

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

VOTE.ORG; GEORGIA ALLIANCE  
FOR RETIRED AMERICANS; and  
PRIORITIES USA,

Plaintiffs,

v.

Case No. 1:22-cv-01734-JPB

GEORGIA STATE ELECTION  
BOARD; EDWARD LINDSEY,  
JANICE W. JOHNSTON, SARA  
TINDALL GHAZAL, and MATTHEW  
MASHBURN, in their official capacities  
as members of the Georgia State Election  
Board; and CATHY WOOLARD,  
KATHLEEN D. RUTH, AARON V.  
JOHNSON, MARK WINGATE, and  
TERESA K. CRAWFORD in their  
official capacities as members of the  
Fulton County Registration and Elections  
Board,

Defendants.

**PLAINTIFFS' CONSENT MOTION FOR LEAVE TO FILE AN AMENDED  
COMPLAINT AND TO EXTEND DISCOVERY**

VOTE.ORG, GEORGIA ALLIANCE FOR RETIRED AMERICANS, and  
PRIORITIES USA (collectively, "Plaintiffs"), by and through their undersigned  
counsel, file this Memorandum of Law in Support of their Consent Motion for Leave  
to File an Amended Complaint and to Extend Discovery. Plaintiffs move under

Federal Rule of Civil Procedure 16(b)(4) to extend discovery through February 7, 2024.

With the consent of all parties, Plaintiffs move under Rules 15, 20, and 21 to file their Amended Complaint. Plaintiffs seek leave to amend their Complaint to make two changes, adding: (1) a new plaintiff, Communications Workers of America Local 3204, Retired Members Council (“CWA-RMC”); and (2) new defendants, the DeKalb County Board of Registration & Elections and its members: Vasu Abhiraman, Nancy Jester, Anthony Lewis, Susan Matter, and Karli Swift, in their official capacities (collectively, the “DeKalb County Board”).

### **BACKGROUND**

On May 2, 2022, Plaintiffs filed suit challenging the Pen and Ink Rule, O.C.G.A. § 21-2-381(a)(1)(C)(i). ECF No. 1.

Following State Defendants’ motion to dismiss, ECF No. 36, and Plaintiffs’ opposition, ECF No. 38-1, this Court stayed discovery pending resolution of the motion. ECF No. 55. On March 9, 2023, this Court issued its order denying State Defendants’ Motion to Dismiss and marking the start of discovery with a close date of November 9, 2023. ECF No. 59. Thereafter, on May 11, Plaintiffs issued formal written discovery requests to both State Defendants and Fulton County Defendants. *See* ECF No. 70.

Plaintiffs also served nonparty subpoenas to Gwinnett County, Cobb County, and DeKalb County, to identify instances in which the counties rejected absentee ballot applications under the Pen and Ink Rule. Gwinnett County completed its production on August 25, 2023; DeKalb County completed its production on September 1, 2023. DeKalb County's document production revealed a substantial number of absentee ballot applications rejected as a result of the Pen and Ink Rule, confirmed by a subsequent analysis performed by Plaintiffs' expert, Dr. Kenneth Mayer, as set forth in his September 22 report. *See* ECF No. 88. However, despite ongoing efforts to confer with Cobb County to obtain a complete production, Plaintiffs still have not received a complete response to their subpoena, even though the county made a partial production on November 2, 2023.

In light of the information obtained through Dekalb County's production, prospective plaintiff CWA-RMC—an affiliate of the Georgia Alliance for Retired Americans—also seeks to assert claims against DeKalb County on behalf of its members. Because CWA-RMC and its membership are affiliates of GARA, CWA-RMC's members may cast votes for the leadership of GARA, and to alter or amend GARA's bylaws. CWA-RMC members may participate in all GARA activities and are eligible to hold any executive offices in GARA. CWA-RMC and its members were charter signatories of GARA when it formed in 2010. As such, Plaintiffs now

seek leave to add CWA-RMC as a party to ensure its members' rights are adequately protected.

Plaintiffs have conferred with counsel for Defendants and Intervenors, all of whom consent to this motion contingent upon the extension of the close of discovery to February 7, 2024, and the deadline to file dispositive motions to March 7, 2024.

