

No. 23-13085

**In the United States Court of Appeals
for the Eleventh Circuit**

IN RE: GEORGIA SENATE BILL 202

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
Master Case No. 1:21-mi-55555-JPB**

**PLAINTIFFS-APPELLEES' RESPONSE TO
JURISDICTIONAL QUESTION**

FENWICK & WEST LLP
555 California Street
San Francisco, CA 94104
(415) 875-2300

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street NW, Ste 900
Washington, D.C. 20005
(202) 662-8600

THE LAW OFFICE OF BRYAN SELLS, LLC
PO Box 5493
Atlanta, GA 31107
(404) 480-4212

LAW OFFICES OF GERRY WEBER, LLC
PO Box 5391
Atlanta, GA 31107
(404) 522-0507

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

NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
40 Rector St., 5th Floor 700 14th St. NW, Ste. 600
New York, NY 10006 Washington, D.C. 20005
(212) 965-2200 (202) 682-1300

ACLU FOUNDATION, INC.
125 Broad St. 18th Floor
New York, NY 10004
(212) 519-7836

ACLU FOUNDATION OF GEORGIA, INC.
P.O. Box 570738
Atlanta, GA 30357
(678) 981-5295

WILMER CUTLER PICKERING HALE AND DORR LLP
250 Greenwich St. 60 State St.
New York, NY 10007 Boston, MA 02109
(212) 230-8800 (617) 526-6000

*Attorneys for Plaintiffs-Appellees Sixth District
of the African Methodist Episcopal Church, Delta
Sigma Theta Sorority, Georgia ADAPT, and Georgia
Advocacy Office*

SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Ste. 340
Decatur, GA 30031
(404) 521-6700

DAVIS WRIGHT TREMAINE LLP
1301 K St. NW, Ste. 500 920 Fifth Ave., Ste. 3300
Washington, D.C. 20005 Seattle, WA 98104
(202) 973-4288 (206) 622-3150

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

Additional Counsel Information on Front Pages

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

Laurence F. Pulgram
Armen Nercessian
FENWICK & WEST LLP
555 California Street
San Francisco, CA 94104
(415) 875-2300

Jon Greenbaum
Ezra D. Rosenberg
Julie M. Houk
Jennifer Nwachukwu
Heather Szilagyi
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, D.C. 20005
(202) 662-8600

Bryan L. Sells
THE LAW OFFICE OF BRYAN SELLS, LLC
PO Box 5493
Atlanta, GA 31107
(404) 480-4212

Gerald Weber
LAW OFFICES OF GERRY WEBER, LLC
PO Box 5391
Atlanta, GA 31107
(404) 522-0507

Attorneys for Plaintiffs-Appellees Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, and Georgia Advocacy Office:

Sophia Lin Lakin
Davin M. Rosborough
Jonathan Topaz
Dayton Campbell-Harris
Casey Smith
ACLU FOUNDATION, INC.
125 Broad St., 18th Floor
New York, NY 10004
(212) 519-7836

Susan P. Mizner
ACLU FOUNDATION, INC.
39 Drumm Street
San Francisco, CA 94111
(415) 343-0781

Brian Dimmick
ACLU FOUNDATION, INC.
915 15th Street NW
Washington, D.C. 20005
(202) 731-2395

Rahul Garabadu
Caitlin May
Cory Isaacson
ACLU FOUNDATION OF
GEORGIA, INC.
P.O. Box 570738
Atlanta, GA 30357
(678) 981-5295

Leah C. Aden
John S. Cusick
Alaizah Koorji
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.

Debo P. Adegbile
Alexandra Hiatt
WILMER CUTLER PICKERING
HALE AND DORR LLP
250 Greenwich St.
New York, NY 10007
(212) 230-8800

George P. Varghese
Stephanie Lin
Lucas Fortier
Sofia Brooks
Mikayla Foster
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State St.
Boston, MA 02109
(617) 526-6000

Tania Faransso
Laura E. Powell
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave., NW
Washington, D.C. 20037
(202) 663-6000

Nana Wilberforce
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Ave., Suite 2400
Los Angeles, CA 90071
(213) 443-5300

40 Rector St., 5th Floor
New York, NY 10006
(212) 965-2200

Anuja Thatte
NAACP LEGAL DEFENSE AND
EDUCATION FUND, INC.
700 14th St., NW, Suite 600
Washington, D.C. 20005
(202) 682-1300

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

Bradley E. Heard
Pichaya Poy Winichakul
Matletha N. Bennette
SOUTHERN POVERTY
LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, GA 30030
(404) 521-6700

Jess Unger
Sabrina S. Khan
SOUTHERN POVERTY
LAW CENTER
1101 17th St. NW, Suite 705
Washington, D.C. 20036
(202) 728-9557

David M. Gossett
Courtney T. DeThomas
DAVIS WRIGHT TREMAINE LLP
1301 K St. NW, Suite 500
Washington, D.C. 20005-7048
(202) 973-4288

Matthew R. Jedreski
Grace Thompson
Danielle E. Kim
Kate Kennedy
Shontee Pant
DAVIS WRIGHT TREMAINE LLP
920 Fifth Ave., Suite 3300
Seattle, WA 98104-1610
(206) 622-3150

Adam S. Sieff
Daniel Leigh
Brittni A. Hamilton
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa St., 24th Floor
Los Angeles, CA 90017-2566
(213) 633-6800

RETRIEVED FROM DEMOCRACYDOCKET.COM

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 to 26.1-3, Plaintiffs-Appellees Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., League of Women Voters of Georgia, Inc., GALEO Latino Community Development Fund, Inc., Common Cause, Lower Muskogee Creek Tribe, Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, Georgia Advocacy Office, and The Arc of the United States certify that the following persons and entities have an interest in the outcome of this appeal:

1. Abbott, Robert, *Defendant*
2. Abudu, Nancy, *Former Attorney for Plaintiffs-Appellees*
3. ACLU Foundation of Georgia, Inc., *Attorneys for Plaintiffs-Appellees*
4. Adebile, Debo, *Attorney for Plaintiffs-Appellees*
5. Aden, Leah, *Attorney for Plaintiffs-Appellees*
6. Advancement Project, *Attorneys for Plaintiffs-Appellees*
7. Ameri, Mana, *Attorney for Plaintiffs-Appellees*
8. American Civil Liberties Union Foundation, Inc., *Attorneys for Plaintiffs-Appellees*
9. Andrews, Wanda, *Defendant*
10. Aquino, Nora, *Plaintiff-Appellee*

