UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE GEORGIA SENATE BILL 202	Master Case No.: 1:21-mi-55555-JPB

REPUBLICAN INTERVENORS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

INTRODUCTION

The Eleventh Circuit vacated the preliminary injunction Plaintiffs obtained against enforcing Georgia's gift-giving ban within 25-feet of a voter standing in line. Plaintiffs renew their request for a preliminary injunction; this time asking for relief not only for their own activities but also those of "all other non-Plaintiff, non-partisan groups and individuals that provide line relief." Doc. 988-1 at 6. Intervenors join the State's opposition to Plaintiffs' motion. They write separately to address three issues: why the 25-foot ban's careful tailoring defeats Plaintiffs' claim, why Plaintiffs' request for relief for non-parties is foreclosed by recent Supreme Court precedent, and why this Court should deny relief under *Purcell*.

On the merits, Plaintiffs commit a similar error to the one corrected by the Eleventh Circuit: They lump together any application of the 25-foot ban to their conduct and assume it must all be unconstitutional. The careful tailoring of the 25-foot ban rebuts that conclusion. Courts have approved protective zones much larger than Georgia's 150-foot zone. *See Frank v. Lee*, 84 F.4th

1119, 1144 (10th Cir. 2023) (300 feet); *Schirmer v. Edwards*, 2 F.3d 117, 121 (5th Cir. 1993) (600 to potentially 1,000). But Georgia opted for "a less restrictive alternative in kind." *Burson v. Freeman*, 504 U.S. 191, 210 (1992) (plurality op.). Instead of expanding the protective zone in all directions, it drew a narrow zone around the voting line itself. But that doesn't automatically render the protection of a voter in line unconstitutional at 151 feet. Plaintiffs don't point to any specific unconstitutional applications, let alone a substantial number.

Plaintiffs' request for relief for nonparties runs headlong into recent Supreme Court precedent. Last term, the Supreme Court held that equitable relief may not "extend[] beyond the parties." *Trump v. CASA, Inc.*, 606 U.S. 831, 843 (2025). But Plaintiffs seek exactly that relief without even attempting to satisfy any of the narrow exceptions that the Court recognized.

The *Purcell* principle also forecloses the request for relief here. *Purcell* instructs that federal courts should not change election rules too close to the election. *See Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of stay applications). It applies based on the time that the State would have to implement a court-mandated change. Georgia's primary election is three months away—already well within *Purcell*'s reach. *See League of Women Voters of Fla. v. Fla. Sec'y of State (LWVF)*, 32 F.4th 1363, 1371 (11th

Cir. 2022). And the November 3 general election is fast approaching. So *Purcell* bars relief here.

ARGUMENT

"A preliminary injunction is an extraordinary and drastic remedy." *Citizens for Police Accountability Pol. Comm. v. Browning*, 572 F.3d 1213, 1217 (11th Cir. 2009) (cleaned up). It "should not be granted unless the movant clearly carries its burden." *Suntrust Bank v. Houghton Mifflin Co.*, 252 F.3d 1165, 1166 (11th Cir. 2001) (per curiam). That burden requires Plaintiffs to show a "substantial likelihood" of success on the merits, irreparable injury absent an injunction, that the balance of the equities favors them, and that an injunction favors the public interest. *Id.* Plaintiffs cannot meet their burden on the merits, the equities, or the public interest.*

* Intervenors respectfully maintain their position that strict scrutiny does not apply, and they incorporate their arguments made in opposition to Plaintiffs' first set of preliminary injunction motions. *See* Doc. 194 at 10-21. The gift-giving ban does not regulate expressive conduct. *See id.* at 11-15. Even if it did, the ban is a reasonable time, place, or manner restriction. *See id.* at 17-18. It also meets the relaxed standard for laws governing express conduct. *See id.* at 18-20. Finally, even if the gift-giving ban imposed a content-based restriction or involved a traditional public forum, it would be subject to the *Anderson-Burdick* balancing test, which it easily passes. *See id.* at 20-21.

I. Plaintiffs are not substantially likely to succeed on the merits.

A. The 25-foot zone is narrowly tailored to protect voters.

This Court has previously applied *Burson*'s modified strict scrutiny standard to Plaintiffs' First Amendment challenge, ruling that the 25-foot supplemental zone must be "'reasonable'" and must not "'*significantly impinge*' on constitutional rights." *In re Georgia Senate Bill 202*, 622 F. Supp. 3d 1312, 1130 (N.D. Ga. 2022) (quoting *Burson*, 504 U.S. at 209 (internal quotation omitted)). This standard requires Plaintiffs to show that a substantial number of applications of Georgia's supplemental gift-giving ban to their conduct would violate their First Amendment rights. Plaintiffs cannot meet this burden.

