

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

VOTE.ORG, *et al.*,

Plaintiffs,

v.

GEORGIA STATE ELECTION
BOARD, *et al.*,

Defendants.

Civil Action File No.
1:22-cv-01734-JPB

**STATE DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

RESPONSES

State Defendants respond to the separately numbered paragraphs and prayer for relief contained in the Amended Complaint, as quoted below. State Defendants deny each and every allegation asserted in Plaintiffs' Amended Complaint not specifically admitted herein. Moreover, to the extent the Amended Complaint refers to or quotes from external documents, statutes, or other sources, State Defendants may refer to such materials for their accurate and complete contents; however, State Defendants' references are not intended to be, and should not be construed to be, an admission that the cited materials: (a) are correctly cited or quoted by Plaintiffs; (b) are relevant to this, or any other, action; or (c) are admissible in this, or any other, action.

State Defendants answer as follows:

NATURE OF THE CASE

1. “The question posed by this lawsuit is simple: can the State of Georgia use arcane rules and administrative traps to deny absentee ballots to eligible voters? Federal law makes clear that the State may not: Section 101 of the Civil Rights Act prohibits election officials from denying any individual the right to vote “because of an error or omission on any record or paper relating to any application” if the error or omission is immaterial in determining whether the individual is qualified to vote. 52 U.S.C. § 10101(a)(2)(B).”

ANSWER: Paragraph 1 contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required. To the extent a response is necessary, State Defendants deny the allegations contained in this paragraph. State Defendants specifically deny Plaintiffs’ characterization of SB 202 as imposing “arcane rules and administrative traps to deny absentee ballots to eligible voters.”

2. “Yet, in Georgia, an individual’s application for an absentee ballot can be rejected simply because they used the wrong writing instrument. Georgia law dictates that all absentee ballot applications must be signed with “pen and ink” (the “Pen and Ink Rule”)—a requirement inserted without explanation into a haystack of voter suppression measures passed by the state legislature in response to record turnout in the 2020 general election and

subsequent runoffs. S.B. 202, § 25, 156th Gen. Assemb., Reg. Sess. (Ga. 2021 Act 9) (“SB 202”) (amending O.C.G.A. § 212-381(a)(1)(C)(i)).”

ANSWER: State Defendants admit that SB 202 requires all absentee-ballot applications to be signed with “pen and ink” when executing the oath of eligibility incorporated into that application (the “signature-oath requirement”). State Defendants deny Plaintiffs’ characterization of that requirement and all other factual allegations in Paragraph 2, including but not limited to Plaintiffs’ characterization of SB 202. Paragraph 2 also contains Plaintiffs’ legal conclusions to which no response is required.

3. “This antiquated rule is irreconcilable with the legislature’s suggestion that SB 202 would eliminate the use of signatures as a means of verifying absentee voters in Georgia’s elections. Representative Barry Fleming, one of the key sponsors of SB 202, criticized the signature matching processes as “subjective.” Hearing on SB 202; Spec. Comm. On Election Integrity, Feb. 18, 2021 (Ga. Leg.). During hearings on the bill, Representative Alan Powell stated that signatures caused “numerous problems” in the 2020 election. Hearing on SB 202; Spec. Comm. On Election Integrity, Feb. 19, 2021 (Ga. Leg.).”

ANSWER: Paragraph 3 contains Plaintiffs’ legal conclusions, characterization of recent elections, and characterization of statements made by individual legislators, not allegations of fact, to which no response is

required. By way of further response, State Defendants respectfully refer the Court to the referenced statements for a full and accurate statement of their contents and deny any allegations inconsistent therewith. To the extent a response is deemed necessary, State Defendants deny the allegations in Paragraph 3.

4. “But perhaps the strangest aspect of the Pen and Ink Rule is that it singles out applications submitted by mail or in person. Voters may also submit the form by fax or email, which effectively digitizes their signature. Election officials have little opportunity to assess whether a faxed or emailed application form was originally signed with a pen and ink—proving false any suggestion that the Pen and Ink Rule is material to determining a voter’s qualifications.”

ANSWER: Paragraph 4 contains Plaintiffs’ legal conclusions and characterization of the signature-oath requirement, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, State Defendants deny the allegations in Paragraph 4.

