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

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

AME & GEORGIA NAACP PLAINTIFFS' BRIEF IN SUPPORT OF SECOND RENEWED MOTION FOR A PRELIMINARY INJUNCTION

INTRODUCTION

This Court has twice found that Plaintiffs were likely to succeed on the merits of their claim that Georgia's criminal ban on offering or providing "gifts, including . . . food and drink" within 25 feet of any voters standing in line (the "Line Relief Ban" or "Ban") beyond the 150-foot buffer zone (the "Supplemental Zone") violates the First Amendment's protection of expressive conduct. On appeal, the Eleventh Circuit did not reach "the respective merits of the parties' positions." *In re Ga. Senate Bill 202* ("*SB 202 II*"), 160 F.4th 1171, 1175–76 (11th Cir. 2025). The sole issue addressed by the Eleventh Circuit was the analysis used to determine the scope of relief. The panel held that this Court had improperly granted facial relief—enjoining the Ban as applied to the Supplemental Zone in its entirety—without conducting "the facial-challenge analysis that the Supreme Court's recent decision in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), [now] requires." *Id.*

As such, the Court did not call into question the merits analysis regarding the unconstitutionality of the Line Relief Ban. In light of the remand from the Eleventh Circuit, however, Plaintiffs now seek two narrower forms of preliminary relief, only the second of which is governed by the new *Moody* framework.

First, Plaintiffs seek relief as applied to their own line relief activities—providing food, drink, and other comfort items of nominal value to express solidarity

and support in the face of long voting lines—in the Supplemental Zone. As the Eleventh Circuit acknowledged and left undisturbed, this Court has already conducted the requisite analysis for as-applied relief. *SB 202 II*, 160 F.4th at 1177 (recognizing this Court's analysis of "the plaintiffs' own line-relief efforts," and "the downstream questions regarding content-neutrality, the requisite level of scrutiny, and governmental interests and tailoring"). Because Plaintiffs will again face the same irreparable harm if they are unable to exercise their First Amendment-protected activities in upcoming elections, the Court, at minimum, should reinstitute the preliminary injunction as applied to Plaintiffs own line-relief activities. Indeed, the Court can determine Plaintiffs' straightforward as-applied request before addressing the second, somewhat wider relief that Plaintiffs also seek.

Second, Plaintiffs seek a slightly broader form of relief, though one that falls short of a total facial injunction. As the Supreme Court and Eleventh Circuit have recognized, plaintiffs may pursue relief that has both as-applied and facial qualities, stretching beyond the named plaintiffs in the case, but not seeking to strike down a provision in all its applications. *See Doe v. Reed*, 561 U.S. 186, 194 (2010); *McGuire v. Marshall*, 50 F.4th 986, 1003–04 (11th Cir. 2022). To prevail, the plaintiff "must satisfy the standard for a facial challenge to the extent that [her] claim 'reach[es] beyond [her] particular circumstances.'" *McGuire*, 50 F.4th at 1003–04 (quoting

Doe, 561 U.S. at 194). Here, in addition to pure as-applied relief, Plaintiffs ask the Court for quasi-as-applied relief to further enjoin the Ban only as it applies to individuals and other non-Plaintiff, non-partisan groups providing food, drink, or gifts of nominal value within the Supplemental Zone to convey messages of solidarity and encouragement. To do so, in accord with *Moody*, Plaintiffs must: (1) identify the scope of conduct that these challenged portions of Georgia Senate Bill 202 ("SB 202") criminalize; (2) show which of those applications violate the First Amendment; and (3) prove that the "unconstitutional applications substantially outweigh [the] constitutional ones." *SB 202 II*, 160 F.4th at 1176–77.

