

**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

THE NEW GEORGIA PROJECT, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State, *et al.*,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

Civil Action No.:
1:21-cv-01229-JPB

GEORGIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Secretary of State for the

Civil Action No.:
1:21-cv-01259-JPB

State of Georgia, *et al.*,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

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

**STATE DEFENDANTS' AND DEFENDANT GREGORY W. EDWARDS'
OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY
INJUNCTION**

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INTRODUCTION

In 2020, representatives of many third-party organizations approached Georgia voters waiting in line to vote. And, when they did, they gave voters a wide range of items, including masks, pizza, water, literature, and ponchos. While those groups may have meant well, voters complained that this practice felt intimidating. Additionally, the presence of so many different organizations and people within the 150-foot buffer zone around polling places made it more difficult for counties to ensure a smooth and efficient election.

These experiences from the 2020 election, combined with activities during other recent elections, showed that Georgia's voting laws needed to be updated to ensure that votes were cast freely and without undue interference. Thus, SB 202 updated the State's existing solicitation ban to make clear that no one may hand out money or gifts—including food or drinks—to voters in the area immediately surrounding a polling place. O.C.G.A. § 21-2-414 (the "Anti-Solicitation Provision"). At the same time, the State took several steps to reduce lines at polling places.

Now, more than a year later, Plaintiffs belatedly ask the Court to preliminarily enjoin the Anti-Solicitation Provision, notwithstanding the confusion it would inject into the ongoing election cycle. As Justice Kavanaugh recently explained, where, as here, "an election is close at hand," a plaintiff's

“undu[e] delay[]” weighs against granting preliminary injunctive relief. *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). But there are several other reasons to deny Plaintiffs’ motions. For instance, Plaintiffs cannot show any irreparable harm, as confirmed by the fact that they waited more than a year to seek injunctive relief.

Moreover, Plaintiffs cannot come close to carrying their burden of showing that the merits are “entirely clearcut” in their favor. *Id.* at 881. Rather, because the Anti-Solicitation Provision prohibits only conduct—handing out things of value to voters—it has no impact on Plaintiffs’ First Amendment rights. But even if it implicated expressive activity, it is a reasonable viewpoint- and content-neutral regulation that easily passes muster under the Supreme Court’s *Anderson-Burdick* framework.

In fact, this provision would be constitutional even if the Court were to apply heightened scrutiny: Preventing voter fraud, intimidation, and confusion, as well as ensuring efficient elections, are all compelling state interests. SB 202’s narrow prohibition on giving things of value to voters in the final stages of the voting process—even things of small value like water bottles—clearly furthers those interests. And, in doing so, SB 202 still allows Plaintiffs to engage in their preferred conduct and speech in a host of ways. Accordingly, Plaintiffs cannot come close to showing that they are

substantially likely to succeed on the merits.

Plaintiffs fare no better on the remaining factors. Given the lack of irreparable injury to Plaintiffs, and the pronounced injury to the State and its voters if an injunction were granted—especially just three months before in-person voting begins—Plaintiffs cannot show that the balance of equities tips in their favor.

For all those reasons, the Court should deny Plaintiffs’ motions.

BACKGROUND

A. Factual background

In Georgia, it has long been illegal to solicit votes in the areas surrounding a polling place. O.C.G.A. § 21-2-414(a). Indeed, before SB 202, it was unlawful to conduct *any* of the following activities either inside a polling place, within 150 feet of the outer edge of the building in which a polling place is established, or within 25 feet of any voter standing in line to vote: (1) solicit votes in any manner or by any means; (2) distribute or display any campaign material; (3) solicit signatures for any petition; or (4) set up any tables or booths on any day when ballots are being cast. *Id.* But confusion remained over what constituted “soliciting” votes around a polling place. *See* R. Germany Decl. ¶ 31 (attached as Ex. 1).

For instance, during the 2020 elections, many third-party groups

circumvented these prohibitions by “approaching electors while they waited in line” with food, drinks, and other goods. SB 202 at 6:126–27 (Ex. 2). In fact, during recent elections, “[g]iving away food and water” had “become commonplace.”¹ As State Elections Board (“SEB”) member Matthew Mashburn explained, “the practice of giving out food and drinks ‘got out of hand’ in recent years, with taco bars, buffets and snack stands set up at polling places.” *Id.*

This was problematic, Mashburn explained, because “[t]here’s not supposed to be any interaction between virtually anyone and the voters ... so they would be free from intimidation.” *Id.* Indeed, “[t]he voter protection bubble is a serious thing with a very important history, especially in Georgia.” *Id.*; *see also* L. Bailey Decl. ¶¶ 7–8 (attached as Ex. 3). Yet, as retired county elections official Lynn Bailey explained, “there is no practical way for elections officials to ensure that” individuals in this bubble are “not using food or water as a basis to approach a voter and electioneer” or ensure “that the individual is giving the voter accurate information about voting.” *Id.* ¶ 12.

Unsurprisingly, these actions around polling places led voters to complain to the Georgia Secretary of State that they felt these individuals were

¹ Mark Niese, *Georgia lawmakers under investigation for handing out snacks to voters*, ATL. J.-CONST. (May 19, 2021), <https://tinyurl.com/2p92b7se>.

attempting to influence their vote. Germany Decl. ¶¶ 29–30. For instance, one voter noted that “[o]lder voters felt intimidated by the presence” of a third-party organization handing out food and water. *Id.* ¶ 30(a). Similarly, as a county elections official observed, “[w]hat one voters sees as a benefit another voter might feel is an effort to intimidate or influence them.” *Id.* ¶ 30(e).

In addition to complaints from voters, the increased number of people in the area surrounding polling places created logistical complications for elections officials. As Ryan Germany, General Counsel for the Georgia Secretary of State, explains, polling locations operate under a complicated set of rules that ensure the voting process is free of outside influence, confusion, or harassment. Germany Decl. ¶¶ 17–27. As a voter progresses from arrival at the polling place closer to the enclosed space, the voter enters “more secure” environments “the closer he or she gets to the ballot box.” Bailey Decl. ¶ 15.

But this complex system led to confusion and questions from election officials about who may engage in what activity in the areas surrounding the polling place. Germany Decl. ¶ 31. Accordingly, Georgia updated its pre-existing solicitation rules to make clear that the solicitation ban includes: “[G]iv[ing], offer[ing] to give, or participat[ing] in the giving of any money or gifts, including, but not limited to, food or drink, to an elector[.]” O.C.G.A. § 21-2-414(a). At the same time, the General Assembly also permitted poll officers

to “make[] available self-service water from an unattended receptacle to an elector waiting in line to vote.” *Id.* § 21-2-414(e).

While these updates to the existing solicitation provisions prohibit *approaching* voters with food or drinks, they do not restrict a voter’s ability to bring his or her own food or beverage to consume while waiting in line to vote. Similarly, this provision does not affect a third party’s ability to provide food or water outside the buffer zone, provided they are not doing so only to voters or as an inducement to vote. Germany Decl. ¶ 35.

At the same time, to ensure that voters were not faced with the prospect of waiting in lengthy lines without food or water, SB 202 sought to reduce line length at polling locations. Under SB 202, Georgia added a mandatory day to early voting, and required that any precinct with more than 2,000 electors where, during the last general election, lines exceeded one hour be “reduce[d] [in] size” or “provide additional voting equipment or poll workers, or both, before the next general election.” O.C.G.A. § 21-2-263(b). With those provisions in place, there were very few complaints about lines at polling locations during the 2022 primary election. Germany Decl. ¶ 16.

B. Procedural background

Not content to let the legislature resolve these matters, Plaintiffs filed their complaints challenging the Anti-Solicitation Provision well over a year

ago. Yet, Plaintiffs waited until now—in the middle of the 2022 election cycle—to file their motions for preliminary injunctions. [Docs. 171, 185].

LEGAL STANDARDS

Ordinarily, a plaintiff seeking a preliminary injunction must establish that: “(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). But that standard is even higher if a plaintiff seeks a preliminary injunction “[w]hen an election is close at hand[.]” *Milligan*, 142 S. Ct. at 880 (Kavanaugh, J., concurring). Under those circumstances, the plaintiffs must also show (1) that the merits are “entirely clearcut” in their favor; (2) that they *will* suffer irreparable harm absent an injunction; (3) that they did not “unduly delay[]” in seeking injunctive relief; and (4) that the requested changes are feasible, without significant cost, confusion or hardship, before the upcoming election. *Id.* at 881. The Eleventh Circuit agrees, having relied on these same factors when staying a preliminary injunction order issued several months before an election, including a solicitation provision. *League of Women Voters of Fla. v. Fla. Sec’y of State*, 32 F.4th 1363, 1371–72 (11th Cir. 2022) (favorably

discussing *Milligan*, 142 S. Ct. at 880–81 (Kavanaugh, J., concurring)).

ARGUMENT

I. Plaintiffs Cannot Meet the Non-Merits Requirements for Preliminary Injunctive Relief When an Election is Close at Hand.

As *League of Women Voters* and Justice Kavanaugh’s concurrence in *Milligan* show, a plaintiff seeking a preliminary injunction “when an election is close at hand” must satisfy three preliminary requirements in addition to showing that the merits are “clearcut” in their favor. Plaintiffs cannot do so.

A. Plaintiffs “unduly delay[ed]” seeking injunctive relief.

Here, Plaintiffs filed their complaints within days of SB 202’s March 25, 2021 enactment. Yet they only now—more than a year later and during an election cycle—seek supposedly urgent relief. The Court should not countenance this attempt to short-circuit the ordinary litigation process.

Indeed, as this Court has held, courts should hesitate to grant election-related injunctive relief “close to an election” where, as here, Plaintiffs “unnecessar[ily] delay[ed] in commencing the suit[.]” *Coalition for Good Governance v. Kemp*, No. 1:21-cv-2070-JPB, 2021 WL 2826094, *2 (N.D. Ga. July 7, 2021) (CGG). In denying the preliminary injunction motion in CGG, this Court noted that the plaintiffs had “waited almost three months after SB 202 passed and until the eve before the underlying election to file their

Motion.” *Id.* at *3. The much greater delay here is inexcusable and, as discussed below, increases the likelihood that Plaintiffs’ actions will “disrupt[] ... the electoral process.” *Id.* at *2. Accordingly, Plaintiffs’ dilatory actions weigh heavily against Plaintiffs’ motions.

B. Plaintiffs cannot show they will suffer irreparable injury.

Plaintiffs’ delay also confirms that they will not suffer irreparable injury absent an injunction. As the Eleventh Circuit holds, “[a] delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.” *Wreal, LLC v. Amazon.com*, 840 F.3d 1244, 1248 (11th Cir. 2016). Indeed, “the very idea of a *preliminary* injunction is premised on the need for speedy and urgent action to protect a plaintiff’s rights before a case can be resolved on its merits.” *Id.* Thus, Plaintiffs’ delay of more than a year in filing their motions “necessarily undermines a finding of irreparable harm.” *Id.* And, considering that Plaintiffs have the burden of demonstrating irreparable injury, *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring), this is fatal to their motions.

Additionally, the NGP Plaintiffs cannot show irreparable harm for another reason. They seek to enjoin District Attorney Edwards from enforcing the Anti-Solicitation Provision. [Doc. 185-1 at 1–2]. But they cite no pending or threatened enforcement of the law. Thus, any harm absent an injunction

against is entirely speculative and contingent on the possibility of some future action. As the Supreme Court has repeatedly held, “[i]ssuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent” with the Supreme Court’s “characterization of injunctive relief as an extraordinary remedy.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008) (emphasis added). The NGP Plaintiffs thus cannot satisfy this indispensable requirement for a preliminary injunction.

C. Plaintiffs’ requested relief would impose significant cost, confusion, and hardship before the upcoming election.

The Court should also deny the motions because the requested injunction would harm the public by inserting chaos into the electoral system on the eve of an election. The State just completed a primary runoff, and the upcoming months are replete with significant preparation for the general election. Further, in-person voting begins just three months after the hearing on Plaintiffs’ motions. The Eleventh Circuit has already found a similar timeline too short for judicial action. *League of Women Voters*, 32 F.4th at 1371.²

These problems illustrate the wisdom of this Court’s prior holding that courts should “exercis[e] judicial restraint where an injunction could hamper

² The fact that the precise claims underlying *League of Women Voters* and this case differ slightly is irrelevant to the reality that an injunction at this late stage would be harmful. [Doc. 171-1 at 32].

the electoral process.” *CGG*, 2021 WL 2826094, at *2. That is particularly true here, where an injunction “would have a chaotic and disruptive effect upon the electoral process[.]” *Id.* (cleaned up). As Judge Jones recently noted, “election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process.” *Alpha Phi Alpha Fraternity v. Raffensperger*, No. 1:21-cv-5337-SCJ, 2021 WL 633312, *74 (N.D. Ga. Feb. 28, 2022). That is true even where, as the Eleventh Circuit noted, the requested injunction “seem[s] innocuous[.]” *League of Women Voters*, 32 F.4th at 1371. In those instances, “late-in-the-day judicial alterations to state election laws can interfere with administration of an election and cause unanticipated consequences.” *Id.* (citations omitted).

As the Germany Declaration explains, granting the requested injunction would require “the Secretary of State’s office and county elections officials ... to update their trainings to educate officials and poll workers about the new rules in place for the general election.” Germany Decl. ¶ 39. Those changes will pull officials away from the election-related duties they must otherwise accomplish before the November general election. *Id.* ¶ 41.³

³ The NGP Plaintiffs, who seek an injunction against county prosecutors, incorrectly argue (at 19) that enjoining those prosecutors would not affect election administration. But any such injunction would necessarily call into question any other application of the Anti-Solicitation Provision, thereby

The likely result of an injunction would be “voter confusion and [the] consequent incentive to remain away from the polls.” *CGG*, 2021 WL 2826094, *3 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 5–6 (2006)). That is why, “[w]hen an election is close at hand, the rules of the road must be clear and settled.” *Milligan*, 142 S. Ct. at 880–81 (Kavanaugh, J., concurring).⁴ Accordingly, the Court should avoid these last-minute and confusing changes to election rules.

II. Plaintiffs Cannot Show That the Merits are “Entirely Clearcut” in their Favor.

In addition, Plaintiffs have not and cannot come close to showing that the merits are “entirely clearcut” in their favor. Rather, whatever standard of

causing exactly the chaos described in the accompanying declarations. Further, enjoining prosecutors in two counties—but not in others—from enforcing this law would raise serious constitutional issues. *Bush v. Gore*, 531 U.S. 98, 107 (2000) (per curiam) (explaining the dangers of “arbitrary and disparate treatment ... in ... different counties”); *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020) (declaring a statute unconstitutional does not eliminate “the legal effect of the statute in all contexts”).

⁴ The AME Plaintiffs read far too much (at 29) into the Supreme Court’s silence on *Purcell* in *Wisconsin Legislature v. Wisconsin Elections Comm’n*, 142 S. Ct. 1245 (2022). While the Court did not discuss *Purcell* in that decision, Plaintiffs offer no reason why this Court may read into that silence a basis to ignore the Eleventh Circuit’s clear statements about *Purcell* in *League of Women Voters*.

scrutiny the Court applies, Plaintiffs' First Amendment claims will likely fail.

A. Passing out food and drinks is conduct, not speech, and thus subject only to rational-basis review, which the Anti-Solicitation Provision easily passes.

For example, Plaintiffs' challenge to the Anti-Solicitation Provision is unlikely to succeed because that provision does not restrict speech, but conduct. Indeed, Plaintiffs have failed to carry their burden to "demonstrate that the First Amendment even applies." *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 n.5 (1984). Rather, at most, Plaintiffs communicate a message *while* they give things to voters waiting in line—pizza, pretzels, ponchos, masks, or other items. However, as the Supreme Court has explained, conduct cannot be "labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." *Rumsfeld v. FAIR*, 547 U.S. 47, 65–66 (2006) (cleaned up).⁵ Otherwise, "a regulated party could always transform conduct into 'speech' simply by talking about it." *Id.* at 66. The relevant inquiry is thus not the speaker's *intention*. Rather, the Court must ask "whether the reasonable person would interpret" the *conduct* at issue "as *some* sort of message." *Holloman v. Harland*, 370 F.3d 1252, 1270 (11th

⁵ This is fatal to the AME Plaintiffs' attempt (at 11) to characterize giving food as expressive conduct because it would purportedly also require speech to "offer to give" a voter food.

Cir. 2004). If not, the provision is subject only to rational-basis review.

1. Plaintiffs’ own confusion about what message they are trying to convey underscores that no “reasonable person would interpret” Plaintiffs’ conduct as expressing a particular message. *Id.* Indeed, like their declarants, Plaintiffs themselves suggest over a dozen different “messages” they purport to convey to voters standing in line, ranging from “a civic expression of unconditional support, gratitude, and shared strength” to “the importance of humanitarian assistance.” [Doc. 171-1 at 1, 7]. Elsewhere, Plaintiffs claim their message could be received as religious, [Doc. 83 ¶ 312] (“living up to the tenet of the Gospel” to feed the hungry), political, [Doc. 171-1 at 1] (citizens “should exercise their hard-earned right to vote”), inspirational, [*id.* at 8] (“receiving the water, in particular, was like receiving hope”), educational, [Doc. 185-1 at 1], patriotic, [*id.* at 10], and even a form of protest, [Doc. 171-1 at 7]. Beyond that muddle of potential messages, there are a host of other messages Plaintiffs’ conduct might suggest, from “stay in line,” to “thanks for voting,” to “you look thirsty,” to “come visit our church” or “our business,” to “I need to get rid of these extra waters.”⁶ Of course, when a voter cannot tell

⁶ This highlights another defect of Plaintiffs’ claims. Plaintiffs bring facial claims to the Anti-Solicitation Provision, but they cannot plausibly allege that each of these reasons for passing out food or drinks is protected. And, because the Anti-Solicitation Provision certainly does not violate the First Amendment

what message is being expressed without additional speech, that is a telltale sign that the conduct is “not inherently expressive,” *Rumsfeld*, 547 U.S. at 66, and thus not to be treated as speech.⁷

Reaffirming that their conduct is separate from their speech, Plaintiffs argue that providing items to voters is protected by the First Amendment because it *opens the door* to protected speech: “[P]roactively approaching voters facilitates other communication.” [Doc. 171-1 at 9]; *see also* [Doc. 185-1 at 9]. But that just illustrates the futility of Plaintiffs’ argument. If the conduct—passing out food and drinks—*may* open the door to protected speech, it is not *itself* speech, and certainly not the type of conduct that a “reasonable person would interpret ... as *some* sort of message.” *Holloman*, 370 F.3d at 1270. Rather, Plaintiffs’ argument that handing out items of value is an *avenue* for speech in the future “is strong evidence that the conduct at issue [] is not so inherently expressive that it warrants protection[.]” *Rumsfeld*, 547 U.S. at 66.

Plaintiffs’ reliance ([Doc. 171-1 at 12] on the Eleventh Circuit’s decision

in “all of its applications,” these claims fail. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008).

⁷ For that reason, the AME Plaintiffs’ reliance (at 11) on *Texas v. Johnson*, 491 U.S. 397, 404 (1989), is misplaced. Under *Johnson*, even if handing out food is *intended* to convey a message apart from any speech, Plaintiffs cannot demonstrate that their preferred message was “overwhelmingly apparent,” and thus their conduct was not “inherently expressive.” *Id.* at 406.

in *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235 (11th Cir. 2018), fares no better. In that case, the Eleventh Circuit found that the plaintiff's weekly event—sharing free food at a public park known to have a large homeless population—was expressive activity protected by the First Amendment. *Id.* at 1243. But, unlike approaching voters in line, these weekly events were intended to convey a singular, specific message: “That society can end hunger and poverty if we redirect our collective resources from the military and war and that food is a human right, not a privilege, which society has a responsibility to provide for all.” *Id.* at 1240 (cleaned up). And this message was made clear by the plaintiff's “tables and banners (including one with its logo),” which also contained its motto—“Food not bombs.” *Id.* at 1238, 1242.

Here, by contrast, Plaintiffs' conduct communicates no such discernible message. Thus, Plaintiffs' activity is much more similar to “most social-service food sharing events,” which the Eleventh Circuit explained “will not be expressive.” *Ft. Lauderdale Food Not Bombs v. City of Ft. Lauderdale*, 11 F.4th 1266, 1292 (11th Cir. 2021). Indeed, unlike the plaintiff in *Food Not Bombs*, Plaintiffs here represent several, disparate groups that engage in varying religious, social, and political activity. And Plaintiffs provided no evidence of signage or other displays that would give the necessary context to interpret Plaintiffs' numerous potential messages.

In fact, Plaintiffs’ characterization of their conduct as speech overlooks that other courts have held that much more significant conduct—including helping people vote—does *not* communicate any message. For instance, the Ninth Circuit held that helping facilitate voting by collecting ballots does not itself communicate a message. *Knox v. Brnovich*, 907 F.3d 1167, 1181 (9th Cir. 2018). And, if conduct that actually facilitates voting is not communicative, then handing food or drinks to voters certainly is not.

Accordingly, passing out food and other things of value is *conduct* separate from any message.⁸ It is therefore not protected speech, and the Anti-Solicitation Provision is thus subject only to rational-basis review.⁹ *Voting for America v. Steen*, 732 F.3d 382, 392 (5th Cir. 2013); *Johnson v. Robinson*, 415 U.S. 361, 381–82 (1974).

2. The Anti-Solicitation Provision easily satisfies rational-basis review, as it is “a rational means to serve a legitimate end.” *City of Cleburne*

⁸ For the same reason, the NGP Plaintiffs are incorrect when they suggest (at 7) that the Anti-Solicitation Provision violates the speech rights of *voters*. Since giving things to voters in line is not speech, Georgia does not burden the right of voters to *receive* speech from Plaintiffs. Regardless, any burden the Provision imposes would survive First Amendment scrutiny for the various reasons discussed below.

⁹ Because *Food Not Bombs* is entirely inapplicable here, so too is Plaintiffs’ passing suggestion that the Anti-Solicitation Provision is subject to intermediate scrutiny. [Doc. 171-1 at 20–21].

v. Cleburne Living Ctr., 473 U.S. 432, 442 (1985). As this Circuit holds, “[t]he leniency of rational-basis scrutiny provides the political branches the flexibility to address problems incrementally and to engage in the delicate line-drawing process of legislation without undue interference from the judicial branch.” *Haves v. City of Miami*, 52 F.3d 918, 923–24 (11th Cir. 1995). Moreover, under rational-basis review, courts are “compelled ... to accept a legislature’s generalizations even when there is an imperfect fit between means and ends.” *Heller v. Doe by Doe*, 509 U.S. 312, 321 (1993).

First, preventing voter fraud and confusion, as well as increasing election efficiency, are legitimate and even compelling interests. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2340 (2021) (discussing laws enacted to combat voter fraud); *id.* at 2347 (“preserving the integrity of [a State’s] election process” is “compelling” interest (citation omitted)); *Libertarian Party of Fla. v. Florida*, 710 F.2d 790, 792 (11th Cir. 1983) (“avoiding voter confusion” is “compelling” interest); *New Ga. Proj. v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) (“conducting an efficient election” is “strong” interest).