11. Asian Americans Advancing Justice-Asian Law Caucus, *Attorneys for Plaintiffs-Appellees*
12. Asian Americans Advancing Justice-Atlanta, *Plaintiff-Appellee*
13. Augusta Georgia Law Department, *Attorneys for Defendant*
14. Ausburn, Deborah, *Attorney for Defendants-Appellants*
15. Awuku, George, *Defendant*
16. Banks, Marques, *Attorney for Plaintiffs-Appellees*
17. Banter, James, *Attorney for Defendant*
18. Barkdull, Annika Boone, *Attorney for Defendants-Appellants*
19. Barnes, Sherry, *Defendant*
20. Barron, Richard, *Defendant*
21. Bartolomucci, Christopher, *Attorney for Defendants-Appellants*
22. Beausoleil, William, *Attorney for Plaintiffs-Appellees*
23. Beck Owen & Murray, *Attorneys for Defendant*
24. Begakis, Steven, *Attorney for Intervenors-Appellants*
25. Belichick, Joseph, *Attorney for Plaintiffs-Appellees*
26. Bell, Jordan, *Attorney for Defendant*
27. Bennette, Matletha, *Attorney for Plaintiffs-Appellees*
28. Bibb County Board of Elections, *Defendant*
29. Bibb County Board of Registrars, *Defendant*

30. Black Voters Matter Fund, *Plaintiff-Appellee*
31. Blender, Matthew, *Defendant*
32. Bloodworth, Kristin, *Former Attorney for Defendant*
33. Boulee, Honorable Jean-Paul (“J.P.”), *United States District Court Judge*
34. Bowman, Brad, *Attorney for Defendant*
35. Boyle, Donald, *Attorney for Defendants-Appellants*
36. Broder, Karl, *Attorney for Defendant*
37. Brooks, Jessica, *Defendant*
38. Brooks, Sofia, *Attorney for Plaintiffs-Appellees*
39. Brown, Marcia, *Defendant*
40. Bruning, Stephen, *Defendant*
41. Bruning, Steven, *Defendant*
42. Bryan, Bennett, *Attorney for Defendant*
43. Burwell, Kaye, *Attorney for Defendant*
44. Campbell-Harris, Dayton, *Attorney for Plaintiffs-Appellees*
45. Carr, Christopher M., Attorney General of the State of Georgia, *Attorney for Defendants-Appellants*
46. Carver, William, *Attorney for Intervenors-Appellants*
47. Cathey, Thomas, *Former Attorney for Defendant*
48. Chalmers, Adams, Backer & Kaufman, LLC, *Attorneys for Defendant*

49. Chatham County Attorney, *Attorneys for Defendant*
50. Chatham County Board of Elections, *Defendant*
51. Chatham County Board of Registrars, *Defendant*
52. Clarke County Board of Election and Voter Registration, *Defendant*
53. Clayton County Board of Elections and Registration, *Defendant*
54. Cobb County Board of Elections and Registration, *Defendant*
55. Cochran, Ken, *Defendant*
56. Columbia County Board of Elections, *Defendant*
57. Columbia County Board of Registrars, *Defendant*
58. Common Cause, *Plaintiff-Appellee*
59. Consovoy McCarthy PLLC, *Attorney for Intervenors-Appellants*
60. Cramer, Raisa, *Former Attorney for Plaintiffs-Appellees*
61. Crawford, Teresa, *Defendant*
62. Crowell & Moring, LLP, *Attorneys for Plaintiffs-Appellees*
63. Cushman, Ann, *Defendant*
64. Cusick, John, *Attorney for Plaintiffs-Appellees*
65. Dasgupta, Riddhi, *Attorney for Defendants-Appellants*
66. Dave, Charles, *Defendant*
67. Davenport, Jennifer, *Attorney for Defendant*
68. Davis Wright Tremaine LLP, *Attorneys for Plaintiffs-Appellees*

69. Davis, Britton, *Former Attorney for Plaintiffs-Appellees*
70. Day, Stephen, *Defendant*
71. DeKalb County Board of Registrations and Elections, *Defendant*
72. DeKalb County Law Department, *Attorneys for Defendant*
73. Delta Sigma Theta Sorority, Inc., *Plaintiff-Appellee*
74. Denmark, Emilie, *Attorney for Defendant*
75. Dentons US LLP, *Attorney for Intervenors-Appellants*
76. Deshazior, Zurich, *Defendant*
77. DeThomas, Courtney, *Attorney for Plaintiffs-Appellees*
78. Dianis, Judith, *Attorney for Plaintiffs-Appellees*
79. Dickey, Gilbert, *Attorney for Intervenors-Appellants*
80. Dicks, Terence, *Defendant*
81. Dimmick, Brian, *Attorney for Plaintiffs-Appellees*
82. DiStefano, Don, *Defendant*
83. Doss, Travis, *Defendant*
84. Dozier, Shauna, *Defendant*
85. Drennon, Baxter, *Attorney for Intervenors-Appellants*
86. Duffey, William, Jr., *Defendant-Appellant;*
87. Duffie, Wanda, *Defendant*
88. Durbin, Jauan, *Plaintiff-Appellee*

89. Durso, Katherine, *Defendant*
90. Edwards, Gregory, District Attorney for Dougherty County, *Defendant*
91. Elias Law Group LLP, *Attorneys for Plaintiffs-Appellees*
92. Ellington, Thomas, *Defendant*
93. Enjeti-Sydow, Anjali, *Plaintiff-Appellee*
94. Evans, James, *Attorney for Defendant*
95. Evans, Rachel, *Attorney for Plaintiffs-Appellees*
96. Evans-Daniel, Karen, *Defendant*
97. Eveler, Janine, *Defendant*
98. Exousia Lighthouse International C.M., Inc, *Former Plaintiff*
99. Faith In Action Network, *Former Plaintiff*
100. Falk, Donald, *Attorney for Defendants-Appellants*
101. Fambrough, Willa, *Defendant*
102. Faransso, Tania, *Attorney for Plaintiffs-Appellees*
103. Farrell, Gregory, *Attorney for Plaintiffs-Appellees*
104. Feldsherov, Ilya, *Former Attorney for Plaintiffs-Appellees*
105. Fenwick & West, LLP, *Attorneys for Plaintiffs-Appellees*
106. Field, Brian, *Attorney for Defendants-Appellants*
107. First Congregational Church, United Church of Christ Incorporated, *Plaintiff-Appellee*