### LEGAL STANDARD

Rule 16 governs amendments to a scheduling order, which may be modified “only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Rule 15(a)’s liberal standard governs motions for leave to amend pleadings. *Bowers v. Am. Heart Ass’n, Inc.*, 513 F. Supp. 2d 1364, 1367 (N.D. Ga. 2007). Under Rule 15(a)(2), parties may amend with the opposing parties’ written consent or the court’s leave. Leave to amend should be “freely give[n] . . . when justice so requires,” Fed. R. Civ. P. 15(a), absent a showing of undue prejudice to the opposing party, undue delay, bad faith on the part of the movant, futility of the motion, or repeated failure to cure deficiencies by previous amendments. *Rivera v. Stroup*, No. 1:19-CV-03052-JPB, 2019 WL 13227185, at \*1 (N.D. Ga. Oct. 18, 2019).

To add additional parties in a motion for leave to amend, the movant must also demonstrate compliance with Rules 20 and 21 governing the addition of parties. *Rivera*, No. 1:19-CV-03052-JPB, at \*1. Rule 15(a)’s standard applies to motions

seeking to add or remove a party pursuant to Rule 21. *Id.* (citing *Loggerhead Turtle v. Cnty. Council of Volusia Cnty.*, 148 F.3d 1231, 1255 (11th Cir. 1998)).

To demonstrate compliance with Rule 20, under which courts must “employ a liberal approach,” the movant must show (1) prospective claims arise from “the same transaction, occurrence, or series of transactions or occurrences,” and (2) any question of law or fact common to all prospective parties will arise in the action. *Mathews v. Home Depot USA, Inc.*, No. 1:22-CV-02605-ELR, 2023 WL 2731721, at \*12 (N.D. Ga. Feb. 22, 2023) (quoting Fed. R. Civ. P. 20(1)(A)-(B)).

## ARGUMENT

### **I. Plaintiffs have good cause to seek modification of the Court’s scheduling order.**

Plaintiffs have met Rule 16’s standard to modify the Court’s scheduling order because, despite Plaintiffs’ continued diligence, discovery of new facts, delayed productions, and a lack of mutually available dates have made it impossible for the parties to maintain the current schedule.

*First*, the addition of new parties—identified because of Plaintiffs’ proactive discovery efforts—may require additional time for the arrangement of depositions at a time convenient for all parties. Plaintiffs learned that the DeKalb County Board has rejected a significant number of absentee ballot requests for noncompliance with the Pen and Ink Rule, which particularly impacts members of CWA-RMC—who are voting affiliates of GARA free to hold executive offices in the organization and

participate in all GARA activities—who reside in DeKalb County and are affected by the DeKalb County Board’s ongoing enforcement of the Rule.

*Second*, Plaintiffs require additional time to complete discovery related to the Cobb County Board’s enforcement of the Pen and Ink Rule due to delays in production from the county. Plaintiffs have conferred with Cobb County Board’s counsel several times in the hopes of resolving any discovery disputes without the Court’s involvement. Those good faith efforts are ongoing, and although Cobb County produced additional documents responsive to the subpoena on November 2, 2023, its document production appears to be incomplete.

*Third*, Plaintiffs have diligently pursued other aspects of discovery, including written discovery of other parties and nonparties. *Cf. Girard v. Aztec RV Resort, Inc.*, No. 10-62298-CIV, 2011 WL 7962612, at \*5 (S.D. Fla. Oct. 4, 2011) (finding plaintiff lacked good cause because plaintiff did not conduct written discovery while waiting to schedule depositions). While balancing their pursuit of Cobb County’s production, Plaintiffs have continued to engage in written discovery with State and County Defendants, to review productions from the Gwinnett and DeKalb County boards and the incomplete portions of Cobb County’s production, to find mutually available deposition dates with all Defendants, and all parties have completed their expert disclosures.