Second, the Anti-Solicitation Provision is rationally related to these legitimate ends. In SB 202, Georgia updated its solicitation provision to prohibit giving voters in line money or other things of value, including food and drinks, in response to complaints about voter confusion and concerns about

harassment and undue influence. Indeed, voters complained that the actions of third-party organizations were “intimidat[ing]” and “partisan.” Germany Decl. ¶¶ 29–30. And elections officials stated that these actions were becoming “more aggressive,” and led voters to believe that there was “a motive” behind the provision of food and water. *Id.* In fact, confirming such motive, one organization stressed that it needed to reach voters in line because it was “our last chance to reach Georgians before they vote” where “[t]he results have the potential to determine control of the U.S. Senate.” *Id.* ¶ 30(c).

Moreover, the Anti-Solicitation Provision is an important part of maintaining efficient elections. As noted, polling locations are complex, with different rules applying at different places. *Id.* ¶¶ 17–27. To avoid adding more confusion, Georgia rationally concluded that excluding certain activities from the buffer zone would help streamline the process.

Thus, the record confirms that voters were concerned about organizations attempting to influence their votes by providing food and drinks. And the record confirms that allowing additional conduct in the buffer zone creates added confusion. That is enough: “Only in an exceptional circumstance will a statute not be rationally related to a legitimate government interest and be found unconstitutional under rational basis scrutiny.” *Williams v. Pryor*, 240 F.3d 944, 948 (11th Cir. 2001). This is not such an “exceptional” case, and

Plaintiffs have not come close to carrying their substantial burden of showing a likelihood of success on the merits—much less that the correctness of their position is “entirely clearcut.” *League of Women Voters*, 32 F.4th at 1372.

B. Even if the Anti-Solicitation Provision implicated expressive activity, it is content-neutral and reasonable.

Even if the Anti-Solicitation Provision implicated speech, the Supreme Court’s recent decision in *City of Austin v. Reagan National Advertising*, 142 S. Ct. 1464 (2022), confirms that it is content neutral, and therefore subject only to reasonableness review, not heightened scrutiny. As the Court explained, when a regulation lacks “a content-based purpose,” it “is content neutral and does not warrant the application of strict scrutiny.” *Id.* at 1471.

1. Like the sign code provision challenged in *City of Austin*, the Anti-Solicitation Provision “do[es] not single out any topic or subject matter for differential treatment.” *Id.* at 1472. Anyone wishing to approach a voter in line with food or water for *whatever reason* is subject to the same provision.

Plaintiffs thus wrongly contend that the law “targets only one type of expressive conduct: the use of non-partisan line relief to celebrate and affirm the importance of political participation.” [Doc. 171-1 at 15; *see also* Doc. 185-1 at 11]. That ignores the Anti-Solicitation Provision’s plain text, which is “agnostic as to content” and viewpoint, *City of Austin*, 142 S. Ct. at 1471; it

prohibits “any money or gifts” given for any purpose—religious, political, charitable, commercial, or for no purpose at all. In short, Plaintiffs’ message (if there is one) “is irrelevant[.]” *City of Austin*, 142 S. Ct. at 1472.

Indeed, it is hard to imagine a more content-neutral rule than one that bans *everyone* from doing the same thing—handing food or drinks to voters.¹⁰ AME Plaintiffs are thus misguided when they argue that the challenged provision is “content based” because it restricts “expression ‘because of disagreement with the message it conveys.’” [Doc. 171-1 at 14–15] (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).¹¹ Quite the opposite, the Anti-Solicitation Provision prohibits handing out food by people who wish to express *any view*, whether the State agrees or disagrees with the message.¹²

¹⁰ The NGP Plaintiffs confusingly argue (at 11) that the Anti-Solicitation Provision does “not reach other categories of speech, such as commercial solicitation, distribution, and display.” But the provision addresses such speech directly—no one may provide food or drinks to voters, whether for commercial reasons or otherwise.

¹¹ The NGP Plaintiffs are equally misguided when they suggest (at 11–12) that Georgia conceded that the Anti-Solicitation Provision is content-based because it seeks to limit the risk of electioneering. Not so. The Provision applies to *everyone* for a variety of reasons, including the risk of improper influence on voters. As the Provision applies equally, it cannot be content based.

¹² Here, AME Plaintiffs’ reliance (at 14–15) on *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), is also misplaced, as the Supreme Court recently said it is “too extreme an interpretation of this Court’s precedent.” *City of Austin*, 142 S. Ct. at 1471.

Plaintiffs largely admit this by arguing that the law is too broad: “The Line Relief Ban expanded this narrower restriction [on bribing or pressuring a person to vote] to a blanket prohibition on providing food and water to voters in line.” [Doc. 185-1 at 14]. But a law cannot be both “a blanket prohibition” on giving voters items, and narrowly targeted to restrict their particular views.

Rather, the law is concerned with *where* the gifts are given—near a polling place—and how such gifts confuse and intimidate voters. Plaintiffs may act and speak freely, provided they are more than 150 feet from the polling place, 25 feet from voters in line, and are not engaged in vote buying. O.C.G.A. § 21-2-414(a). Such an “on-/off-premises distinction is therefore similar to ordinary time, place, or manner restrictions.” *City of Austin*, 142 S. Ct. at 1473. And, under that standard, “the government may impose reasonable restrictions on the time, place, or manner of protected speech[.]” *McCullen v. Coakley*, 573 U.S. 464, 477 (2014); *see also Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)).

2. The Anti-Solicitation Provision easily satisfies this reasonableness standard. Indeed, “[s]tates—not federal courts—are in charge of setting [election] rules.” *New Ga. Proj.*, 976 F.3d at 1284. And rules governing voting are “inevitabl[e],” “necessary[y],” and “must be ... substantial” to ensure “fair,” “honest,” and “order[ly]” elections. *Timmons v. Twin Cities Area New Party*,

520 U.S. 351, 358 (1997). Accordingly, the Eleventh Circuit evaluates the reasonableness of a challenged election law by applying the *Anderson-Burdick* approach, *Jacobson*, 974 F.3d at 1261,¹³ which has two strict requirements.

First, Plaintiffs must show that the Anti-Solicitation Provision inflicts a cognizable burden on their rights. *Timmons*, 520 U.S. at 358. For this, the “extent of the burden ... is a factual question on which [Plaintiffs] bear the burden of proof.” *Democratic Party of Hawaii v. Nago*, 833 F.3d 1119, 1124 (9th Cir. 2016). Plaintiffs must therefore “direct th[e] Court to ... admissible and reliable evidence that quantifies the extent and scope” of the burden. *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1354 (11th Cir. 2009).

Second, after establishing a cognizable burden, Plaintiffs must show that the burden outweighs the State’s interests. *Timmons*, 520 U.S. at 358. Election laws that “impose[] only reasonable, nondiscriminatory restrictions” are “generally” justified by “the State’s important regulatory interests,” *id.*, as there is no right to be free from “the usual burdens of voting,” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (opinion of Stevens, J.).

¹³ Plaintiffs concede that the *Anderson-Burdick* test applies here because the Anti-Solicitation Provision allegedly “burdens” the ability of voters to vote. [Doc. 171-1 at 3]. Plaintiffs’ declarants allege the same thing. [Doc. 171-4 ¶ 18; 171-10 ¶17]. Claims that a “State’s rule imposes” a “burden ... on the right to vote” are reviewed under *Anderson-Burdick*. *New Ga. Proj.*, 976 F.3d at 1280.

On the first requirement, Plaintiffs have not shown any cognizable burden on their rights. As noted, they remain free to express their message as much as they wish and wherever they wish. The Anti-Solicitation Provision merely restricts their conduct within a specific area.

But even if the Court finds some minor burden, the State's interest is strong. In fact, the State need not submit "any record evidence in support of" its interests. *Common Cause/Ga.*, 554 F.3d at 1353. And, though not required, Georgia has provided substantial evidence showing that the Anti-Solicitation Provision is a "reasonable, nondiscriminatory restriction[.]" *Timmons*, 520 U.S. at 358. Indeed, the accompanying declarations detail the complaints that the State received, the complex nature of polling locations, and the need to prevent voter confusion, enhance election efficiency, and increase confidence in the election process. *See* Germany Decl. ¶¶ 17–32; Bailey Decl. ¶¶ 7–18.

The reasonableness of the Anti-Solicitation Provision is clearer still because the Supreme Court has upheld even stricter regulations on political speech imposed around polling places. *See Burson v. Freeman*, 504 U.S. 191 (1992). And, if the State may regulate pure political speech in and around a polling place, it may certainly restrict lesser forms of expression, including the messages Plaintiffs allegedly wish to express.

In *Burson*, for instance, the Supreme Court upheld a Tennessee statute

that prohibited voter solicitation and the display of campaign materials within 100 feet of the polling place. The four-justice plurality held that this provision survived *heightened* scrutiny even though the buffer zone around the polling place was a public forum because it included “streets and sidewalks.” 138 S. Ct. at 196; *but see id.* at 216 (Scalia, J., concurring) (concluding that “the portions of streets and sidewalks adjacent to polling places are not public forums *at all times*”) (cleaned up).

Then, just a few years ago, in *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876 (2018), the Supreme Court addressed the constitutionality of a Minnesota statute prohibiting any person from wearing political insignia inside a polling place. The *Mansky* Court held that the inside of a polling place was a nonpublic forum, while also noting that *Burson* left open the question of how to classify the area *around* the polling place. *Id.* at 1886. But the *Mansky* Court’s reasoning confirms that the distinct features of the inside of a polling place equally apply to the areas immediately surrounding the polling place:

Members of the public are brought together at that place, at the end of what may have been a divisive election season, to reach considered decisions about their government and laws. The State may reasonably take steps to ensure that partisan discord not follow the voter up to the voting booth, and distract from a sense of shared civic obligation at the moment it counts the most.

Id. at 1887–88. Though the specific statute at issue in *Mansky* ultimately fell

because it was not “capable of reasoned application,” *id.* at 1892, the Anti-Solicitation Provision, which applies categorically, is easily capable of such an application, and *Mansky*’s statements about the polling place thus remains instructive. Applied here, the concerns about what follows the voter up to the voting booth starts when the voter gets in line. Bailey Decl. ¶ 15.

Applying these standards, the Anti-Solicitation Provision is a reasonable restriction that serves important interests. Of course, the purpose served by the forum here is peaceful and effective voting—the essence of a democratic society—and a State certainly “has a compelling interest in protecting voters from confusion and undue influence.” *Burson*, 504 U.S. at 199. It is equally undisputed that “some restricted zone is necessary in order to serve the States’ compelling interests in preventing voter intimidation and election fraud.” *Id.* at 206. Thus, a zone that prohibits third parties from providing money, food, or drinks to voters reasonably serves the State’s interest in creating “an island of calm in which voters can peacefully contemplate their choices.” *Mansky*, 138 S. Ct. at 1887. Considering that the Supreme Court held the 100-foot solicitation limit in *Burson* to withstand much more demanding scrutiny—despite a plurality of the Supreme Court also concluding that the buffer zone was a public forum—the Anti-Solicitation Provision certainly survives the more relaxed *Anderson-Burdick* review.

C. The Anti-Solicitation Provision satisfies even the highest standard of scrutiny.

Even if a higher level of scrutiny is appropriate, Plaintiffs would still be unable to demonstrate that they are substantially likely to succeed—much less that their position is “clearly” correct.¹⁴

1. Initially, the highest standard of scrutiny that could *conceivably* apply to the Anti-Solicitation Provision is “exacting scrutiny,” not strict scrutiny. [Doc. 171-1 at 14]. The *Burson* plurality noted that the 100-foot solicitation limit was a “facially content-based restriction on political speech in a public forum.” 504 U.S. at 198. Then, citing the same cases as Plaintiffs, the Court applied exacting, not strict, scrutiny. *Id.* There could be no reason to apply even *greater* scrutiny here to a regulation that implicates speech even less clearly than the regulation at issue in *Burson*.

¹⁴ Again, the applicable authority does not support application of heightened scrutiny. Plaintiffs’ attempt to analogize the Anti-Solicitation Provision to provisions at issue in cases where the Supreme Court and other courts applied exacting scrutiny for regulations of “election-related expression” falls under its own weight: The Anti-Solicitation Provision, which does not regulate or burden any speech (election-related or otherwise), is nothing like the regulation of yard signs, campaign contributions, payments for petition circulators, or lobbying disclosure requirements to which Plaintiffs point. [Doc. 171-1 at 18–19] (discussing *Buckley*, *Meyer*, *McCutcheon*, *McIntyre*, *ACLU of Fla.*, and several other cases). Those regulations directly implicated protected speech. In contrast, Plaintiffs may still “encourage[e] voter participation[.]” *Id.* at 19. They simply may not hand anything of value to a voter.

Even under exacting scrutiny, moreover, the Anti-Solicitation Provision survives. To meet this standard, a State must assert a compelling interest and “that [the regulation] is narrowly drawn to achieve that end.” *Id.* at 198. Both requirements are met here.

First, as discussed above, the State undoubtedly has a compelling interest in guarding against voter fraud (and the appearance of fraud), confusion, and intimidation, as well as in enhancing election efficiency. *See supra* at 18. And these concerns are particularly applicable to polling places. As the Supreme Court has recognized, our Nation has a lengthy history of voter intimidation and election fraud, which has led “all 50 states [to] limit access to the areas in or around polling places.” *Burson*, 504 U.S. at 206.

Thus, it is unsurprising that other states have also acted on this compelling interest by implementing laws similar (albeit not identical) to the Anti-Solicitation Provision. In New York, for instance, it is illegal to provide “any meat, drink, tobacco, refreshment, or provision” with a value over one dollar to a voter standing in line to vote. N.Y. ELEC. LAW § 17-140. So too in Montana, where anyone affiliated with a campaign is prohibited from providing food or drink to voters in line. MONT. CODE ANN. § 13-35-211(2).

Second, the 150-foot solicitation ban is narrowly drawn to achieve the State’s interest in interference-free voting. As noted, the *Burson* Court upheld

a more stringent restriction on speech in the buffer zone surrounding a polling place. 504 U.S. at 210. And, in doing so, the Court explicitly rejected several of the arguments Plaintiffs make here. For instance, the *Burson* Court rejected the argument that other criminal laws prohibiting voter interference are sufficient. *Id.* at 206; [Doc 171-1 at 24]. Rather, “[i]ntimidation and interference laws fall short of serving a State’s compelling interests,” as they “deal with only the most blatant and specific attempts to impede elections.” *Id.* at 206–07. The record here demonstrates why those laws are insufficient—they were in place when the conduct detailed in the Germany Declaration occurred.

The *Burson* Court also rejected the argument that the state had insufficient evidence that the law was necessary. Rather, the Court held that, “because a government has such a compelling interest in securing the right to vote freely and effectively, this Court never has held a State to the burden of demonstrating empirically the objective effects on political stability that are produced by the voting regulation in question.” *Id.* at 208 (cleaned up). As the Court further explained, states do not have to wait until they “sustain some level of damage before the legislature” may “take corrective action.” *Id.* at 209 (citation omitted). Thus, Plaintiffs are incorrect that this is an impermissible “prophylactic rule.” [Doc. 185-1 at 14]. The Supreme Court has made clear that the State may “respond to potential deficiencies in the electoral process

with foresight rather than reactively.” *Burson*, 504 U.S. at 209 (citation omitted); *see also Brnovich*, 141 S. Ct. at 2348 (a State need not wait to “sustain some level of damage before the legislature [can] take corrective action”).

Burson is thus fatal to many of Plaintiffs’ arguments, and their attempt to distinguish it fails. According to Plaintiffs, *Burson* is inapplicable because it addressed a law that “prohibited ‘vote solicitation’ within 100 feet of a polling place,” whereas the law here covers Plaintiffs’ conduct, which they say “does not involve electioneering in any capacity.” [Doc. 171-1 at 23 n 7]. That is a distinction without a difference. The compelling interest in prohibiting voter interference is the same, and the buffer zones are nearly identical.

But even if the difference in prohibiting gifts to voters mattered, in *Citizens for Police Accountability Pol. Comm. v. Browning*, 572 F.3d 1213, 1218 (11th Cir. 2009), the Eleventh Circuit has already emphasized that “the *Burson* plurality opinion is highly persuasive.” And it has extended *Burson* to apply beyond its narrow facts, upholding a regulation of voter solicitation on proposed laws that “related to nothing then on the ballot.” *Id.* at 1215. For example, the plaintiffs in *Browning* wished to gather signatures from voters exiting the polls, but Florida’s 100-foot solicitation ban prohibited their conduct. *Id.* As in *Burson*, the Eleventh Circuit accepted Florida’s compelling interest in “protecting voters from confusion and undue influence” and

“preserving the integrity of the election process.” *Id.* at 1218. The court also found that the law was necessary to serve those interests to maintain “peace and order around its polling places,” even if many solicitors were not disruptive, and were approaching voters *after* they finished voting to discuss topics unrelated to those on the ballot. *Id.* at 1220. The Eleventh Circuit rejected the plaintiffs’ argument that the state needed evidence of interference before it could act: “[T]he State need not wait for actual interference or violence or intimidation to erupt near a polling place for the State to act.” *Id.* Rather, “[t]he State may take precautions to protect and to facilitate voting; and the pertinent history [including *Burson*] is broad enough to provide the proof of reasonableness for a zone of order around the polls.” *Id.* at 1220–21.

In sum, *Burson* and *Browning* explicitly reject each argument Plaintiffs make and demonstrate that, even under exacting scrutiny, Georgia may proactively ensure that there is peace around the polling place so that voters can vote “freely and effectively.” *Burson*, 504 U.S. at 208. And that is exactly what Georgia has done here.

Yet, despite restricting such activity, the State also ensured that Plaintiffs have many ways to communicate their message. They may stand 25 feet from voters in line outside the buffer zone to provide food and drinks to anyone who approaches them, as long as they are not tying it to voting or giving

it only to voters. Germany Decl. ¶ 35. And, beyond the polling place itself, Plaintiffs do not allege that they are restricted from engaging in any otherwise lawful expression in support of their mission elsewhere. The Anti-Solicitation Provision merely institutes a narrow restriction on conduct in the vicinity of a polling location, which is sufficiently tailored for any level of scrutiny.¹⁵

D. Plaintiffs’ expert report does not support their argument.

In an attempt to buttress their merits argument, Plaintiffs also rely on the entirely unreliable report of Dr. Pettigrew. [Doc. 171-1 at 2–4].

At the outset, Plaintiffs “bear the burden to show that” Pettigrew “is qualified to testify competently regarding the matters he intended to address; [] the methodology by which the expert reach[ed] his conclusions is sufficiently reliable; and the testimony assists the trier of fact.” *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004) (cleaned up). Moreover, the Court must “assess ‘whether the reasoning or methodology underlying the testimony is scientifically valid and ... can be applied to the facts in issue.’” *Id.* at 1262 (quoting *Daubert v. Merrill Dow Pharm.*, 509 U.S. 579, 592–93 (1993)).

¹⁵ The NGP Plaintiffs are also incorrect when they suggest (at 14–15) that the Anti-Solicitation Provision lacks narrow tailoring because Georgia could merely prohibit the expression most likely to implicate its interests. That incorrectly assumes that Georgia’s only interest is in preventing electioneering. As explained, Georgia has multiple compelling interests that are served by a ban on anyone approaching voters with something of value.

Under these standards, Pettigrew’s report is entirely unreliable. Plaintiffs use the report only to discuss the length of voting lines in Georgia, which is, at best, marginally relevant to whether the Anti-Solicitation Provision violates Plaintiffs’ First Amendment rights. But, as the attached report of Professor Daron Shaw explains, the Pettigrew report also suffers on the merits in several key respects. *First*, that report relies on self-reported data, which can be inaccurate. Shaw Report ¶¶ 17–18 (attached as Ex. 4). *Second*, Pettigrew overstates the precision of his estimates. *Id.* ¶¶ 19–26. *Third*, Pettigrew miscalculates the data to make it appear that Black Georgians recently waited longer than White Georgians to vote. *Id.* ¶ 27. *Fourth*, Pettigrew overstates the times when Georgians did not vote because of line length. *Id.* ¶¶ 30–32. *Fifth*, Pettigrew ignores recent changes to Georgia law that could foreseeably affect line length moving forward. *Id.* ¶¶ 38–41.¹⁶

But even the two pages of Pettigrew’s report that deal with the Anti-Solicitation Provision are unreliable, as they cite only news articles—not scientific works. [Doc. 171-21 at 20–21]; Shaw Report ¶¶ 33–37. Based on no scientific evidence, Pettigrew then concludes that the provision at issue “will

¹⁶ Of course, there is little “value” in “predict[ing] long lines ... based almost entirely on the existence of long lines in past elections.” *Anderson v. Raffensperger*, 497 F. Supp. 3d 1300, 1309 (N.D. Ga. 2020).

have a particular impact on voters who live in areas that already tend to have long lines.” *Id.* at 21. But that does not remotely address the alleged harm to Plaintiffs’ First Amendment rights. It is also insufficient under *Daubert*: Because Pettigrew made no attempt to review evidence in a “genuinely scientific” way, the Court should reject his “unscientific speculation.” *Allison v. McGhan Med.*, 184 F.3d 1300, 1316–17 (11th Cir. 1999) (citations omitted).

III. The Balance of Equities and the Public Interest Weigh Heavily Against an Injunction.

Finally, the harm a preliminary injunction would cause the State and the public outweighs any harm Plaintiffs might suffer without one.

1. A state is irreparably harmed when it is unable to enforce its statutes. As the Eleventh Circuit has held, “[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Hand v. Scott*, 888 F.3d 1206, 1214 (11th Cir. 2018) (cleaned up). By enjoining the challenged provision, the Court would impair the State’s ability to address confusion, suspicion, and loss of confidence in Georgia’s election processes. *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 261, 266 (D. Ariz. 2020) (rejecting injunction against statute “meant to safeguard the integrity of the election process”).

2. Beyond such state interests, the injunction would also harm the

public, as enjoining the Anti-Solicitation Provision would subject Georgia voters to the “interference, political pressure, or intimidation” the provision combats. Ex. 2 at 6:128. And it would harm the public’s interest in avoiding confusion about the rules governing polling places. Germany Decl. ¶ 42. Moreover, as discussed above (Part I.C), the injunction would inject confusion and hardships into the current election cycle, causing further harm to voters.

3. Any supposed harm suffered by Plaintiffs is substantially less than the harm to the public and the State. As explained above, the Anti-Solicitation Provision does not implicate, much less violate, Plaintiffs’ First Amendment rights. Nor does the provision affect Plaintiffs’ ability to communicate their desired message in other ways, most obviously outside the buffer zone. When balanced against the identified harms to the State and the public, Plaintiffs’ purported harms pale in comparison, and an injunction is inappropriate.

CONCLUSION

The Court should deny Plaintiffs’ motions and allow this litigation to proceed in the normal course. Plaintiffs have fallen far short of their burden to clearly demonstrate each of the required elements for a preliminary injunction. Plaintiffs’ questionable case on the merits, their inexplicable delay, and the balance of interests militate strongly against an injunction.