Here, the record shows that many other non-partisan groups and individuals engage in line relief as an expressive activity. Voters understood similar messages of solidarity and perseverance from these entities as they did when Plaintiffs engaged in line relief. Outside of expressive line relief for which the Plaintiffs seek relief, there are only two other types of conduct that would fall within the scope of the statute that are not already prohibited under other Georgia laws: first, the rare, if any, instances of commercial businesses providing sample products; and second, the non-problematic occurrence of one voter sharing with another voter a small item of food or drink. While this conduct likely does not implicate the First Amendment under this record, there is also no evidence in either the legislative or extensive litigation

record that these situations occur with any frequency, if at all. In fact, the record shows that the Legislature justified the Ban precisely because of concerns about the expressive impact of line relief. Thus, it is only expressive line relief that is among "the 'principal things regulated' [that] should get a heavier weight in this analysis." *SB 202 II*, 160 F.4th at 1177 (quoting *Moody*, 603 U.S. at 726). As this Court found, the Ban's application to expressive line relief is unconstitutional. This unconstitutional application substantially outweighs the rare applications in the commercial or voter-to-voter sharing context. Therefore, the Court should also grant Plaintiffs' broader request for quasi-as-applied relief for non-Plaintiffs' groups providing food, drink, or gifts of nominal value within the Supplemental Zone.

BACKGROUND

Plaintiffs incorporate by reference their factual evidence and briefing from their prior line relief initial preliminary injunction motions, *see* Dkt. Nos. 171, 171-1–27, 216, 216-1–5, 535, 535-1–19, 590, and do not repeat it here for efficiency. Plaintiffs address relevant new evidence below.

ARGUMENT

A preliminary injunction issues when the moving party demonstrates (1) a substantial likelihood of success on the merits; (2) irreparable injury absent an injunction; (3) injury to the movant that outweighs whatever damage the proposed

injunction might cause the non-moving party; and (4) the injunction would not be adverse to the public interest. *See Keeton v. Anderson-Wiley*, 664 F.3d 865, 868 (11th Cir. 2011). Plaintiffs have once again met those standards here, both regarding their pure as-applied and quasi-as-applied requests for relief.

I. Plaintiffs Are Likely to Succeed on the Merits of Their Claim That the Line Relief Ban Violates the First Amendment Both As Applied to the Plaintiffs and to Other Individuals and Non-Partisan Groups Providing Line Relief to Voters in the Supplemental Zone.

Both before and after SB 202's enactment in 2021, O.C.G.A. § 21-2-414(a) has provided that no person shall, within 150 feet of the polling place or within 25 feet of any voter standing in line at any distance from the polling place: (a) "solicit votes in any manner or by any means or method"; (b) "distribute or display any campaign material"; or (c) "establish or set up any tables or booths," among other things. Also, before and after SB 202's enactment, another provision of Georgia law, O.C.G.A. § 21-2-570, prohibits giving or receiving "money or gifts for the purpose of registering as a voter, voting, or voting for a particular candidate." SB 202, therefore, only prohibits the following additional areas of conduct: giving "any money or gifts, including, but not limited to, food and drink, to an elector" within 150 feet of the polling place or within 25 feet of any voter standing in line.

The scope of Plaintiffs' challenge, then, concerns SB 202's Ban on (a) providing food, drink, or items of nominal value to voters standing in line more than

150-feet from the polling place; (b) without the use of tables or booths; and (c) for purposes other than influencing anyone to vote or vote for a particular candidate, as these latter two features are already illegal. The limited scope of the challenge itself narrows the range of potential applications.

Considering the Eleventh Circuit's decision and the urgency for relief ahead of the 2026 elections, Plaintiffs here ask the Court not for full facial relief but instead for a narrowed injunction. First, Plaintiffs seek relief as applied to Plaintiffs in this case, relying on the correct analysis this Court twice has used and that the Eleventh Circuit did not disturb. This requires no new merits analysis and does not implicate the *Moody* facial-relief framework at all. Second, Plaintiffs seek quasi-as-applied relief: enjoining the Ban as applied to all other non-Plaintiff, non-partisan groups and individuals that provide line relief—items of nominal value including food and drink to show solidarity and support—to voters standing in line more than 150-feet from the polling place, under the *Moody* framework required by the Eleventh Circuit.

A. SB 202's Line Relief Ban Is Unconstitutional As Applied to Plaintiffs.

The Eleventh Circuit's order did not address this Court's merits decision concerning the Ban as applied to Plaintiffs. Even in vacating the injunction, the Eleventh Circuit acknowledged that "the district court [had] looked only to the plaintiffs' own line-relief efforts"—in other words, had already analyzed as-applied

relief. *SB 202 II*, 160 F.4th at 1177. Indeed, this Court has explained in multiple orders, *see* Dkt. Nos. 241, 614, that the Line Relief Ban unconstitutionally violates Plaintiffs' First Amendment rights. The same factual findings and legal conclusions apply to Plaintiffs' renewed request for as-applied relief here, and do not require further analysis under *Moody*. At a minimum, then, this Court should reinstate the preliminary injunction as it applies to Plaintiffs, as other courts have done on remand following *Moody*. *E.g.*, *NetChoice, LLC v. Fitch*, 787 F. Supp. 3d 262, 267–68 (S.D. Miss. 2025) (granting preliminary injunction as applied to plaintiffs after remand).