At a minimum, Georgia's 25-foot supplemental zone is constitutional at some distance from the polls. Georgia's 150-foot protective zone is small compared to other zones that courts have upheld. *See Frank*, 84 F.4th at 1144 (300 feet); *Schirmer*, 2 F.3d at 121 (600 to potentially 1,000). After all, *Burson* "d[id] not view the question of whether" the "boundary line could be somewhat tighter as a question of 'constitutional dimension.'" 504 U.S. at 210. A smaller zone is "a difference only in degree, not a less restrictive alternative in kind." *Id.* So even if application of Georgia's 25-foot zone is unconstitutional "[a]t some measurable distance from the polls," *id.*, it remains constitutional in the majority of applications.

"The real question then is *how large* a restricted zone is permissible or sufficiently tailored," *id.* at 208, and how many applications of Georgia's supplemental zone will cross that line. Plaintiffs don't venture answers. They ask for injunctive relief against all applications of the 25-foot zone "as applied to Plaintiffs here." Doc. 988-1 at 14. But a protective zone does not "effectively become an impermissible burden" as soon as it reaches 151 feet. *Cf. Burson*, 504 U.S. at 210. Even at polling places with lines exceeding 150 feet, only a fraction will reach a point at which they could be an impermissible burden. Instead of showing that a substantial number of the supplemental zone's applications will cross the constitutional line, Plaintiffs rely on the possibility that some applications might: Because the supplemental zone "has no fixed boundary and thus no limit," it is unconstitutional. Doc. 988-1 at 12 (quoting *In re Georgia Senate Bill 202*, 688 F. Supp. 3d 1300, 1314 (N.D. Ga. 2023)). That theoretical possibility is not enough to show a substantial number of unconstitutional applications. *See In re Georgia Senate Bill 202*, 160 F.4th 1171, 1177 (11th Cir. 2025) (explaining the need "to systematically assess the full sweep of the regulation and weigh the constitutional against the unconstitutional applications").

Plaintiffs' inability to point to a substantial number of unconstitutional applications is a result of the supplemental zone's careful tailoring. As explained, courts have approved much larger buffer zones. *See Frank*, 84 F.4th

at 1144; *Schirmer*, 2 F.3d at 121. Georgia could have done the same. *See* Oral Argument, *In re Georgia Senate Bill 202*, No. 23-13095, at 38:17-39:24 (11th Cir. Aug. 13, 2025), bit.ly/46AaZs4 (Judge Jordan: "If you're right in this challenge, aren't you basically asking for the buffer zone to be extended?"). Instead, Georgia adopted a "a less restrictive alternative in kind." *Burson*, 504 U.S. at 210. It drew a smaller zone around voters who have already entered the voting line. That narrow rule is well-tailored to "protect[] voters from confusion and undue influence" during the voting process, and to "preserv[e] the integrity of the election process." *Browning*, 572 F.3d at 1218. Plaintiffs have not shown that a substantial number of the gift-giving ban's applications to their conduct will violate the First Amendment.

II. Plaintiffs' request for injunctive relief for nonparties violates Supreme Court precedent.

Just last June, the Supreme Court clarified a federal court's authority to grant injunctive relief. Barring narrow exceptions, relief must not "extend[] beyond the parties." *CASA*, 606 U.S. at 843. The Judiciary Act of 1789 gave federal courts only authority to grant remedies "traditionally accorded by our courts of equity." *Id.* at 856 (quoting *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999)). Relief beyond the parties clashes with "the party-specific principles that permeate our understanding of equity." *Id.* at 844. At the Founding, equitable suits "were brought by and

against individual parties," and the "remedies were also typically party specific." *Id.* at 842; *see also Iveson v. Harris*, 32 Eng. Rep. 102, 104 (1802) (The High Court of Chancery in England "adhered very closely to the principle, that you cannot have an injunction except against a party to the suit."). Early practice reinforced this understanding, as federal courts "consistently rebuffed requests for relief that extended beyond the parties." *Id.* at 843. The bottom line: An injunction cannot "directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs." *Id.* at 844 (quoting *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)).