Respectfully submitted this 24th day of June, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Gene C. Schaerr

Gene C. Schaerr

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In re Georgia Senate Bill 202
No. 1:21-MI-55555-JPB

Defendants' Opposition to
Plaintiffs' Motions for Preliminary Injunction

Exhibit 1

**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

THE NEW GEORGIA PROJECT, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State, *et al.*,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

Civil Action No.:
1:21-cv-01229-JPB

GEORGIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Secretary of State for the

Civil Action No.:
1:21-cv-01259-JPB

State of Georgia, *et al.*,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

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

DECLARATION OF C. RYAN GERMANY

I, C. Ryan Germany, declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge.

Background

1. I am the General Counsel for the Office of the Georgia Secretary of State. I have held that position since January 2014. My job responsibilities include providing legal advice and guidance to all divisions of the Secretary of State's Office, including the Elections Division. I also work closely with the State Election Board. I routinely interact with county election officials.

Line length at polling places

2. Elections in Georgia are administered by counties. The Secretary of State's Office wants line lengths to be short for voters and seeks to assist counties in that goal.

3. For early voting, voters may go to any early-voting location in their county, rather than to their assigned precinct. The uncertain nature of early voting contrasts with Election Day, where a certain number of voters are assigned to particular precincts by county election officials. Thus, it is more difficult for each early-voting location to plan for the number of voters who will arrive to vote on any given day.

4. For Election Day for statewide general elections, however, counties are required to have at least one voting machine for every 250 voters. O.C.G.A. § 21-2-367(b).

5. After the June 2020 primary, the State took numerous steps to assist counties in avoiding lines in the November general election.

6. That included running the amount of voting equipment and personnel that counties planned to deploy in every polling place through a tool from MIT that estimated whether lines would occur. The Secretary of State's office then notified counties of the tool's evaluation of each of their polling places. The Secretary of State's office intends to use this tool for the 2022 general election as well.

7. That effort resulted in an average line length of three minutes on Election Day in the November 2020 general election in Georgia.

8. In an effort to track line lengths, the Secretary of State's office invested in a geolocation tool in 2020 that allowed an individual at each polling place to report the wait time at that location in real time. The Secretary of State's office intends to use a similar tool this year for reporting line length.

9. Additionally, various provisions of Georgia's recent election law (SB 202) specifically target line length.

10. For instance, under SB 202, at each precinct with more than 2,000 electors during the most recent general election, the precinct's chief manager must submit a report to the superintendent of the "reported time from entering the line to checking in to vote." For this, "wait time shall be measured no fewer

than three different times throughout the day (in the morning, at midday, and prior to the close of polls) and such results shall be recorded on a form provided by the Secretary of State.” O.C.G.A. § 21-2-263(b).

11. And State Election Board Rule 183-1-12-.11(12) requires that all precincts measure wait times a minimum of three times a day on a form provided by the Secretary of State. This was the first time these types of reports were required by Georgia law.

12. Additionally, under SB 202, counties are required to take action regarding any precinct with more than 2,000 electors where electors waited more than one hour before checking in to vote during the previous general election by reducing “the size of such precinct so that it shall contain not more than 2,000 electors ... or provide voting equipment or poll workers, or both, before the next general election.” O.C.G.A. § 21-2-263(b).

13. Further, if precincts with less than 2,000 electors experience long lines, I would expect counties to take action to resolve that issue as well, but splitting that precinct may not be the best solution in that case.

14. And for advance voting, SB 202 added a second required Saturday of voting and, at the county’s discretion, multiple Sundays of advance voting. O.C.G.A. § 21-2-385(d)(a)(B).

15. Each of these provisions, along with other provisions in SB 202, aim to reduce line length at polling locations across the State.

16. Those efforts were largely successful in the May 2022 primary election, with almost no reported lines despite record voter turnout for a primary election.

Regulations governing polling places

17. The polling location is subject to a complex set of rules to protect voters and election officials and ensure a calm and orderly process of voting.

18. Starting with the location closest to the voting machines, only voters, poll workers, and certified poll watchers are allowed in the enclosed space. Candidates are specifically prohibited from entering the enclosed space unless they are at their own precinct and voting.

19. Despite those rules, Georgia has experienced several issues with candidates campaigning in and around polling locations, including, based on recent cases presented to the State Elections Board, candidates for U.S. Congress, State House, State Senate, and county commission.

20. The next layer of protection extends 150 feet from the outside of the building in which voting is taking place. Within that bubble, it has long been illegal to campaign or try to solicit votes from voters waiting in line.

21. As State Election Board Member Matthew Mashburn has stated, this “150[-foot] bubble was a tremendous safety innovation for Georgia voters and made Georgia’s some of the safest in-precinct voting in the country.” Ex. A.

22. As Elections Division Director Chris Harvey similarly explained, this is an area where “[v]oters standing in line ... should generally be free of approaches from bystanders, even those with good intentions of offering refreshment[.]” Ex. B at 2. Indeed, “[p]olling places are meant to be a sanctuary from political influence[.]” *Id.*

23. Beyond 150 feet (or 25 feet from any voter in line if the line extends beyond 150 feet), anyone may campaign freely. Voters will often notice a collection of campaign signs just beyond the 150-foot limit when approaching their polling place or early voting site, as candidates try to reach voters one last time before they enter the protected zone around a polling place.

24. Because of the complexities of this system, voters and county election officials routinely contact the Secretary of State’s Office with questions about who is permitted in which portions of the polling place.

Prohibition on soliciting voters in line to vote

25. In the late 2010s, groups began to set up tables within the 150-foot buffer, claiming they were nonpartisan or conducting research. State officials responded by amending O.C.G.A. § 21-2-414 in 2017 through HB 268 to

address this concern, specifically prohibiting tables from being set up in that area. HB 268 also empowered election officials to “manage the number of persons allowed in the polling place to prevent confusion, congestion, and inconvenience to voters.” O.C.G.A. § 21-2-414(c)(2).

26. After 2017, but before SB 202, Georgia law prohibited “solicit[ing] votes in any manner or by any means or method,” “distribut[ing] or display[ing] any campaign material,” “solicit[ing] signatures for any petition,” or “establish[ing] or set[ting] up any tables or booths on any days in which ballots are being cast”: (1) within 150 feet of a polling place’s outer edge; (2) within any polling place; or (3) within 25 feet of any voter standing in line to vote at a polling place. O.C.G.A. § 21-2-414(a).

27. Yet, despite these rules, the highly complex areas around a polling location became even more confusing as many third-party organizations sent representatives to approach voters in line with food, drinks, masks, literature, and other goods.

28. This made the counties’ efforts to maintain an orderly election process more difficult, as “it’s impossible for the poll managers, workers and watchers to monitor what is being said by these groups as they perform their ‘line warming.’” Ex. A at 3–4 (statement by SEB Member Mashburn).

29. For instance, this led voters and elections officials to contact the Secretary of State to complain.¹

- a. For example, SEB Member Mashburn explained that Georgia had historically “turned a compassionate blind eye to people delivering water and food to people in line[.]” Ex. A at 1. But the situation had changed recently, as “we’re now seeing people setting up tables and food stations within the 150-foot voter protection Bubble while wearing clearly identifiable campaign clothing and colors.” *Id.* And further, Mr. Mashburn complained that this practice had become “more aggressive, more sophisticated (and to me more worrisome).” *Id.*
- b. Similarly, the Secretary of State’s office received a complaint that a food truck was providing food to voters inside the buffer zone in Cobb County. *See* Ex. C at 3–4.
- c. The Secretary of State’s office also received multiple complaints about Fulton County, where “organizations [we]re setting up outside the poll within 150 feet to provide coffee, water, crackers, [and] food boxes.” Ex. D at 1.
- d. Further, as Jamie Eveler, Director of Cobb County Board of Elections, stated: “We get a lot of complaints from voters when there are line warmers, because they always suspect the motives are partisan.” Ex. E at 5.

30. Elsewhere, voters and county elections officials complained that the actions of these “non-partisan” organizations seemed aimed at soliciting certain votes.

- a. For instance, the State received a complaint from Elizabeth Brown, who participated in early voting in October 2020. She

¹ The examples cited in this Declaration are merely illustrative of the complaints made about third parties approaching voters waiting in line to vote. The lists in this Declaration are by no means exhaustive.

reported that “[t]he Black Voters Matter group was present handing out food and water.” Ex. F. Ms. Brown continued, stating that “[t]here was also a lady leaning against the door” of the polling place “handing out plastic bracelets.” Ms. Brown reported that “[o]lder voters felt intimidated by the presence of this group” and that “[h]anding out food & water can be misconstrued as influencing voters or buying votes.” *Id.*

- b. Indeed, as Director Harvey stated, “depending on the organization that is distributing water, there could arise allegations or perceptions of having a political agenda.” Ex. B at 2. Director Harvey further explained that the act of giving voters food and water could have the appearance “that voters are being rewarded for voting with beverages and food.” *Id.* Of note, these statements were made in an October 26, 2020 Official Election Bulletin (“OEB”) issued by the Secretary of State’s office. In general, the Secretary of State’s office only issues OEBs when an issue has been the source of many complaints or questions.
- c. Moreover, as I explained in an email responding to a complaint about a food truck sent to polling locations by Vote.org, “[w]hat they are doing seems [to] be campaigning and should not be allowed within 150 feet of a polling place.” Ex. C at 3. Specifically, as I noted, the e-mail message from Vote.org stated that the food trucks were being used as “our last chance to reach Georgians before they vote.” *Id.* In fact, Vote.org further stated that they wanted to reach voters before they voted because “[t]he results have the potential to determine control of the U.S. Senate.” *Id.* As I explained, by emphasizing the need to “reach[] people *before* they vote,” such groups “seem to be giving something of value for voting[.]” *Id.*
- d. Ms. Eveler also explained that one potential solution to the confusion about permissible activities would be for “poll workers ... to give the items to voters in line so there isn’t a perceived conflict, but line warmer groups don’t want to do that. They want the contact with the voters, which fuels the idea that there is a motive.” Ex. E at 5.

- e. Similarly, as Cobb County Board of Elections & Registration Absentee Supervisor Allison Schaeffer explained when discussing “[p]eople handing out comfort items to people in line”: “What one voter sees as a benefit another voter might feel is an effort to intimidate or influence them. Out of respect for the varying perceptions of our voters we are creating this safe voting space.” Ex. E at 5.

31. Elsewhere still, confusion abounded in how the rules applied when third-party organizations wished to set up food trucks or otherwise provide goods to voters in line waiting to vote.

- a. As Elections Division Director Chris Harvey explained, the law before SB 202 required “a fact dependent inquiry” to determine whether “candidates, campaigns, or third-parties offering refreshments to voters in line could violate that provision” against providing voters “anything of value in exchange for voting.” Ex. B at 1.
- b. Elsewhere, in a discussion about food trucks set up around polling places, Ms. Eveler complained that “[t]his continues to be a grey area that we don’t understand how to moderate. We have people giving out water and food and masks, warm hats etc.” Ex. C at 2. Additionally, Ms. Eveler noted that although third-party organizations set up food trucks outside the 150-foot buffer zone, “people bring items closer to the line to give them out.” *Id.*
- c. As Ms. Eveler explained elsewhere in correspondence with the Chair of the Cobb County Democratic Party, “[t]he problem [with line warming] is knowing where to draw the line.” Ex. E at 5. On this, Ms. Eveler stated, the Secretary of State’s “direction is also confusing,” and makes it complicated to determine whether a “complete meal from a food truck is too much and is a ‘gift’ for voting,” or whether “hats” being handed out “were a little too nice to be an incidental item and bordered on a gift.” *Id.*

- d. Additionally, there were multiple instances where food truck operators were confused and parked within the buffer zone and were required to move. *See* Ex. E at 4, 6, 7, 8.

32. Accordingly, the State took steps through SB 202 to update this solicitation provision to address the increase in organizations using food and drinks as a reason to approach voters waiting in line.

33. Under SB 202, the following activity was prohibited: “giv[ing], offer[ing] to give, or participat[ing] in the giving of any money or gifts, including, but not limited to, food and drink, to an elector[.]” O.C.G.A. § 21-2-414(a).

34. However, SB 202 also provided that this provision does not prohibit any poll officer from “mak[ing] available self-service water from an unattended receptacle to an elector waiting in line to vote.” O.C.G.A. § 21-2-414(e).

35. Under these updated anti-solicitation provisions, third-party organizations may not send representatives to approach voters waiting in line with money, food, or drink. But these organizations may provide food and drink outside the buffer zone as long as they are not providing it only to voters or as an inducement to vote.

36. This struck the same balance that Director Harvey suggested when he said that “[t]he simpler, the better on this subject” as “the appearance

could be that voters are being rewarded for voting with beverages and food.” Ex. B at 2. As “[p]olling places are meant to be a sanctuary from political influence,” Director Harvey explained, “it [is] better to sacrifice some refreshments than to allow a perception of political influence from any group, if it comes to that.” *Id.*

Impact of an injunction

37. As noted, polling places in Georgia are very complex, and county election officials are trained on the various requirements so that the system is able to run efficiently.

38. For instance, poll workers are trained about what is and is not permitted in and around polling locations. And this includes portions of the Poll Worker Manual that address the rules for the 150-foot buffer zone. *See* Ex. G at 40.

39. If the Court enjoins the Anti-Solicitation Provision, the Secretary of State’s office and county elections officials will be required to update their trainings to educate officials and poll workers about the new rules in place for the general election.

40. County elections officials would also be forced to spend more time and resources policing activity in and around voters waiting in line to ensure it is not campaigning, electioneering, or giving anything of value to vote.

41. This would be time-consuming and problematic. Although there are several elections conducted throughout an election year, they are all part of a single election cycle. Indeed, many poll workers are the same individuals who work multiple elections, and the primary election serves as an initial opportunity for many officials and poll workers to implement their training on a smaller scale.

42. Between the primary and general elections, those individuals receive refresher training to build on what they learned during the primary election. Having different rules for the primary and general elections could result in poll worker confusion that logically leads to voter confusion. And it would harm the public's interest in the clarity of the electoral process.

43. Moreover, there are myriad other activities that state and county election officials are otherwise expected to complete during the upcoming months, including list maintenance, building ballots for use in the general election, proofing ballots for the general election, preparing for overseas/military ballots to be sent out 49 days prior to the election, training for the required risk-limiting audit following the November election, ensuring polling places and early voting locations are set and ready, conducting logic and accuracy testing, and numerous other activities necessary for a smooth election in November.

44. By requiring the State and counties to divert their attention to update training about more changes to the solicitation provision, those officials will not be able to complete the activities that they are otherwise expected to complete over the next few months.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and accurate to the best of my knowledge, information, and belief.

6/24/22
Date


C. Ryan Germany
Office of the Georgia Secretary of State

RETRIEVED FROM DEPOSITBOX.COM

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: [T. Matthew Mashburn](#)
To: [Germany, Ryan](#)
Subject: Intrusions into the 150 foot bubble needs a bright line restatement in my view
Date: Friday, October 30, 2020 6:58:25 PM

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

To Ryan first:

Dear Secretary Raffensperger, fellow Board Members and Counsel Germany: As always, the bad people take advantage of what was once a good thing and ruin it for everybody. Georgia has always turned a compassionate blind eye to people delivering water and food to people in line but now we're seeing people setting up tables and food stations within the 150 foot voter protection Bubble while wearing clearly identifiable campaign clothing and colors. Further, the AJC had an article today that this practice is getting more aggressive, more sophisticated (and to me more worrisome).

RETRIEVED FROM DEMOCRACYDOCKET.COM



The 150 bubble was a tremendous safety innovation for Georgia voters and made Georgia's some of the safest



in-precinct voting in the country. In light of the AJC article today on “line warming,” I would like to propose a regulation for the runoff that makes it clear that nobody other than on-duty, sworn-in poll workers should be talking or interacting with voters waiting in line to vote. As we continue to work so hard on shortening the lines this will be less of a problem; but it’s impossible for the poll managers, workers and watchers to monitor what is being said by these

groups as they perform their “line warming.” Like I said, the bad apples ruin it for everybody. I ask for your support of a regulation beginning with the January runoff that makes it absolutely clear that only on-duty sworn pollworkers should be talking and interacting with voters while they are waiting in line and fully restore the integrity of the 150 foot voter protection bubble. If people want to donate water to the county for the poll workers to pass out that’s perfectly fine and compassionate. Thank you for your consideration of this proposal.

Get [Outlook for iOS](#)

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EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM



OFFICIAL ELECTION BULLETIN

October 26, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, Elections Division Director

RE: Polling Place Concerns

Even with record-breaking voter turnout numbers for advance voting, we are expecting historic and record-breaking voter turnout on Election Day. There have been several persistent questions around several topics, so I want to give some direction on three topics: militias or civil unrest; Covid-19 awareness; and voters receiving refreshments in line.

1. Civil Unrest or "Militias" at or near polling places

I encourage you to continue to keep regular communications with your local law enforcement agencies in the days before the election and on election day. Your first responders (sheriff or police) should know the locations of all of your polling places and should be prepared to respond to events as necessary with the foreknowledge that the location is a polling place.

As you are aware, it is against the law to carry a firearm within 150' of a polling place (O.C.G.A. 21-2-413(i)) unless the person is a law enforcement officer or certified security guard.

Questions of voter intimidation can sometimes be difficult to discern. If you suspect or receive reports of voter intimidation, report the circumstances to local law enforcement and seek assistance in documenting the events with pictures and videos if possible.

2. Voters Receiving Refreshments While in Line to Vote

You know that voters cannot receive anything of value in exchange for voting. Though it is not expressly mentioned in the law, candidates, campaigns, or third-parties offering refreshments to voters in line could violate that provision, but it is a fact dependent inquiry. All other prohibitions against campaigning, soliciting votes, and interfering with voters are still effective, and must be prevented. Poll officers (as opposed to candidates, campaigns, or third-party groups) may hand out refreshments to voters in line.

Voters standing in line, even beyond the 150' mark are should generally be free of approaches from bystanders, even those with good intentions of offering refreshment, for at least 25'. A better option would be to have any group who wants to offer refreshments to

anyone, not only those voting, set up an area, outside of the 150' line and 25' away from voters in line where voters could approach the group to receive refreshments.

The simpler, the better on this subject. Bottles of water and crackers or peanuts is reasonable, but if the refreshments get fancier, the appearance could be that voters are being rewarded for voting with beverages and food. Also, depending on the organization that is distributing water, there could arise allegations or perceptions of having a political agenda. Maintain fairness and consistency as you are making decisions about what is allowable. Polling places are meant to be a sanctuary from political influence, and I think it better to sacrifice some refreshments than to allow a perception of political influence from any group, if it comes to that. OCGA 21-2-414 allows poll managers to manage people in the polling place to prevent confusion, congestion, and inconvenience to voters, and I believe the spirit of this provision allows poll managers to manage and instruct groups who are outside the polling place approaching or interacting with voters waiting in line to vote.

3. Covid-19 Awareness

You have been through this drill before. You know that PPE, barriers, hand sanitizer and distance, when possible, create a safer polling place. However, voters need to vote efficiently on election day, and the possibility of not having optimum social distances at every venue should not always override voters voting with the minimum amount of wait time. The CDC has published polling place guidelines, and your county health departments should be on your list of agencies to consult before Election Day to make sure you are keeping your poll workers and voters as safe as possible while still recognizing the primacy of voting on election day.

As you know, we are expecting historic turnout levels. Election Officials and voters will have to adjust to these situations, and others with patience, leadership, and creativity. Remember that emergency situations should initially be handled by appropriate first responders

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EXHIBIT C

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: [Eveler, Janine](#)
To: [Germany, Ryan](#); [Watson, Frances](#)
Subject: RE: Cobb County Food Truck at Advanced Voting at Cobb Election Board on Whitlock - Sen Kay Kirkpatrick - Pam Reardon
Date: Wednesday, December 16, 2020 7:56:10 AM
Attachments: [image001.png](#)

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

One more thing, as far as we can tell they are not campaigning. They have given out napkins with the food that have a QR code to <https://www.vote.org/election-protection/> and has the election protection hotline number on it. They give food to everyone, including voters, poll workers, and other employees in the government complex. I am having a hard time justifying why they need to stop doing any of this.

Janine Eveler

Director,
Cobb County Elections & Registration
770-528-2312
770-528-2519 Fax
[REDACTED] Cell
www.CobbElections.org

Register...then Vote!

From: Eveler, Janine
Sent: Tuesday, December 15, 2020 6:12 PM
To: 'Germany, Ryan' <rgermany@sos.ga.gov>; Watson, Frances <fwatson@sos.ga.gov>
Subject: RE: Cobb County Food Truck at Advanced Voting at Cobb Election Board on Whitlock - Sen Kay Kirkpatrick - Pam Reardon

I believe they are. The truck is more than 150 feet away, but people bring items closer to the line to give them out.

Janine Eveler

Director,
Cobb County Elections & Registration
770-528-2312
770-528-2519 Fax
[REDACTED] Cell
www.CobbElections.org

Register...then Vote!

From: Germany, Ryan [<mailto:rgermany@sos.ga.gov>]
Sent: Tuesday, December 15, 2020 6:10 PM
To: Eveler, Janine [REDACTED] Watson, Frances <fwatson@sos.ga.gov>
Subject: Re: Cobb County Food Truck at Advanced Voting at Cobb Election Board on Whitlock - Sen Kay Kirkpatrick - Pam Reardon

I think a food truck crosses the line, especially the way they are marketing it. Frances has an open

investigation. Are they actually up there everyday?

—
Ryan Germany
[REDACTED]

From: Eveler, Janine [REDACTED]
Sent: Tuesday, December 15, 2020 5:58:17 PM
To: Watson, Frances <fwatson@sos.ga.gov>
Cc: Germany, Ryan <rgermany@sos.ga.gov>
Subject: RE: Cobb County Food Truck at Advanced Voting at Cobb Election Board on Whitlock - Sen Kay Kirkpatrick - Pam Reardon

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

This continues to be a grey area that we don't understand how to moderate. We have people giving out water and food and masks, warm hats etc.

Janine Eveler

Director,
Cobb County Elections & Registration
770-528-2312
770-528-2519 Fax
[REDACTED] Cell
www.CobbElections.org

Register...then Vote!

From: Eveler, Janine
Sent: Tuesday, December 15, 2020 4:45 PM
To: 'Watson, Frances' <fwatson@sos.ga.gov>
Subject: RE: Cobb County Food Truck at Advanced Voting at Cobb Election Board on Whitlock - Sen Kay Kirkpatrick - Pam Reardon

So, no food trucks allowed?

Janine Eveler

Director,
Cobb County Elections & Registration
770-528-2312
770-528-2519 Fax
[REDACTED] Cell
www.CobbElections.org

Register...then Vote!