108. Fogelson, Matthew, *Attorney for Plaintiffs-Appellees*
109. Forsyth County Board of Voter Registrations and Elections, *Defendant*
110. Fortier, Lucas, *Attorney for Plaintiffs-Appellees*
111. Foster, Mikayla, *Attorney for Plaintiffs-Appellees*
112. Freeman Mathis & Gary, LLP, *Attorneys for Defendant*
113. Fulton County Attorney's Office, *Attorneys for Defendant*
114. Fulton County Registration and Elections Board, *Defendant*
115. Galeo Latino Community Development Fund, Inc., *Plaintiff-Appellee*
116. Gammage, Keith, *Defendant*
117. Garabadu, Rahul, *Attorney for Plaintiffs-Appellees*
118. Gartland, Pat, *Defendant*
119. Gartland, Pat, *Defendant*
120. Gay, Nancy, *Defendant*
121. Geiger, Debra, *Defendant*
122. Georgia Adapt, *Plaintiff-Appellee*
123. Georgia Advocacy Office, *Plaintiff-Appellee*
124. Georgia Coalition for the People's Agenda, Inc., *Plaintiff-Appellee*
125. Georgia Department of Law, *Attorneys for Defendants-Appellants*
126. Georgia Latino Alliance for Human Rights, Inc., *Plaintiff-Appellee*
127. Georgia Muslim Voter Project, *Plaintiff-Appellee*

128. Georgia Republican Party, Inc., *Intervenor-Appellant*
129. Georgia State Conference of the NAACP, *Plaintiff-Appellee*
130. Georgia State Election Board, *Defendant*
131. Ghazal, Sara, *Defendant*
132. Gibbs, Fannie, *Plaintiff-Appellee*
133. Gillon, Thomas, *Defendant*
134. Givens, Diane, *Defendant*
135. Gossett, David, *Attorney for Plaintiffs-Appellees*
136. Greater Works Ministries Network, Inc., *Former Plaintiff*
137. Green, Tyler, *Attorney for Intervenors-Appellants*
138. Greenbaum, Jon, *Attorney for Plaintiffs-Appellees*
139. Greenberg Traurig, LLP, *Attorneys for Defendant*
140. Groves, Angela, *Attorney for Plaintiffs-Appellees*
141. Gwinnett County Board of Registrations and Elections, *Defendant*
142. Gwinnett County Department of Law, *Attorneys for Defendant*
143. Hall Booth Smith, P.C., *Attorney for Intervenors-Appellants*
144. Hall County Board of Elections and Registration, *Defendant*
145. Hall County Government, *Attorneys for Defendant*
146. Hall, Dorothy, *Defendant*
147. Hall, John, *Attorney for Intervenors-Appellants*

148. Hamilton, Brittni, *Attorney for Plaintiffs-Appellees*
149. Hancock, Jack, *Attorney for Defendant*
150. Hart, Ralph, *Attorney for Defendant*
151. Hart, Twyla, *Defendant*
152. Hasselberg, Emily, *Attorney for Plaintiffs-Appellees*
153. Hayes, Vilia, *Attorney for Plaintiffs-Appellees*
154. Haynie, Litchfield & White, PC, *Attorneys for Defendant*
155. Hazard, Joel, *Defendant*
156. Heard, Bradley, *Attorney for Plaintiffs-Appellees*
157. Heimes, Marianne, *Defendant*
158. Henseler, James, *Attorney for Plaintiffs-Appellees*
159. Herren, Thomas, *Attorney for Plaintiffs-Appellees*
160. Hiatt, Alexandra, *Attorney for Plaintiffs-Appellees*
161. Ho, Dale, *Former Attorney for Plaintiffs-Appellees*
162. Hodge, Malinda, *Defendant*
163. Houk, Julie, *Attorney for Plaintiffs-Appellees*
164. Hoyos, Luis, *Attorney for Plaintiffs-Appellees*
165. Hughes Hubbard & Reed, *Attorneys for Plaintiffs-Appellees*
166. Hughes, Aileen, *Attorney for Plaintiffs-Appellees*
167. Hull Barrett, PC, *Attorneys for Defendant*

168. Ingram, Randy, *Defendant*
169. Isaacson, Cory, *Attorney for Plaintiffs-Appellees*
170. Jacoutot, Bryan, *Attorney for Defendants-Appellants*
171. Jaffe, Erik, *Attorney for Defendants-Appellants*
172. Jahangiri, Mahroh, *Former Attorney for Plaintiffs-Appellees*
173. Jaikumar, Arjun, *Former Attorney for Plaintiffs-Appellees*
174. James-Bates-Brannan-Groover-LLP, *Attorneys for Defendant*
175. Jarrard & Davis, LLP, *Attorneys for Defendant*
176. Jasrasaria, Jyoti, *Former Attorney for Plaintiffs-Appellees*
177. Jaugstetter, Patrick, *Attorney for Defendant*
178. Jedreski, Matthew, *Attorney for Plaintiffs-Appellees*
179. Jester, Alfred, *Defendant*
180. Jester, Nancy, *Defendant*
181. Jhaveri, Sejal, *Attorney for Plaintiffs-Appellees*
182. Johnson, Aaron, *Defendant*
183. Johnson, Ben, *Defendant*
184. Johnson, Darlene, *Defendant*
185. Johnson, Melinda, *Attorney for Plaintiffs-Appellees*
186. Johnston, Janice, *Defendant*
187. Joiner, Amelia, *Attorney for Defendant*