Plaintiffs' request for injunctive relief "stretching beyond the named plaintiffs in the case" clashes with the Supreme Court's holding. Doc. 988-1 at 2. Plaintiffs expressly ask for relief for "non-Plaintiff, non-partisan groups." *Id.* This relief running to "all other non-Plaintiff, non-partisan groups and individuals that provide line relief" cannot be squared with *CASA*'s holding that injunctive relief should be party-specific. Doc. 988-1 at 6.

Plaintiffs' fail to mention *CASA*, let alone show that their unusual request is consistent with the Supreme Court's decision. Nor could they. None of *CASA*'s narrow limitations to the party-specific relief rule bear even a passing resemblance to Plaintiffs' unusual request.

Start with the bill of peace. The "bill of peace" is a "form of group litigation permitted in English courts." *CASA*, 606 U.S. at 847. But this mechanism

"lives in modern form" not as an injunction for nonparties but as "the modern class action." *Id.* at 849. Rule 23 class actions have "virtually identical" requirements to the bill of peace. *Id.* And like the bill of peace, the modern class action involves a cohesive group that will all be bound by the judgment. *Id.* at 848 (noting that the bill of peace involved "small and cohesive" groups and "would bind all members of the group" (cleaned up)).

Rule 23's requirements for group relief pose "a significant problem" for Plaintiffs' request. *Id.* at 849. Under Rule 23, a class action "can come about in federal courts in just one way—through the procedure set out in Rule 23." *Id.* (quoting *Smith v. Bayer Corp.*, 564 U.S. 299, 315 (2011)). Plaintiffs and federal courts are not free to "forg[e] a shortcut to relief that benefits parties and nonparties alike." *Id.* Any argument that a class could be certified "simply proves" that the requested relief is "a class action workaround." *Id.* at 850. That "quick fix" is not permitted. *Id.*

Plaintiffs' own argument forecloses a claim that non-party relief is needed to "award complete relief." *Id.* at 853. Complete relief refers to "complete relief *between the parties*." *Id.* at 851 (cleaned up). Relief for "other similarly situated individuals" is not permitted when a party-specific injunction "will give th[e] plaintiff complete relief." *Id.* at 853.

Plaintiffs expressly seek non-party injunctive relief in addition to a party-specific injunction granting them full relief. They first "seek relief as

applied to Plaintiffs." Doc. 988-1 at 7. Party-specific relief, they claim, is needed to avoid "irreparable harm if they are unable to exercise their First Amendment-protected activities." *Id.* at 3. They seek "broader … relief" for non-parties for a different reason: "[O]ther non-partisan groups and individuals engage in line relief as an expressive activity," and application of Georgia's gift-giving ban, they claim, "is unconstitutional." *Id.* at 3-4. In short, they make exactly the claim for relief for others "potentially affected by an allegedly unlawful act" foreclosed by *CASA*, 606 U.S. at 852.

Neither of the cases Plaintiffs cite can overcome the application of recent Supreme Court precedent. Doc. 988-1 at 3-4. The Supreme Court's decision in *Doe v. Reed* clarified that plaintiffs must "satisfy our standards facial challenge to the extent" that they seek an injunction "beyond the particular circumstances of the plaintiffs." 561 U.S. 186, 194 (2010). The Eleventh Circuit repeated this instruction in *McGuire v. Marshall*, 50 F.4th 986, 1003-04 (11th Cir. 2022). These statements about the substantive showing to obtain *any* equitable relief on a theory reaching beyond the parties don't touch the question raised in *CASA*: Whether a federal court has authority to grant relief beyond the parties even if it concludes that a policy's application would be unlawful. "[A]fter *CASA*," the "relief a court can grant a plaintiff mounting a facial versus as-applied challenge is basically the same—an injunction against enforcing the law against the plaintiff or plaintiffs only." *Benjamin v. Oliver*, 800 F. Supp.

3d 1314, 1345 n.12 (N.D. Ga. 2025). Plaintiffs' requests injunctive relief for nonparties must be denied.

III. *Purcell* forecloses relief.

The *Purcell* principle prevents this Court from issuing an injunction concerning the gift-giving ban. The *Purcell* principle is a "bedrock tenet of election law." *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of stay applications). This principle instructs that the "traditional test" for injunctive relief "does not apply" when a plaintiff asks for an injunction of a state's election law "in the period close to an election." *Id.* Instead, "[w]hen an election is close at hand, the rules of the road must be clear and settled." *Id.* at 880-81. As this Court observed when it refused Plaintiffs' initial motion for an injunction based on the *Purcell* principle, "a review of Eleventh Circuit case law regarding the *Purcell* doctrine indicates that the standard to allow a voting-related injunction to take effect close to election day is high." *In re Georgia Senate Bill 202*, 622 F. Supp. 3d 1312, 1343 (N.D. Ga. 2022). Indeed, "it would be an extraordinary case where an injunction—despite its issuance on the eve of the election—might be proper." *Id.* (cleaned up).