From: Watson, Frances [<mailto:fwatson@sos.ga.gov>]
Sent: Tuesday, December 15, 2020 4:43 PM

To: Eveler, Janine [REDACTED]

Subject: Fwd: Cobb County Food Truck at Advanced Voting at Cobb Election Board on Whitlock - Sen Kay Kirkpatrick - Pam Reardon

Chief Investigator
Frances Watson

From: Germany, Ryan <rgermany@sos.ga.gov>

Sent: Tuesday, December 15, 2020 3:53:15 PM

To: McCloud, Hayley <hmcccloud@sos.ga.gov>; Watson, Frances <fwatson@sos.ga.gov>

Cc: Combs, Leigh <lcombs@sos.ga.gov>; Holland, Gabrielle <gholland@sos.ga.gov>; Teasley, Sam <samteasley@sos.ga.gov>; Harvey, Chris <wharvey@sos.ga.gov>

Subject: RE: Cobb County Food Truck at Advanced Voting at Cobb Election Board on Whitlock - Sen Kay Kirkpatrick - Pam Reardon

What they are doing seems to be campaigning and should not be allowed to within 150 feet of a polling place. They say "these food trucks will be our last chance to reach Georgians before they vote." They also seem to be giving some of value for voting—otherwise it wouldn't matter if they were reaching people before they vote and it's not allowed to matter if the people are voting or not.

--

C. Ryan Germany

Georgia Secretary of State

Direct: 470-312-2808

Cell: [REDACTED]

rgermany@sos.ga.gov



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From: McCloud, Hayley <hmcccloud@sos.ga.gov>

Sent: Tuesday, December 15, 2020 3:44 PM

To: Watson, Frances <fwatson@sos.ga.gov>

Cc: Combs, Leigh <lcombs@sos.ga.gov>; Holland, Gabrielle <gholland@sos.ga.gov>; Teasley, Sam <samteasley@sos.ga.gov>; Germany, Ryan <rgermany@sos.ga.gov>

Subject: Cobb County Food Truck at Advanced Voting at Cobb Election Board on Whitlock - Sen Kay Kirkpatrick - Pam Reardon

Frances,

Per our earlier discussion, can someone on our team please contact Pam Reardon at [REDACTED]? She says she has video of a food truck with folks less than 25' from the voters at the Cobb Election Board on Whitlock? Sen Kirkpatrick is asking if this is legal and wants us to answer. Allegedly, the Cobb sheriff came by and said they shouldn't be on county property, but was allegedly dissuaded by election staff.

I included the email about this below:

From: Bridget Geraghty <info@vote.org>
Date: December 10, 2020 at 7:27:45 PM EST
To: [REDACTED]
Subject: Food trucks
Reply-To: info@vote.org

RETRIEVED FROM DEMOCRACYDOCKET.COM

Kay,

During the general election, we sent Vote.org-branded food trucks to polling places with long lines to provide free food, water, and crucial nonpartisan information about voting rights.

Now we're gearing up to do it again for the January 5, 2021, runoff elections in Georgia.

These food trucks will be our last chance to reach Georgians before they vote.

[If we raise \\$153,000, we'll be able to send five food trucks stocked with free meals to early voting sites in Georgia. Chip in today — every dollar will help feed communities and increase voter turnout.](#)

DONATE NOW

If we can fully fund this program, food trucks will be parked in strategic locations across the state and voter ambassadors will refer Georgians who need support to 866-OUR-VOTE, the nonpartisan Election Protection hotline.

Each food truck will hand out between 500 and 750 free meals. **During a pandemic that has caused increased food insecurity for many communities, this program serves multiple community needs.**

Thanks to supporters like you, **we're already running a multilayered campaign to reach and turn out every eligible Georgia voter** for these consequential runoff elections. The results have the potential to determine control of the U.S. Senate.

Historically, runoff races have significantly lower turnout than general elections, especially in Georgia. This year, voters are expected to face additional barriers due to COVID-19 and misinformation about the election process. **We're doing everything we can to make sure every eligible Georgia voter has the accurate, timely information they need to make their voice heard.**

We can't do it alone. We need *your* support to help us reach even more communities in the days ahead. Our full Georgia food truck program will cost \$153,000 to supply and staff.

[Chip in now to ensure we're able to reach Georgia voters with crucial election messaging through our food trucks. The more money we raise, the more free meals and voter information we'll be able to distribute.](#)

DONATE NOW

Your support helps us continue to reduce barriers so that *nothing* stands in the way of voters and the ballot box.

Thank you,
Bridget Geraghty, Director of Donor Relations
Vote.org

This email was sent to: [REDACTED] You received this email because you have a relationship with Vote.org — you might have used our tools to register to vote, to check your status, or to get your absentee ballot.

Vote.org is located at 4096 Piedmont Avenue, #368, Oakland, CA 94611.

[Update your email address or unsubscribe here.](#)

To receive fewer emails, please [click here](#).

Sent via [ActionNetwork.org](#). To update your email address, change your name or address, or to stop receiving emails from Vote.org, please [click here](#).

Thanks!

Hayley McCloud, MPA
Legislative Director
Georgia Secretary of State
Cell: [REDACTED]
hmcccloud@sos.ga.gov



CAUTION: This email originated outside Cobb County Government. Please exercise caution when opening links/attachments in this email .

CAUTION: This email originated outside Cobb County Government. Please exercise caution when opening links/attachments in this email .

EXHIBIT D

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: [Watson, Frances](#)
To: [Barron, Richard L.](#)
Subject: RE: Giving away food and items outside poll
Date: Tuesday, November 3, 2020 9:41:00 AM

CT Martin Recreation center.

Frances Watson
Chief Investigator
Investigations Division
Georgia Secretary of State
Main: 470-312-2774
Cell: [REDACTED]

-----Original Message-----

From: Barron, Richard L. [REDACTED]
Sent: Tuesday, November 3, 2020 9:41 AM
To: Watson, Frances <fwatson@sos.ga.gov>; Brower, Dwight [REDACTED]
Subject: RE: Giving away food and items outside poll

** Do not click any links or open any attachments unless you trust the sender and know the content is safe. **

Where is this happening?

From: Watson, Frances [fwatson@sos.ga.gov]
Sent: Tuesday, November 03, 2020 9:00 AM
To: Barron, Richard L.; Brower, Dwight
Subject: Giving away food and items outside poll

We are getting complaints that organizations are setting up outside the poll within 150 feet to provide coffee, water, crackers, food boxes. This is contrary to 21-2-414 (a)1 Please advise the poll managers to request that they monitor the outside of the poll and advise any organization to move outside 150 feet. It does not matter if they are offering to everyone

Frances Watson
Chief Investigator
Investigations Division
Georgia Secretary of State
Main: 470-312-2774
Cell: [REDACTED]

[cid:image001.jpg@01D6B1BF.691E1F60]

EXHIBIT E

RETRIEVED FROM DEMOCRACYDOCKET.COM



INVESTIGATIONS DIVISION

REPORT OF INVESTIGATION

CASE NAME:	Cobb County-Food Truck at Polling Location
SEB CASE #:	SEB2020-262
INVESTIGATOR:	P.E. Cain #19
DATE OF REPORT:	June 17, 2021

COMPLAINT:

On December 15, 2020, The Georgia Secretary of State's Office, State Elections Division, received a complaint from Dana Schlup, that provided information that a food truck was parked at the East Cobb Government Center, a poll location, located at 4400 Lower Roswell Road, Marietta, (Cobb County) Georgia. The food truck personnel were giving out free food items to voters. This occurred during early voting for the Special Run-Off Election, January 5, 2021. The matter was assigned to the Investigations Division, (*Exhibit #1*). The complaint of giving or receiving things of value for voting, is contrary to the Official Code of Georgia Annotated 21-2-570.

COUNTY AND ELECTION INVOLVED:

Cobb County, Special Run-Off Election held January 5, 2021.

ELECTION STAFF:

Combined Board of Elections and Registration

ELECTION CERTIFICATION:

The Cobb County Combined Board of Elections and Registration has met the election training requirements, as Elections Director Janine Eveler, was certified on 04-02-2009.

JURISDICTION/VENUE:

Jurisdiction will be with the State Election Board in Atlanta, Fulton County, Georgia.
Venue on any criminal prosecution will lie in Cobb County, Georgia.

COMPLAINANT:

Dana Schlup

[REDACTED]

Marietta, Georgia [REDACTED]

Phone [REDACTED]

Email: [REDACTED]

RESPONDENT:

Bridget Geraghty

Director of Donor Relations

Vote.Org

[REDACTED]

Oakland, California [REDACTED]

(866-OUR-VOTE-nonpartisan Election Protection hotline)

Email: info@vote.org

(Respondent #1)

Janine Eveler

Director

Cobb County Elections & Registration

735 Whitlock Avenue NW Suite 400

Marietta, Georgia 30064

Main: 770-528-2312

Cell: [REDACTED]

Email: [REDACTED]

(Respondent #2)

Nikia Harris

On the Move Catering, LLC.

[REDACTED]

Powder Springs, Georgia [REDACTED]

Direct: [REDACTED]

Email: [REDACTED]

(Respondent #3)

Christopher Martin Murphy
Oyster CO., LLC.
dba: Lil Nauti Food Truck

Residence

[REDACTED]
Atlanta, Georgia [REDACTED]

Cell: [REDACTED]

Email: [REDACTED]

(Respondent #4)

Mr. Michael C. Renner Jr.
Loaded Taco Food Truck
Loaded Burger Food Truck

[REDACTED]
Atlanta, Georgia [REDACTED]

Cell: [REDACTED]

Email: [REDACTED]

(Owner-Operator)

(Respondent #5)

INVESTIGATIVE SUMMARY:

On February 11, 2021, reporting Investigator spoke to S.O.S. Investigator April Odom. Investigator Odom advised she was initially assigned this case and did not respond to the original complaint. Investigator Odom advised that Investigator Vincent Zagorin did respond to the complaint. Investigator Odom said she obtained notarized statements from (3) three Cobb County Poll Mangers regarding food trucks being present at (2) two separate Cobb County polling precincts, during the Special Run-Off Election held on January 5, 2021 election. This Investigator conducted a review of the statements.

-Poll Manager Craig J. Rogers wrote he was assigned at the Sandy Plains and East Cobb polling precincts. Mr. Rogers advised every vendor & observer did speak to him before any activity began. Mr. Rogers said on December 18, 2020, a food truck vendor checked in with him at the East Cobb early voting poll precinct. Mr. Rogers wrote he told the vendor to remain 150 feet from the building and 25 feet from the (voter) line. Mr. Rogers wrote he advised the vendor that no campaigning was authorized. Mr. Rogers wrote that is what he had previously been instructed before this encounter. Mr. Rogers wrote an S.O.S. Investigator (Zagorin) told him the food truck operators were overtly inducing people to vote and that the line had extended to within 25 feet of the food truck. Mr. Rogers wrote the food truck immediately packed up and left.

-Poll Manager Deborah Lundquist wrote she was assigned at the Lower Roswell polling precinct. Ms. Lundquist advised on December 14, 2020; a food truck was parked in the parking lot. Ms. Lundquist wrote the food truck driver was asked to move more than 150 feet away from the building. Ms. Lundquist advised the Driver did so. Ms. Lundquist wrote she told the driver to keep the food truck more than 25 feet away from the last voter (in line). Ms. Lundquist wrote the Driver complied. Ms. Lundquist wrote the "*Driver of food truck did not offer food only to voter or offer ant other incentives for voters*".

-Poll Manager Twana Orders wrote she was assigned to the Whitlock Avenue poll precinct. Ms. Orders advised on December 14, 2020, she was asked to speak to a food truck vendor regarding the message posted on the napkins being given out to the public. Ms. Orders wrote she went outside to speak to the vendors and did *see napkins* that had “*Vote.org*” written on them. Ms. Orders wrote she told the person serving the food that their napkins could not have messages on them. Ms. Orders wrote that she further told the vendors if they wanted to continue handing out food, they would need to use plain napkins, or none at all. Ms. Orders wrote the vendor complied with her request. Ms. Orders wrote when they returned the next day plain napkins “(to her knowledge)” was being handed out. (*Exhibit #3*)

On February 12, 2021, reporting Investigator called and spoke to Cobb County Board of Elections & Registration Director, Janine Eveler. Ms. Eveler said she would provide a notarized statement regarding the food truck issues. Ms. Eveler said she would provide the names and contact information of the Poll Managers at the polls where any food truck were observed. Ms. Eveler said the Elected Officials or Sheriff did not arrive at any location to her knowledge. Ms. Eveler said they did have Deputies assigned each day to the Polls for security. Ms. Eveler verified they had a food truck at her location. Ms. Eveler said it was 736 Whitlock Avenue with early voting for the January 5, 2021, Senate Runoff race. Ms. Eveler said they do not have cameras at this building. Ms. Eveler said she knew a deputy did move a food truck away from a polling building. Ms. Eveler verified she received the memo from Chris Harvey about the food trucks after the incidents. (*Exhibit #4*)

On February 12, 2021, reporting Investigator called and spoke to Pamela Reardon. Ms. Reardon said she filed several SEB complaints. Ms. Reardon said in regard to the food trucks, she has photographs of the food trucks. Ms. Reardon said she has a friend who has a video of the food trucks. Ms. Reardon said she had already sent all the information to Mr. Hall previously. Ms. Reardon said she had to go because she was at work (Realtor) and would call back later. Ms. Reardon called back. Ms. Reardon said she took still photos and her friend took video at the Whitlock Avenue polling location. Ms. Reardon said she could not remember her friends name at this time. Ms. Reardon said she would have to research the dates and locations of her photographs to advise this Investigator. Ms. Reardon said she went to (4) four or (5) five locations. Ms. Reardon said she did speak to her personal State Senator, Kay Kirkpatrick. Ms. Reardon said she had spoken to Senator Kirkpatrick about the photos and the food trucks. Ms. Reardon said the Senator contacted the S.O.S. Ms. Reardon said then Mr. Hall contacted her. Ms. Reardon said that that is why she sent everything to Mr. Hall by text message. Ms. Reardon said she did also send an email to Cobb County Board of Elections Director, Janine Eveler. Ms. Reardon said that on the first day of early voting for the Presidential Election, October 12, 2020, she went in to get her Cobb County Poll Watching credentials. Ms. Reardon said *she saw a food truck parked close to the building*. Ms. Reardon said she saw Director Eveler and Cobb poll officials with a measuring tape. Ms. Reardon said she saw a Deputy Sheriff speak to the food truck occupants. The food truck then moved away to the parking lot close to the road entrance. (*Exhibit #5*)

On February 15, 2021, reporting Investigator started receiving multiple emails from Cobb County Board of Elections Director, Janine Eveler. The emails contained:

- an email and photograph forwarded to Cobb County Board of Elections & Registration Director, Janine Eveler, from the Cobb County GOP Executive Director Chris Scheve.

-copies of all emails about food trucks sent to Cobb County Board of Elections & Registration Director, Janine Eveler.

-copies of emails sent to and answers from Cobb County Board of Elections & Registration Director, Janine Eveler.

-copy of all email with contact information for Cobb County Poll staff. -copies of emails sent from Don Davidson to and answers from Cobb County Board of Elections & Registration Director, Janine Eveler, copied to *Georgia Senator Kay Kirkpatrick*.

-copies of emails sent from Jacquelyn Bettadapur, Cobb County Democratic Party Chair.

"Janine, DPG Voter Protection wanted me to touch base with you about the issues yesterday with the Vote.org food truck and line warmers passing out hats at Whitlock. Apparently the Sheriff said they could not be in the space, you said it was fine. I was told there was a back and forth on this. How was this resolved? Were they cleared to operate within the space? Anything we can do?" and answer from Cobb County Board of Elections & Registration Director, Janine Eveler, *"We get a lot of complaints from voters when there are line warmers, because they always suspect the motives are partisan. We tell them that unless they are campaigning there is nothing wrong with giving out incidental items. The problem is knowing where to draw the line. The SOS direction is also confusing. They feel that a complete meal from a food truck is too much and is a "gift" for voting, which is not allowed. I thought the hats were a little too nice to be an incidental item and bordered on a gift. It is such a grey area. The SOS has suggested the poll workers offer to give the items to voters in line so there isn't a perceived conflict, but line warmer groups don't want to do that. They want the contact with the voters, which fuels the idea that there is a motive. We did not really resolve it last night and it continues to be a difficult area. Janine Eveler."*

-copy of email sent from Complainant, Dana Schlup, to and answer from Cobb County Board of Elections & Registration Director, Janine Eveler.

-copy of email sent from Cobb County Board of Elections & Registration Absentee Supervisor Allison Schaeffer, dated 12-19-2020, containing updated instructions regarding handing comfort items to voters in line. *"People handing out comfort items to people in line such as water, snacks, chairs, umbrellas in the past could come up to voters in line and pass out their items. Please read below the update to for this exchange. Voters in line are in a safe space and there is a twenty five foot space to be kept between the line and the general public. Just as exit interview and exit polls must take place 25 feet from the exit or the voter line, now all those passing out comfort items must also respect the 25 foot space. They may have their cart, supplies or items (example : chairs) on the ground twenty five feet from the line. No tables or booths can be set up within 150 feet of the polling location. They may hold up the item to let the voter know it is available to the voter. If the voter signals they would like the item, the item can be brought to them. There is not to be lengthy conversation around the exchange. What one voter sees as a benefit another voter might feel is an effort to intimidate or influence them. Out of respect for the varying perceptions of our voters we are creating this safe voting space. Food trucks are to be*

150 feet or more from the voting location and 25 feet from the end of the line (some locations have long lines). It may entail the food truck moving if the line grows to the location of the truck. Locations can have no food truck in the parking lot if the parking is limited and the truck takes parking away from the voters.” (Exhibit #6)

On February 22, 2021, reporting Investigator received a call from Cobb County Sheriff’s Office LTC, Dewayne Morris. LTC Morris advised he had spoken to the Cobb County Elections Director regarding this Investigators request for notarized statements from the Deputies working at the Cobb County election polls. LTC Morris advised he would have his Deputies who were assigned to the Cobb County election polling precincts, write incident reports regarding any observations and or interactions regarding any food trucks. This Investigator sent an email request to LTC, Dewayne Morris. (Exhibit #7)

On March 5, 2021, reporting Investigator went to the Cobb County Board of Elections and Registration Office. The administrative assistant at the front window provided this Investigator a sealed envelope. The envelope contained the notarized statement of Elections Supervisor, Janine Eveler. (Exhibit #8)

On March 19, 2021, reporting Investigator received a call from Jerilyn Gover. Ms. Gover advised she did *not* see Candidate Warnock personally passing out food items at a Cobb County polling site. Ms. Gover said she saw a website online that showed the Warnock bus at a Cobb County polling location. This Investigator asked Ms. Gover for an email statement and send any attachments that may show the bus or candidate passing out food items. Ms. Gover said she filed a complaint with the Cobb County Elections website and not the S.O.S. website. Ms. Gover sent an email advising that she saw a report in the Epoch times with a video. Ms. Gover advised she deleted the email sent to the Cobb County Board of Elections because it was not taken seriously. (Exhibit #9)

On March 22, 2021, reporting Investigator went to the Cobb County Sheriff’s Office HQ located at 185 Washington Street, Marietta. This Investigator received from Lt. Colonel Dewayne Morris, copies of the Incident reports written by his deputies regarding food trucks at or near polling locations in Cobb County. The reports included the following:

(1) *Sgt. John P. Gloster* wrote Cobb County S.O. report #12-01938, that he was assigned to the Epi Center polling location at 135 Riverside Parkway, Austell, Georgia, for both the November 3, 2020, General Election and the January 5, 2021, Federal Senate Runoff Election. Sgt. Gloster advised he encountered numerous food trucks while working. Sgt. Gloster said he notified the Poll Manager and the Epi Center Manager. Sgt. Gloster said upon the arrival of the Poll Manager, he was advised the food trucks were in violation being parked within 150 feet of the poll. Sgt. Gloster said he assisted the Poll Manager in moving the food trucks beyond 150 feet. Sgt. Gloster said all food trucks complied and moved beyond 150 feet of the poll. Sgt. Gloster said several other food trucks arrived throughout the election times, but they parked beyond the 150 feet limit, were he was advised by the Poll Manager it was ok.

(2) *Sgt. Chris P. Leger* wrote Cobb County S.O. report #21-0225-865, that he was assigned to the North Cobb Regional Library Poll, located at 3535 Old Highway 41, NW, in Kennesaw, Georgia, during the January 5, 2021 Special Federal Runoff Election. Sgt. Leger said that on a couple of occasions, food trucks were parked in the library parking lot giving out free food. Sgt.

Leger said he stayed in close contact with the Poll Manager, Ken Parmer. Sgt. Leger said their instructions said the food trucks had to be parked beyond 150 feet of the building. Sgt. Leger said whenever he saw a food truck within 150 feet of the poll, he notified the Poll Manager, Mr. Parmer. Sgt. Leger said Mr. Parmer would come out and inspect the situation and ask the food trucks to move beyond 150 feet. Sgt. Leger also reported that on one occasion, a subject set up a table within 20 feet of the line of voters and was giving out bottles of water and snacks. Sgt. Leger said Mr. Parmer came out and told the subject to take down the table. Sgt. Leger said all of the food trucks and the subject with the table all complied with Mr. Parmer.

(3) *Sgt. Gary W. Hatch* wrote Cobb County S.O report #21-0227896, that he was assigned to the East Cobb Government Center, located at 4400 Lower Roswell Road, in Marietta. Sgt. Hatch said this was during the early voting of the January 5, 2021, Federal Special Election Runoff Election. Sgt. Hatch said the Poll Manager was Craig Rogers. Sgt. Hatch advised on one day a female with a food truck arrived. Sgt. Hatch said he was near when the Poll Manager spoke to the female and told them to park 150 feet away from the poll and to not to approach the voters in line. Sgt. Hatch said the truck did park 150 feet or more away from the poll building. Sgt. Hatch said he only provided security for the poll location and poll staff. Sgt. Hatch said he never received any complaints about anyone approaching the voters. Sgt. Hatch said he did not remember any of the food truck workers names or any of the food truck names from his poll location.

(4) *Deputy Adam M. Reddish* wrote Cobb County S.O report #21-02151. Deputy Reddish wrote that on December 31, 2020, he was working the election detail at the Epi Center poll, located at 135 Riverside Parkway, in Austell. Deputy Reddish said he parked his marked patrol vehicle in front of the building. Deputy Reddish said he went inside the poll every 30-to 40 minutes and spoke to the elections staff and asked if everything was ok. Deputy Reddish said while inside his marked patrol vehicle, he saw one male subject & one female subject handing out food & drinks to voters standing in line to vote. Deputy Reddish said he started to go and address the two subjects, but before he could, the poll Manager came out and advised them they could not pass out items to the voters waiting in line. Deputy Reddish said the Poll Manager said she told the two subjects they could move to the exit side of the building and pass out the free food and drinks to the people after they had voted. Deputy Reddish said he thought the two subjects had left, but then saw them near the end of the waiting to vote entry line, again passing out free drinks and food. Deputy Reddish he and the Poll Manager approached the two subjects again. Deputy Reddish said the Poll Manager again told them they could not pass out the items to voters in line to vote. Deputy Reddish said the female raised her voice and asked why they could not hand out the free drinks & food items to voters in line. Deputy Reddish advised they provided the subjects with the O.C.G.A. code. Deputy Reddish said the two subjects then left.