1. SB 202's Line Relief Ban criminalizes expressive conduct that is protected under the First Amendment.

As this Court has held, SB 202's prohibition on "line relief activities constitute[s] expressive conduct that is protected by the First Amendment." *In re Ga. Senate Bill 202* ("*SB 202*"), 688 F. Supp. 3d 1300, 1307 (N.D. Ga. 2023), *vacated and remanded*, 160 F.4th 1171 (11th Cir. 2025). "The First Amendment protects expressive conduct in addition to spoken or written speech." *Id.* (quoting *Texas v. Johnson*, 491 U.S. 397, 404 (1989)). "To determine whether conduct is expressive, a court asks 'whether [a] reasonable person would interpret it as *some* sort of message, not whether an observer would necessarily infer a *specific* message.'" *Id.* (quoting *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004)). "A 'narrow, succinctly articulable message is not a

condition of constitutional protection.'" *Moody v. NetChoice, LLC*, 603 U.S. 707, 732 (2024) (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995)).

This Court has found on multiple occasions that Plaintiffs' line relief activities meet the expressive conduct standard. In view of the extensive record in this case, this Court found that "Plaintiffs intend to convey a message that voting is important and that voters should remain in line to ensure their participation in the democratic process." *SB 202*, 688 F. Supp. 3d at 1307 (quoting Dkt. No. 241 at 31); *see also id.* at 1313 ("[L]ine relief activities convey messages about community support, voter dignity and the importance of political participation."). Further, this Court found that "[t]he record also shows that voters perceive these messages" from Plaintiffs' line relief activities, including voter testimony that line relief "conveyed a message of support that lifted his spirits and strengthened his resolve to persevere through adversity." *Id.* at 1313 (internal quotation marks and alterations omitted); *see also id.* at 1307 (finding "voters 'infer' some message from Plaintiffs' efforts") (quoting *Holloman*, 370 F.3d at 1270). Thus, as this Court has already correctly held, Plaintiffs' line relief activities constitute expressive conduct protected by the First Amendment.

2. *Burson* scrutiny applies because the Line Relief Ban is a content-based restriction of Plaintiffs' speech in a public forum.

This Court was also correct in holding that the Line Relief Ban constitutes a content-based restriction of speech. "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). "[E]ven facially content-neutral laws . . . 'will be considered content-based regulations of speech' if they 'cannot be justified without reference to the content of the regulated speech' or if they were adopted by the government 'because of disagreement with the message [the speech] conveys.'" *SB 202*, 688 F. Supp. 3d at 1307 (quoting *Reed*, 576 U.S. at 163). In determining if "a law is content-based, the Court looks to the government's purpose in adopting the law as 'the controlling consideration.'" *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

This Court held that the Line Relief Ban is content-based for two principal reasons. *First*, "this Court held that the [Ban] prohibited a specific category of conduct (offering or providing certain items to voters) around the polling place." *Id.* at 1308 (citation modified). This means that "Plaintiffs' ability in this case to exercise their First Amendment rights near polling places hinged entirely on the nature of their conduct and thus on the content of their speech." *Id.*

Second, this Court found—based on the extensive record before it, including the State's own admissions—that the justification for the Line Relief Ban was a concern that "what volunteers were communicating to voters and that line warming activities could . . . be perceived as improper electioneering, political pressure or intimidation." *Id.* at 1309 (internal quotation marks omitted). This Court rejected the State's argument that the Ban was aimed at "the secondary effects of Plaintiffs' expressive conduct 'on the surrounding community,'" *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986), finding instead that the Line Relief Ban "targets the direct effect of Plaintiffs' speech on voters," *SB 202*, 688 F. Supp. 3d at 1313; *see Boos v. Barry*, 485 U.S. 312, 321 (1988) (finding "[r]egulations that focus on the direct impact of speech on its audience … are not the type of secondary effects" at issue in *Renton*). Indeed, SB 202 itself "justifies the [Ban] on the grounds that it protects voters from the potential effects of Plaintiffs' speech," and the State's own testimony revealed that "the Secretary of State's Office was concerned about perceptions of political influence from organizations distributing food and water around polling places." *SB 202*, 688 F. Supp. 3d at 1313. That the Ban was principally motivated by concerns about the content of the speech from those offering line relief is further evidence of it being a content-based restriction.