5. “The Pen and Ink Rule also runs counter to the State’s decades-long effort to move toward digital signatures. Georgia law *demand*s the acceptance of digital signatures when an individual registers to vote while obtaining a driver’s license or hunting license. Georgia also accepts digital signatures for purposes such as recording and registering property deeds, filing

auto liens, and many real estate transactions. More than a decade before adopting the Pen and Ink Rule, the Georgia legislature declared that it would “promote economic development and efficient delivery of government services by encouraging state governmental agencies and private sector entities to conduct their business and transactions using electronic media,” particularly digital signatures. O.C.G.A. § 50-29-12(a).”

ANSWER: Paragraph 5 contains Plaintiffs’ legal conclusions and characterization of the signature-oath requirement and its place in the broader Georgia code, not allegations of fact, to which no response is required. To the that a response is deemed necessary, State Defendants deny the allegations in Paragraph 5.

6. “Digital signatures are increasingly important to ensuring that voters who rely on absentee ballots and lack access to printers, scanners, or fax machines can access the ballot box. Demanding that all absentee ballot applications be signed in “pen and ink” simply generates errors that can be used to reject applications—a game of “gotcha” serving only to trip up otherwise lawful, eligible voters.”

ANSWER: State Defendants deny that the signature-oath requirement denies any voter “access to the ballot box.”. State Defendants further state that Paragraph 6 contains Plaintiffs’ characterizations of the signature-oath requirement, not allegations of fact, to which no response is required. To the

extent a response is deemed necessary, State Defendants deny the allegations in Paragraph 6.

7. “The Pen and Ink Rule therefore imposes unnecessary procedural hoops in the absentee ballot application process. For these reasons and those stated below, Plaintiffs request that the Court declare that the Pen and Ink Rule violates Section 101 of the Civil Rights Act of 1964 and enjoin its enforcement in future elections.”

ANSWER: Paragraph 7 contains Plaintiffs’ legal conclusions and characterization of the signature-oath requirement and its place in the broader Georgia code, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, State Defendants deny the allegations in Paragraph 7. State Defendants further specifically deny that the signature-oath requirement “imposes unnecessary procedural hoops in the absentee ballot application process.”

JURISDICTION AND VENUE

8. Plaintiffs bring this action under 52 U.S.C. § 10101 and 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the federal Civil Rights Act.

ANSWER: State Defendants admit that the Complaint alleges violations of 52 U.S.C. § 10101 and 42 U.S.C. §§ 1983 and 1988 but deny any violation of these statutes and all other allegations in Paragraph 8.

9. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the laws of the United States and involve the assertion of deprivation, under color of state law, of rights secured under federal law.

ANSWER: State Defendants admit that, if this Court finds that Plaintiffs have standing, this Court has original jurisdiction over the subject matter of this case.

10. This Court has personal jurisdiction over Defendants, who are sued in their official capacities.

ANSWER: State Defendants admit the allegations contained in Paragraph 10.

11. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because Defendants reside in the Northern District of Georgia, and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events that give rise to Plaintiffs' claims occurred and will occur in this judicial district.

ANSWER: If the Court has jurisdiction over this matter, State Defendants admit that venue is proper in this Court.

12. This Court has the authority to enter declaratory judgment and provide injunctive relief under Federal Rules of Civil Procedure 57 and 65, and 28 U.S.C. §§ 2201 and 2202.

ANSWER: Paragraph 12 contains Plaintiffs' legal conclusions, not allegations of fact, to which no response is required.

PARTIES

13. Plaintiff Vote.org is the largest 501(c)(3) nonprofit, nonpartisan voter registration and get-out-the-vote technology platform in the country. Vote.org uses technology to simplify political engagement, increase voter turnout, and strengthen American democracy. Vote.org works extensively to support historically underserved voters, including racial and ethnic minorities and younger voters who tend to have lower voter-turnout rates. Those wishing to learn about registering and voting in Georgia turned to Vote.org more than 2 million times between January 1, 2020, and June 30, 2021. During that period, Vote.org helped more than 80,000 Georgians who sought information about absentee voting by guiding them to the State's now-defunct online application or, in almost 9,000 instances, providing tools voters could use to complete a printable absentee ballot application themselves.

