and white voter turnout gap increased from 7.2 percentage points to 16 CVAP or 18.4 CVAP trend percentage points. Ex. 113 (Grimmer Rep. Tbl. 2).

**RESPONSE:** Disputed because these claims are out of context and also immaterial. First, this statement takes the 2020 election as the proper baseline for turnout, but that is improper because it compares a presidential election year to a midterm election. *See* Grimmer Rep. ¶ 28 (Defs.’ Ex. DDDD) (“Because the first statewide election after SB 202 is a midterm election, I will

first focus on turnout in midterm elections.); *see also* Shaw 2/24 Rep. ¶ 13 (Defs.’ Ex. LLLL) (“But 2020 and (especially) 2018 are high-water marks for turnout in Georgia[.]”). Second, turnout in both the 2022 general election and 2022 general runoff election was very high, with the turnout rate for the 2022 midterm approximately 81% higher than the turnout rate for the 2014 midterm, which is larger than the increase of the 2020 general election turnout rate over the 2016 general election turnout rate. Grimmer Rep. ¶¶ 27–28 (Defs.’ Ex. DDDD). This change was also consistent with increases in turnout among all racial groups from 2014 to 2022. *Id.* ¶ 32 (“Across all racial groups, I find that the turnout rate has increased relative to the 2014 election[.]”).

Third, the turnout gap between white voters and other ethnic groups did not significantly vary from 2020 to 2022. The gap between white and Black voters changed from 9.9% (2020) to 12.0% (2022) (2.1% difference using CVAP figures). *See id.* at 50 tbl. 2. Likewise, the gap in turnout between white and Hispanic voters changed from 26.8% (2020) to 29.6% (2022) (0.8% difference using CVAP figures or 2.6% using CVAP trend). *Id.*; *see League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). Finally, the gap between white and AAPI voters changed from 7.2% to 16% (a change of 8.8%), but this was a *narrowing* of the pre-2020 gap for midterm election turnout, which was 19.6%

in 2018. Grimmer Rep. 50 tbl. 2 (Defs.’ Ex. DDDD); *see also id.* ¶ 64 (“Compared to the 2020 election, I find that the change in mail-in absentee ballot usage among [AAPI] voters is similar to the change in mail-in absentee ballot usage among white voters and the change overall.”). And turnout by AAPI voters “increased 24.9% percentage points from the 2014 to 2022 general election[.]” *Id.* ¶ 35.

967. Prior to the enactment of SB 202 in 2021, Georgia’s Latino voters were not only increasing in numbers, but their political participation was increasing. For example, before the enactment of SB 202, the Latino voter registration rate had steadily increased in Georgia, rising from 164,784 in 2016 to 274,524 in 2020, with the addition of 109,740 registered voters, representing an almost 67% increase in Latino registered voters just in the four years preceding the enactment of SB 202 in 2021. Ex. 85 (Burden Rep. 8-9, Tbl. 3).

**RESPONSE:** Undisputed, but immaterial.

968. Voter turnout rates for Latino voters in Georgia also increased by almost 16.7 percentage points between the November 2018 and the November 2020 general elections, growing from 25.5 percentage points in 2018 to 42.2 percentage points in the 2020, an increase of 65%. Ex. 96 (Fraga Rep. ¶¶ 36-37, Tbl. 1). Four metro-Atlanta counties (Fulton, Gwinnett, Cobb and DeKalb) accounted for more than 40 percent of all Latino votes cast statewide in 2020. Ex. 95 (Cobb Rep. 30).

**RESPONSE:** Undisputed, but immaterial.

969. However, Latino voter turnout substantially declined in the first Georgia statewide elections conducted following the enactment of SB 202. The Latino voter turnout rate in the November 2020 general election dropped to 26.2 percentage points in the November 2022 general election—a decrease of almost 38 percent. In comparison, white turnout decreased only 18% during this period. Latino turnout also dropped from 32.7 percentage points in the January 2021 runoff to 21.9 percentage points in the December 2022 runoff, following the implementation of SB 202, representing a turnout decline for Latino voters of 33%, compared to a white decrease under 20%. Ex. 96 (Fraga Rep. ¶¶ 35-47, Tbl. 1).