188. Kanu, Nkechi, *Attorney for Plaintiffs-Appellees*
189. Kaplan, Mike, *Defendant*
190. Kastorf Law, LLC, *Attorneys for Plaintiffs-Appellees*
191. Kastorf, Kurt, *Attorney for Plaintiffs-Appellees*
192. Kaufman, Alex, *Attorney for Intervenors-Appellants*
193. Keker Van Nest & Peters LLP, *Attorneys for Plaintiffs-Appellees*
194. Kemp, Brian, Governor of the State of Georgia, *Defendant-Appellant*
195. Kennedy, David, *Defendant*
196. Kennedy, Kate, *Attorney for Plaintiffs-Appellees*
197. Keogh, William, *Attorney for Defendant*
198. Khan, Sabrina, *Attorney for Plaintiffs-Appellees*
199. Kim, Danielle, *Attorney for Plaintiffs-Appellees*
200. Kingsolver, Justin, *Attorney for Plaintiffs-Appellees*
201. Klein, Spencer, *Attorney for Plaintiffs-Appellees*
202. Knapp, Halsey, *Attorney for Plaintiffs-Appellees*
203. Koorji, Alaizah, *Attorney for Plaintiffs-Appellees*
204. Krevolin & Horst, LLC, *Attorneys for Plaintiffs-Appellees*
205. Kucharz, Kevin, *Attorney for Defendant*
206. Lakin, Sophia, *Attorney for Plaintiffs-Appellees*
207. Lam, Leo, *Attorney for Plaintiffs-Appellees*

208. Lang, Antan, *Defendant*
209. LaRoss, Diane, *Attorney for Defendants-Appellants*
210. Latino Community Fund of Georgia, *Plaintiff-Appellee*
211. Lauridsen, Adam, *Attorney for Plaintiffs-Appellees*
212. Law Office of Gerald R Weber, LLC, *Attorneys for Plaintiffs-Appellees*
213. Lawyers' Committee for Civil Rights Under Law, *Attorneys for Plaintiffs-Appellees*
214. League of Women Voters of Georgia, Inc., *Plaintiff-Appellee*
215. Leung, Kimberly, *Attorney for Plaintiffs-Appellees*
216. Lewis, Anthony, *Defendant*
217. Lewis, Joyce, *Attorney for Plaintiffs-Appellees*
218. Lin, Stephanie, *Attorney for Plaintiffs-Appellees*
219. Lindsey, Edward, *Defendant*
220. Lower Muskogee Creek Tribe, *Plaintiff-Appellee*
221. Lowman, David, *Attorney for Defendant*
222. Ludwig, Jordan, *Attorney for Plaintiffs-Appellees*
223. Luth, Barbara, *Defendant*
224. Ma, Eileen, *Attorney for Plaintiffs-Appellees*
225. Mack, Rachel, *Attorney for Defendant*
226. Mahoney, Thomas, *Defendant*

227. Manifold, Zach, *Defendant*
228. Martin, Grace Simms, *Attorney for Defendant*
229. Mashburn, Matthew, *Defendant-Appellant*
230. May, Caitlin, *Attorney for Plaintiffs-Appellees*
231. McAdams, Issac, *Defendant*
232. McCandless, Spencer, *Former Attorney for Plaintiffs-Appellees*
233. McCarthy, Thomas, *Attorney for Intervenors-Appellants*
234. McClain, Roy, *Defendant*
235. McCord, Catherine, *Attorney for Plaintiffs-Appellees*
236. McFalls, Tim, *Defendant*
237. McFarland, Ernest, *Attorney for Plaintiffs-Appellees*
238. McGowan, Charlene, *Former Attorney for Defendants-Appellants*
239. Mcrae, Colin, *Defendant*
240. Melcher, Molly, *Attorney for Plaintiffs-Appellees*
241. Metropolitan Atlanta Baptist Ministers Union, Inc., *Plaintiff-Appellee*
242. Mijente, Inc., *Former Plaintiff*
243. Miller, Nicholas, *Attorney for Defendants-Appellants*
244. Milord, Sandy, *Attorney for Defendant*
245. Minnis, Terry, *Attorney for Plaintiffs-Appellees*
246. Mizner, Susan, *Attorney for Plaintiffs-Appellees*

247. Mocine-McQueen, Marcos, *Attorney for Plaintiffs-Appellees*
248. Momo, Shelley, *Attorney for Defendant*
249. Morrison, Tina, *Attorney for Plaintiffs-Appellees*
250. Mosbacher, Jennifer, *Defendant*
251. Motter, Susan, *Defendant*
252. Murchie, Laura, *Attorney for Plaintiffs-Appellees*
253. Murray, Karen, *Defendant*
254. NAACP Legal Defense and Education Fund, Inc., *Attorneys for Plaintiffs-Appellees*
255. National Association for the Advancement of Colored People, Inc., *Parent Corporation of Georgia State Conference of the NAACP*
256. National Republican Congressional Committee, *Intervenor-Appellant*
257. National Republican Senatorial Committee, *Intervenor-Appellant*
258. Natt, Joel, *Defendant*
259. Nemeth, Miriam, *Former Attorney for Plaintiffs-Appellees*
260. Nercessian, Armen, *Attorney for Plaintiffs-Appellees*
261. New Birth Missionary Baptist Church, Inc., *Plaintiff*
262. Newland, James, *Defendant*
263. Nguyen, Candice, *Attorney for Plaintiffs-Appellees*
264. Nguyen, Phi, *Former Attorney for Plaintiffs-Appellees*

265. Nkwonta, Uzoma, *Attorney for Plaintiffs-Appellees*
266. Noa, Jack, *Defendant*
267. Noland Law Firm, LLC, *Attorneys for Defendant*
268. Noland, William, *Attorney for Defendant*
269. Norris, Cameron, *Attorney for Intervenors-Appellants*
270. Norse, William, *Defendant*
271. Nwachukwu, Jennifer, *Attorney for Plaintiffs-Appellees*
272. O'Brien, James, *Defendant*
273. O'Connor, Eileen, *Attorney for Plaintiffs-Appellees*
274. O'Lenick, Alice, *Defendant*
275. Olm, Rylee, *Attorney for Plaintiffs-Appellees*
276. Oxford, Neil, *Attorney for Plaintiffs-Appellees*
277. Paik, Steven, *Plaintiff-Appellee*
278. Pant, Shontee, *Attorney for Plaintiffs-Appellees*
279. Paradise, Loree, *Former Attorney for Defendants-Appellants*
280. Parker, Warrington, *Attorney for Plaintiffs-Appellees*
281. Pelletier, Susan, *Former Attorney for Plaintiffs-Appellees*
282. Porter, Megan, *Former Attorney for Plaintiffs-Appellees*
283. Powell, Laura E., *Attorney for Plaintiffs-Appellees*
284. Prince, Joshua, *Former Attorney for Defendants-Appellants*