ANSWER: State Defendants lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 13 regarding Plaintiff's assertions about itself and its operations. State Defendants deny that the State's online application portal is defunct.

14. In preparation for the 2018 general and special elections, Vote.org invested significant resources in developing and launching an e-signature

function of its web application that helped roughly 8,000 Georgians request an absentee ballot. The e-signature function of Vote.org's web application allowed qualified voters throughout Georgia to enter information into an online absentee ballot application; sign the form by uploading an image of their original signature into the web application; review their signed absentee ballot application; and fax the completed application to their county registrar as required by Georgia law. In 2020, Vote.org referred voters to the State's own web portal, which at the time allowed voters to apply for an absentee ballot entirely online without a wet signature. But soon after the enactment of the Pen and Ink Rule, the State disabled its online application.

ANSWER: State Defendants lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 14 regarding Plaintiff's assertions about itself and its operations. State Defendants admit that the previous online application portal was taken down for maintenance following the passage of SB 202 for enhancements to ensure compliance with SB 202, but deny that the online application portal was "disabled."

15. The Pen and Ink Rule prevents Vote.org from resuming use of one of its most effective tools: the e-signature function of its absentee ballot web application. But for the Rule, Vote.org would build on its existing e-signature function to provide Georgia voters with the option to sign and submit their

application electronically. *See* O.C.G.A. § 21-2-381(a)(1)(A). No longer able to use this feature, Vote.org has been, and will continue to be, forced to divert resources from its general, nationwide operations—as well as its specific programs in other states—to redesign its absentee ballot web application and employ more expensive (and less effective) means of achieving its voter participation goals in Georgia.

ANSWER: State Defendants lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 15.

16. Plaintiff Georgia Alliance for Retired Americans (the “Alliance”) brings this action on behalf of its members. The Alliance is incorporated in Georgia as a 501(c)(3) nonprofit, social welfare organization. It has tens of thousands of members, including retirees from public and private sector unions, community organizations, and individual activists, and is a chartered state affiliate of the Alliance for Retired Americans. The Alliance’s mission is to ensure social and economic justice and full civil rights that retirees have earned after a lifetime of work.

ANSWER: State Defendants lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 16.

17. The Pen and Ink Rule threatens to deny the Alliance's members—in some cases successfully—the opportunity to vote. It is particularly cumbersome for the many Alliance members who rely on absentee voting. The Pen and Ink Rule forces such members into a cumbersome process involving some combination of calls to election officials, mailed requests for an application, a mailed blank application, and a mailed completed application. In addition to being burdensome, this process has multiple points of failure or delay, any one of which could prevent the member from receiving an absentee ballot. For reasons financial, physical, or geographic, some Alliance members cannot vote in person, and an inability to successfully apply for an absentee ballot will deny them their vote.

ANSWER: State Defendants deny that the signature-oath requirement threatens to or will deny anyone the opportunity to vote. State Defendants otherwise lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 17.

18. The Communications Workers of America Retired Members Council Local 3204 ("CWA-RMC") brings this action on behalf of its members. The CWA-RMC is an association of more than 2,000 retirees who worked in Georgia's telecom industry. It is a chartered affiliate of the Communications Workers of America. The CWA-RMC is also an affiliate of the Communications Workers of America. The CWA-RMC is also an affiliate of the Georgia Alliance

of Retired Americans and its members also enjoy membership in the Alliance. The CWA-RMC's mission is to protect the social and economic wellbeing of its members including advocating for their civil rights.

ANSWER: State Defendants lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 18.

19. The Pen and Ink rule threatens to deny the CWA-RMC's members the right to vote, particularly its many members who rely on absentee voting. The Pen and Ink Rule forces such members into a cumbersome process. For some members, this will involve some combination of calls to election officials, mailed requests for an application, a mailed blank application, and a mailed completed application. Other members will have to rely on family or commercial printing services, requiring additional time, travel, and cost. In addition to being burdensome, this process has multiple points of failure or delay, any one of which could prevent the member from receiving an absentee ballot. For reasons financial, physical, or geographic, some CWA-RMC members cannot vote in person, and an inability to successfully apply for an absentee ballot will deny them their vote.