(5) *Deputy Jeffery K. Dulworth* wrote Cobb County S.O report #21-02054. Deputy Dulworth advised on December 30, 2020, he worked security at the Smyrna Community Center poll, located at 200 Village Green Circle. In Smyrna. Deputy Dulworth advised he saw a food truck arrive that sold churros. Deputy Dulworth said it parked approximately 400 to 500 feet away from the poll. Deputy Dulworth said he brought this to the attention of the Poll Manager. Deputy Dulworth said the Poll Manager did not voice any concerns. Deputy Dulworth said the the food truck arrived around 16:00 hours (4 p.m.) and left around 18:45 hours (6:45 p.m.)

(6) Deputy Kimber L. Meade wrote Cobb County S.O report #21-01879. Deputy Meade wrote on December 16, 2020, she was working the Elections detail at 4400 Lower Roswell Road, in Marietta. Deputy Meade said around 08:00 hours, a.m., a pink food truck arrived and parked close to the building, taking up several parking spaces. Deputy Meade said the food truck had “Vote” and “VoteGeorgia.org” marked on the outside. Deputy Meade said she notified the Poll Manager. Deputy Meade said the Poll Manager told her to advise the food truck they could not park within 150 feet and could not take up any voter parking spaces. Deputy Meade said the Poll Manager told her they could park the food truck in the back of the parking lot. Deputy Meade advised after she told the food truck workers the instructions from the Poll Manager, one occupant complained and stated they had parked there the day before without anyone saying anything. Deputy Meade said she told them she was not here yesterday and the rules did apply today. Deputy Meade advised the food truck moved to the back of the parking lot, then left the poll about one hour later. (*Exhibit #10*)

On May 3, 2021, reporting Investigator received a call from Georgia State Senator Kay Kirkpatrick. Senator Kirkpatrick verified she had received the same email in this Investigators file from Bridget Geraghty, Director of Donor Relations, with vote.org. This email was dated December 10, 2020. Senator Kirkpatrick verified she had discussed via text messages, the Cobb County Food Truck issues with her constituent, Pam Reardon. Senator Kirkpatrick advised she would meet this Investigator at her Office on Wednesday, May 5, 2021, at 09:00 a.m., to sign the email she had received from Bridget Geraghty, Director of Donor Relations with vote.org, located in Oakland California. (*Exhibit #11*)

On May 5, 2021, reporting Investigator went to 18 Capitol Square, Suite 324-A, in Atlanta and spoke to Georgia Senator, Kay Kirkpatrick. This Investigator presented my S.O.S. credentials. Senator Kirkpatrick provided her Senate Photo ID. Senator Kirkpatrick reviewed and verified she had received the (2) two email copies shown to her. Senator Kirkpatrick initialed the first pages and signed the last page of each email. Senator Kirkpatrick advised the food trucks should have been issued food permits from the Department of Health. This Investigator notarized the emails signed by the Senator. (*Exhibit #12*)

On May 14, 2021, reporting Investigator received a return call from Karen H. Gulley, the Cobb County Environmental Health Manager. Ms. Gulley advised Judy Lowry, is the Georgia Department of Public Health, Office Services Manager, and would be the person to request copies of any Food Truck applications/permits for Cobb County. Ms. Gulley advised Ms. Lowry’s direct number is [REDACTED]. Ms. Gulley said her direct number is [REDACTED]. Ms. Gulley explained that a Food Truck vender had to have permission from someone, like the property owner, or someone having authority at the property location, for the Food Trucks to operate. Ms. Gulley said the Food Truck had to have a letter granting customers access, to a bathroom within 200 feet of the location. Ms. Gulley said the Food Trucks were required to update the County of their vending locations within (7) seven days. Ms. Gulley said the Food Trucks should have a letter from each location allowing access to a bathroom. Ms. Gulley said Ms. Lowry would know how long their records would be kept. Ms. Gulley said she thought the records were kept (3) three years. Ms. Gulley provided her email address. Ms. Gulley said she would forward this Investigators request to Ms. Lowry. (*Exhibit #13*)

On May 17, 2021, reporting Investigator conducted an S.O.S. corporation search. The search found “On the Move Catering, LLC.” The principal Office address is [REDACTED] Austell, Georgia [REDACTED]. The Registered Agent is Nikia Harris, [REDACTED] Powder Springs, Georgia [REDACTED]. Nothing was found for any company named “A Little Nauti”. (*Exhibit #14*)

On June 1, 2021, reporting Investigator called and spoke to Christopher Murphy. Mr. Murphy is the owner of the “Little Nauti” food truck. Mr. Murphy verified he was hired by a non-profit for the election events. Mr. Murphy said he would have to go back and research his calendar to be able to advise the non-profits name. Mr. Murphy said upon his arrival at a poll location, he would speak to an onsite contact, who would then speak to the poll officials. Mr. Murphy said the poll officials would then tell the contacts where to have him park. Mr. Murphy said the non-profit also gave him a banner for the events. Mr. Murphy said the non-profit was nonpartisan and impartial. Mr. Murphy said all food items were pre-paid for and there was no charge for items given out to anyone the event crowds. Mr. Murphy said there was no campaigning, and no food was offered for voting. Mr. Murphy said he had no contracts with the non-profit. Mr. Murphy said all business was conducted through emails. Mr. Murphy said he sent an invoice was paid through the “Square” app. Mr. Murphy said he did not have any Department of Health (DPH) documents for the events. Mr. Murphy said he does not know anything about the “On the move Catering” food truck. Mr. Murphy said he does have a corporation named Oyster Co, LLC. Mr. Murphy said his food truck, “Little Nauti”, is a “dba” business of the corporation. This Investigator sent an email request. (*Exhibit #15*)

On June 3, 2021, reporting Investigator received a call from Judy Lowry, with the Cobb & Douglas County Department of Public Health. Ms. Lowry verified she had received this Investigators email request regarding the food trucks operating in Cobb County during the elections. Ms. Lowry said a Michael Renner, with either the loaded taco or loaded burger food truck, participated during the election. Ms. Lowry said she would check to see which specific truck, Mr. Renner operated. This Investigator requested information on the Lil Nauti food truck owned by Christopher Murphy and the “On the Move Catering” food truck. Ms. Lowry said the Lil Nauti food truck was based out of another county. Ms. Lowry said the Lil Nauti food truck only requested a Cobb County location permit, in February, 2021. Ms. Lowry she would research and provide the requested information. (*Exhibit #16*)

On June 3, 2021, reporting Investigator received an email with attachments from Judy Lowry, with the Cobb & Douglas County Department of Public Health. Ms. Lowry provided copies of the permits and documents relating to the “On the Move Catering”, food truck. The information indicated the food truck was operated by Nikia Harris, and the base of operation was [REDACTED] Mableton, Georgia, in Cobb County. The information indicated the owner had requested the cancelation of their permits because they had lost their base of operation. DPH documents indicated Nakia Harris resides at [REDACTED] Powder Springs, Georgia. (*Exhibit #17*)

On June 7, 2021, reporting Investigator arrived unannounced at 5520 Wheatfield Lane, Powder Springs. The Investigator observed no vehicles in the driveway. A male sounding voice answered through a Ring doorbell. The voice (rec) identified himself as Mr. (Sheron?) Green. Mr. Green said Nakia Harris did not live there. Mr. Green said did not know a Nakia Harris. The Investigator took photographs of the location. (*Exhibit #18*)

On June 8, 2021, reporting Investigator called and spoke to Respondent Nakia Harris. Ms. Harris advised she wanted to verify this Investigators identity before providing any information. Ms. Harris requested the main S.O.S. number. This Investigator advised Ms. Harris to call the main S.O.S. number listed on our website, 404-656-2881, and ask for Investigations, then ask for Deputy Chief Callaway, my Supervisor. This Investigator also provided Deputy Chief Callaway's direct desk number. (*Exhibit #19*)

On June 8, 2021, reporting Investigator received a return call (rec) from Nakia Harris, owner of On the Move Catering, LLC. Mrs. Harris said she did verify this Investigator was with the Georgia Secretary of State's Office. Mrs. Harris said because she was directly contacted, the type of questions asked, and long time since the events, she was concerned when this Investigator called her. Mrs. Harris said would help this Investigator little bit. Mrs. Harris said she and other food trucks were organized by World Central Kitchens (WCK). Mrs. Harris said they are online at WCK org. Mrs. Harris said the WCK phone number is [REDACTED] Mrs. Harris said the WCK email address [REDACTED] Mrs. Harris said she cannot give information on all the food trucks that were at the events. Mrs. Harris said some of the other food trucks were from other organizations. Mrs. Harris said her food truck was organized by the WCK and offered the WCK menu and food items. Mrs. Harris said she had WCK signage barriers on the front and back of her food truck. Mrs. Harris said this Investigator could find information about WCK by accessing "online profiles", "Facebook", and "Google". Mrs. Harris said if this Investigator went to google and typed in "world central kitchens chefs for the polls". Mrs. Harris said this will explain how WCK selected the food trucks, what their purpose was and who handled the WCK event arrangements. This Investigator asked Mrs. Harris if she would provide an notarized statement. Mrs. Harris said she would not provide a notarized statement about her food truck. Mrs. Harris said she did not want to participate in this and would only provide the information requested because of all of the negativity about the community. Mrs. Harris said this was unsettling and the way things were negative in the newspaper and towards the community. Mrs. Harris said she is not WCK and does not take any side on any issues. Mrs. Harris said she was thinking about obtaining legal representation because of aggression towards her and her food truck by Trump supporters. Mrs. Harris explained the personal aggression towards her was from Trump supporters with signage, and that they knew her name, knew her company name, and asked her who (candidate) she supported. Mrs. Harris said they also asked her what party she was affiliated with. Mrs. Harris said one of the females in the group told her she would report her. Mrs. Harris said she felt uncomfortable because of the aggression. Mrs. Harris said people from the Cobb County building came out and told her she was ok, but next time not to park so close to the building so she would not get shut down. Mrs. Harris said she did find a Facebook video post of the aggressors and said she would try to send that footage to this Investigator. Mrs. Harris said another news channel reported on the food trucks. Mrs. Harris said she did not want to be part of all the negativity. Mrs. Harris said she only gave out food, drinks and trays of food to people and families in need. Mrs. Harris said she was just helping her community. Mrs. Harris said one lady gave her a crocheted potholder. Mrs. Harris said she parked her food truck in back. Mrs. Harris said the Warnock van-bus parked right behind her truck. Mrs. Harris said Mr. Warnock came out and started to speak to people. Mrs. Harris said she did not want to be caught up in the situation. Mrs. Harris said that is not what she was doing. Mrs. Harris said all she was doing was passing out food to families in need. Mrs. Harris said she would reply to this Investigators email. Mrs. Harris said expressed concern why this Investigator went to her home address. This Investigator explained I trying to obtain her notarized statement for the SEB Board. Mrs. Harris said a food truck with Trump stickers came to her house and recorded them for

hours. Mrs. Harris said they also took a photo of her and her license plate. Mrs. Harris said this occurred during the election events. This Investigator suggested Mrs. Harris contact the Cobb County Police Department or Sheriff 's Office if there were any suspicious vehicle parked outside of her home taking photographs. This Investigator sent an email request. (*Exhibit #20*)

On June 8, 2021, Nakia Harris, owner operator of the "On the Move Catering, LLC.," food truck sent her email statement to the Investigator. The statement verified she was contracted by the World Central Kitchen non-profit, to provide free meals & drinks to people at and around the polls, regardless if they voted or not. (*Exhibit #21*)

On June 10, 2021, reporting Investigator conducted an open records WEB search for World Central Kitchens. This Investigator found the WCK website with several articles that referenced the food trucks being at voting polls during election times. There were a few specific references to WCK sponsored food trucks being in Marietta and Cobb County Georgia. (*Exhibit #22*)

On June 15, 2021, reporting Investigator added S.O.S. Director of Elections, Chris Harvey's memo as an Exhibit. (*Exhibit #23*)

On June 15, 2021, reporting Investigator received a brief email statement from Christopher Murphy. Mr. Murphy provided contact information for World Central Kitchens associate, Akeem Evans. Mr. Murphy invoked his right to legal counsel for any other documentation request. (*Exhibit #24*)

On June 15, 2021, reporting Investigator received an email from Judy Lowery, DPH, with attached documents for the "Lil Nauti" food truck business and the "Loaded Taco and Loaded Burger food truck business. (*Exhibit #25*)

On June 16, 2021, reporting Investigator called and spoke to Respondent, Michael C. Renner Jr. Mr. Renner verified he was the owner/operator of both the Loaded Taco & Loaded Burger Food Trucks. Mr. Renner advised he did not know who he was speaking with and wanted to verify this Investigator was with the S.O.S. Mr. Renner advised he would provide the requested information upon his verifying this Investigators identity. Mr. Renner requested and was sent an email request for information. Note Mr. Renner did advise his business was hired by "Roaming Hunger". (*Exhibit #26*)

FINDINGS:

Ms. Pamela Reardon advised the Investigator that on December 14, 2020, the first day of early voting for the Presidential Election, she went in to get her Cobb County Poll Watching credentials at 736 Whitlock Avenue. Ms. Reardon said *she saw (2) two food truck parked close to the building*. Ms. Reardon said *she saw Director Eveler and Cobb poll officials with a measuring tape*. Ms. Reardon advised the food trucks were *initially within 150 feet*. Ms. Reardon said *she saw* a Deputy Sheriff speak to the food truck occupants. The food trucks then *moved away* from the building and parked in the lot close to the road entrance. Ms. Reardon advised she saw Ms. Floam videotaping the voter line. The Investigator also later received several photographs from Ms. Reardon, of food trucks with advertisement signage that referenced voting. No specific food truck with said signage, could be placed within 150 feet of any polling location. Ms. Reardon also provided the Investigator with copies of several text messages.

The Investigation received an email sent from Respondent Janine Eveler, the Cobb County Elections Supervisor, to Complainant Dana Schlup. The email advised *per Ms. Eveler*, it was *allowable* for food trucks to park *outside* of 150 feet from a poll, that *were not campaigning or offering food items, a thing of value, to vote*. The email further stated, the items *must be offered to everyone and not be of significant value*.

The Investigation received a copy of an email sent from Respondent Bridget Geraghty of “vote.org” to Georgia Senator, Dr. Kay Kirkpatrick, that advised Geraghty *raised funds* that paid for food trucks to display advertisement signage that referenced voting and offered food items, a thing of value to vote.

Christopher Murphy told the Investigator he operated his food truck in Cobb County but would need to check his records before he could say when and where. Mr. Murphy verified he was hired by a non-profit for the election events. Mr. Murphy said he would have to go back and research his calendar to be able to advise the non-profits name. Mr. Murphy said there was *no campaigning, and no food was offered for voting*. Mr. Murphy said he had no contracts with the non-profit. Mr. Murphy said all business was conducted through emails. Mr. Murphy said he sent an invoice was paid through the “Square” app. Mr. Murphy said he did not have any Department of Health (DPH) documents for the events. Mr. Murphy *did* provide some of the requested information via email.

Michael C. Renner Jr. Mr. Renner verified he was the owner/operator of both the Loaded Taco & Loaded Burger Food Trucks. Mr. Renner advised he did not know who he was speaking with and wanted to verify this Investigator was with the S.O.S. Mr. Renner advised he would provide the requested information upon his verifying this investigators identity. Mr. Renner did advise his business was hired by “Roaming Hunger”.

The investigation exhausted all leads and found that there is *insufficient* evidence to suggest, any Respondent, violated **O.C.G.A. 21-2-570**, in performing their various duties during the Special Run-Off Election, January 5, 2021. All food trucks parked *outside* of 150 feet of a polling location or *voluntarily moved* outside 150 feet when directed too by election officials. A specific food truck operator also complied with an election poll manager’s instruction and voluntarily stopped handing out napkins with a political message printed on them.

POTENTIAL VIOLATIONS:

Bridget Geraghty **No Violation**

There is *insufficient* evidence to suggest, respondent **Bridget Geraghty**, violated **O.C.G.A. 21-2-570**, in that she did while performing her duties as Director of Donor Relations for vote.org, *fund* activities that sponsored a food truck to park *inside* 150 feet of a polling location, in which the food truck employee’s gave out *free food and beverage* items, *a gift of value*, for voting. The investigation found all food trucks parked *outside* of 150 feet or *voluntarily moved* outside 150 feet. This occurred at the East Cobb Government Service Center, a poll located at 4400 Lower Roswell Road, Marietta, on December 14, 2020, during early voting for the January 5, 2021, Special Election, in Cobb County, Georgia.

Janine Eveler

No Violation

There is *insufficient* evidence to suggest, respondent **Janine Eveler**, violated **O.C.G.A. 21-2-570**, that she did while performing her duties as Director of the Cobb County Elections & Registration Office, *allow* a food truck to park *inside* 150 feet of a polling location, in which the food truck employee's gave out *free food and beverage* items, *a gift of value*, for voting. The investigation found all food trucks parked *outside* of 150 feet or *voluntarily moved* outside 150 feet. This occurred at the East Cobb Government Service Center, a poll location, during early voting for the January 5, 2021, Special Election, on December 14, 2020, in Cobb County, Georgia.

Christopher Murphy

No Violation

There is *insufficient* evidence to suggest, respondent **Christopher Murphy**, violated **O.C.G.A. 21-2-570**, in that he did while operating a food truck, park *inside* 150 feet of a polling location, in which the food truck employee's gave out *free food and beverage* items, *a gift of value*, for voting. The investigation found all food trucks parked *outside* of 150 feet or *voluntarily moved* outside 150 feet. This occurred at the North Cobb Regional Library, a poll located at 3535 Old Highway 41, NW, in Kennesaw, on December 14, 2020, during early voting for the January 5, 2021, Special Election, in Cobb County, Georgia.

Nikia Harris

No Violation

There is *insufficient* evidence to suggest, respondent **Nakia Harris**, violated **O.C.G.A. 21-2-570**, in that she did while operating a food truck, park *inside* 150 feet of a polling location, in which the food truck employee's gave out *free food and beverage* items, *a gift of value*, for voting. The investigation found all food trucks parked *outside* of 150 feet or *voluntarily moved* outside 150 feet. This occurred at the East Cobb Government Service Center, a poll location, at 4400 Lower Roswell Road, Marietta, on December 14, 2020, during early voting for the January 5, 2021, Special Election, in Cobb County, Georgia.

EXHIBITS

1. Complaint.
2. Witness List.
3. MOI, S.O.S. Inv. April Odom, investigative actions to date, copy of notarized statement(s) of Cobb County Poll Managers, Craig J. Rogers, Deborah Lundquist, and Twana Orders.
4. MOI, Janine Eveler, Cobb County Elections Supervisor, call, emails,
5. MOI, Pamela Reardon, call, email.
6. EX, Janine Eveler, Cobb County Elections Supervisor, emails.
7. EX, Dewayne Morris, LTC, Cobb County Sheriff's Office, email.
8. MOI, Janine Eveler, Cobb County Elections Supervisor, notarized statement.
9. MOI, Jerilyn Gover, Email statement. statement.
10. MOI, Dewayne Morris, LTC, Cobb County Sheriff's Office, copies of incident reports.
11. MOI, Kay Kirkpatrick, Georgia State Senator, call, emails.
12. EX, Kay Kirkpatrick, Georgia State Senator, notarized email statements.
13. MOI, Karen Gulley, Cobb County, Department Public Health, call, email.
14. EX, S.O.S. corporations search, "On the Move Catering, LLC.", Nakia Harris, Registered Agent.
15. MOI, Christopher Murphy, Food Truck Owner, call, email.
16. MOI, Judy Lowry, Cobb County, Department Public Health, call.
17. EX, Judy Lowry, email, DPH documents, "On the Move Catering".
18. MOI, Investigative Action, unannounced visit, 5520 Wheatfield Lane, powder Springs.
19. MOI, Nakia Harris, On the Move Catering, LLC., call.
20. MOI, Nakia Harris, On the Move Catering, LLC., call, email.
21. EX, Nakia Harris, On the Move Catering, LLC., email statement, copy text messages.
22. EX, World Central Kitchens (WCK), open records WEB search, documents.
23. EX, Copy of Elections Director, Chris Harvey's Food Truck memo.
24. EX, Christopher Murphy, Lil Nauti Food Truck, email statement.
25. EX, Judy Lowery, DPH, copies of Lil Nauti and Loaded Taco Food Truck documents.
26. MOI, Michael Renner Jr., Loaded Taco & Burgers Food Trucks, call, email.

EXHIBIT F

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: ElectionsComplaintAlerts@sos.ga.gov
To: electionscomplaints
Subject: Elections Complaint from Elizabeth Lee Brown
Date: Tuesday, October 20, 2020 6:29:28 AM

Name: Elizabeth Lee Brown
Phone: [REDACTED]
Address: [REDACTED]
City: Albany
State: Ga
Zip Code: [REDACTED]
E-mail [REDACTED]
Complaint Type: General Complaint
Election Date:
County: Dougherty
City: Albany

Description of Complaint: I early voted in Albany, Georgia at the Candy Room on Tuesday, October 13th, 2020. I and other older voters had no issue standing in a long line to vote. The Black Voters Matter group was present handing out food and water. There was also a lady leaning against the door of the Candy Room, where voting takes place & she was handing out plastic bracelets. Older voters felt intimidated by the presence of this group. There was a look of fear on their faces. Handing out food & water can be misconstrued as influencing voters or buying votes. There needs to be some type of ordinance or law regarding any nonpolitical, social justice group from doing this.

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT G

RETRIEVED FROM DEMOCRACYDOCKET.COM

POLL WORKER MANUAL



Latest Update: May 2021

ELECTION DAY

Although there is no such thing as a typical election day, this section reviews what happens when everything goes as planned. If assigned to a particular station, know your role and make the poll manager aware of any questions or concerns you may have before the polls open.

Poll workers must be aware of a few important things whenever voters begin entering the polling place.

How should voters with disabilities be accommodated?
What happens if a voter is wearing campaign material?
Can someone take a picture of their ballot?
What are Poll Watchers?



ELECTION DAY

Voter Flow

- Voters enter the polling place
 - When a voter enters the polling place, ensure they are not wearing any campaign material for any candidates on the ballot that day. Greet the voter with a smile and direct them to the appropriate station to begin the voting process.
- Identification & Poll Pad Check-in
 - Check their identification to find them in Poll Pad. The voter's eligibility is checked on the Poll Pad. The voter will sign the electronic voter certificate. Acceptable ID is found in O.C.G.A. § 21-2-417. If they have not voted, they are issued a voter access card (the card they insert into the BMD units), and added to the Numbered List of Voters.
- Vote on BMD
 - The voter is then directed to the BMD touchscreen units. They will insert the voter access card into the machine, select their candidates for each election, review their choices, and select "print ballot". Once the voter prints their ballot, the card will pop out of the machine.
- Voter casts ballot in the polling place scanner
 - The voter will place their printed ballot in the polling place scanner. Once a ballot is scanned into the polling place scanner, the ballot is cast.
- Voter returns Voter card to Poll Worker
 - Ensure the voter has completed their voting, returned their card, and received their sticker and then thank them for voting.
- Voter exits the polling place
- Provisional Ballots
 - If a voter, for any reason, is unable to cast a ballot at your polling station but would like to be issued a provisional ballot, they will fill out their ballot at the "Provisional Ballot Station". Ensure them that they will be notified if their ballot was counted typically within a week after the election. Any votes cast by a provisional ballot in the wrong precinct will not be counted unless it is cast after 5:00 P.M. and before the regular time for the closing of the polls on the day of the primary, election, or runoff.