**RESPONSE:** Disputed because misleading and out of context. First, this statement takes the 2020 election as the proper baseline for turnout, but that is improper because it compares a presidential election year to a midterm election. *See* Grimmer Rep. ¶ 28 (Defs.’ Ex. DDDD) (“Because the first statewide election after SB 202 is a midterm election, I will first focus on turnout in midterm elections.”); *see also* Shaw 2/24 Rep. ¶ 13 (Defs.’ Ex. LLLL) (“But 2020 and (especially) 2018 are high-water marks for turnout in Georgia[.]”). Second, turnout in both the 2022 general election and 2022 general runoff election was very high, with the turnout rate for the 2022 midterm approximately 81% higher than the turnout rate for the 2014



midterm, which is larger than the increase of the 2020 general election turnout rate over the 2016 general election turnout rate. Grimmer Rep. ¶¶ 27–28 (Defs.’ Ex. DDDD). This change was also consistent with increases in turnout among all racial groups from 2014 to 2022. *Id.* ¶ 32 (“Across all racial groups, I find that the turnout rate has increased relative to the 2014 election[.]”). And in the 2022 midterm specifically, “Hispanic turnout was 24.6%, a 14.4 percentage point increase over the turnout in the 2014 midterm election.” *Id.* ¶ 33.

Third, using Plaintiffs’ own expert’s data the turnout gap pre- and post-SB 202 between white and Latino voters did not change significantly. *See* Fraga Rep. 15 tbl. 1 (Defs.’ Ex. BBBB). In the November 2020 election there was a 27% turnout gap between white and Hispanic voters and in the November 2022 election that turnout gap was 30% (a change of 3%). *Id.*; *see League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). And in the 2021 runoff election there was a turnout gap of 29.1% and in the 2022 runoff the gap actually *decreased* to 27.8% (a change of 1.3%). Fraga Rep. 15 tbl. 1 (Defs.’ Ex. BBBB).

970. The turnout gap between white and Latino voters in the first post-SB 202 statewide general election in November 2022 was 30 percentage points

(56.2% turnout for white voters versus 26.2% turnout for Latino voters). Ex. 96 (Fraga Rep. ¶¶ 35-47, Tbl. 1). The turnout gap between white and Latino voters in the December 2022 runoff was 27.8 percentage points. *Id.*

**RESPONSE:** Disputed because misleading and out of context. *See supra*, Resp. ¶ 969.

971. Latino voter participation in absentee-by-mail voting in the November 2020 general election was 23.2% and 20.4% in the January 2021 runoff before the implementation of SB 202. Ex. 96 (Fraga Rep. ¶¶ 55-62, Tbl. 2). Those rates dropped off precipitously for Latino voters after the implementation of SB 202 and its onerous absentee ballot application and ballot return changes. In the November 2022 midterm election and December 2022 midterm runoff, only 4.4% of and 2.7%, respectively, of absentee-by-mail ballots were successfully cast by Latino voters, representing a decrease of 81% in the Latino absentee-by-mail votes cast in the November 2022 general election. Ex. 96 (Fraga Rep. ¶¶ 55-62, Tbl. 2).

**RESPONSE:** Disputed, but immaterial. There is no context for what is a “precipitous[ ]” drop off. Plaintiffs ignore that the numbers from 2020 were unique due to the Covid-19 pandemic. Grimmer Rep. ¶ 37 & n.8 (citing Stanford-MIT Healthy Elections Project, *The Virus and the Vote: Administering the 2020 Election in a Pandemic* (July 1, 2021), <https://tinyurl.com/2p98hn69>), ¶ 39 (noting that “the coronavirus was salient

and disrupting many Americans' routines") (Defs.' Ex. DDDD). Plaintiffs also ignore that "[s]elf-identified Hispanic voters cast the largest-share of their votes on Election Day compared to other racial groups." Grimmer Rep. ¶ 61; *see also id.* at 46 fig. 1 (reproduced below). The 2022 election thus represented a return to the norm.