Given that the Line Relief Ban is a content-based restriction occurring in a traditional public forum—i.e., "sidewalks and streets adjacent to the polling places," *Burson v. Freeman*, 504 U.S. 191, 197 n.2 (1992)—strict scrutiny applies. *Reed*, 576 U.S. at 164. Here, because the Court found that "the First Amendment right threatens to interfere with the act of voting itself," *Burson*, 504 U.S. at 209 n.11, the modified strict scrutiny analysis detailed in *Burson* applies. Under this standard, Defendants bear the burden of establishing that the law is narrowly tailored to advance a compelling governmental interest, meaning the "[s]tatute is 'reasonable and does not significantly impinge on constitutionally protected rights.'" *Citizens for Police Accountability Pol. Comm. v. Browning*, 572 F.3d 1213, 1221 (11th Cir. 2009) (quoting *Burson*, 504 U.S. at 209). This Court has previously held that Plaintiffs' line relief activities fall under the *Burson* modified strict scrutiny analysis, *SB 202*, 688 F. Supp. 3d at 1310, and, at a minimum, the record supports the same conclusion here rather than lesser forms of scrutiny.

3. The Line Relief Ban in the Supplemental Zone cannot survive First Amendment scrutiny because it is not narrowly tailored as applied to Plaintiffs' activities.

The Line Relief Ban violates the First Amendment as applied to Plaintiffs' line relief activities because the Supplemental Zone "is tied to the location of the voter," meaning it "has no fixed boundary and thus no limit." *Id.* at 1314. This Court,

relying on *Burson*, correctly noted that the Supreme Court has "indicated that a restricted zone becomes unconstitutional at 'some measurable distance from the polls.'" *Id.* at 1310 (quoting *Burson*, 504 U.S. at 210)). The Supplemental Zone "is neither restricted nor limited in its geographic [location]" because it applies 25 feet from a voter in line, no matter how far away that voter is from the actual polling place. *Id.* at 1315. In this way, the Line Relief Ban in the Supplemental Zone cannot possibly be narrowly tailored as applied to Plaintiffs' line-relief activities, because it applies to Plaintiffs "no matter the distance from the polls so long as a voter is present." *Id.* at 1314; *cf. Anderson v. Spear*, 356 F.3d 651, 658 (6th Cir. 2004) (holding 500-foot buffer zone against electioneering "sought to eliminate all electioneering on election day," which "*Burson* simply does not permit.").

This Court has already made these findings in the context of Plaintiffs' line relief activities. As the record makes clear, Plaintiffs are "nonprofit organizations whose work includes fostering participation in the democratic process." Order, Dkt. No. 241 at 6. As Plaintiffs have testified, conducting their line relief activities within the Supplemental Zone is particularly necessary because "[i]t is important to be able to approach voters closer to where they are standing in line." Dkt. No. 171-3 at 5; *see also* Dkt. Nos. 535-13 at 2, 535-10 at 4. Yet the Ban shuts down those activities in their entirety, meaning the "Supplemental Zone is neither restricted nor limited in

its geographic application." *SB 202*, 688 F. Supp. 3d at 1315; *see also Anderson*, 356 F.3d at 658 (*Burson* "simply does not permit" an absolute ban on expressive activity regardless of geographic distance).

Plaintiffs have long provided line relief within the Supplemental Zone for voters waiting in lines in Georgia elections, and these line relief activities are core to their missions. Thus, the Line Relief Ban within the Supplemental Zone is unconstitutional, as this Court has already found as applied to Plaintiffs here.

B. The Court Should Also Grant Relief Beyond the Named Plaintiffs, But Need Not Strike Down the Provision at Issue in All Applications.