## **II. The Court should grant leave to amend the Complaint.**

### **A. There are no substantial circumstances that merit denial.**

All parties consent to Plaintiffs' motion to file an amended complaint; accordingly, Plaintiffs are entitled to file the complaint without leave of court. *See* Fed. R. Civ. P. 15(a)(2). In any event, Plaintiffs' amendments do not impose any undue prejudice on Defendants, who have consented to this motion, because the proposed changes would not alter any party's fundamental theory of the case or add new claims. *See Black v. Madderdom*, No. 3:22-CV-19 (CAR), 2023 WL 5751434, at \*3 (M.D. Ga. Sept. 6, 2023). As such, there is no specific and substantial reason justifying denial of leave to amend. *McKinley v. Kaplan*, 177 F.3d 1253, 1258 (11th Cir. 1999).

Plaintiffs are also seeking leave for the first time and at the earliest possible instance, *see supra* at 2-3. Plaintiffs are acting in good faith and without undue delay, as the amendments are being made based on information Plaintiffs could not have known without discovery, *see Labas Ventures, LLC v. Butterfly Agency, LLC*, No. 1:20-CV-03889-ELR, 2021 WL 4866997, at \*7 (N.D. Ga. Aug. 4, 2021); *see also supra* at 3.

Plaintiffs' proposed amendments, moreover, are not futile as they can withstand a motion to dismiss: The claims are identical to those this Court found colorable in denying Defendants' motion to dismiss. *Bowers*, 513 F. Supp. 2d at 1369. Finally, Plaintiffs have not previously moved to amend pleadings in this matter to cure deficiencies or for any other reason.

**B. CWA-RMC’s claims and allegations against Defendants and prospective defendant DeKalb County meet the requirements of Rule 20.**

CWA-RMC and Plaintiffs meet both requirements set forth in Rule 20, which require that they show (1) “a right to relief arising out of the same transaction [or] occurrence,” and (2) “some question of law or fact common to all persons seeking to be joined.” *Glen v. Galardi S. Enters.*, No. 1:13-cv-3670-WSD, 2015 WL 1308258, at \*4 (N.D. Ga. Mar. 23, 2015). Plaintiffs satisfy both prongs.

Plaintiffs meet the first requirement because both CWA-RMC and Plaintiffs have a complete identity of claims—that the Pen and Ink Rule violates the Materiality Provision—against existing Defendants and the DeKalb County Board, which weighs heavily in favor of joinder. *See Mathews*, 2023 WL 2731721, at \*12. As a result, CWA-RMC and Plaintiffs seek relief against the DeKalb County Board and the current Defendants on the basis of “logically related” events—the implementation and enforcement of the Pen and Ink Rule. *See Labas*, 2021 WL 4866997, at \*7. For similar reasons, Plaintiffs also meet the second requirement—“that *some* question of law or fact be common to all parties,” *Glen*, 2015 WL 1308258, at \*5 (emphasis in the original).

**CONCLUSION**

For these reasons, Plaintiffs respectfully request that the Court grant their Consent Motion and grant them leave to file the attached Amended Complaint for Declaratory and Injunctive Relief. A proposed order is attached.



Dated: November 3, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing **PLAINTIFFS' CONSENT MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND TO EXTEND DISCOVERY** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: November 3, 2023

/s/ Uzoma Nkwonta  
*Counsel for Plaintiffs*

RETRIEVED FROM DEMOCRACYDOCKET.COM

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing **PLAINTIFFS' CONSENT MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND TO EXTEND DISCOVERY** has been prepared in accordance with the font type and margin requirements of LR 5.1, N.D. Ga., using font type of Times New Roman and a point size of 14.

Dated: November 3, 2023

/s/ Uzoma Nkwonta  
*Counsel for Plaintiffs*

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# Exhibit B

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

VOTE.ORG; GEORGIA ALLIANCE  
FOR RETIRED AMERICANS;  
COMMUNICATIONS WORKERS OF  
AMERICA LOCAL 3204 RETIRED  
MEMBERS COUNCIL, and  
PRIORITIES USA,

Plaintiffs,

v.