285. Pulgram, Laurence, *Attorney for Plaintiffs-Appellees*
286. Pullar, Patricia, *Defendant*
287. Qadir, Hunaid, *Defendant*
288. Radzikinas, Carla, *Defendant*
289. Raffensperger, Brad, Secretary of State of Georgia, *Defendant-Appellant*
290. Raffle, Rocky, *Defendant*
291. Ramahi, Zainab, *Attorney for Plaintiffs-Appellees*
292. Rich, James, *Attorney for Plaintiffs-Appellees*
293. Richardson, Jasmyn, *Attorney for Plaintiffs-Appellees*
294. Richmond County Board of Elections, *Defendant*
295. Ringer, Cheryl, *Former Attorney for Defendant*
296. Rise, Inc., *Plaintiff-Appellee*
297. Rodriguez, Anthony, *Defendant*
298. Rosborough, Davin, *Attorney for Plaintiffs-Appellees*
299. Rosenberg, Ezra, *Attorney for Plaintiffs-Appellees*
300. Rosenberg, Steven, *Former Attorney for Defendant*
301. Rusciano, Megan, *Attorney for Plaintiffs-Appellees*
302. Russ, John, *Attorney for Plaintiffs-Appellees*
303. Ruth, Kathleen, *Defendant*
304. Ryan, Elizabeth, *Attorney for Plaintiffs-Appellees*

305. Sabzevari, Arash, *Attorney for Defendant*
306. Sachdeva, Niharika, *Attorney for Plaintiffs-Appellees*
307. Samuel Dewitt Proctor Conference, Inc., *Former Plaintiff*
308. Sankofa United Church of Christ Limited, *Former Plaintiff*
309. Schaerr | Jaffe LLP, *Attorneys for Defendants-Appellants*
310. Schaerr, Gene, *Attorney for Defendants-Appellants*
311. Scott, William, *Former Attorney for Defendant*
312. Seals, Veronica, *Defendant*
313. Segarra, Esperanza, *Former Attorney for Plaintiffs-Appellees*
314. Sells, Bryan, *Attorney for Plaintiffs-Appellees*
315. Shah, Niyati, *Attorney for Plaintiffs-Appellees*
316. Sheats, Gala, *Defendant*
317. Shelly, Jacob, *Attorney for Plaintiffs-Appellees*
318. Shirley, Adam, *Defendant*
319. Sieff, Adam, *Attorney for Plaintiffs-Appellees*
320. Silas, Tori, *Defendant*
321. Sixth District of the African Methodist Episcopal Church, *Plaintiff-Appellee*
322. Smith, Casey, *Attorney for Plaintiffs-Appellees*
323. Smith, Dele, *Defendant*
324. Smith, Mandi, *Defendant*

325. Solh, Chahira, *Attorney for Plaintiffs-Appellees*
326. Solomon, Elbert, *Plaintiff-Appellee*
327. Sosebee, Charlotte, *Defendant*
328. Southern Poverty Law Center, *Attorneys for Plaintiffs-Appellees*
329. Sowell, Gregory, *Attorney for Defendant*
330. Sparks, Adam, *Attorney for Plaintiffs-Appellees*
331. Squiers, Cristina, *Attorney for Defendants-Appellants*
332. Stewart Melvin & Frost, LLP, *Attorneys for Defendant*
333. Strawbridge, Patrick, *Attorney for Intervenors-Appellants*
334. Sumner, Stuart, *Attorney for Intervenors-Appellants*
335. Sung, Connie, *Attorney for Plaintiffs-Appellees*
336. Swift, Karli, *Defendant*
337. Szilagyi, Heather, *Attorney for Plaintiffs-Appellees*
338. Tatum, Tobias, *Attorney for Defendants-Appellants*
339. Taylor English Duma LLP, *Attorneys for Defendants-Appellants*
340. Taylor, Wandy, *Defendant*
341. Thatte, Anuja, *Attorney for Plaintiffs-Appellees*
342. The ACLU Foundation Disability Rights Program, *Attorneys for Plaintiffs-Appellees*
343. The Arc of the United States, *Plaintiff-Appellee*

344. The Concerned Black Clergy of Metropolitan Atlanta, Inc., *Plaintiff-Appellee*
345. The Georgia State Election Board, *Defendant*
346. The Justice Initiative, Inc., *Plaintiff-Appellee*
347. The Law Office of Bryan L. Sells, LLC, *Attorneys for Plaintiffs-Appellees*
348. The New Georgia Project, *Plaintiff-Appellee*
349. The Republican National Committee, *Intervenor-Appellant*
350. The State of Georgia, *Defendant-Appellant*
351. The United States of America, *Plaintiff-Appellee*
352. The Urban League of Greater Atlanta, Inc., *Former Plaintiff-Appellee*
353. Thomas, Ethan, *Attorney for Plaintiffs-Appellees*
354. Thompson, Grace, *Attorney for Plaintiffs-Appellees*
355. Till, Ann, *Defendant*
356. Topaz, Jonathan, *Attorney for Plaintiffs-Appellees*
357. Trent, Edward, *Attorney for Defendants-Appellants*
358. Tucker, William, *Attorney for Plaintiffs-Appellees*
359. Tyson, Bryan, *Attorney for Defendants-Appellants*
360. Uddullah, Angelina, *Plaintiff-Appellee*
361. Unger, Jess, *Attorney for Plaintiffs-Appellees*
362. United States Department of Justice, *Attorneys for Plaintiffs-Appellees*
363. Van Stephens, Michael, *Attorney for Defendant*