The Eleventh Circuit instructed this Court on remand to conduct the facial-challenge analysis that the Supreme Court set out under *Moody*. 603 U.S. at 723. Plaintiffs' renewed request for preliminary relief, however, does not seek full facial relief. Plaintiffs instead seek quasi-as-applied relief that would enjoin the Ban's line-relief prohibitions only as to their and to non-Plaintiffs' expressive distribution of items of nominal value including food and drink. Indeed, the Supreme Court and Eleventh Circuit allow parties to seek such relief that "has characteristics of both" as-applied and facial challenges. *Doe*, 561 U.S. at 194; *see also McGuire*, 50 F.4th at 1003–04. In *Doe*, the Supreme Court explained that a party may seek relief that stretches beyond the named plaintiffs in the case but does not seek to strike down a

provision in all its applications. 561 U.S. at 194. In a similar remand based on the Supreme Court's decision in *Moody*, another federal court agreed "that based on *Doe*, a plaintiff may assert a First Amendment facial challenge to a specific application of a statutory provision." *NetChoice, LLC v. Bonta*, 770 F. Supp. 3d 1164, 1197 (N.D. Cal. 2025).

This approach makes good sense, because the "distinction between facial and as-applied challenges . . . goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010); *see also Young Israel of Tampa, Inc. v. Hillsborough Area Reg'l Transit Auth.*, 89 F.4th 1337, 1351 (11th Cir.), *cert. denied*, 145 S. Ct. 161 (2024) (same). Seeking facial relief "affects the extent to which the invalidity of the challenged law must be demonstrated and the corresponding 'breadth of the remedy,' but it does not speak at all to the substantive rule of law necessary to establish a constitutional violation." *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019).

To obtain quasi-as-applied relief, the plaintiff "must satisfy the standard for a facial challenge to the extent that his claim "reach[es] beyond [her] particular circumstances." *McGuire*, 50 F.4th at 1003–04 (quoting *Doe*, 561 U.S. at 194). Such analysis "focuses on only the constitutional validity of the subset of applications

targeted by the plaintiffs' substantive claim." *United States v. Supreme Ct. of N.M.*, 839 F.3d 888, 915 (10th Cir. 2016).

Here, Plaintiffs seek to vindicate the rights of all non-partisan groups and individuals who will have their line relief efforts chilled by the Ban's criminal provision, but only to the extent it applies to those groups or individuals providing food, beverages, or other items of nominal value to voters waiting more than 150-feet from the polling place in the Supplemental Zone. Under *Moody*'s framework, Plaintiffs must therefore: (1) "show the full scope of the law's coverage," *Bonta*, 770 F. Supp. 3d at 1184, to the extent they seek injunctive relief, *Doe*, 561 U.S. at 194; (2) identify within that scope of relief sought "which of the law's applications are constitutionally permissible and which are not," *Bonta*, 770 F. Supp. 3d at 1184; and (3) "show that the law prohibits a substantial amount of protected speech relative to its plainly legitimate sweep,'" *id.* at 1184–85 (quoting *Moody*, 603 U.S. at 744).

1. The scope of the challenged conduct is the Line Relief Ban's criminalization of sharing food, drink, and items of nominal value for reasons other than influencing voting decisions.

The Court must first analyze the scope of the conduct prohibited by the statute, *see, e.g.*, *NetChoice, L.L.C. v. Fitch*, 134 F.4th 799, 809 (5th Cir. 2025), but in doing so, the Court "considers only applications where the statute actually [covers] the conduct, not those where the statute does no work." *Spirit Aerosystems, Inc. v.*

Paxton, 142 F.4th 278, 286 (5th Cir. 2025). "Conduct that is independently [covered] by a legal provision or doctrine other than the challenged law"—including the text of the statute at issue before SB 202 amended it—"is thus not relevant to that law's facial constitutionality." *Garcia v. City of Los Angeles*, 11 F.4th 1113, 1119 n.7 (9th Cir. 2021). Additionally, as the Eleventh Circuit instructed, "the 'principal things regulated' should get a heavier weight in this analysis," *Ga. SB 202 II*, 160 F.4th at 1177 (quoting *Moody*, 603 U.S. at 726), and the Court should "not consider hypothetical-but-unrealistic applications of [the law] . . . when applying the [*Moody*] balancing analysis," *Penguin Random House LLC v. Robbins*, 774 F. Supp. 3d 1001, 1030 (S.D. Iowa 2025).