ANSWER: State Defendants deny that the signature-oath requirement threatens to or will deny anyone the opportunity to vote. State Defendants

otherwise lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 19.

20. Plaintiff Priorities USA (“Priorities”) is a 501(c)(4) nonprofit, voter-centric, progressive advocacy and service organization. Priorities’ mission is to build a permanent infrastructure to engage Americans by persuading and mobilizing citizens around issues and elections that affect their lives. In furtherance of this purpose, Priorities works to educate and turn out voters across the country, including in Georgia.

ANSWER: State Defendants lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 20.

21. To counter the confusion and burden caused by the Pen and Ink Rule, Priorities has been, and will continue to be, forced to divert funding away from its core mission and towards helping voters obtain absentee ballots. A significant focus of Priorities’ work in Georgia is reaching audiences through digital advertising. Such audiences include individuals who increasingly depend on all-digital processes, including digital signatures to conduct personal, professional, and civic business. The Pen and Ink Rule’s prohibition of digital signatures complicates the voting process for the very audiences Priorities works to mobilize. And in states like Georgia that do not have an all-digital ballot application option, Priorities must spend significantly more

money to aid absentee voters. This increased cost is due in part to the need to educate voters on the various steps required to vote absentee and to provide voters with the tools necessary to do so. Such processes are also slower, requiring additional staff time and greater spending on efforts to reach voters and coach them through the process.

ANSWER: State Defendants deny that the signature-oath requirement creates “confusion and burden” or that it “complicates the voting process.” State Defendants lack sufficient knowledge or information with which to form a belief as to the truth of the remaining allegations contained in Paragraph 21.

22. Defendants Edward Lindsey, Janice W. Johnston, Sara Tindall Ghazal, and Matthew Mashburn are members of the Georgia State Election Board (“SEB”) and are named in their official capacities as members of the SEB (“SEB Defendants”). As members of the SEB, the SEB Defendants are authorized by the state legislature to formulate, adopt, and promulgate such rules and regulations, consistent with Georgia law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections in Georgia. O.C.G.A. § 21-2-31(1)-(2). SB 202 authorized the SEB to promulgate rules consistent with the law, and on October 28, 2021, the SEB Defendants adopted regulations implementing the Pen and Ink Rule. Ga. Comp. R. & Regs. § 183-1-14-.12.

ANSWER: State Defendants admit the allegations contained in the first and last sentences of Paragraph 22. The remainder of this paragraph contains Plaintiffs' legal conclusions, not allegations of fact, to which no response is required.

23. Defendants Patrise Perkins-Hooker, Kathleen D. Ruth, Aaron V. Johnson, Michael Heekin, and Teresa K. Crawford are sued in their official capacities as members of the Fulton County Registration and Elections Board (collectively the "Fulton County Defendants"). In this capacity, the Fulton County Defendants oversee Fulton County's voting activities. *See* O.C.G.A. §§ 21-2-40, 21-2-70. This includes assuming the role of registrar, or overseeing the absentee ballot clerk, in reviewing each absentee ballot application to ensure it conforms with Georgia law (including the Pen and Ink Rule) and issuing ballots to voters whose applications are satisfactory. O.C.G.A. §§ 21-2-380.1, 21-2-381(b). The Fulton County Defendants are sued for the manner in which they enforce the Pen and Ink Rule.

ANSWER: State Defendants admit the allegations contained in the first sentence of Paragraph 23. State Defendants do not have sufficient information or knowledge on why Plaintiffs sued the Fulton County Defendants. The remainder of this paragraph contains Plaintiffs' legal conclusions, not allegations of fact, to which no response is required.

24. Defendants Nancy Jester, Susan Motter, Vasu Abhiramen, Anthony Lewis, and Karli Smith are sued in their official capacities as members of the DeKalb County Registration and Elections (collectively the “DeKalb County Defendants”). In this capacity, the DeKalb County Defendants oversee DeKalb County’s voting activities. See O.C.G.A. §§ 21-2-40, 21-2-70. This includes assuming the role of registrar, or overseeing the absentee ballot clerk, in reviewing each absentee ballot application to ensure it conforms with Georgia law (including the Pen and Ink Rule) and issuing ballots to voters whose applications are satisfactory. O.C.G.A. §§ 21-2-380.1, 21-2-381(b). The DeKalb County Defendants are sued for the manner in which they enforce the Pen and Ink Rule.