ELECTION DAY

Voter enters the Polling Place

Accommodating Voters with Disabilities

Signs are vital. Directional signs should designate accessible parking spaces and be visible, especially those designating handicapped parking spaces, as well as the nearest accessible entrance if it is not the main door.

If the polling place does not have a permanent handicapped parking space, designate a handicapped parking space by placement of a temporary "Handicapped Parking Sign." Make sure there is wheelchair access to the building, the polling place, and the voting booth.

Always be courteous and respectful. Be considerate of extra time it may take for a person who is disabled or elderly to complete the voting process, and give unhurried attention to a person who has difficulty speaking.

Always speak directly to the voter, and not to a companion, aide, or sign language interpreter.

Animals that assist people with disabilities should be admitted into all buildings. DO NOT pet or distract these Assistance Animals, as they are working animals, not pets.

If you observe a voter with a disability who needs assistance, ASK "May I help you in any way?" before rendering assistance. The answer you receive should dictate any further assistance.

Place chairs or benches along a waiting area for the convenience and comfort of those who may have difficulty standing in line.

Assistance to Voters

A voter is entitled to assistance if the voter is:

- Unable to read the English Language and/or
- Has a disability which renders the voter unable to:
 - See or mark the ballot...OR
 - Operate the voting equipment...OR
 - Enter the voting compartment or booth without assistance
- Notice of the availability of assistance shall be posted at polling place.
- "A physically disabled or illiterate elector may receive assistance in preparing his or her ballot from" ...
- Any person of the elector's choice EXCEPT
 - Elector's Employer or Agent of Employer
 - Officer or Agent of Elector's Union
 - Candidate on the Ballot or Family Member of Candidate
 - Unless Disabled/Illiterate Elector is Related to Candidate

ELECTION DAY

Voter enters the Polling Place

Voters with Speech or Hearing Impairment

- A voter who cannot speak can give their name and address simply by providing their written name and address to the poll worker
- Follow the voter's cues to determine whether speaking, gestures, or writing is the most effective method of communication
- If speaking, speak calmly, slowly, and directly to the voter. Do not shout. Your facial expressions, gestures, and body movements help in understanding.
- Face the voter at all times and keep your face in full light (not backlit)
- Rephrase, rather than repeat, sentences that the voter does not understand

Voters with Mobility Impairment

- Do not push or touch another person's wheelchair or equipment without prior consent
- People using adaptive equipment often consider the equipment as part of their personal space
- You are also more likely to break a wheelchair or piece of equipment with which you are not familiar

Voting by Electors Over 75 Years of Age or Older or Disabled

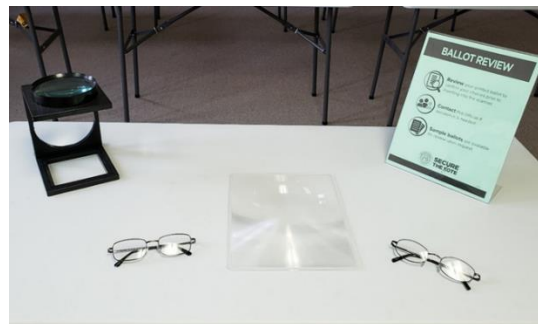
- On election day between the hours of 9:30 A.M. and 4:30 P.M., and also during advance voting each elector who is 75 years of age or older or who is disabled and requires assistance in voting, shall, upon request to a poll officer, be authorized at any primary or election to vote immediately at the next available voting compartment or booth without having to wait in line.
- O.C.G.A. §§ 21-2-385.1 and 21-2-409.1

Printed Ballot Review

An area set up to provide magnifying tools for the paper ballots is recommended. Some voters may have difficulty reading the words on paper ballots

Ideas for assistance

- Standing magnifying screens
- Handheld magnifying glasses
- Reading glasses



SEB Rule 183-1-13-.02 Assistive Technology Devices

- An illiterate or disabled elector who is entitled to receive assistance pursuant to O.C.G.A. §§ 21-2-385 or 21-2-409, or a person assisting such an elector, may use an assistive technology device to help the elector review their paper ballot prior to casting. Any image of the ballot obtained through using an assistive technology device shall be immediately deleted. Use of an assistive technology device by an illiterate or disabled elector or by a person assisting an illiterate or disabled elector shall not be deemed a violation of O.C.G.A. § 21-2-413(e).

ELECTION DAY

Campaign Activity or Materials

O.C.G.A. § 21-2-413 and 21-2-414

- No person, when within the polling place, shall electioneer or solicit votes for any political party or body or candidate or question, nor shall any written or printed matter be posted within the room.
- No person whose name appears as a candidate on the ballot being voted upon at a primary, election, special primary, or special election, except a judge of the probate court serving as the election superintendent, shall physically enter any polling place other than the polling place at which that person is authorized to cast his or her ballot for that primary, election, special primary, or special election and, after casting his or her ballot, the candidate shall not return to such polling place until after the poll has closed and voting has ceased.
- No person shall solicit votes in any manner or by any means of method, nor shall any person distribute any campaign literature, nor shall any person give, offer to give, or participate in the giving of any money or gifts, including, but not limited to, food and drink, to an elector, nor shall any person solicit signature for any petition, nor shall any person, other than election officials discharging their duties, establish or set up any tables or booths on any day in which ballots are being cast:
 - Within 150 feet of out the outer edge of the building in which the polling place is established;
 - Within any polling place; or
 - Within 25 feet of any voter standing in line to vote at any polling place.
- Rooms under the control or supervision of the board of registrars or absentee ballot clerk in which absentee ballots are cast shall be considered polling places.
- This section shall not be construed to prohibit a poll officer from distributing materials, as required by law, which are necessary for the purpose of instructing electors or from distributing materials prepared by the Secretary of State which are designed solely for the purpose of encouraging voter participation in the election being conducted or from making available self-service water from an unattended receptacle to an elector waiting in line to vote.

O.C.G.A. § 21-2-2

- Defines Campaign materials as “any newspaper, booklet, pamphlet, card, sign, paraphernalia, or any other written or printed matter referring to:
 - A candidate whose name appears on the ballot in a primary or election;
 - A referendum which appears on the ballot in a primary or election; or
 - A political party or body which has a nominee or nominees on the ballot in a primary or election

ELECTION DAY

The Voting Line

The voting line is an important component in all polling places. At each polling place, there should be a plan to deal with a scenario where there is a line that is well out the door. Wait times must be recorded at least three times on Election day. (Morning/Midday/Before the Polls Close) Wait times should be recorded on the Poll Pad recap sheet. Consider the following questions and options for a well-maintained voting line:

- Do you have room for the voters to line up safely around the building?
- O.C.G.A. § 21-2-414(a) (3) states that there can be no campaigning within 25 feet of anyone waiting in line to vote. Are you prepared to make those measurements?
- At your busier polling locations where you expect a line, have a designated person to manage the line. This person's focus should be to prepare the voters for the check-in and voting process.
- Consider giving poll workers a special nametag that says something like "Have a question about voting? Ask me."
- Have the poll workers monitor voters in line to ensure there is no campaigning in line or wearing campaign materials.
- Have the poll worker notify the voters of the required identification needed to vote and to have it ready to present to the poll work at the Poll Pad Station.
- Consider providing that poll worker with an electors list, a portable Poll Pad, or a device that can access MVP to look up voters in line to ensure that they are at the correct polling location.
- If the line is caused by a long ballot or long questions on the ballot, be sure to have extra sample ballots available to pass out to voters in line. The more prepared they are when they get to the voting machine, the quicker you will be able to process them.



ELECTION DAY

Cell Phones and Other Electronic Devices O.C.G.A. § 21-2-413(e)

No person shall use photographic or other electronic monitoring or recording devices, cameras, or cellular telephones while such person is in a polling place while voting is taking place; provided, however, that a poll manager, in his or her discretion, may allow the use of photographic devices in the polling place under such conditions and limitations as the election superintendent finds appropriate, and provided, further, that no photography shall be allowed of a ballot or the face of a voting machine or DRE unit or electronic ballot marker while an elector is voting such ballot or machine or DRE unit or using such electronic ballot marker, and no photography shall be allowed of an electors list, electronic electors list, or the use of an electors list or electronic electors list.

Poll Watchers - O.C.G.A. § 21-2-408

A poll watcher is a person named by a political party, political body, or candidate who is authorized to enter the enclosed space to observe the conduct of an election and the counting and recording of votes. No person shall be eligible to serve as a poll watcher unless he or she has completed training provided by the political party, political body, or candidate designating the poll watcher.

(d) Notwithstanding any other provisions of this chapter, a poll watcher may be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes. Such poll watcher shall in no way interfere with the conduct of the election, and the poll manager may make reasonable regulations to avoid such interference. Without in any way limiting the authority of poll managers, poll watchers are prohibited from talking to voters, checking electors lists, using photographic or other electronic monitoring or recording devices, using cellular telephones, or participating in any form of campaigning while they are behind the enclosed space. If a poll watcher persists in interfering with the conduct of the election or in violating any of the provisions of this Code section after being duly warned by the poll manager or superintendent, he or she may be removed by such official. Any infraction or irregularities observed by poll watchers shall be reported directly to the superintendent, not to the poll manager. The superintendent shall furnish a badge to each poll watcher bearing the words "Official Poll Watcher," the name of the poll watcher, the primary or election in which the poll watcher shall serve, and either the precinct or tabulating center in which the poll watcher shall serve or a statement that such poll watcher is a state-wide poll watcher. The poll watcher shall wear such badge at all times while serving as a poll watcher.

In re Georgia Senate Bill 202
No. 1:21-MI-55555-JPB

Defendants' Opposition to
Plaintiffs' Motions for Preliminary Injunction

Exhibit 2

Senate Bill 202

By: Senators Burns of the 23rd, Miller of the 49th, Dugan of the 30th, Ginn of the 47th, Anderson of the 24th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To comprehensively revise elections and voting; to amend Chapter 2 of Title 21 of the
2 Official Code of Georgia Annotated, relating to elections and primaries generally, so as to
3 revise a definition; to provide for the establishment of a voter intimidation and illegal
4 election activities hotline; to limit the ability of the State Election Board and the Secretary
5 of State to enter into certain consent agreements, settlements, and consent orders; to provide
6 that the Secretary of State shall be a nonvoting ex officio member of the State Election
7 Board; to provide for the appointment, confirmation, term, and removal of the chairperson
8 of the State Election Board; to revise provisions relating to a quorum of such board; to
9 require the Secretary of State to support and assist the State Election Board; to provide for
10 the appointment of temporary and permanent replacement superintendents; to provide for
11 procedures; to provide for performance reviews of local election officials requested by the
12 State Election Board or local governing authorities; to provide for a definition; to provide for
13 appointment and duties of performance review boards; to provide for reports of performance
14 review boards; to provide for promulgation of rules and regulations; to provide additional
15 requirements on the State Election Board's power to adopt emergency rules and regulations;
16 to provide that no election superintendents or boards of registrars shall accept private
17 funding; to provide that the State Election Board shall develop methods for distribution of
18 donations; to provide that certain persons may serve as poll workers in other than the county

S. B. 202

19 of their residence; to provide for the appointment of acting election superintendents in the
20 event of a vacancy or incapacitation in the office of judge of the probate court of counties
21 without a board of elections; to provide for resumption of the duties of election
22 superintendent upon the filling of such vacancy; to provide for the compensation of such
23 acting election superintendents; to provide for the reduction in size of certain precincts under
24 certain circumstances; to provide for notice when polling places are relocated; to provide for
25 certain reports; to provide limitations on the use of buses and other moveable facilities; to
26 provide that the name and designation of the precinct appears on every ballot; to provide for
27 allocation of voting equipment by counties and municipalities; to provide for the manner of
28 handling the death of a candidate prior to a nonpartisan election; to provide that no candidate
29 shall take or be sworn into any elected public office unless such candidate has received a
30 majority of the votes cast for such office except as otherwise provided by law; to provide for
31 participation in a multistate voter registration system; to revise procedures and standards for
32 challenging electors; to provide for the printing of ballots on safety paper; to provide for the
33 time and manner for applying for absentee ballots; to provide for certain limitations and
34 sanctions on the distribution of absentee ballot applications; to provide for the manner of
35 processing of absentee ballot applications; to provide for absentee ballot drop boxes and the
36 requirements therefor; to provide for the time and manner of issuing absentee ballots; to
37 provide for the manner of voting and returning absentee ballots; to revise the times for
38 advance voting; to limit changes to advance voting locations in the period prior to an
39 election; to provide notice requirements for changes of advance voting locations; to provide
40 for the processing and tabulation of absentee ballots; to provide sanctions for improperly
41 opening an absentee ballot; to provide for certain elector identification for absentee balloting;
42 to provide for monitors and observers; to provide for poll watcher training; to provide for
43 restrictions on the distribution of certain items within close proximity to the polls on election
44 days; to provide for the voting and processing of provisional ballots; to provide for
45 duplication panels for defective ballots that cannot be processed by tabulating machines; to

46 provide for ranked choice voting for military and overseas voters; to revise the time for
47 runoffs; to revise eligibility to vote in runoffs; to provide for the deadline for election
48 certification; to provide for a pilot program for the scanning and publishing of ballots; to
49 provide for the inspection and copying of original ballots by certain persons following the
50 completion of a recount; to provide for special primaries and special elections to fill
51 vacancies in certain offices; to provide for public notice and observation of preparation of
52 voting equipment; to provide for observation of elections and ballot processing and counting;
53 to provide for the filling of vacancies in certain offices; to prohibit observing or attempting
54 to observe how a voter marks or has marked his or her ballot or inducing a voter to do so; to
55 prohibit the acceptance of a ballot for return without authorization; to prohibit the
56 photographing or other recording of ballots and ballot markers; to amend Chapter 35 of Title
57 36 of the Official Code of Georgia Annotated, relating to home rule powers, so as to provide
58 for the delay of reapportionment of municipal corporation election districts when census
59 numbers are delayed; to amend Title 50 of the Official Code of Georgia Annotated, relating
60 to general provisions regarding state government, so as to provide for the submission and
61 suspension of emergency rules by the State Election Board; to provide that scanned ballot
62 images are public records; to provide for legislative findings; to provide a short title; to
63 provide for related matters; to provide for effective dates; to repeal conflicting laws; and for
64 other purposes.

65 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

66 **SECTION 1.**

67 This Act shall be known and may be cited as the "Election Integrity Act of 2021."

SECTION 2.

The General Assembly finds and declares that:

(1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;

(2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;

(3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;

(4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;

(5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;

(6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there

is no political advantage conferred by preferring certain counties over others in the distribution of funds;

(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off

period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it "easy to vote and

147 hard to cheat," applying the lessons learned from conducting an election in the 2020
148 pandemic.

149 **SECTION 3.**

150 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
151 primaries generally, is amended by revising paragraph (35) of Code Section 21-2-2, relating
152 to definitions, as follows:

153 "(35) 'Superintendent' means:

154 (A) Either the judge of the probate court of a county or the county board of elections,
155 the county board of elections and registration, the joint city-county board of elections,
156 or the joint city-county board of elections and registration, if a county has such;

157 (B) In the case of a municipal primary, the municipal executive committee of the
158 political party holding the primary within a municipality or its agent or, if none, the
159 county executive committee of the political party or its agent;

160 (C) In the case of a nonpartisan municipal primary, the person appointed by the proper
161 municipal executive committee; ~~and~~

162 (D) In the case of a municipal election, the person appointed by the governing
163 authority pursuant to the authority granted in Code Section 21-2-70; and

164 (E) In the case of the State Election Board exercising its powers under subsection (f)
165 of Code Section 21-2-33.1, the individual appointed by the State Election Board to
166 exercise the power of election superintendent."

167 **SECTION 4.**

168 Said chapter is further amended by revising Code Section 21-2-3, which was previously
169 reserved, as follows:

170 "21-2-3.

In re Georgia Senate Bill 202
No. 1:21-MI-55555-JPB

Defendants' Opposition to
Plaintiffs' Motions for Preliminary Injunction

Exhibit 3

**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

THE NEW GEORGIA PROJECT, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State, *et al.*,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

Civil Action No.:
1:21-cv-01229-JPB

GEORGIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Secretary of State for the

Civil Action No.:
1:21-cv-01259-JPB

State of Georgia, *et al.*,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

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

DECLARATION OF LYNN BAILEY

I, Lynn Bailey, declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge.

Background

1. I am retired after serving as the Executive Director of the Richmond County Board of Elections from 1993 to 2021, and in that position, I oversaw administrative duties and worked to fulfill the policies and directives of the Richmond County Board of Elections. I currently work as a part-time consultant to the Board of Elections and a part-time consultant with the Georgia Secretary of State's office.

2. I have extensive knowledge and experience about Georgia's election system. I have participated in organizations of Georgia election officials, conducted trainings for other election officials, and chaired committees. For several years, I served on the Standards Board for the U.S. Election Assistance Commission.

3. When I was Director, the Board of Elections had a professional staff, which ranged in size between nine full-time employees and a number of temporary employees, as needed. The Board oversees the equipment needs for Richmond County's 68 voting precincts; recruiting and hiring poll managers, assistant poll managers, and poll workers for every election; arranging for the State's Ballot-Marking Devices (BMDs) for all precincts to include training all poll officials, securing transportation of equipment to and from the polling locations; supervising all aspects of Advance in Person voting at multiple

locations; supervising all aspects of absentee by mail ballots; and supervising all aspects of the November 2020 General Election and the January 2021 General Election Runoff

4. In my role with Richmond County, I was responsible for overseeing all elections in Richmond County. That included overseeing voter registration, absentee-by-mail voting, early-in-person voting, and voting on election day. I further oversaw selection of poll workers, and their subsequent training. I also managed all voting locations, oversaw the Board's budget, and regularly interacted with voters to discuss their questions or concerns about the election process in Richmond County.

5. Through all of this, the overarching goal was to ensure that elections in Richmond County were run efficiently and securely.

6. In preparing this declaration, I relied on Georgia law, my knowledge of Georgia election administration, and my decades of experience operating elections in Georgia.

Complexities of polling places

7. One of the most important aspects of running efficient and secure elections is the management of polling places. Polling places are subject to an intricate set of rules, which ensure that voters may vote without interference or undue pressure.

8. This requires establishing a voting environment that allows voters to access the ballot box with as few interruptions and distractions as possible.

9. That is why the State provides for a 150-foot buffer zone around polling locations (or 25 feet from any voter in line if the line extends beyond 150 feet), which allows voters in the final stages of the voting process to be free of confusion and external influences.

10. In that buffer zone, no campaigning is permitted. Additionally, with limited exceptions, in Richmond County, we strove to keep that buffer zone free of any people other than voters and elections officials.

11. Yet, in recent elections, particularly in 2020, there was an increase in the number of outside organizations requesting permission to set up stands and tables with food and water in and around voters. Additionally, food trucks began to arrive at polling locations to provide food to voters.

12. This practice was troubling as our goal in the buffer zone was to ensure voters were not approached or subject to influence. While many people who wish to approach voters may have good intentions, there is no practical way for elections officials to ensure that the individual is not using food or water as a basis to approach a voter and electioneer or otherwise try to solicit

a particular vote or that the individual is giving the voter accurate information about voting.

13. Complicating matters further within the buffer zone, it was not uncommon for candidates to enter the area to speak with voters, despite the rules prohibiting them from doing so. This issue was typically resolved by elections officials speaking with the candidate and explaining the rules.

14. However, this contributed to the complications of managing the complex nature of polling places.

15. When a voter arrives at a polling place, he or she progresses through an environment that grows more secure the closer he or she gets to the ballot box. For instance, there are few if any restrictions on activity in the parking lot and outside of the 150-foot buffer zone. And then, as the voter approaches the 150-foot buffer zone, there is typically a large amount of campaign activity around that area.

16. But once the voter enters the buffer zone, he or she has entered the final stages of the voting process and very little voter interaction is permitted. For instance, elections officials and individuals conducting exit polls are permitted within this buffer zone. But anyone seeking to influence a voter or solicit a vote is prohibited from this buffer zone.

17. Then, there are even stricter rules once a voter enters the polling location itself. Only voters, poll workers, certified poll watchers, and technicians are allowed in the enclosed space.

18. In light of these complex rules, it would become more complicated if additional individuals were present in the buffer zone. By restricting that area, elections officials may more easily monitor the voting process and ensure that voters are free of outside influences during the final stages of the process.

Line length at polling locations

19. At the outset, we have not experienced long voting lines in Richmond County. But I understand that longer lines have been reported in other areas.

20. In order to help protect Georgia voters from waiting in line for an excessive amount of time on Election Day, a new Georgia law (SB 202) requires that voter wait time be measured three times during Election Day in any precinct containing more than 2,000 electors—once in the morning, at midday, and prior to the close of the polls.

21. Also, the State Election Board passed Rule 183-1-12-.11(12) in order to implement SB 202. That Rule requires that *all* precincts record their wait times a minimum of three times throughout the day. Precincts must then

report that information to the election superintendent on a form provided by the Secretary of State.

22. Under SB 202, should the voter wait time exceed one hour, the election superintendent shall either reduce the size of such precinct so that it does not contain more than 2,000 voters or provide additional voting equipment or poll workers, or both, before the next general election in order to relieve the overcrowding that attributed to the formation of long lines.

Trainings

23. As noted, one of my roles as Executive Director was to train elections officials about the various rules in place at polling places.

24. To do so, we had regularly scheduled trainings in advance of each election within the election cycle (*e.g.*, primary election, run-off elections, and general election). Of note, though, the trainings throughout an election cycle build on previous trainings offered throughout the year. In many instances, the same individuals serve as poll workers for multiple elections in an election year. Thus, after they receive training in advance of the primary election, subsequent trainings build on what was learned during the primary election.

25. Those trainings include educating poll managers about the rules governing buffer zones and polling places.

26. This includes training elections officials on the information included in the Poll Worker Manual, which includes a section discussing the buffer zone and the prohibition on providing anything of value, including food or drinks, to voters waiting in line to vote.

27. In addition to formal training, I was regularly involved in informal training for poll managers, where we would discuss various aspects of the voting process to ensure they were prepared for each day on which ballots would be cast.

28. That training begins months before the election, with the first trainings before the primary, and it can invite confusion for poll workers and voters if rules are changed between the primary and general elections, because the same individuals often work both elections.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and accurate to the best of my knowledge, information, and belief.

6/24/2020
Date

Lynn Bailey
Lynn Bailey

In re Georgia Senate Bill 202
No. 1:21-MI-55555-JPB

Defendants' Opposition to
Plaintiffs' Motions for Preliminary Injunction

Exhibit 4

**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

THE NEW GEORGIA PROJECT, *et al.*,

Plaintiffs,

v.

Civil Action No.:
1:21-cv-01229-JPB

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State, *et al.*,

Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

GEORGIA STATE CONFERENCE OF THE
NAACP, *et al.*,

Plaintiffs,

v.