The scope of Plaintiffs' challenge concerns only the Line Relief Ban's prohibitions on providing food, drink, or items of nominal value for expressive purposes to voters standing in line more than 150-feet from the polling place. And it excludes the use of tables or booths and conduct seeking to influence anyone to vote or vote for a particular candidate, as these latter two features are already illegal under provisions that predate SB 202. Based on the scope of relief of the quasi-as-applied challenge and limiting its application to other non-partisan groups and individuals performing line relief beyond named Plaintiffs, there are only three potential applications of the Ban to evaluate under part one of the *Moody* framework.

Line Relief by Non-Plaintiffs: The record is replete with examples of other non-partisan groups and individuals beyond the named Plaintiffs whose expressive line-relief activities are criminalized by SB 202's Ban. The evidence reflects that those activities by non-Plaintiffs similarly seek to convey messages of solidarity and perseverance to Georgians waiting in long lines to vote. *See, e.g.*, Dkt. Nos. 171-3, 171-6, 171-8, 171-17, 171-18, 185-4, 185-5. Melody Bray, with the non-Plaintiff Georgia 55 Project, described how her organization engaged in line relief in several counties to "convey a message" to "persevere to make sure voters' voices are heard," connecting that work "to the work of civil rights activists in the past." Dkt. No. 171-3 ¶ 10, ¶¶ 12-15. Billy Honor, before he was affiliated with any Plaintiff group, served as a church pastor whose church hosted a polling place in South Fulton, when he and the church staff would pass out water when lines stretched out onto the sidewalks beyond the church. Dkt. No. 185-5 ¶¶ 5-6. Jauan Durbin, an individual not affiliated with any organization, described how he received line relief in 2018—a message that "lifted [his] spirit and strengthened [his] resolve"—and then, inspired by that experience, provided line relief himself in 2020. Dkt. No. 185-4 ¶¶ 4-5. And many individuals—some who are unaffiliated with Plaintiffs, Dkt. No. 171-8, and others who were Plaintiffs' organizational members, *see* Dkt. Nos. 171-6, 171-17,

171-18—described receiving line relief from non-Plaintiff, non-partisan groups and understanding the messages of solidary and perseverance they conveyed.

Moreover, election officials—including State Defendants' own witness, Lynn Bailey—described line relief activities of non-partisan groups beyond named Plaintiffs. Dkt. No. 171-5 (former Fulton election official Dwight Brower); Dkt. No. 535-5 (Lynn Bailey); Dkt. No. 535-7 (Douglas County election official Milton Kidd). Ms. Bailey testified, for example, that most of the groups that provided line relief in Richmond County were Black churches or Black-led civic groups without limitation to Plaintiffs. Dkt. No. 535-5.

The record shows that SB 202's Ban criminalizes expressive line relief by Plaintiffs and by other non-partisan groups and individuals.

Other Criminalized Conduct Excluded from Plaintiffs Quasi-As-Applied Injunction: The other types of conduct prohibited by SB 202 as challenged here are largely speculative, not supported in the record, and not subject to the preliminary injunctions sought by Plaintiffs. Defendants have previously argued that "[c]andidates, political parties, and special interest groups try to sway elections" including by "hiring food trucks to give away free meals to voters, personally handing out pizza and snacks to voters waiting in line, and throwing parties with live

entertainment like mariachi bands and circus performers." State Defs.' Appellants Br., *SB 202*, No. 23-13095 (11th Cir. July 1, 2024), Dkt. No. 105 at 2.

But none of that conduct falls within the scope of Plaintiffs' challenge to SB 202 or the relief Plaintiffs seek. As noted above, Georgia laws that pre-dated SB 202 and remain in effect ban electioneering, vote buying, and tables and booths (which would include food trucks). O.C.G.A. §§ 21-2-570, 21-2-414(a). Moreover, SB 202 does not address live entertainment at all, though such conduct would also be banned under preexisting law if it "materially interrupts or improperly and materially interferes with the execution of a poll officer['s] . . . duties." O.C.G.A. § 21-2-566.

There are only two conceivable applications of SB 202's line relief provision beyond expressive line relief, although nothing in the record suggests either is an existing problem or concern of the Georgia Legislature or election officials. First, the challenged portion of SB 202 would criminalize the giving of nominal-value food, drink, and gifts by businesses to promote their business rather than convey any sort of message. But there is no evidence that this occurs in Georgia in long voting lines. Neither Defendants nor the Legislature have cited commercial solicitation as a basis for the Ban, nor is there any indication of it in the record. As the Court found, the State Legislature and Defendants have cited concerns that voters will perceive the provision of food and drink as attempting to influence the vote, *SB 202*, 688 F.