Plaintiffs are asking for an injunction within the *Purcell* period. Even an election several months away is close enough for *Purcell*. The Supreme Court applied *Purcell* to an election that was "about four months" away in *Milligan*, 142 S. Ct. at 88 (Kagan, J., dissenting). And the Eleventh Circuit found that

four months "easily falls within" *Purcell's* reach. *LWVF*, 32 F.4th at 1371 n.6. Other courts have applied *Purcell* six months before an election. *Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir. 2020). In each of these cases, the courts measured from the time when the State would have to implement a disruptive change. *See Milligan*, 142 S. Ct. at 88 (Kagan, J., dissenting) (election is "four months from now."); *LWVF*, 32 F.4th at 1371 ("[D]istrict court … issued its injunction" when the next election was "set to begin in less than four months); *Thompson*, 959 F.3d at 813 ("[M]oving or changing a deadline or procedure now will have inevitable, further consequences.").

Here, Plaintiffs are asking this Court to grant an injunction too close to an election. Georgia will hold two special elections next month. *Election Information—March 10, 2026 Special Election*, Ga. Sec'y of State (2026), perma.cc/NFP3-WKUC; *Election Information—March 17, 2026 Special Election*, Ga. Sec'y of State (2026), perma.cc/C2WG-LVE6. Georgia's primary elections are three months away. *Election Information—May 19, 2026 General Primary Election*, Ga. Sec'y of State (2026), perma.cc/UN7L-CGAY. And a general election will be held on November 3. Accordingly, the *Purcell* principle bars relief. *See LWVF*, 32 F.4th at 1371.

Plaintiffs make no effort to justify their request for a preliminary injunction under *Purcell*. Nor could they. To "overcome" *Purcell*, they must show "at least … (i) the underlying merits are entirely clearcut in favor of the plaintiff;

(ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship." *Milligan*, 142 S. Ct. 881 (Kavanaugh, J., concurring). Yet this Court has already ruled *in this case* that "Plaintiffs have failed to show at least two of the *Merrill* factors. As to the first *Merrill* factor, it is questionable whether the merits of Plaintiffs' case are entirely clearcut." *In re Georgia Senate Bill 202*, 622 F. Supp. 3d at 1345-46 (cleaned up). Even if Plaintiffs demonstrate they are "substantially likely to succeed on the merits of their claim as to the Supplemental Zone, the Court interprets the entirely clearcut standard to require even more" and "cannot say that this prong of the *Merrill* analysis is satisfied." *Id*. at 1345.

Plaintiffs also fail to satisfy the fourth *Merrill* factor. "Plaintiffs have not shown that compliance with an injunction would be feasible without significant cost, confusion, or hardship." *Id*. at 1345-46 (cleaned up). "S.B. 202 is already the law, and an injunction with respect to the Supplemental Zone would not merely preserve the status quo." *Id*. at 1344.

Plaintiffs cannot avoid *Purcell* by arguing that they acted diligently in moving for a preliminary injunction quickly after the Eleventh Circuit's decision. To be sure, "a party requesting a preliminary injunction must generally show reasonable diligence." *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018)

(per curiam). But the primary concerns behind *Purcell* are "protect[ing] the State's interest in running an orderly, efficient election" and giving citizens "confidence in the fairness of the election." *DNC v. Wisconsin State Legis.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). In fact, the Supreme Court applied *Purcell* to preclude relief even when a plaintiff sought relief based on the COVID-19 pandemic in March 2020. *E.g.*, *RNC v. DNC*, 589 U.S. 423, 424-25 (2020) (per curiam). Because the election to which the district court's injunction would apply is "close at hand" and Georgia "'has a compelling interest in preserving the integrity of its election process,'" *Purcell* precludes relief. *LWVF*, 32 F.4th at 1371-72 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)).

CONCLUSION

This Court should deny Plaintiffs' motion for a preliminary injunction.

Dated: February 19, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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/s/ William Bradley Carver

CERTIFICATE OF SERVICE

On February 19, 2026, I e-filed this document on ECF, which will email everyone requiring service.

/s/ William Bradley Carver