364. Vander Els, Irene, *Former Attorney for Defendant*
365. Varghese, George, *Attorney for Plaintiffs-Appellees*
366. Varner, Johnny, *Defendant*
367. Vasquez, Jorge, *Former Attorney for Plaintiffs-Appellees*
368. Vaughan, Elizabeth, *Former Attorney for Defendants-Appellants*
369. Waite, Tristen, *Attorney for Defendant*
370. Wakschlag, Shira, *Attorney for Plaintiffs-Appellees*
371. Wang, Emily, *Attorney for Plaintiffs-Appellees*
372. Wardenski, Joseph, *Former Attorney for Plaintiffs-Appellees*
373. Ward-Packard, Samuel, *Attorney for Plaintiffs-Appellees*
374. Webb, Brian K., *Attorney for Defendants-Appellants*
375. Weber, Gerald, *Attorney for Plaintiffs-Appellees*
376. Weigel, Daniel, *Attorney for Defendants-Appellants*
377. Wesley, Carol, *Defendant*
378. White, Daniel, *Attorney for Defendant*
379. White, William, *Attorney for Intervenors-Appellants*
380. Wiggins, Larry, *Defendant*
381. Wilberforce, Nana, *Attorney for Plaintiffs-Appellees*
382. Wilborn, Eric, *Attorney for Defendant*
383. Willard, Russell D., *Attorney for Defendants-Appellants*

384. Williams, Gilda, *Former Attorney for Plaintiffs-Appellees*
385. Williams, Tuwanda, *Former Attorney for Defendant*
386. Wilmer Cutler Pickering Hale and Dorr LLP, *Attorneys for Plaintiffs-Appellees*
387. Wilson, Jacob, *Attorney for Defendant*
388. Wilson, Melanie, *Attorney for Defendant*
389. Wingate, Mark, *Defendant*
390. Winichakul, Pichaya, *Attorney for Plaintiffs-Appellees*
391. Women Watch Afrika, *Plaintiff-Appellee*
392. Woodfin, Conor, *Attorney for Intervenors-Appellants*
393. Woolard, Cathy, *Defendant*
394. Wurtz, Lori, *Defendant*
395. Yoon, Meredyth, *Attorney for Plaintiffs-Appellees*
396. Young, Sean, *Former Attorney for Plaintiffs-Appellees*
397. Zatz, Clifford, *Attorney for Plaintiffs-Appellees*

Members of the above-named Plaintiff-Appellee groups and residents of the State of Georgia also have an interest in the outcome of this appeal.

Except Plaintiff-Appellee Georgia State Conference of the National Association for the Advancement of Colored People (whose parent corporation is National Association for the Advancement of Colored People, Inc.), none of the

above parties has a parent corporation, and no corporation owns 10% or more of any party's stock. No publicly traded company or corporation has an interest in the outcome of this case or appeal.

Per Eleventh Circuit Rule 26.1-2(c), Appellees certify that the certificate of interested persons contained in this motion is complete.

Dated: October 30, 2023

Respectfully Submitted,

Laurence F. Pulgram
Armen Nercessian
FENWICK & WEST LLP
555 California Street
San Francisco, CA 94104
(415) 875-2300

Joseph S. Belichick
FENWICK & WEST LLP
Silicon Valley Center
801 California St.
Mountain View, CA 94041-2008
(650) 988-8500

Catherine McCord
FENWICK & WEST LLP
902 Broadway, Suite 14
New York, NY 10010
(212) 430-2690

Bryan L. Sells
THE LAW OFFICE OF
BRYAN SELLS, LLC
PO Box 5493
Atlanta, GA 31107
(404) 480-4212

Jon Greenbaum
Ezra D. Rosenberg
Julie M. Houk
Jennifer Nwachukwu
Heather Szilagyi
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, D.C. 20005
(202) 662-8600

Vilia Hayes
Neil Oxford
Gregory Farrell
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, NY 10004-1482
(212) 837-6000

Gerald Weber
LAW OFFICES OF
GERRY WEBER, LLC
PO Box 5391
Atlanta, GA 31107
(404) 522-0507

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

Sophia Lin Lakin
Davin M. Rosborough
Jonathan Topaz
Dayton Campbell-Harris
Casey Smith
ACLU FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 519-7836

Susan P. Mizner
ACLU FOUNDATION
39 Drumm Street
San Francisco, CA 94111
(415) 343-0781

Brian Dimmick
ACLU FOUNDATION
915 15th Street NW
Washington, D.C. 20005
(202) 731-2395

Rahul Garabadu
Caitlin May
Cory Isaacson
ACLU FOUNDATION OF
GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
(678) 981-5295

Leah C. Aden
John S. Cusick
Alaizah Koorj
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200

Anuja Thatte
NAACP LEGAL DEFENSE AND
EDUCATION FUND, INC.
700 14th Street, NW
Washington, DC 20005
(202) 682-1300

Debo P. Adegbile
Alexandra Hiatt
WILMER CUTLER PICKERING
HALE AND DORR LLP
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
George P. Varghese

Stephanie Lin
Lucas Fortier
Sofia Brooks
Mikayla Foster
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000

Tania Faransso
Laura E. Powell
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave. NW
Washington, D.C. 20006
Telephone: (202) 663-6000

Adam S. Sieff
Daniel Leigh
Brittni A. Hamilton
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, CA 90017
(213) 633-6800

Nana Wilberforce
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Avenue, Suite 2400
Los Angeles, CA 90071
Telephone: (213) 443-5300

Matthew R. Jedreski
Grace Thompson
Danielle E. Kim
Kate Kennedy
Shontee Pant
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
(206) 622-3150

*Attorneys for Plaintiffs-Appellees Sixth
District of the African Methodist
Episcopal Church, Delta Sigma Theta
Sorority, Georgia ADAPT, and
Georgia Advocacy Office*

David M. Gossett
Courtney T. DeThomas
DAVIS WRIGHT TREMAINE LLP
1301 K Street NW, Suite 500
Washington, D.C. 20005
(202) 973-4288

Bradley E. Heard
Pichaya Poy Winichakul
Matletha N. Bennette
SOUTHERN POVERTY LAW
CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, GA 30031
(404) 521-6700

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

Jess Unger
Sabrina S. Khan
SOUTHERN POVERTY LAW
CENTER
1101 17th Street NW, Suite 705
Washington, DC 20036
(202) 728-9557

Plaintiffs-Appellees respectfully submit this response to the Court's Jurisdictional Question. Dkt. 76. State Defendants-Appellants' and Intervenor-Appellants' (together, "Appellants") appeals should be dismissed. Appellants were not aggrieved by, and thus lack standing to appeal, the District Court's order preliminarily enjoining immaterial voting requirements of Georgia Senate Bill 202 ("SB 202"). Separately, Gregory Edwards, the State of Georgia, and Southern Christian Leadership Conference ("SCLC") should be dismissed because they are not proper parties to Appellants' appeals or Plaintiffs-Appellees' cross-appeal.