ANSWER: State Defendants admit the allegations contained in the first sentence of Paragraph 24. State Defendants do not have sufficient information or knowledge on why Plaintiffs sued the DeKalb County Defendants. The remainder of this paragraph contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required.

STATEMENT OF FACTS AND LAW

25. Georgians may submit an absentee ballot application by fax, email, or using a paper application submitted by mail or in person. Voters submitting a paper application must sign their application form with “pen and ink.”

ANSWER: State Defendants admit that there are many ways to submit an absentee ballot application in Georgia and that voters submitting a paper application must sign their application form with pen and ink. To the extent the second sentence of Paragraph 25 implies that the signature-oath requirement does not apply to applications submitted online or by fax, State Defendants deny that implication.

26. The signature requirement for absentee ballot applications is relatively new. It was first adopted in 2016 as an administrative rule but did not mandate the use of any particular writing instrument. *See* Ga. Comp. R. & Regs. § 183-1-14-.12 (2016). Even then, its only statutory role was to be compared with the signature on the voter's registration card to ensure they matched. *See, e.g.*, O.C.G.A. § 21-2381(b)(5) (2008). This predecessor to the State's photo ID requirement was known as "signature verification." But under SB 202, signature matching is no longer a part of the verification process.

ANSWER: State Defendants deny that the signature-oath requirement is "relatively new" or that it was adopted in 2016. State Defendants admit that State Election Board Rule 183-1-14-.12 became effective in 2016, but deny that there was no signature requirement for absentee ballot applications prior to that time. State Defendants admit that, while there is still a signature-oath requirement on absentee ballot applications, signature-matching is no longer how an absentee ballot application is verified in Georgia. The rest of the

allegations in Paragraph 26 contain Plaintiffs' legal conclusions, not statements of fact, to which no response is required.

27. During legislative hearings on SB 202, Georgia legislators renounced the use of signatures in the context of elections. Barry Fleming, the chair of the House Special Committee on Election Integrity, which was formed in the wake of the 2020 general election, summarized the concerns and goals of legislators regarding signature verification by explaining that “[t]here was significant discussion, controversy, consternation, with parts of the process, particularly the signature verification process. And one thing you will see that this bill does is attempt to move from what is a subjective process, that being signature, to an objective process” Hearing on SB 202; Spec. Comm. on Election Integrity, Feb. 18, 2021 (Ga. Leg.).

ANSWER: This paragraph contains Plaintiffs' legal conclusions, not allegations of fact, to which no response is required. By way of further response, State Defendants respectfully refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent therewith and Plaintiffs' interpretation of the quoted statement as contained in Paragraph 27.

28. In other words, Georgia legislators clearly expressed their intent to move away from the use of signatures to verify voters in the absentee voting process. Election Integrity Act of 2021, Ga. Laws Act 9 § 2(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.”).¹ By eliminating signature matching with SB 202, the legislature wrote out of Georgia law the only purpose signatures on absentee ballot applications ever served.

ANSWER: State Defendants deny the allegations that Georgia legislators “clearly expressed their intent to move away from the use of signatures” and that “the legislature wrote out of Georgia law the only purpose signature on absentee ballot applications ever served.” Otherwise, this Paragraph 28 contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required. By way of further response, State Defendants respectfully refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent therewith.

29. But rather than abandon the now meaningless signature requirement, the legislature doubled down. The very legislators who passed SB 202 in part to move away from signature verification turned around and created an entirely new signature requirement and added a mandate that the signature be applied “with a pen and ink.” O.C.G.A. § 21-2-381(a)(1)(C)(i). Having stricken the signature’s previous statutory purpose, the legislators had

¹ See Annotations to O.C.G.A. § 21-2-381, Editor’s Notes (“Ga. L. 2021, p. 14, § 2/SB 202, not codified by the General Assembly”).

to create a new role for the signature. The signature now affirms “that the elector is a qualified Georgia elector and the facts presented on the application are true.” *Id.* But the legislature offered no justification for demanding that this signature appear *in pen and ink* when an electronic, digital, or imaged signature would suffice.