Supp. 3d at 1313, not as a concern that the waiting-to-vote zone will become a marketplace for business handouts. As such, commercial solicitation is not one of the "'principal things regulated'" by SB 202 that "should get a heavier weight in this analysis." *SB 202 II*, 160 F.4th at 1177 (quoting *Moody*, 603 U.S. at 726), and is not within the scope of the preliminary injunctions sought by Plaintiffs.

Second, the challenged portion of SB 202's Ban would criminalize voters standing in line who share any food, drink, or nominal gifts with other voters in line. But there are no incidences of this in the record, nor any evidence that this was a concern for the State or election officials, whose justification for the Ban focuses on alleged interference by groups or individuals providing line relief. *Id.*

Expressive line relief activities are far and away the principal actions the challenged portion of SB 202's Ban regulates.

2. SB 202's expressive Line Relief Ban violates the First Amendment, while its Ban on providing food, drink, or gifts for other reasons likely does not.

The Court has already found that the Line Relief Ban "in the Supplemental Zone is not narrowly tailored and that it places an impermissible burden on the exercise of constitutional rights," analyzing its application to groups and individuals providing expressive line relief. *SB 202*, 688 F. Supp. 3d at 1315. Nothing in the Eleventh Circuit's order undermines the validity of that finding.

Plaintiffs concede based on the current record that the Ban's application to two types of conduct likely does not violate the First Amendment: commercial gift-giving and non-organized sharing of food, drink, or other items between individuals waiting in line. Nothing in the record suggests that food-sharing between two individuals waiting to vote is inherently expressive, though it may be in many circumstances. And while in certain contexts providing, for example, samples of a company's products may constitute commercial speech, there is nothing in the record indicating such efforts occur around voters waiting in line. The lack of inherently expressive conduct associated with these two applications provides a sharp contrast to the highly visible, organized efforts of Plaintiffs and other non-partisan groups and individuals showing up to polling places with long lines to provide messages of "community support, voter dignity and the importance of political participation." *Id.* at 1313. As the Court explained in its first decision, organized line relief activities relate "to an issue of community concern," and "food has specific historical and cultural significance in the context of civil rights activities." *In re Ga. Senate Bill 202*, 622 F. Supp. 3d 1312, 1329 (N.D. Ga. 2022).

3. In terms of the relief sought, SB 202 prohibits a substantial amount of speech in relation to its legitimate sweep.

The Ban's application to line relief activities is its principal purpose and application: it was motivated by "the notion that voters would perceive line relief as

improper electioneering or political pressure." *SB 202*, 688 F. Supp. 3d at 1313. The evidence Defendants cite in opposition to the Ban focuses on activities that were already illegal prior to SB 202 and thus outside the scope of the current challenge. *See* State Defs.' Appellants Br. at 2, *Ga. SB 202 II*, Dkt. No. 105 (referring to "[c]andidates, political parties, and special interest groups try to sway elections through last-minute efforts on election day," the "activities of advocacy organizations" providing line relief, *id.* at 3, and groups "approach[ing] voters . . . wait[ing] in line . . . with small items like food, water bottles, or ponchos" as the conduct motivating the Ban).

There is also no evidence or assertion of any, let alone widespread, commercial hand-outs to voters in line. And while it is certainly possible that voters on occasion may share a snack or water with a family member, friend, or neighbor waiting in line next to them, there is also no evidence or assertion that officials are concerned or would even attempt to stop such conduct or prosecute such conduct. If the purpose of this law is, as Defendants claim, to "address[ ] a recognized problem" of "invasive activities of advocacy organizations arous[ing] fear and suspicion in voters waiting in line," *id.* at 3, one family member handing a granola bar to another voter is unlikely to prompt any concern let alone enforcement activities, even if technically a violation of the Ban.

The Ban therefore, as challenged here, primarily prohibits the First Amendment protected expressive conduct activities of Plaintiffs and others likewise providing line relief, while having far fewer constitutional applications.