1. Neither State Defendants-Appellants¹ nor Intervenor-Appellants² have standing to appeal for the reasons briefed in Plaintiffs-Appellees' pending Motion to Dismiss Appeal for Lack of Jurisdiction filed on October 13, 2023. Dkt. 70 at 38-42 of 46. The Appellants filed their Oppositions to that Motion to Dismiss on October 23, 2023. *See* Dkt. 89, 90. Plaintiffs-Appellants' Reply Brief is due to be filed concurrently with this brief, on October 30, 2023. Fed. R. App. P. 27(a)(4).

¹ As defined in the District Court's order, State Defendants-Appellants consist of Brian Kemp (Governor of Georgia), Brad Raffensperger (Secretary of State of Georgia), the Georgia State Election Board ("SEB"), Sara Tindall Ghazal (member of the SEB), Janice W. Johnston (member of the SEB), Edward Lindsey (member of the SEB), Matthew Mashburn (member of the SEB). *See* Order Granting in Part and Denying in Part Motion for Preliminary Injunction (ECF No. 613) (**Exhibit 1**) at 5 of 38, n.2.

² Intervenor-Appellants consist of Georgia Republican Party, Inc., National Republican Congressional Committee, National Republican Senatorial Committee, and Republican National Committee. *See* Exhibit 1 (ECF No. 613) at 6 of 38, n.5.

Plaintiffs-Appellants’ refer this Court to the arguments set forth in that brief as well. Before the District Court, State Defendants-Appellants argued that Plaintiffs-Appellees³ lacked standing to seek an injunction against them, claiming “[t]here is no traceability or redressability because “the processing of absentee ballots *has nothing to do with State Defendants*, eliminating any claim against State Defendants for an injunction related to the absentee voter verification provisions.” State Defendants’ Brief in Opposition to Motion for Preliminary Injunction (ECF No. 582) (**Exhibit 2**) at 16 of 31 (emphasis added). The District Court granted Plaintiffs-Appellees’ motion as to eleven county defendants⁴ (who have not appealed), enjoining them from violating the prohibition on immaterial voting

³ The Plaintiffs-Appellees consist of plaintiffs in two of five actions that were consolidated for discovery purposes: *Georgia State Conference of the NAACP et al. v. Brad Raffensperger et al.*, No. 1:21-cv-01259-JPB (Georgia State Conference of the NAACP, Georgia Coalition for the People’s Agenda, Inc., League of Women Voters of Georgia, Inc., GALEO Latino Community Development Fund, Inc., Common Cause, and the Lower Muskogee Creek Tribe), and *Sixth District of the African Methodist Episcopal Church et al. v. Brian Kemp et al.*, No. 1:21-cv-01284-JPB (Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, Georgia Advocacy Office, Georgia Muslim Voter Project, Women Watch Afrika, Latino Community Fund Georgia, and The Arc of the United States).

⁴ As defined in the District Court’s order, County Defendants consist of the boards of elections and registration (as well as members of those boards) from the following counties: Bibb, Chatham, Clarke, Clayton, Cobb, Columbia, DeKalb, Fulton, Gwinnett, Hall and Richmond. Exhibit 1 (ECF No. 613) at 5 of 38, n.3.

requirements. Exhibit 1 (ECF No. 613) at 38 of 38. But the District Court denied the motion as to State Defendants-Appellants, determining that “Plaintiffs’ injury . . . is not redressable by an order directed to State Defendants, who are removed from the process of accepting or rejecting absentee ballots.” *Id.* at 16 of 38. Thus, the District Court expressly declined to enjoin any of the State Defendants-Appellants. *Id.* State Defendants-Appellants, as prevailing parties below and against whom no order was entered, therefore lack standing to appeal. *See, e.g., Henderson v. Ford Motor Co.*, 72 F.4th 1237, 1245 (11th Cir. 2023).

2. Likewise, as explained in Plaintiffs-Appellants’ Motion to Dismiss (Dkt. 70 at 42-43 of 46), Intervenors-Appellants have not been aggrieved and also lack standing to appeal the District Court’s order. Intervenors-Appellants are not enjoined by the District Court’s order and have no role in the enforcement of SB 202. *Hollingsworth v. Perry*, 570 U.S. 693, 705–07 (2013) (holding intervenors lacked standing because “the District Court had not ordered them to do or refrain from doing anything” and thus the intervenors had only a “generalized grievance” as opposed to a “‘direct stake’ in the outcome of their appeal”). Because State Defendants-Appellants lack standing to appeal, Intervenors-Appellants also have no

right to “piggyback” on their standing. *Diamond v. Charles*, 476 U.S. 54, 64 (1986).

Both appeals should therefore be dismissed.⁵

3. Mr. Edwards and the State of Georgia are not proper appellants or cross-appellees with respect to the injunction. Only parties to a lawsuit, or those that properly become parties, have standing to appeal an adverse judgment. *Mickles v. Country Club, Inc.*, 887 F.3d 1270, 1278 (11th Cir. 2018). Neither Mr. Edwards nor the State of Georgia was named in or is a party to Plaintiffs-Appellees’ two operative complaints. See First Amended Complaint, *Georgia State Conference of the NAACP et al. v. Brad Raffensperger et al.*, No. 1:21-cv-01259-JPB (ECF No. 35) (**Exhibit 3**); First Amended Complaint, *Sixth District of the African Methodist Episcopal Church et al. v. Brian Kemp et al.*, No. 1:21-cv-01284-JPB (ECF No. 83) (**Exhibit 4**). Nor were either named in Plaintiffs-Appellees’ motion for preliminary injunction or the District Court’s order. See Exhibit 1 (ECF No. 613) at 5-6 of 38 (omitting Mr. Edwards and the State of Georgia among the “State Defendants” and omitting Dougherty County in its listing of “County Defendants”). Mr. Edwards’ only role in the related proceedings before the District Court has been in a cause of action brought by a separate plaintiff group challenging criminal penalties in connection