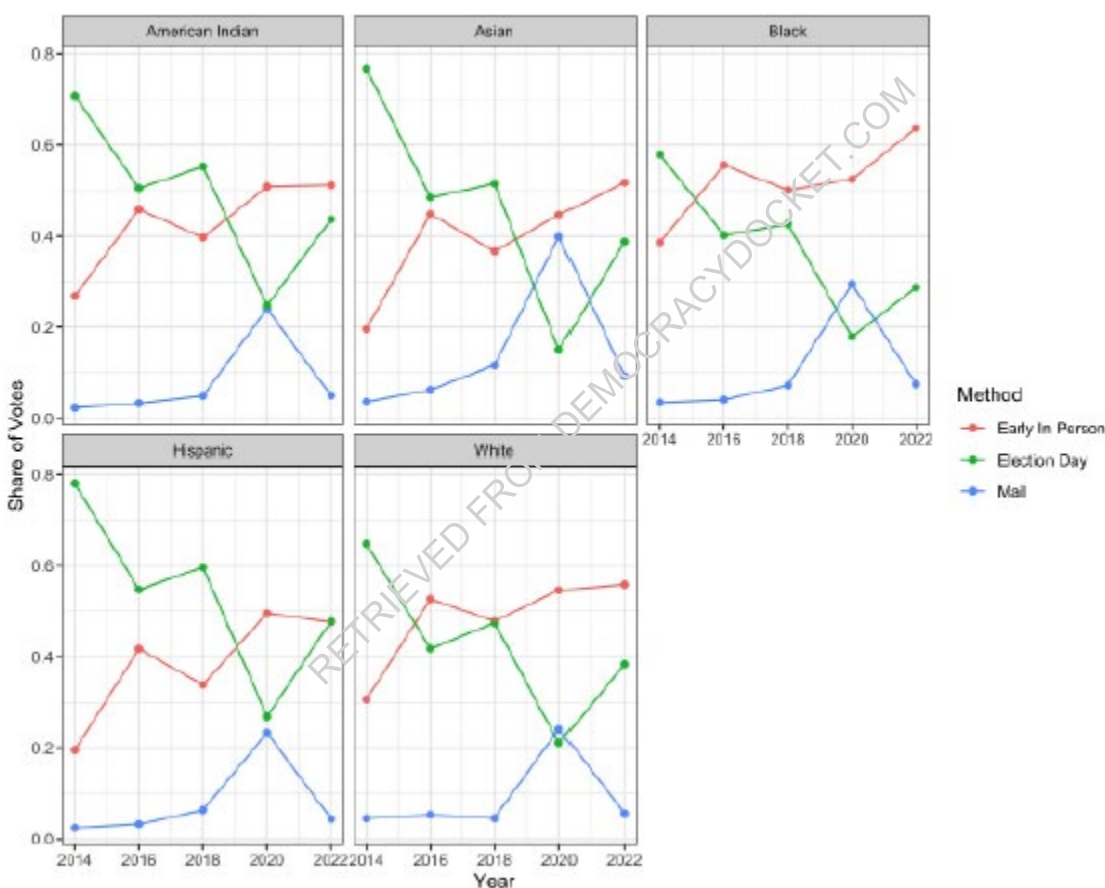


Figure 1: Share of votes cast by method for self-reported racial groups.

Plaintiffs also provide no comparison to assess the decline in Latino participation in absentee-by-mail voting. Using their own expert's data those declines are statistically insignificant when compared to the decline in white

voters voting absentee-by-mail. Fraga Rep. 23 tbl. 2 (Defs.' Ex. BBBB). The percent decrease in white voters voting absentee-by-mail from the 2020 to 2022 general election was 76.57% and for Latino voters it was 81.03 (a difference of 4.46%). *Id.*; see *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh'g en banc denied*, 81 F.4th 1328 (11th Cir. 2023). And as noted, *supra*, Resp. ¶ 969, the white-Latino turnout gap did not change significantly from the 2020 to 2022 general election and actually *declined* from the 2021 runoff to the 2022 runoff.