Civil Action No.:
1:21-cv-01259-JPB

BRAD RAFFENSPERGER, in his official
capacity as the Secretary of State for the
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Defendants,

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Intervenor-Defendants.

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

EXPERT REPORT OF DR. DARON SHAW

I, Dr. Daron Shaw, am an adult of sound mind and make this statement voluntarily, based on my own personal knowledge, education, and experience.

I. PURPOSE AND TERMS, INCLUDING COMPENSATION, OF ENGAGEMENT

1. I have been engaged by the State Defendants here to review and respond to Dr. Stephen Pettigrew's Expert Report of May 13, 2022. I have completed that review.

2. I base the opinions in this report on my own knowledge, research, experience, and publications, and the work of other academics and writers. I also base this report on my review of the case materials, which include:

- The motion for a preliminary injunction and accompanying exhibits; and
- Dr. Pettigrew's Expert Report.

3. The materials I have used to research and write this report are the standard sources used by other experts in my field. I am receiving \$500 per hour for my time spent preparing this report and any time testifying, including at a deposition. I will receive the same amount regardless of the outcome of this litigation or the substance of my opinions.

II. CREDENTIALS AND HISTORY OF EXPERT TESTIMONY

4. I am currently a Distinguished Teaching Professor and the Frank C. Erwin, Jr. Chair of State Government at the University of Texas at Austin. My areas of specialization include Campaigns and Elections, Public Opinion and Voting Behavior, Political Parties, and Applied Survey Research. I received my B.A. and Ph.D. degrees in Political Science from the University of California, Los Angeles (in 1988 and 1994, respectively).

5. I joined the faculty at UT-Austin as an assistant professor in 1994. I was promoted to associate professor in 2001 and to full professor in 2008. I am co-director of the Fox News Poll and the UT-Austin Poll and am director of the Texas Lyceum Poll. I am also one of four scholars overseeing the American National Election Study, the longest standing election study in the world. In addition, I am currently serving as a senior member of the Fox News Decision Team, helping to develop and interpret election polls and to make election calls for the network. In 2013, I was on the Presidential Commission on Election Administration. Since 2017, I have been on the MIT Election and Data Science

Board of Advisors. Finally, following the 2020 election, I was on the American Association of Public Opinion Research's task force on pre-election polling.

6. In my scholarly research, I investigate the effects of campaigns on voting and elections, as well as how best to survey the public and estimate public opinion and political attitudes. I also do research on the U.S. party system, and the underlying coalitional and issue structure of political competition in the United States. For most of my research, I use survey data (including survey experiments), election data, and field experiments.

7. At the graduate level, I most recently co-taught a course on "Political Parties." At the undergraduate level, my most recent offerings were "American Government," "Political Parties," and "Campaigns and Elections." I have published four scholarly books, including 2020's "The Turnout Myth" (Oxford University Press) and 2021's "The Appearance of Corruption" (Oxford University Press). I have published 33 articles in peer-reviewed journals, including the American Political Science Review, the American Journal of Political Science, the Journal of Politics, and the British Journal of Political Science. I have published articles in Electoral Studies and the Journal of Election Law on election administration and waiting in lines to vote.

8. A current copy of my curriculum vitae is attached as Exhibit A.

9. In the last four years, I have neither testified nor been deposed in any cases.

III. SUMMARY OF OPINIONS

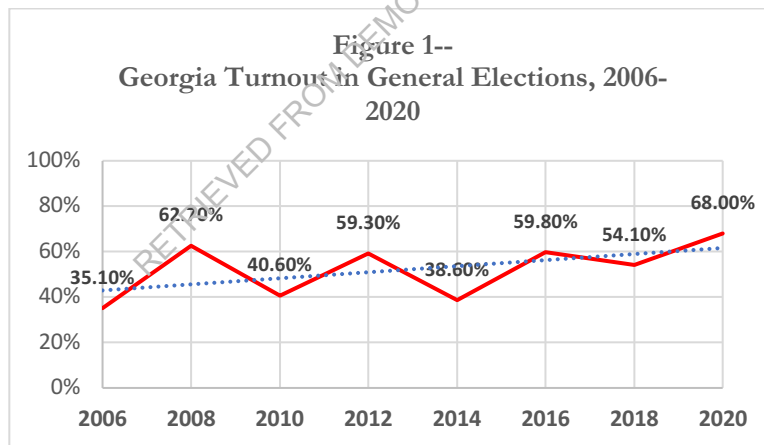
10. In the following report, I consider only the narrow questions addressed by Dr. Pettigrew's report. Namely, what do professional research and relevant statistical analyses say with respect to the effect of SB 202's prohibition on third-party interest groups distributing food and water within 150 feet of polling locations during early in-person and in-person Election Day voting. My main findings can be summarized as follows:

- In general, state laws passed since 2000 designed to ensure election integrity do not appear to have had a negative impact on voting in Georgia. In fact, turnout in Georgia elections has increased over the past two decades.
- The estimates of the minutes spent in line by Georgia voters presented in Prof. Pettigrew's report are based on exceedingly questionable analyses. In fact, a straightforward examination of the data suggests that there are no consistent, significant wait-time differences by race.
- It is exceptionally rare for Georgians to say they did not vote because the lines were too long.
- There is no evidence presented in the Pettigrew report, or elsewhere, assessing whether voters waiting in long lines would be less likely to "give up" if a third-party interest group were allowed to give them food or water.
- It is reasonable to infer that the most recent changes to Georgia's voter laws could reduce the burdens of voting and limit wait times, although it is impossible to say by how much without conducting a scientific study.

IV. OPINION

A. Despite the Controversy Surrounding Georgia’s Election Laws, Turnout has Increased in Recent Elections.

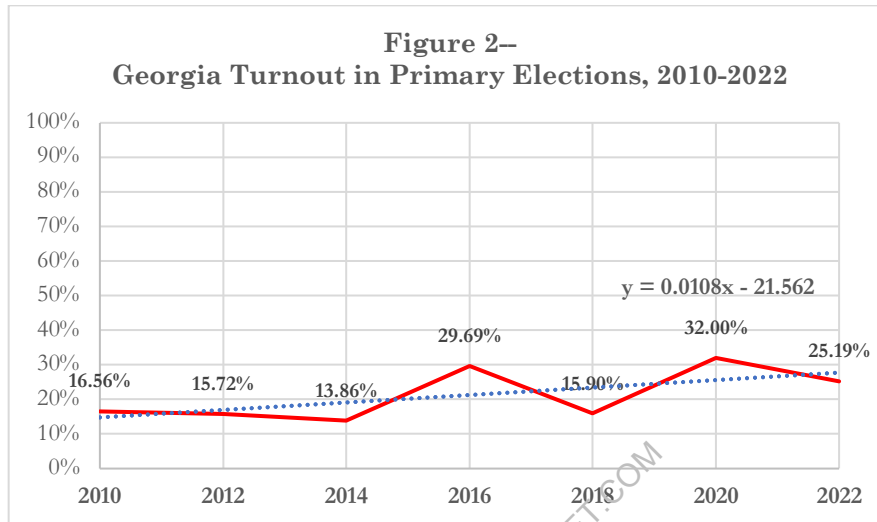
11. Critics have labelled Georgia “ground zero” for voter suppression, with the inference being that recent changes in election laws would reduce turnout among eligible voters. These claims, however, are not borne out in the data. Instead, turnout in Georgia has been increasing since the early 2000s. Figure 1 shows turnout among the voter eligible population in elections from 2006 through 2020. In presidential elections, even using the high-turnout 2008 election as our starting point does not suppress the overall positive trend. In midterm elections, the trend is even stronger.



Source: Data on turnout is taken from the U.S. Elections Project.¹

¹ Michael P. McDonald, *Voter Turnout*, UNITED STATES ELECTION PROJECT, <http://www.electproject.org/home/voter-turnout/voter-turnout-data> (last visited June 22, 2022).

12. Figure 2 shows turnout in primary elections, where we see the same thing. The trend is towards higher turnout.



Source: Data on turnout is taken from the U.S. Elections Project and the Georgia Secretary of State's report of the vote.²

13. Critics have claimed that increased turnout would have been even greater had the allegedly controversial laws not been passed, but the evidence for this is slender to non-existent. Indeed, the preponderance of research in political science indicates that turnout increases are especially pronounced among Black voters because Democratic candidates have used “voter suppression” messages to successfully mobilize communities of color.³

² See McDonald, *supra* note 1.; *Georgia Election Results*, GEORGIA SECRETARY OF STATE BRAD RAFFENSPERGER, <https://sos.ga.gov/page/georgia-election-results> (last visited June 22, 2022).

³ Nicholas A. Valentino & Fabian G. Neuner, *Why the Sky Didn't Fall: Mobilizing Anger in Reaction to Voter ID Laws*, 38 POL. PSYCH. 331 (2017), <https://doi.org/10.1111/pops.12332>.

14. The bottom line is that the “sky is falling” reaction to changes in Georgia’s voter and voter registration laws has not resulted in any appreciable deterioration in citizen participation. Indeed, the relevant data point in the opposite direction.

B. Section 3.3 of Dr. Pettigrew’s Report Concerning Racial Disparities in Wait Times is Unreliable.

15. In the first two sub-sections of section 3 of his report, Dr. Pettigrew presents evidence that, before SB 202 went into effect, some Georgia voters have waited in line for more than 30 minutes, and that, in the past, Georgia voters have tended to wait in line a few minutes longer than voters in other states.⁴ The data mostly support these claims, and the attendant analysis appears reasonable. This is not the case for section 3.3. In this section, Dr. Pettigrew presents a statistical case for racial differences in wait time. On its face, this claim seems strong. On closer inspection, it falls apart.

16. Let us start with the underlying data. Dr. Pettigrew uses the “CES” or Congressional Election Study (formerly the “CCES” or Cooperative Congressional Election Study) to gauge voter opinions, attitudes, and behavior. The CES is a reputable survey.⁵ Most political scientists accept it as

⁴ In Pettigrew’s Report, Figure 3.5 indicates that the worst differential between Georgia and another state (Vermont) was roughly 18 minutes and that the worst average for any state (South Carolina) was about 30 minutes.

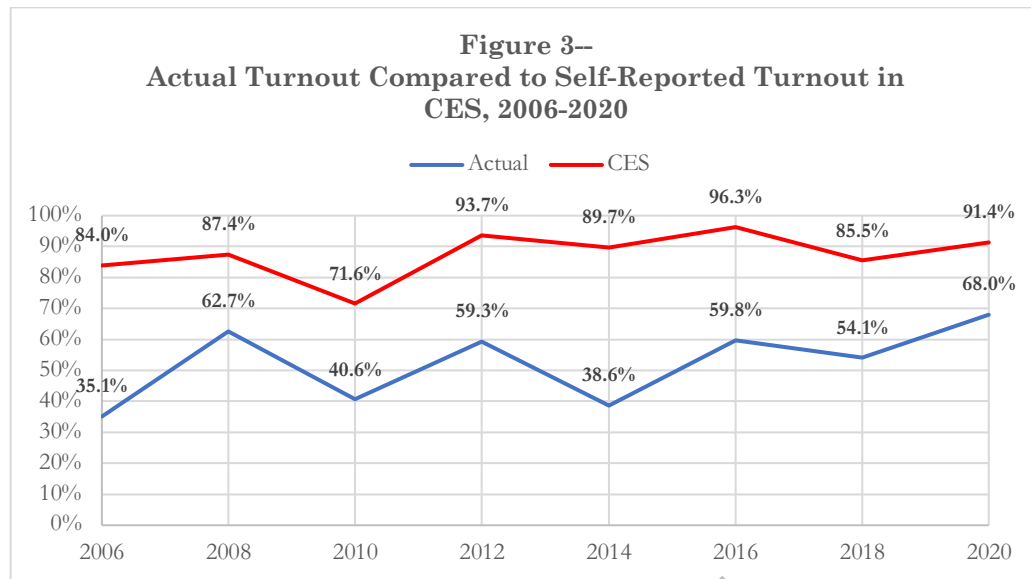
⁵ The CES is an online, non-probability sample conducted by YouGov. The project began in 2006, covering every election year since (as well as in a few off

statistically sound.⁶ I have used it myself on many occasions.

17. That study is not, however, without its problems. Its researchers, for example, are at the mercy of their respondents' ability and willingness to accurately report their political activities and behavior. Consider Figure 3's graph of self-reported turnout in the CES with the actual figures. The data show a massive over-reporting of "who voted." In the 2020 election, for instance, the over-report is 23 points. In the 2014 midterm, it was 51 points.

years, such as 2021). It features a large overall national sample (of around 50,000 respondents) and stand-alone sub-samples of the states (the overall sub-sample sizes vary by the population size of the state). The survey consists of a two-wave panel. Respondents are given a pre-election survey in the weeks leading up to the election, and then are given a post-election survey afterwards.

⁶ CES sub-samples by state vary in quality, with sub-samples associated with larger states looking better. The quality of sub-samples of groups (for example, Latinos or suburban women) within the state sub-samples is even more variable. It is especially difficult to get high-quality sub-samples of racial and ethnic groups in the states. To be more precise, these sub-samples tend to be more educated and politically engaged than the population.



Source: Data on self-reported turnout is taken from the CES. Data on turnout is taken from the U.S. Elections Project.⁷

18. Throughout section 3, Dr. Pettigrew relies on self-reported data for how long voters waited in line. It is possible that voters accurately estimate how long they waited in line. However, given what we know about the fallibility of human memory and the power of social pressures to misrepresent past activities, it seems reasonable to question the accuracy of these data.

19. Then there is the question itself. As noted above, voters were asked how long they waited in line to vote, and they were offered five response options: (1) no time at all, (2) 0-10 minutes, (3) 10-30 minutes, (4) 30-60 minutes, and (5) more than 60 minutes. Setting aside their ability to recall accurately how long they waited, Dr. Pettigrew uses the mid-point of these

⁷ See *Cooperative Election Study*, HARV. UNIV., <https://cces.gov.harvard.edu/> (last visited June 22, 2022); McDonald, *supra* note 1.

response categories to estimate the precise number of minutes each individual waited. He justifies this by stating that this is “common practice.” I am not at all certain that this is accurate.

20. Even accepting as true that this practice is common, however, it is far from innocuous, and it results in highly misleading estimates and analysis.

21. Why, exactly, would relying on this practice lead to misleading results? Initially, there is no empirical reason to do this. Using the mid-point *assumes* that there is no skew to the minute-by-minute distribution of voters within the response categories. If 250 voters say they waited between 10 and 30 minutes, they are all assigned the mid-point value of 20 minutes. But what if all 250 of them waited 11 minutes? Alternatively, what if all 250 waited 30 minutes? We have no idea what is going on here. Furthermore, we certainly have no idea about the distribution within this category by race. What if 100 White Georgians choose this category and they all waited 30 minutes, while 100 Black Georgians choose this category and they all waited 11 minutes? Or vice-versa. Dr. Pettigrew would have assumed they all waited 20 minutes—which in this hypothetical example would mask a serious *disadvantage* endured by White voters generally.

22. So, why do this? By turning a five-point measure into a continuous measure of the number of minutes voters waited in line, Dr. Pettigrew creates a measure that seems much more precise than it is. Using his mid-point

assumption, he produces a slew of estimates of the minute-by-minute wait time differences between Georgians and others (section 3.2), and between White and Black Georgians (section 3.3). In addition to the problem noted above, he then calculates confidence intervals around these as if people offered responses in minutes rather than by category. As a matter of statistical practice, this is not correct.

23. Let me try to put this in plain English. A survey with 1,000 respondents has a margin of error of about ± 3 points. Dr. Pettigrew uses the mid-point of categories to calculate an average overall “wait time,” and then uses ± 3 points around that estimate as his confidence interval. So, if he finds that White Georgians wait in line an average of 20 minutes (± 3 points) and Black Georgians wait in line an average of 28 minutes (± 3 points), this appears statistically significant:

	Average	High	Low
White Georgians	20	23	17
Black Georgians	28	31	25

24. Using this methodology, the low range of the estimate for Blacks is greater than the high end of the estimate for White Georgians, so the difference appears significant.

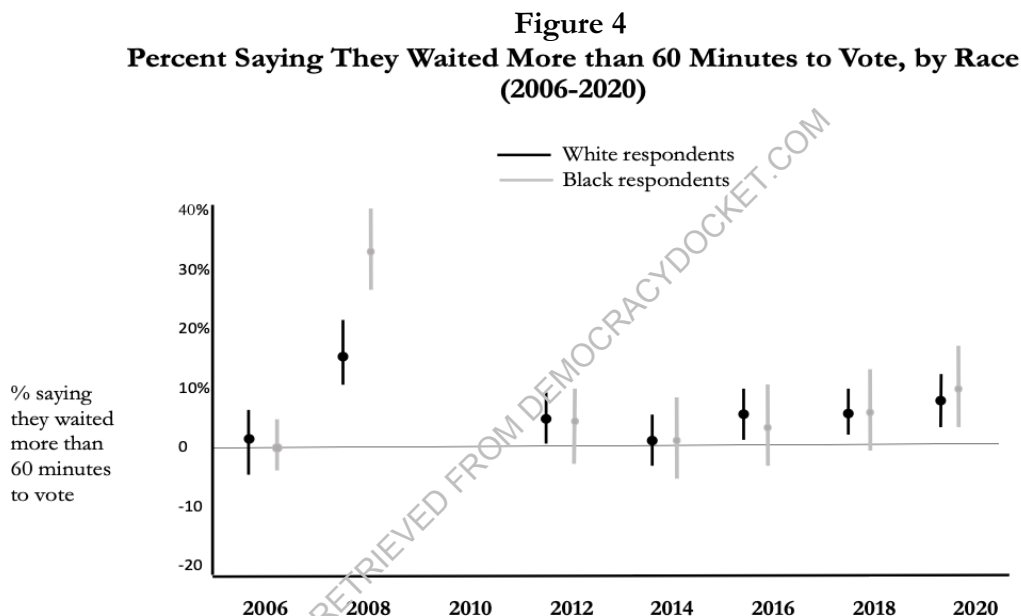
25. But, again, as a matter of sound statistical practice, this analysis and the resulting conclusion make little sense. The data from the survey do not

tell us anything about the precise number of minutes waited. In fact, the use of broad categories reflects the belief on the part of the survey researchers that voters cannot accurately recall *exactly* how long they waited in line. To get around the issue of self-reporting errors, they are instead offered categories containing a wide range of wait times: survey researchers thus lose precision but (hopefully) gain reliability. However, you cannot have it both ways.

26. Furthermore, because we do not know anything about the distribution of minutes waited within our five categories, we do not have an appropriate estimate of the relevant (for Dr. Pettigrew's report) variance or standard deviation. To return to the question posed above, were minute-by-minute wait times for individual voters clustered around the mid-point of the 10-30 minute range, or were they spread out evenly? Without this information about the variance of responses within Dr. Pettigrew's scale, we cannot validly calculate the statistical significance of minute-by-minute wait time differences by groups.

27. A better comparison would be to take the actual percentage choosing a particular category, and to compare differences by race using appropriate confidence intervals. This is what my Figure 4 (below) does, comparing the percent saying they waited more than 60 minutes to vote by race across the CES time series. The data suggest that Black Georgians were significantly more likely than White Georgians to wait more than 60 minutes

in the Obama-McCain election of 2008, but not in other elections. In all other elections (2006, 2012, 2014, 2016, 2018, and 2020) the percentages of White Georgians and Black Georgians saying they waited more than 60 minutes are very close. Indeed, in three elections (2006, 2016, and 2018) a higher percentage of White Georgians than Black Georgians said they waited more than 60 minutes.



Source: CCES/CES survey data. Dots represent point estimates from Survey.⁸ Vertical lines represent margin of error for sub-group estimates, which are based on the number of respondents.

28. As a final note, I have no confidence in the county-by-county wait time analyses offered in Dr. Pettigrew's report. These rely entirely on estimates of county-level behavior based on between 5 and 250 respondents per county. Dr. Pettigrew excludes counties with fewer than five cases, but

⁸ See *Cooperative Election Study*, *supra* note 7.

includes all others. Outside of Fulton, Gwinnett, Cobb, and DeKalb, most other counties offer only a handful of cases upon which he bases his estimates. Consequently, most of the “data points” (counties) draw on an insufficient number of respondents to be considered reliable. Even a county estimate based on 100 voters, for instance, has a margin of error of roughly +/-10 points.

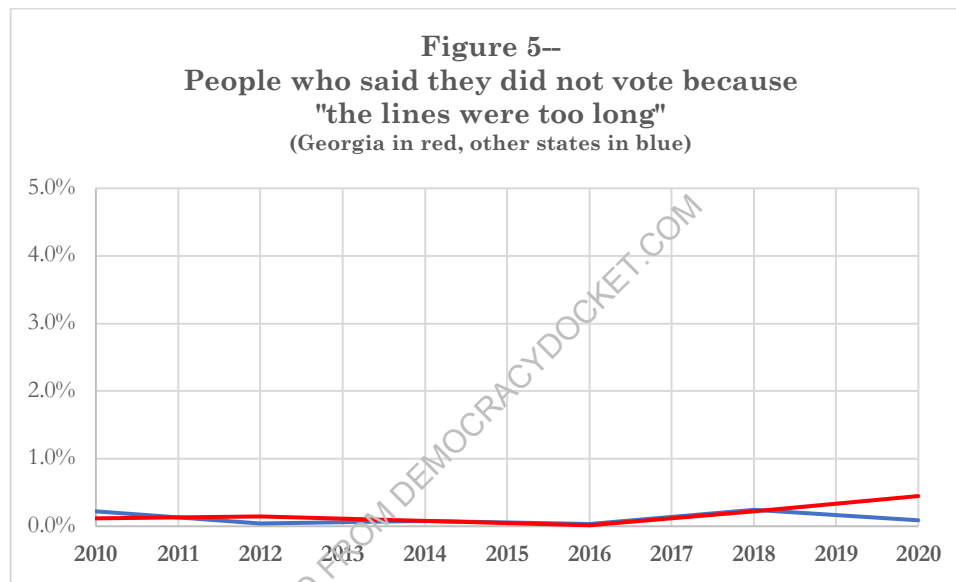
29. Moreover, the CES is not designed to produce representative samples within counties. In other words, the CES design ensures that the aggregation of individual responses to the state-level produces a representative picture of the statewide voting population, but it is not the case that the aggregation of individual cases to the county-level produces a representative picture of the county voting population.

C. There is Little If Any Evidence that Georgians Fail to Vote Because Lines are Too Long.

30. Setting aside Dr. Pettigrew’s estimates of how long Georgians wait in line to vote, the report presents no evidence whatsoever that these wait times are *causing* people not to vote. Dr. Pettigrew does cite that Presidential Commission on Election Administration, which sets 30 minutes as a standard for administrators. I served on this commission, and I can say that this standard was not based on any specific research suggesting that voters leave the line after 30 minutes. Rather, it was a standard that we developed based on discussions with election administrators. I still believe that it is a

reasonable standard, but it is unclear what the implications are for a state whose average wait time is at or near this marker.

31. Interestingly, the CES actually asks non-voters a question about why they did not vote. Figure 5 shows that less than one-half of one percent of those surveyed say they failed to vote because “lines were too long.”