ANSWER: Paragraph 29 contains Plaintiffs’ legal conclusions and characterizations of the signature-oath requirement, not allegations of fact, to which no response is required. The text of the statute speaks for itself. To the extent a response is deemed necessary, State Defendants deny the allegations.

30. This meaningless requirement is now enshrined in Georgia law. Following SB 202’s enactment, the SEB Defendants voted unanimously to adopt the Pen and Ink Rule on October 28, 2021, and, as a result, all registrars and absentee ballot clerks must now comply with it. *See* O.C.G.A. § 21-2-31(1)-(2).

ANSWER: State Defendants admit that the regulation implementing the signature-oath requirement was adopted unanimously by the State Election Board. Otherwise, Paragraph 30 contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required. The text of the statute speaks for itself. To the extent a response is deemed necessary, State Defendants deny the remaining allegations.

31. The Pen and Ink Rule is not only archaic but is also out of step with state laws and procedures governing the use of signatures in elections and in other important contexts. *See, e.g.*, Ga. Comp. R. & Regs. 183-1-14-.02(11) (“Voters who vote absentee ballots in person shall first complete an absentee ballot application and sign an oath, which may be on the same form and may be on paper or digital.”). When an eligible Georgian applies for a hunting, fishing, or trapping license issued by the Department of Natural Resources, for example, the voter is offered the opportunity to register to vote at the same time. To do so, the voter completes and signs an application provided by the Department of Natural Resources and the Secretary of State, which allows them to capture a digital signature. O.C.G.A. § 212-221.1. The law requires that the department transmit the completed applications to the Secretary at the end of each day and specifically allows for digital transmission. O.C.G.A. § 21-2-221.1(f), (i). The law goes on to state that “[s]uch electronically transmitted signatures *shall be valid* as signatures on the voter registration application and shall be treated in all respects *as a manually written original signature* and shall be recognized as such in any matter concerning the voter registration application.” O.C.G.A. § 21-2-221.1(i) (emphasis added).

ANSWER: Paragraph 31 contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required. The text of the statute

speaks for itself. To the extent a response is deemed necessary, State Defendants deny the allegations.

32. The well-established legitimacy of digital signatures is further illustrated by the State's broad recognition and acceptance of such signatures in other important transactions. For real estate deeds, "[a]n electronic signature shall satisfy any requirement as a condition for recording that a document be signed." O.C.G.A. § 44-2-37(b). Public officers are required to accept electronic signatures on transportation-related bonds. O.C.G.A. § 32-2-70(b). Georgia's Commerce and Trade Code states that "[a] record or signature shall not be denied legal effect or enforceability solely because it is in electronic form" and that "[i]f a law requires a signature, an electronic signature shall satisfy the law." O.C.G.A. § 10-12-7(d).

ANSWER: Paragraph 32 contains Plaintiffs' legal conclusions and characterizations of the broader Georgia code, to which no response is required. To the extent a response is deemed necessary, State Defendants deny the allegations.

33. The Pen and Ink Rule creates a meaningless administrative trap for Georgians. Voters who rely on absentee ballots—including those who are ill, disabled, limited by family and work obligations, or temporarily relocated—risk having their absentee ballot applications rejected unless they either print their absentee ballot applications or wait for election officials or third parties

to provide them with paper applications. This barrier exists despite the fact that the method of signing is irrelevant to the application process.

ANSWER: State Defendants deny the allegations in Paragraph 33.

CLAIM FOR RELIEF

COUNT I

52 U.S.C. § 10101; 42 U.S.C. § 1983 Violation of 52 U.S.C. § 10101(a)(2)(B) Against All Defendants

34. Plaintiffs reallege and reincorporate by reference paragraphs 1-7 and 22-30 of this Complaint and the paragraphs in the count below as though fully set forth herein.

ANSWER: State Defendants incorporate their responses to the foregoing paragraphs as if set forth fully herein.

35. 52 U.S.C. § 10101(a)(2)(B) (the “Materiality Provision”) provides that:

[n]o person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.

ANSWER: Paragraph 35 contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required. The text of the statute speaks for itself.