972. By comparison, 23.9% and 21.7% of the absentee-by-mail ballots cast by White voters in the November 2020 general election and January 2021 runoff, respectively, were successfully cast by white voters. In the November 2022 general election and December 2022 runoff, 5.6% and 5.2% of absentee ballots were successfully cast by white voters, representing decreases of almost 77% and 76% for white voters post-SB 202 as compared to decreases of 81% and 87%, respectively, for Latino voters in those post-SB 202 elections. Ex. 96 (Fraga Rep. ¶¶ 55-62, Tbl. 2).

**RESPONSE:** Disputed because misleading and out of context. See *supra*, Resp. ¶ 971,

973. Georgia's Latino voters were also consistently more likely to have their absentee-by-mail applications rejected as arriving “too late” in elections

conducted after the implementation of SB 202 relative to White Georgia voters. Ex. 96 (Fraga Rep. ¶¶ 93-103, Tbl. 7).

**RESPONSE:** Disputed because the suggestion that Latino voters are “consistently more likely to have their absentee-by-mail application rejected as arriving ‘too late’ in elections” is an inaccurate interpretation of the data. *See League of Women Voters*, 81 F.4th at 1334 (“The district judge’s factual findings were clearly erroneous because they relied on fatally flawed statistical analysis[.]”); *see also Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2345 (2021) (“This is precisely the sort of statistical manipulation that Judge Easterbrook rightly criticized, namely,  $1.0 \div 0.5 = 2.$ ”).

In fact rejections due to absentee-by-mail ballots arriving after election day are exceedingly rare constituting .84% of all absentee-by-mail ballots case. *See* Grimmer Rep. ¶¶ 100-01 & tbl. 17 (Defs.’ Ex. DDDD) (reproduced below).

Race	2018	2020	2022
American Indian	0.029	0.005	0.029
Asian	0.020	0.002	0.023
Black	0.014	0.002	0.007
Hispanic	0.017	0.003	0.015
White	0.013	0.002	0.008
Overall	0.016	0.002	0.0084

Table 17: Share of mail in ballots rejected due to arriving after Election Day, for the 2018, 2020, and 2022 statewide general elections.

The rejection rate in 2022 was exceedingly rare at .84%. *Id.* ¶ 101. And the gap between white and Latino voters is (0.7%). This is not statistically significant. *See League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66

F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh’g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

974. Post-SB 202, Latino voters experienced rejection rates due to their absentee ballot applications arriving “too late” of 32.1% in the November 2022 general election and 36.8% in the December 2022 runoff. White voters, on the other hand, experienced rejection rates of 24.2% and 26.7% in those elections due to their applications arriving “too late,” a 7.9-percentage point difference between rejections for the same reason of applications submitted by Latino voters in the November 2022 general election and a 10-percentage point difference in the December 2022 runoff. Ex. 96 (Fraga Rep. ¶¶ 93-103, Tbl. 7).

**RESPONSE:** Disputed because these figures are an inaccurate interpretation of the data. *See supra*, Resp. ¶ 973.

975. Georgia’s Latino voters were also more likely to experience a decrease in the percentage of drop boxes within their County of voter registration than white voters after the implementation of SB 202, with Latino voters experiencing a decrease in the percentage of drop boxes of 67.9% within the County of their voter registration in November 2022 compared to a decrease of 53.7% for white Georgia voters, a 14.2-percentage point difference. Ex. 96 (Fraga Rep. ¶¶ 136-153, Table 15).

**RESPONSE:** Disputed, because before SB 202, there was no nonemergency authority for drop boxes in Georgia. SB 202 started from a

baseline of zero drop boxes and added permanent authority for a substantial number of drop boxes equitably distributed regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Immaterial because most drop box voters used a small number of the available boxes—in all but one county, a smaller number than is permitted by SB 202. Grimmer Rep. ¶¶ 14, 132–36 (Defs.’ Ex. DDDD). Further immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting. The number of drop boxes used to decrease exposure to pathogens during the pandemic emergency did not create a new statutory or constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular.