⁵ Plaintiffs have also filed a cross-appeal of the District Court’s Materiality Injunction, disputing the District Court’s findings that SB 202’s date-of-birth requirement for absentee ballots is not traceable to, or redressable through an order against, State Defendants. For purposes of Plaintiffs’ cross-appeal, State Defendants are proper parties as cross-appellees.

with line relief, as to which he is the responsible officer for Dougherty County. *See The New Georgia Project, et al., v. Brad Raffensperger et al.*, No. 1:21-cv-01229-JPB (ECF No. 39) (**Exhibit 5**) at 62 of 66. He was not named in any claim respecting absentee ballots in any action. He has not claimed any duties of any kind with respect to enforcement of the immaterial date-of-birth requirement. Moreover, Dougherty County is not one of the eleven counties party to Plaintiffs-Appellees' lawsuits, and thus the country is not enjoined by the District Court's order. *See generally* Exhibits 2 and 3; *see also* Exhibit 1 (ECF No. 613) at 5 of 38, n.3 (listing counties named in Plaintiffs' complaints). Because no order on appeal here was sought or issued against Mr. Edwards or the State of Georgia, they both should be dismissed.

4. Finally, SCLC is not a proper appellee or cross-appellant and should therefore be dismissed. Although SCLC was still a party to the action and a movant on the preliminary injunction motion when filed, the District Court dismissed SCLC with prejudice shortly thereafter.⁶ Accordingly, the cross-appeal and entry of appearance as to SCLC is withdrawn by its counsel, and SCLC should be dismissed.

⁶ On March 13, 2023, Plaintiffs filed a Joint Stipulation and Consent Motion for Voluntary Dismissal of SCLC with prejudice. *See* District Court Docket, No. 1:21-mi-55555-JPB (ECF No. 486) (**Exhibit 6**) at 125 of 138. While that consent motion was still pending, on May 17, 2023, Plaintiffs filed the motion for preliminary injunction. *See id.* at 129 of 138 (ECF No. 548). On May 26, 2023, the District Court approved the joint stipulation and dismissed SCLC with prejudice. *Id.* at 130

For the reasons above, and as explained fully in Plaintiffs-Appellees' pending Motion to Dismiss Appeal for Lack of Jurisdiction filed on October 13, 2023 (Dkt. 70) and Reply Brief in support of same, Appellants' appeals should be dismissed because they lack standing. Separately, Gregory Edwards, the State of Georgia, and SCLC should be dismissed as improper parties to State Defendants-Appellants and Intervenors-Appellants' appeals and Plaintiffs-Appellees' cross-appeal.

Dated: October 30, 2023

Respectfully Submitted,

Laurence F. Pulgram
Armen Nercessian
FENWICK & WEST LLP
555 California Street
San Francisco, CA 94104
(415) 875-2300

Bryan L. Sells
THE LAW OFFICE OF
BRYAN SELLS, LLC
PO Box 5493
Atlanta, GA 31107
(404) 480-4212

Gerald Weber
LAW OFFICES OF
GERRY WEBER, LLC
PO Box 5391
Atlanta, GA 31107
(404) 522-0507

Jon Greenbaum
Ezra D. Rosenberg
Julie M. Houk
Jennifer Nwachukwu
Heather Szilagyi
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, D.C. 20005
(202) 662-8600

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

of 138 (text order following ECF No. 564). The District Court docket reflects that SCLC was terminated effective May 26, 2023. *Id.* at 29 of 138.

Sophia Lin Lakin
Davin M. Rosborough
Jonathan Topaz
Dayton Campbell-Harris
Casey Smith
ACLU FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 519-7836

Susan P. Mizner
ACLU FOUNDATION
39 Drumm Street
San Francisco, CA 94111
(415) 343-0781

Brian Dimmick
ACLU FOUNDATION
915 15th Street NW
Washington, D.C. 20005
(202) 731-2395

Rahul Garabadu
Caitlin May
Cory Isaacson
ACLU FOUNDATION OF
GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
(678) 981-5295

Leah C. Aden
John S. Cusick
Alaizah Koorj
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200

Anuja Thatte
NAACP LEGAL DEFENSE AND
EDUCATION FUND, INC.
700 14th Street, NW
Washington, DC 20005
(202) 682-1300

Debo P. Adegbile
Alexandra Hiatt
WILMER CUTLER PICKERING
HALE AND DORR LLP
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800

George P. Varghese
Stephanie Lin
Lucas Fortier
Sofia Brooks
Mikayla Foster
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000

Tania Faransso
Laura E. Powell
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave. NW
Washington, D.C. 20006
Telephone: (202) 663-6000

Nana Wilberforce
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Avenue, Suite 2400
Los Angeles, CA 90071
Telephone: (213) 443-5300

Attorneys for Plaintiffs-Appellees Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, and Georgia Advocacy Office

Bradley E. Heard
Pichaya Poy Winichakul
Matletha N. Bennette
SOUTHERN POVERTY LAW
CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, GA 30031
(404) 521-6700

Jess Unger
Sabrina S. Khan
SOUTHERN POVERTY LAW
CENTER
1101 17th Street NW, Suite 705
Washington, DC 20036
(202) 728-9557

Adam S. Sieff
Daniel Leigh
Brittni A. Hamilton
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, CA 90017
(213) 633-6800

Matthew R. Jedreski
Grace Thompson
Danielle E. Kim
Kate Kennedy
Shontee Pant
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300

Seattle, WA 98104-1610
(206) 622-3150

David M. Gossett
Courtney T. DeThomas
DAVIS WRIGHT TREMAINE LLP
1301 K Street NW, Suite 500
Washington, D.C. 20005
(202) 973-4288

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

CERTIFICATE OF COMPLIANCE

1. This submission complies with the type-volume limits of Federal Rule of Appellate Procedure 27(d)(2) because, excluding the parts of the submission exempted by Federal Rules of Appellate Procedure Rule 27(a)(2)(B) and 32(f) and Eleventh Circuit Rule 32-4, this submission contains 1,390 words.

2. This submission complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because this submission has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Laurence Pulgram
Laurence Pulgram