II. The Remaining Factors Weigh Heavily in Plaintiffs' Favor

Each remaining factor favors granting a preliminary injunction, as Plaintiffs are "likely to suffer irreparable harm in the absence of preliminary relief," the "balance of equities tips in [their] favor," and "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

On remand, the factual record continues to demonstrate that the Line Relief Ban "has already deterred Plaintiffs and other organizations from engaging in line warming activities," and "[b]ecause the lost opportunity for expression cannot be remedied after the fact, . . . the irreparable harm factor of the preliminary injunction test is satisfied . . . [as to] the Supplemental Zone." Dkt. No. 241 at 59. As Plaintiffs' declarations show, the Supplemental Zone ban prevented them from conducting line relief in the 2022 elections. *See* 2d Supp. Decl. of Rhonda Briggins ¶¶ 16, 19-21 (Ex. A); Decl. of Reverend Willie James Barber II ¶¶ 5-6, 9 (Ex. B); Second Supp. Decl. of Glory Kilanko ¶¶ 4, 6, 12 (Ex. C); Decl. of Gerald Griggs ¶¶ 14-15 (Ex. D); Decl. of Maria Del Rosario Palacios ¶ 10 (Ex. E). With this Court's preliminary injunction in effect for the 2024 elections, certain Plaintiffs were able to conduct line relief in

the Supplemental Zone. *See* Barber Decl. ¶¶ 6, 9; Kilanko Decl. ¶ 12; Griggs Decl. ¶ 18; Palacios Decl. ¶ 14. Absent a new injunction, Plaintiffs again will be prevented from conducting line relief in upcoming elections this year and beyond. *See* Briggins Decl. ¶¶ 21-22; Barber Decl. ¶¶ 10-11, 9; Second Supp. Decl. of Shafina Khabani ¶ 13 (Ex. F); Kilanko Decl. ¶¶ 11-12; Griggs Decl. ¶ 25; Palacios Decl. ¶ 24.

Long lines continue to persist in Georgia elections. While the parties agree that fewer voters waited on long lines in 2024 compared to 2020—a fact largely attributable to Georgia's polling-place check-in changes unrelated to SB 202, *see* Rebuttal Supp. Expert Rep. of Dr. Pettigrew, Dkt. No. 981-10 at 7-8 (July 4, 2025)—Defendants' expert's own analysis shows that some Georgia voters still waited in lines longer than 30 minutes in 2024. *Id.* at 5; Dep. of Justin Grimmer, Dkt. No. 981-5, 172:16-21 (August 27, 2025) (agreeing that 6.3% of Georgia voters waited in lines longer than 30 minutes in 2024). This reflects the experiences of some of the Plaintiffs, such as in Gwinnett County where some voters waited over 1 hour and 20 minutes, and at the Helene S. Mills Senior Center where there were long lines at times with only two check-in devices functioning. *See* Palacio Decl. ¶ 22; *see also* Kilanko Decl. ¶ 12 (referencing long lines during the 2024 general election at the Stone Mountain/Avondale Estates polling site); Briggins Decl. ¶ 32 (referencing Atlanta polling sites with issues in 2024 with polls opening late, voting machine

malfunctions, and/or staffing that contributed to longer lines at polls); Dkt. No. 535-16 at 3 (testimony of Gwinnett Election Director that lines over an hour usually stretch into the Supplemental Zone). Therefore, Plaintiffs' ability to provide line relief in the Supplemental Zone in the future remains necessary.

Finally, as to the two final factors, because an "infringement of First Amendment rights balances the equities in Plaintiffs' favor, and neither Defendants nor the public have a legitimate interest in enforcing an unconstitutional statute, . . . Plaintiffs have satisfied their burden as to the third and fourth prongs of the preliminary injunction test." Dkt. No. 241 at 61.

CONCLUSION

Because this Court has already made all the findings necessary to grant a preliminary injunction as applied to Plaintiffs' line-relief efforts in the Supplemental Zone and nothing in the Eleventh Circuit opinion undermines that analysis, it should at minimum grant this renewed motion as-applied to Plaintiffs. The Court should also grant relief that extends beyond Plaintiffs to other groups providing line relief in the Supplemental Zone under Plaintiffs' quasi-as-applied challenge.

Respectfully submitted, this 22nd day of January, 2026.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: January 22, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2026, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: January 22, 2026

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