976. Georgia’s Latino voters also faced higher increases in the distances to absentee ballot drop boxes relative to White Georgia voters in the aftermath of SB 202’s restrictions on the number and availability of drop boxes. Ex. 96 (Fraga Rep. ¶¶ 154-161, Tbls. 15-18). For example, post-SB 202, Latino registered voters suffered a 15.5% decline in having a drop box located within 4.8 miles of their homes in the November 2022 election. Ex. 96 (Fraga Rep. ¶¶ 158-160, Tbl. 16). White voters, however, experienced a 12.4% decline. The difference is even greater when voters had a new drop box post-SB 202, with the percentage of Hispanic voters having a new drop box within 4.8 miles of

their homes dropping by 11.6%, whereas White voters had a slight increase of 0.03% of access to a new drop box within 4.8 miles of their homes. Ex. 96 (Fraga Rep. ¶¶161-160, Tbl. 17).

**RESPONSE:** Disputed, because before SB 202, there was no nonemergency authority for drop boxes in Georgia. SB 202 started from a baseline of zero drop boxes and added permanent authority for a substantial number of drop boxes equitably distributed regardless of emergency conditions. All voters saw an increase in the number of drop boxes permanently available for their county. Undisputed that some voters had to travel further to a drop box in 2022 than in 2020, disputed as to others, including the many who had access to a drop box for the first time after SB 202. Immaterial because most drop box voters used a small number of the available boxes—in all but one county, a smaller number than is permitted by SB 202. Grimmer Rep. ¶¶ 14, 132–36 (Defs.’ Ex. DDDD). In addition, though there were quibbles about the exact proportions, meaningfully undisputed evidence showed that most voters who used drop boxes did not use the drop box closest to their residence. *Id.* ¶¶ 15, 137–54. Further immaterial because drop boxes have no independent legal significance as an alternate means of absentee voting. The number of drop boxes used to decrease exposure to pathogens during the pandemic emergency did not create a new statutory or



constitutional baseline, particularly in light of ample alternative means of voting and of absentee voting in particular.

977. Georgia's voters of color, including Latino voters, are more likely to be adversely impacted by the change in the period for runoff elections which also eliminated any opportunity to register to vote between general and runoff elections than Georgia's white voters. Ex. 96 (Fraga Rep. ¶¶ 162-173, Tbls. 19-20).

**RESPONSE:** This paragraph contains a legal conclusion, rather than a statement of fact.

978. In sum, over 1.6 million registered Georgia voters faced increased barriers to the ballot box due to SB 202, with Georgia's Latino voters and other voters of color bearing those barriers at higher percentages relative to Georgia's white voter populations. Ex. 96 (Fraga Rep. ¶¶ 174-182, Tbls 21).

**RESPONSE:** Objection. This paragraph does not comply with L.R. 56.1(B)(1) because it contains a legal conclusion, rather than a statement of fact, is speculative and relies on incomplete underlying data and is not separately numbered. Further, the evidence cited does not support the fact because the calculation of barriers is not based on actual voter experience but based on calculations regarding distance unrelated to voter behavior.

The actual data from the 2022 election cycle also contradicts Plaintiffs' statement. Turnout in both the 2022 general election and 2022 general runoff

election was very high, with the turnout rate for the 2022 midterm approximately 81% higher than the turnout rate for the 2014 midterm, which is larger than the increase of the 2020 general election turnout rate over the 2016 general election turnout rate. Grimmer Rep. ¶¶ 27–28 (Defs.’ Ex. DDDD). This change was also consistent with increases in turnout among all racial groups from 2014 to 2022. *Id.* ¶ 32 (“Across all racial groups, I find that the turnout rate has increased relative to the 2014 election[.]”).

Additionally, AAPI, Latino, Black, Native American, and white voters continued to vote at absentee-by-mail levels consistent with prior elections, and all but AAPI voters (and then only by a small amount) utilized absentee-by-mail voting at a higher level than they did in 2018, the last pre-pandemic election. Grimmer Rep ¶¶ 58–62 (Defs.’ Ex. DDDD). Even so, “[AAPI] voters saw their highest midterm turnout rate in the 2022 midterm election,” specifically “a 3.9 percentage point increase relative to 2018[.]” *Id.* ¶ 32. Indeed, after SB 202, voter participation, including the use of absentee-by-mail voting of Black, white, AAPI, Latino, Native American, and all voters remained near record high especially for a midterm election. *Id.* ¶¶ 27–28, 31–35 & tbl. 2 (turnout rates), 41–42, 44–45, 58–64; Shaw 2/24 Rep. ¶¶ 20–22 (Defs.’ Ex. LLLL).