36. “[T]his provision asks whether, accepting the error as true and correct, the information contained in the error is material to determining the eligibility of the applicant.” *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018). For the purposes of the Materiality Provision, “the word ‘vote’ includes all action necessary to make a vote effective.” 52 U.S.C. 10101(e).

ANSWER: Paragraph 36 contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required. The text of both the statute and of the cited case speak for themselves. State Defendants deny that the cited sources support Plaintiffs’ claims.

37. An absentee ballot application is an “application” as described by the plain language of the statute. For those voting by absentee ballot, an absentee application is “an act requisite to voting” as it must be completed to receive a ballot.

ANSWER: Paragraph 37 contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required. To the extent a response is deemed necessary, State Defendants deny the allegations contained in this paragraph.

38. Absentee ballots are the only means by which many Georgians can vote. Georgians who are hospitalized, temporarily relocated, homebound, or without transportation cannot vote without completing an absentee ballot

application. Many Georgians also lack access to printers and cannot print out an application on which to sign with pen and ink.

ANSWER: State Defendants lack sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 38.

39. The Pen and Ink Rule is immaterial to determining whether an elector is qualified to vote. “[T]he only qualifications for voting in Georgia are U.S. Citizenship, Georgia residency, being at least eighteen years of age, not having been adjudged incompetent, and not having been convicted of a felony.” *Martin*, 347 F. Supp. 3d at 1308. The method of signing an absentee ballot application bears no relation to those qualifications. Under Georgia law, a pen and ink signature serves no purpose for which a digital or imaged signature would not suffice, as evidenced by the fact that the State accepts copies of signatures on application forms returned by fax or email, and previously accepted applications with *no hand-written signature* from voters who applied using the State’s online portal.

ANSWER: Paragraph 39 contains Plaintiffs’ legal conclusions, not allegations of fact, to which no response is required. The text of the quoted case speaks for itself. To the extent a response is deemed necessary, State Defendants deny the allegations contained in Paragraph 39.

40. Defendants' enforcement of the Pen and Ink Rule deprives Georgians—including voters that wish to use Plaintiff Vote.org's web application to complete absentee ballot applications—of the rights secured to them by 52 U.S.C. § 10101(a)(2)(B).

ANSWER: State Defendants deny the allegations contained in Paragraph 40.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- a. Declaring that the Pen and Ink Rule, as it appears in O.C.G.A. § 21-2381, and any other provisions requiring a voter to sign an absentee ballot application form with pen and ink, violate 52 U.S.C. § 10101(a)(2)(B);
- b. Preliminarily and permanently enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to the Pen and Ink Rule and any other provisions requiring a voter to sign an absentee ballot application form with pen and ink;

- c. Awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- d. Granting such other and further relief as the Court deems just and proper.

ANSWER: State Defendants deny that Plaintiffs are entitled to any of the relief requested in the Prayer for Relief, including subparagraphs a through d.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs fail to state a claim upon which relief may be granted because, among other things, the signature-oath requirement is material to voting and does not deny anyone the right to vote.

Second Affirmative Defense

Plaintiffs lack standing to bring this action.

Third Affirmative Defense

Plaintiffs' claims against the State Election Board are barred by sovereign immunity and the Eleventh Amendment to the United States Constitution.

Fourth Affirmative Defense

Plaintiffs failed to join necessary and indispensable parties.

Fifth Affirmative Defense

With respect to the 2024 elections, Plaintiffs' requested relief is barred by the *Purcell* principle.

Sixth Affirmative Defense

Plaintiffs' requested relief pursuant to § 101 of the Civil Rights Act, as amended, is barred because § 101 contains no private right of action.

Seventh Affirmative Defense

State Defendants reserve the right to amend their defenses and to add additional ones, including lack of subject matter jurisdiction based on the mootness or ripeness doctrines, as further information becomes available in discovery.

WHEREFORE, based on the State Defendants' Answer and Affirmative Defenses, State Defendants request the Court dismiss Plaintiffs' Amended Complaint with prejudice and award State Defendants their costs in defense of this action.

Respectfully submitted this 21st day of November, 2023.

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CERTIFICATE OF COMPLIANCE

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

/s/ Gene C. Schaerr

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