GEORGIA STATE ELECTION  
BOARD; EDWARD LINDSEY,  
JANICE W. JOHNSTON, SARA  
TINDALL GHAZAL, and MATTHEW  
MASHBURN, in their official  
capacities as members of the Georgia  
State Election Board; FULTON  
COUNTY REGISTRATION AND  
ELECTIONS BOARD; PATRISE  
PERKINS-HOOKER, AARON V.  
JOHNSON, MICHAEL HEKIN, and  
TERESA K. CRAWFORD in their  
official capacities as members of the  
Fulton County Registration and  
Elections Board; DEKALB COUNTY  
BOARD OF REGISTRATION AND  
ELECTIONS; NANCY JESTER,  
SUSAN MOTTER, VASU  
ABHIRAMAN, ANTHONY LEWIS,  
AND KARLI SWIFT in their official  
capacities as members of the DeKalb  
County Board of Registration and  
Elections,

Defendants.

Civil Action File No. 1:22-cv-1734-JPB

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiffs VOTE.ORG, GEORGIA ALLIANCE FOR RETIRED AMERICANS; COMMUNICATIONS WORKERS OF AMERICA LOCAL 3204 RETIRED MEMBERS COUNCIL; and PRIORITIES USA, by and through their undersigned counsel, file this COMPLAINT for DECLARATORY and INJUNCTIVE RELIEF against the GEORGIA STATE ELECTION BOARD; EDWARD LINDSEY, in his official capacity as a member of the Georgia State Election Board; JANICE W. JOHNSTON, in her official capacity as a member of the Georgia State Election Board; SARA TINDALL GHAZAL, in her official capacity as a member of the Georgia State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board; the FULTON COUNTY REGISTRATION AND ELECTIONS BOARD; PATRISE PERKINS-HOOKER in her official capacity as a member of the Fulton County Registration and Elections Board; KATHLEEN D. RUTH in her official capacity as a member of the Fulton County Registration and Elections Board; AARON V. JOHNSON in his official capacity as a member of the Fulton County Registration and Elections Board; MICHAEL HEEKIN in his official capacity as a member of the Fulton County Registration and Elections Board; and TERESA K. CRAWFORD in her official capacity as a member of the Fulton County Registration

and Elections Board; the DEKALB COUNTY REGISTRATION AND ELECTIONS BOARD; NANCY JESTER in her official capacity as a member of the DeKalb County Registration and Elections Board; SUSAN MOTTER in her official capacity as a member of the DeKalb County Registration and Elections Board; VASU ABHIRAMEN in his official capacity as a member of the DeKalb County Registration and Elections Board; ANTHONY LEWIS in his official capacity as a member of the DeKalb County Registration and Elections Board; KARLI SWIFT in her official capacity as a member of the DeKalb County Registration and Elections Board; and alleges 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).

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) (amending O.C.G.A. § 21-2-381(a)(1)(C)(i)).

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, February 19, 2021 (Ga. Leg.).

4. But perhaps the strangest aspect of the Pen and Ink Rule is that it singles out only 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.



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).

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.

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.

## **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.

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.

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

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.

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.

## **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.

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.

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.

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.

17. The Pen and Ink Rule threatens to deny the Alliance's members—in some cases successfully—the opportunity to vote. It is particularly burdensome 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.

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 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.

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 elections 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.

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.

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.

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.

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; O.C.G.A. § 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, O.C.G.A. § 21-2-381(b). The Fulton County Defendants are sued for the manner in which they enforce the Pen and Ink Rule.

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 Board of 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; O.C.G.A. § 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, O.C.G.A. § 21-2-381(b). The DeKalb County Defendants are sued for the manner in which they enforce the Pen and Ink Rule.

### 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.”

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. § 21-2-381(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.

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 before the House Special Committee on Election Integrity, Feb. 18, 2021 (Ga. Leg.).

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.”). By eliminating signature matching with SB 202, the legislature wrote out of Georgia law the only purpose signatures on absentee ballot applications ever served.

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 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.

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).

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. § 21-2-211.1. 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. § 21-2-211.1(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).

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).

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.

**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.

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.

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).

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.

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.

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.

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).

## 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. § 21-2-381, 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.

Dated: November 3, 2023

Respectfully submitted,

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