979. In their eight motions for summary judgment, including their motion seeking summary judgment on discriminatory intent under Section 2

of the Voting Rights Act, Defendants make no references to, nor efforts to rebut, the report of Plaintiffs' expert, Dr. James Cobb, a prominent Georgia historian, whose report addresses Georgia's history of discrimination in voting, including discrimination against Latino and Native American voters, and related issues. Ex. 95 (Cobb Rep. 1-76).

**RESPONSE:** This paragraph contains a legal conclusion, rather than a statement of fact.

980. Black voters' use of absentee-by-mail voting out-paced that of white voters 2.5 percentage points in 2018, 5.1 percentage points in 2020 and 1.7 percentage points in November 2022. AAPI voters' use of absentee-by-mail voting out-paced that of white voters 6.9 percentage points in 2018, 15.8 percentage points in 2020 and 3.5 percentage points in November 2022. Ex. 96 (Fraga Rep. Tbl. 2).

**RESPONSE:** Objection. This paragraph relies on incomplete underlying data and is therefore speculative. In addition, the evidence does not support the facts stated and draws improper comparisons. The paragraph also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

According to Dr. Grimmer, the share of white voters voting absentee by mail was 24.0% in 2020 compared to 29.4% of Black voters who voted absentee by mail in 2020. Grimmer Rep. ¶¶ 60, 62 (Defs.' Ex. DDDD). And Dr. Shaw's

report places the respective shares for Black and white voters in 2020 at 29.3% and 23.8% respectively. Shaw 2/24 Rep. ¶ 20 (Defs.' Ex. LLLL). Additionally, the 2020 election was a unique outlier because the "COVID-19 pandemic caused many states, including Georgia, to alter how it administered its elections." Grimmer Rep. ¶ 37 & n.8 (citing Stanford-MIT Healthy Elections Project, *The Virus and the Vote: Administering the 2020 Election in a Pandemic* (July 1, 2021), <https://tinyurl.com/2p98hn69>), ¶ 39 (noting that "the coronavirus was salient and disrupting many Americans' routines") (Defs.' Ex. DDDD). And there were similar total turnout increases nationwide regardless of whether a state refused to offer no-excuse absentee voting in 2020. Shaw 2/24 Rep. ¶ 26 (Defs.' Ex. LLLL). This suggests that "the salience of the election and the perception that one's vote means something is much more important to turnout than what one needs to do in order to vote." *Id.* ¶ 27.

Dr. Grimmer's report compared all racial groups' use of absentee by mail and absentee voting in Georgia going back to the 2014 election and found that AAPI voters had a higher share of absentee-by-mail votes cast than white voters from 2016 onward. *See* Grimmer Rep. ¶ 63 & fig. 2 (Defs.' Ex. DDDD) (reproduced below). Additionally, Black voters voted early in person at higher rates than white voters consistently from 2014–2018 and in 2022. *Id.*