Source: 2006-2020 Cooperative Congressional Election Studies.⁹

32. In Tables 1 and 2, we see responses to this question broken down by race for each election since 2008. All told, across seven elections and thousands of respondents, 16 Black Georgians and 25 White Georgians said that they did not vote because the lines were too long. This is an extremely low incidence occurrence. Indeed, it is so infrequent that we cannot say anything about the tiny subset of Georgians who failed to vote because of wait times.

⁹ See *ibid.*

**Table 1—
Black Georgians Who Said
They Did Not Vote Because “the Lines Were Too Long”**

	Black Georgians in sub-sample	Black Georgians not voting because of lines	% of Black Georgians who said they didn't vote due to long lines	Margin of error of estimate for Black Georgians
2020	690	2	0.290%	+/-3.7%
2018	658	1	0.152%	+/-3.8%
2016	646	-	0.000%	+/-3.9%
2014	555	3	0.541%	+/-4.2%
2012	551	2	0.363%	+/-4.2%
2010	663	-	0.000%	+/-3.8%
2008	316	8	2.532%	+/-5.5%

Source: 2008-2020 Cooperative Congressional Election Studies.¹⁰

**Table 2—
White Georgians Who Said
They Did Not Vote Because “the Lines Were Too Long”**

	White Georgians in sub-sample	White Georgians not voting because of lines	% of White Georgians who said they didn't vote due to long lines	Margin of error of estimate for White Georgians
2020	1,315	13	0.989%	+/-2.7%
2018	1,240	4	0.323%	+/-2.8%
2016	1,299	0	0.000%	+/-2.2%
2014	1,075	0	0.000%	+/-3.0%
2012	1,073	3	0.280%	+/-3.0%
2010	1,359	1	0.074%	+/-2.7%
2008	638	4	0.627%	+/-3.9%

Source: 2008-2020 Cooperative Congressional Election Studies.¹¹

¹⁰ See *ibid.*

¹¹ See *ibid.*

D. Section 4 of Dr. Pettigrew's Report Presents No Evidence that Voters Waiting in Long Lines Would Be Affected by Line Warming.

33. Dr. Pettigrew's report does not provide any statistical evidence on the effects of line warming. This is to be expected given that political science does not know much about this phenomenon, and it therefore has little to say about its efficacy. To develop a scientifically acceptable model on the effects of line warming would require "sampling on the dependent variable": that is, identifying a sufficient number of people who say that wait times affect their turnout, and then either conducting focus groups or (preferably) randomly sampling them and perhaps implementing survey experiments asking them to react to different scenarios.

34. In the absence of data like this, Dr. Pettigrew simply asserts that line warming would (a) prevent some voters from leaving the lines who would otherwise do so, and (b) encourage voters who are concerned about the wait time to vote.

35. The former claim is not implausible, but—as noted above—there is no evidence that having interest groups around to pass out food and water would have any effect on turnout. It might, but it might not. It is all supposition. It would be interesting to conduct a field experiment, in which precincts were "matched" based on similar socio-demographic and political characteristics and then one was provided with "line warming" and one was

not. Even this would not get at individual-level responses, though. That would require somehow identifying people who were thinking about leaving a voting line, and randomly assigning some number them to receive “line warming.” Then one could estimate whether this intervention causes people to stay in line longer, induces them to leave, or has no effect.

36. On the second claim, voters concerned about wait times seem very likely to bring their own food or water. The notion that they need an outside interest group to do this, so that the wait is more bearable, seems dubious. Of course, it would be interesting to ask voters, in a survey, if they anticipate a long wait to vote, and then whether they would be more or less likely to endure the wait if they knew that “line warmers” would be at the polls. This has all the aforementioned problems associated with self-reported (and here) anticipated behavior. Nevertheless, it could be instructive.

37. Logically, providing childcare or bathroom facilities seems more likely than food or water to affect those waiting in line for a prolonged period. Moreover, all this sets aside the reality that voters can bring their own food or water, and that election administrators are allowed to provide water at unattended receptacles. Therefore, even if we find that food and water might persuade some voters to continue their wait in line, this still raises the question of whether we then need outside interest groups to provide this function. Dr. Pettigrew presents no scientific evidence to support that proposition.

E. Recent Changes to Georgia Law Aimed at Limiting Wait Times and Limiting the Burden on Voters Could Plausibly Do So.

38. Furthermore, whatever the length of lines in Georgia in the past, there are several recent provisions of Georgia law aimed at reducing line length, such as making absentee voting available to all Georgia voters for any reason—O.C.G.A. § 21-2-380 (“An elector who votes by absentee ballot shall not be required to provide a reason in order to cast an absentee ballot in any primary, election, or runoff.”). Increasing mail-in voting could reduce the wait time by reducing the number of in-person voters and decrease the burden on election administrators.

39. Moreover, I understand that SB 202 took steps to keep line lengths down in future elections. Some new SB 202 provisions, for example, require counties to monitor line length to reduce the size of lines in future elections either by reducing the size of precincts, increasing their number of voting machines or poll workers, or some combination of those practices. O.C.G.A. § 21-2-263(b). I understand that counties are then required to report line length to the Secretary of State. *Id.* These provisions too could plausibly decrease the length of lines in future elections.

40. The new laws also allow counties to set up unmanned stations for the voters themselves to go and get drink, O.C.G.A. § 21-2-414 (“This Code section shall not be construed to prohibit a poll officer ... from making available


self-service water from an unattended receptacle to an elector waiting in line to vote.”). If Dr. Pettigrew’s causal model is correct, this could serve the same purpose as third-party food and drink operations, and thereby decrease the burden on those waiting in line without introducing the potential for outside interference.

41. Before anyone could say with any confidence what the effect (if any) of these provisions would be, it would require (at the least) a precinct-level analysis of turnout with the level of line warming activity noted and used as a predictive variable for turnout, holding other factors constant. Ideally, one would have a field experiment, in which matched precincts (see above) would be randomly assigned either (a) line warming by election officials, (b) line warming by outside interest groups, or (c) no line warming. Only then could differences in voter behavior or turnout be estimated and causal conclusions drawn.

I hold the conclusions expressed here to a reasonable degree of scientific certainty.

June 24, 2022

Respectfully submitted,

A handwritten signature in cursive script that reads "Daron Shaw". The signature is written in black ink and is positioned above a horizontal line.

Daron Shaw

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EXHIBIT A

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EMPLOYMENT

Professor, University of Texas at Austin, Fall 2008-Present
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EDUCATION

University of California, Los Angeles, Ph.D. (1994), Political Science
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BOOKS

Shaw, Daron R., Brian Roberts, and Mijeong Baek. 2021. *The Appearance of Corruption: Testing the Supreme Court's Assumptions about Campaign Finance Reform*. New York: Oxford University Press.

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GRANTS, AWARDS, AND FELLOWSHIPS

National Science Foundation, ANES Face-to-Face: The American National Election Studies, 2018-2021 (18-PAF05566), 2018-2022. (\$6,780,000)

The Randolph Foundation, Research Grant/Donation, 2016. (\$10,000)

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow and the Arch W. Shaw National Fellow at the Hoover Institution, 2012-13. (\$15,000)

University of Texas College Research Fellowship, Fall 2012.

National Science Foundation, Doctoral Dissertation Improvement Grant, "Principled Abstention: A Theory of Emotions and Nonvoting in U.S. Presidential Elections," 2011-12. (\$11,000)

Liberal Arts Instructional Technology Grant "Understanding Public Opinion," 2009-2010. (\$5,000)

National Science Foundation, Research Grant, "Black Over-Sample for the American National Election Study" (SES-0840550), 2008-10. (\$380,000)

University of Texas, Faculty Research Assignment, 2008.

National Science Foundation, Doctoral Dissertation Research Grant, "An Analysis of Factors that Contribute to Institutional Decision-Making in Federal Courts and Redistricting Commissions" (SES-0617192), 2006-07. (\$4,500)

National Science Foundation, Doctoral Dissertation Research Grant, "The Communication Contest: Candidate Discourse, News Coverage, and Effects on Voters" (SES-0519275), 2005-06. (\$10,000)

CIRCLE Foundation Research Grant, "Analyzing Asian-American Political Mobilization in 2004," 2005. (\$5,000)

Visiting Fellow, Hoover Institute, Stanford University, 2003-08.

Faculty Recipient, J.J. "Jake" Pickle Regents Chair in Congressional Studies, 2002-05.

University of Texas Dean's Fellow Award, 1997, 2004.

University of Texas Summer Research Assignment, 1997.

University of Texas Special Research Grant, 1996-97.

Charles F. Scott Political Science Fellowship, 1988-89, 1990-93.

TEACHING EXPERIENCE

Courses

Political Parties (1994-2022)
 Campaigns and Elections (1994-2019)
 American and Texas Government (1995-2022)
 Applied Survey Research Analysis (1995, 1997, 2002, 2005)
 Political Behavior (2001)
 Public Opinion and Voting Behavior (2003, 2004, 2006, 2008, 2010, 2013, 2015)

Awards

University of Texas Regents' Outstanding Teaching Award, 2014.
 Academy of Distinguished Teachers, 2010.
 University Coop Outstanding Graduate Teaching Award, 2009.
 President's Associates Teaching Excellence Award, 2008.
 Texas Blazers' Award for Teaching Excellence, 2005.
 Dad's Teaching Award Fellowship, 2004.

Nominated by the Government Department for the Piper Teaching Award, 2016.
 Nominated by the Government Department for UT Regents Outstanding Teaching Award, 2013
 Nominated by the Government Department for President's Associates Teaching Excellence Award, 2006.
 Nominated by the Government Department for the Dad's Teaching Award Fellowship, 2003.
 Nominated by the Government Department for the Friar Centennial Teaching Fellowship, 2002.

PROFESSIONAL EXPERIENCE

Contributor (with Charles Stewart), Straight Arrow News. 2021-current. Developing a series of explanatory videos on election systems and voting for a non-partisan news organization.

Associate Principle Investigator, 2020 and 2024 American National Election Study, 2018-2025. Overseeing ANES Pilot Surveys and aiding with the development of new content for the 2020 and 2024 ANES Time Series Study.

Director (with Chris Anderson), Fox News Poll, 2011-current. Aiding with the design, instrumentation, and analysis of all national surveys for Fox News.

Director (with Chris Anderson), Ronald Reagan Institute National Defense Survey, 2018-current. Designing and implementing a large-scale national survey of opinions on foreign policy, national defense, and security.

Director (with James Henson), University of Texas/Texas Tribune Poll, 2008-current. Designing and implementing an online survey of issue and political attitudes across the state of Texas.

Director, *Texas Lyceum Poll*, 2007-current. Designing and executing a non-partisan statewide survey of Texans.

Member, *Fox News Decision Desk*, 2002-current. Working on national and statewide election polls (the Fox News Voter Analysis or AP VoteCast) with NORC and AP, and on the design and implementation of models to determine election winners.

Consultant, *Bush-Cheney 2004, Republican National Committee*. Assisted in the development of Electoral College Strategy and survey analysis.

Director of Election Studies, *Bush for President*, 2000. Estimated vote targets for the primary elections, conducted swing voter analysis for the general election, and assisted in the development of an Electoral College strategy.

Consultant, *Study of Latino Voting in Texas in the 1990s*, 1998. Consulted on sample design for a citywide survey of Austin Latinos. Helped in the estimation of Latino voting patterns from precinct-level data.

Co-Principle Investigator, *California, Florida, Texas Latino Turnout Project*, 1997. Oversaw focus groups and survey instrument design. Aided in estimating and explaining Latino turnout in the 1996 election.

Consultant, *Texas Poll*, 1996-98. Represented the Government Department in the development of survey instruments for quarterly statewide samples.

Consultant, *Texas Latino Poll*, 1996. Helped design and implement the survey instrument.

Senior National Data Analyst, *Bush-Quayle Campaign*, 1992. Aided in the design and analysis of surveys for the presidential campaign.

Assistant Research Director, *Southern California Social Science Survey*, 1990. Helped design and analyze the SCSSS.

Research Fellow, *Center for American Politics and Public Policy*, 1990. Assisted in data collection and analysis.

Data Analyst, Market Opinion Research, 1989. Helped in the secondary analysis of survey data for mayoral and gubernatorial campaigns.

CONFERENCE PAPERS (since 2010)

Shaw, Daron R. 2022. "Non-Response Bias: An Analysis of 2020 Data and Experiments." Paper presented at the annual meeting of the American Association of Public Opinion Research, Chicago, IL, May 11-13, 2022.

Clinton, Joshua D., Jennifer Agiesta, Megan Brennan, Camille Burge, Marjorie Connelly, Ariel Edwards-Levy, Bernard Fraga, Emily Guskin, D. Sunshine Hillygus, Chris Jackson, Jeff Jones, Scott Keeter, Kabir Khanna, John Lapinsky, Lydia Saad, Daron R. Shaw, Andrew Smith, David Wilson, and Christopher Wlezien. 2021. "AAPOR Task Force on 2020 Pre-Election Polling Report." Paper presented at the annual meeting of the American Association of Public Opinion Research, Virtual Conference Format, May 11-14, 2021.

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Miller, Michael, Brian Arbour, Daron Shaw, Arnon Mishkin, Dana Blanton, Chris Anderson, and Andrew Schwartz. "Beyond the Exit Poll: Testing a New Approach to Estimating Election Night Results." Paper presented at the annual meeting of the American Association of Public Opinion Research, Denver, CO, May 18-20, 2018.

Luskin, Robert, Daron Shaw, and Marc Hetherington. "Under-Forecasting the Republican Vote? A Tale of Campaign Spending and Partisan Straying and Homecoming across Two Eras." Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 4-8, 2018.

McGowen, Ernest, Tasha S. Philpot, and Daron Shaw. "Winning the Race Redux: The Effect of Co-Ethnic Population Density on African-American Participation." Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 4-8, 2018.

Gibson, Nadine and Daron R. Shaw. "Reformism, Nativism, or Moralism? Exploring Issue Space in the 2016 Presidential Election." Paper presented at the symposium on "Immigration, Nativism & Changing Politics," Texas A&M University, College Station, TX, February 12, 2018.

"Some Myths Die Hard." with John Petrocik. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 5-9, 2017.

"Assessing Campaign Effects in the 2016 Presidential Election." University of Georgia Conference on the 2016 Elections, Athens, GA, January 20-21, 2017.

"Results from the Abbott Campaign Field Experiments." with Chris Blunt and Brent Seaborn. Paper presented at the Online Advertising Conference, Stanford University, September 18, 2015.

"The Role of Place in Suburban vs. Urban Voting: How Residential Density Patterns Shape Registration and Voting." with Jeremy Teigen. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 16-19, 2015.

"Does Information about Candidate Contributions Influence Vote Choice?" with Mijeong Baek, Taofang Huang, and Brian Roberts. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 3-6, 2014.

"How Does Scientific Information Influence Americans' Issue Opinions?" with Joshua Blank. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 3-6, 2014.

"What's (Mostly) Right About American Elections: Results from a National Survey of Local Election Administrators," with Stephen Ansolabehere. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 3-6, 2014.

"The Nature and Source of Attitudes towards Science and U.S. Public Policy," with Joshua Blank. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 10-14, 2013.

"The Geography of Tea." Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, March 31-April 3, 2011.

"'Pay to Play' or 'Money for Nothing'? Americans' Assessments of Money and the Efficacy of the Political System." Paper presented at the annual meeting of the American Political Science Association, Washington, D.C., Sept. 2-5, 2010.

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"Cash for Clunkers," with Abby Blass and Brian Roberts. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 23-26, 2010.

"Ask me Suave," with Jason Casellas and David Leal. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 23-26, 2010.

"Winning the Race," with Tasha Philpot and Ernest McGowen. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 23-26, 2010.

"The Reform Dimension in the 2008 Presidential Election," with Mel Hinich and Taofang Huang. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 23-26, 2010.

"Pre-Election Forecasting Error, 1990-2008," with Marc Hetherington and Robert Luskin. Paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 23-26, 2010.

PROFESSIONAL ACTIVITIES, SERVICE, AND MEMBERSHIPS

Member, AAPOR Task Force on Pre-Election Polling, 2019-2021

Member, Social Science One, Committee on Civic Engagement, 2018-present.

Member, Editorial Board for *Political Behavior*, 2018-present.

Member, MIT Election and Data Systems Board of Advisors, 2017-present.

Member, American Political Science Association Task Force on Civic Engagement, 2013-present.

Member, Pew Elections Performance Index Advisory Group, 2013-present.

Executive Committee Member, Midwest Political Science Association, 2012-2016.

Member, Board of Overseers, National Election Study, 2006-2018.

Member, Editorial Board, *American Politics Research*, 2004-present.

Member, Board of Advisers, Annette Strauss Institute for Civic Participation, 2002-present.

Academic Advisor, Presidential Commission on Election Administration, 2013.

Presidential Appointee, National Historical Publications and Records Commission, 2005-08.

Section Head, "Elections and Voting Behavior," 2007. Annual meeting of the Midwest Political Science Association.

Chairman, "New Approaches to Discovering Campaign Effects," Annual meeting of the American Political Science Association, 2006.

Committee Head, "Best Graduate Paper from the 2004 Conference," Annual meeting of the Southwestern Political Science Association, 2005.

Planning Board Member, 2004 National Election Study.

Section Head, "Elections and Voting Behavior," Annual meeting of the Midwest Political Science Association, 2002.

Section Head, "Mass Media and Politics," Annual meeting of the Southern Political Science Association, 2001.

Co-Host, Conference on "New Agendas in Political Communication," 2000.

Member, "Task Force of Campaign Finance Reform," Pew Charitable Trust, 1997-98.

Member (select listing)—American Political Science Association, Academy of Political Science, American Association of Public Opinion Research, Western Political Science Association, Midwestern Political Science Association, Southern Political Science Association, and Southwestern Social Science Association.

Invited Talks (select listing)—UC-Berkeley, University of Michigan, Stanford University, Princeton University, University of Illinois, University of Maryland, UCSD, UCLA, Texas A&M, Miami University, Brookings Institute, CATO Institute, Hoover Institution, Clemson University, Northwestern University, Texas Tech University, University of Georgia, Vanderbilt University, University of Pennsylvania, Western Michigan University, University of Houston, University of Montana, Rice University, Texas State University, Liberty University, American Enterprise Institute, American Association of Political Consultants, U.S. Embassies in the Netherlands and Austria, Goldman Sachs Virtual Series, East-West Center.

News Media Appearances (select listing)—Fox News's "Special Report," "The O'Reilly Factor," "Making Money with Charles Payne," "Fox & Friends," "America's Newsroom," PBS's "Uncommon Knowledge," PBS's "News Hour," PBS's "Odyssey," PBS's "Talk of the Nation," NPR, Time, The New York Times, The Wall Street Journal, USA Today, Associated Press, Washington Post, Los Angeles Times, San Diego Union-Tribune, Boston Globe, Milwaukee Journal Sentinel, Dallas Morning News, Houston Chronicle, San Antonio Daily-Express, Austin American Statesman, Huffington Post, Politico, Slate, Vanity Fair.

UNIVERSITY AND DEPARTMENT SERVICE (since 2010)

Graduate Financial Aid Committee, 2022

COLA Committee on Student Engagement in Discourse and Debate, 2022

Search Committee for the Director of the Politics, Philosophy, and Economics Institute, 2021-22

COLA Committee Rating Endowed Chair and Professorship Nominees, 2021

Race, Ethnicity, Politics Search Committee, 2020

FII American Politics Search Committee (Chair), 2019

American Politics Junior Search Committee (Chair), 2019

Core Curriculum Advisory Committee, 2019-21

Government Department Executive Committee, 2001-20

UEX Faculty Grant Committee, 2019

Graduate Fellowship Committee, 2018

College of Liberal Arts Teaching Award Committee, 2016-19

FII American Politics Search Committee, 2016-17

University of Texas, General Teaching Award Committee, 2015-16, 2016-17

Liberal Arts Academic Planning Advisory Council, 2012-15

University Endowed Presidential Scholarship Committee, 2011-14

Chairman, American Politics Field, 2007-2013

Graduate Placement Director, 2008-2013

Chairman, American Politics Search Committees, 2013-14

Financial Aid Committee, 2013, 2016, 2017
Graduate Student Admissions, 2003, 2010-13

Prepared Promotion Research Reports for Bethany Albertson, Jason Casellas, David Leal, Eric McDaniel, Tasha Philpot, Robert Luskin, Sean Theriault.

Prepared Report for the Dean on Government Department Chair Search, 2019.

ADVISING, STUDENT SERVICE

Ph.D. Dissertation Committee Chairman

Brian Arbour (2007 Ph.D.; CUNY-John Jay)
Mijeong Baek (2009 Ph.D.; University of South Florida-St. Petersburg)
Joshua Blank (2015 Ph.D.; University of Texas/Texas Politics Project)
Brian Brox (2004 Ph.D.; Tulane University)
Lindsay Dun (2021 Ph.D.; Qualtrics)
Kyle Endres (2016 Ph.D.; Northern Iowa University)
Joseph Giammo (2003 Ph.D.; University of Arkansas)
Nadine Gibson (2019 Ph.D.; UNC-Wilmington)
Austin Hart (2013 Ph.D.; American University)
Daniel Hayes (2006 Ph.D.; George Washington University)
*Sarah Heise**
Taofang Huang (2012 Ph.D.; Georgetown College)
Colby Humphrey (2022 Ph.D.)
Kristi Kelly (2017 Ph.D.; Austin Community College)
*Cornelia Lawrence**
Robert Marbutt (2005 Ph.D.; Northwest Vista College)
Seth McKee (2005 Ph.D.; Oklahoma University)
Mark McKenzie (2007 Ph.D.; Texas Tech University)
Kenneth Miller (2017 Ph.D.; UNLV)
*Yul Min Park**
Jaesung Ryu (2006 Ph.D.; East Asia Institute)
Eric Svenson (2014 Ph.D.; Sam Houston State University)
Jeremy Teigen (2005 Ph.D.; Ramapo College)
Michael Unger (2007 Ph.D.; Ramapo College)
Matthew Vandenbroek (2012 Ph.D.; The Mellman Group)

**On-going*

Ph.D. Dissertation Committee Member

Caitlin Andrews	Donald Inbody	Kris Seago
Tamara Bell	Jongho Lee	Mary Slosar
Christopher Bratcher	So Young Lee	Joseph Tafoya
Eunjung Choi	John Mason	Jenna Tighe
Alvaro Corral	Ernest McGowen	Mathieu Turgeon
Jonghoon Eun	Megan Moeller	Shinya Wakao
<i>Klara Fredriksson*</i>	<i>Philip Moniz*</i>	Mark Warren
Joseph Gershtenson	Dorothy Morgan	Samuel West
Hazem Ghobarah	Adam Myers	<i>Benjamin White*</i>
Suzanne Globetti	Curt Nichols	Randy Zabel
Mark Hetherington	Jerod Patterson	Donald Zinman
Patrick Hickey	Dennis Plane	
William Horner	Katie Putnam	
Kai-Ping Huang	Stephanie Sanford	
Joanne Ibara		

**On-going*

Undergraduate Honors Thesis Advisor, 2001-06, 2009-2010, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22.