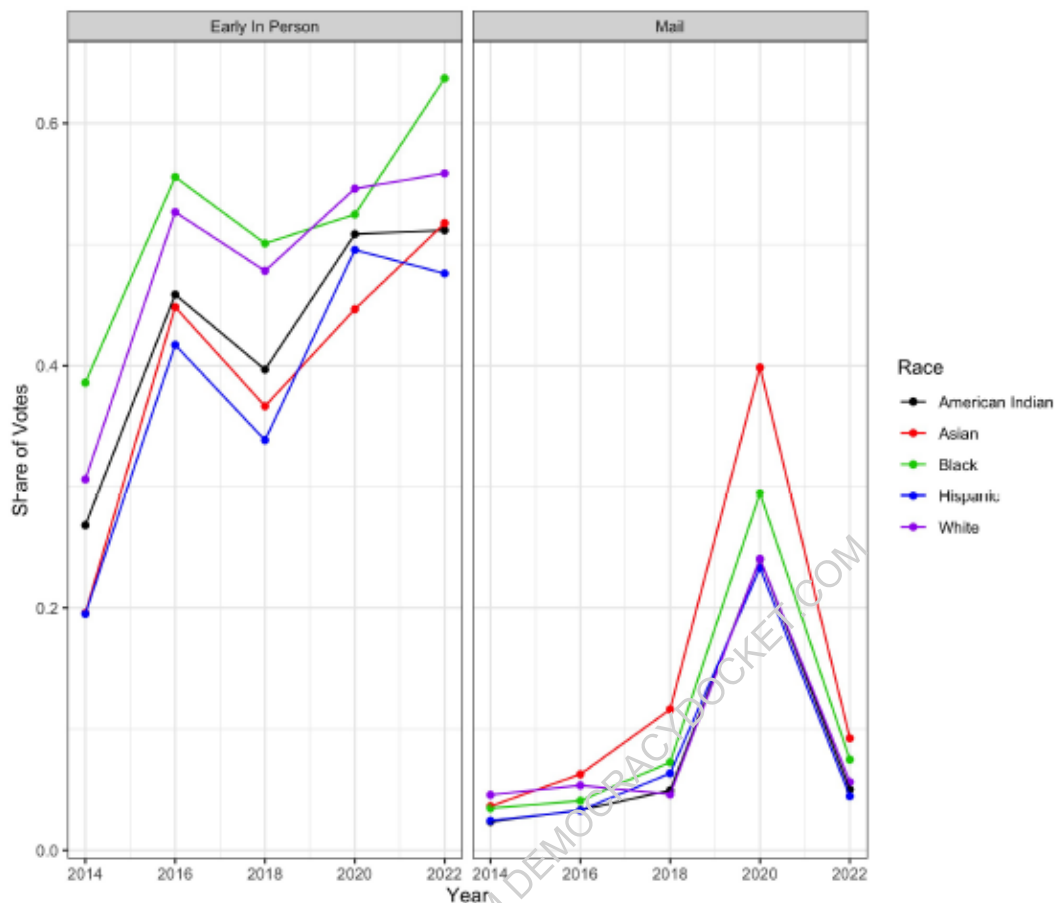


Figure 2: Comparing shares of votes from early in person voting and absentee mail voting.

981. Rates of Black and Latinx voters applying for absentee ballots decreased across the 2018 and 2022 midterm elections, while white voters' rates increased. Ex. 96 (Fraga Rep. Tbl. 3).

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Further, the paragraph relies on incomplete underlying data and is therefore speculative. The paragraph also does not comply with L.R. 56.1(B)(1) because it is not material to the claims and defenses in this case and is not separately numbered.

Also disputed because misleading. In the 2022 election, 63.7% of Black voters casting their votes early-in-person compared to 55.9% of white voters. Grimmer Rep. ¶¶ 60 & 62 (Defs.' Ex. DDDD). And “Black voters in 2022 cast the largest share of their votes using absentee voting methods.” *Id.* ¶ 63; *see also id.* (“In 2022, 71.2% of votes from Black voters were cast using either early in person or mail-in absentee voting. This is 9.7 percentage points more than white voters, 10.2 percentage points more than Asian American voters, 15 percentage points more than American Indian voters, and 19.1 percentage points more than Hispanic voters.”).

And when the gaps between white, Black, and Latino rates of applying for absentee-by-mail ballots are compared from 2018 to 2022 the differences are insignificant. In 2018, 2.2% more Black voters applied for absentee-by-mail ballots than white voters, and in 2022 that gap shrunk by 2.1% to a gap of .1%. Fraga Rep. tbl. 3 (Defs.' Ex. BBBB). For Latino voters in 2018, 0.9% more Latino voters applied for absentee-by-mail ballots than white voters, and in 2022 white voters outpaced Latino voters by a mere 2% (a shift of 2.9% total). *Id.* Such slight changes (2.1% and 2.9%) are statistically insignificant under the law of the Eleventh Circuit. *See League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905, 933 (11th Cir.) (describing “difference of 3.89 percentage points” as not “of large magnitude”), *reh'g en banc denied*, 81 F.4th 1328 (11th Cir. 2023).

May 14, 2024

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing document has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(C).

/s/ Gene C. Schaerr  
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