

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

INTERNATIONAL ALLIANCE OF  
THEATER STAGE EMPLOYEES  
LOCAL 927,

*Plaintiff,*

v.

JOHN FERVIER, in his official  
capacity as member of the Georgia  
State Election Board, *et al.*,

*Defendants,*

REPUBLICAN NATIONAL  
COMMITTEE, *et al.*,

*Intervenor-Defendants.*

Civil Action No.:  
1:23-CV-04929-JPB

**STATE DEFENDANTS' OPPOSITION TO PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

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## INTRODUCTION

Plaintiff, the International Alliance of Theater Stage Employees Local 927 (IATSE), asks this Court to preliminarily enjoin the deadline for submitting absentee-ballot applications. *See* Pl.’s Mot. for Prelim. Inj. [Doc. 83] (“Mot.”). But Plaintiff only requests such relief for a subset of Georgia voters—those who will be away from their election district on Election Day and who cast votes only for President and Vice President. The Court should deny that untenable request for a host of reasons.

Most fundamentally, Plaintiff lacks standing because it has failed to identify any harm caused by Georgia’s deadline to submit absentee-ballot applications at least eleven days before Election Day. That alone precludes finding that Plaintiff has a substantial likelihood of prevailing on its claim. And, even if Plaintiff had identified a harm, Plaintiff failed to show how the harm is traceable to members of the Georgia State Election Board (SEB)—the only State Defendants that Plaintiff chose to sue. For similar reasons, Plaintiff fails to show that its members will suffer any irreparable injury absent an injunction. That is surely why Plaintiff waited several years after the eleven-day deadline was imposed through Senate Bill 202 (SB 202) before filing its lawsuit.

Moreover, Plaintiff has not come close to showing that it is substantially likely to succeed on the merits of its claim that SB 202’s deadline for submitting

absentee-ballot applications violates § 202(d) of the Voting Rights Act (VRA). In Plaintiff's estimation, the VRA requires Georgia to allow absentee-by-mail applications to be submitted for certain voters up until seven days before Election Day. Not only does this VRA section not provide Plaintiff with a private right of action to bring its claim, but Plaintiff also ignores that Georgia law complies with the VRA by allowing Georgia voters to cast absentee-in-person ballots throughout the week before Election Day.

Finally, the Court should deny Plaintiff's motion because it would inject massive costs, serious harm, and significant voter and election-official confusion on the eve of the 2024 General Election, when absentee-ballot applications may be submitted starting in August, slightly more than two months from now. That is precisely what the *Purcell* principle seeks to avoid.

The Court should deny Plaintiff's motion for any or all of these independently dispositive reasons.

## **BACKGROUND**

### **A. Factual Background**

Before SB 202, Georgia voters could begin submitting absentee-ballot applications 180 days before Election Day, and the applications were due four days before Election Day. O.C.G.A. § 21-2-381(a)(1)(A) (2005). This lengthy window for submitting applications proved problematic for many reasons, as the 2020 election crystalized when there was a surge in absentee voting due to

the COVID-19 pandemic.

The early opening of the application window caused problems throughout the voting process in 2020. For instance, some voters who requested an absentee ballot early in that period still attempted to vote in person on Election Day, forgetting that they had previously requested an absentee ballot. Germany Decl. ¶ 22 (Ex. A hereto). When such voters who had requested an absentee ballot nonetheless wished to vote in person, county election officials had to complete the time-consuming process of cancelling the mailed absentee ballot before the voter could vote in person. *Id.* That not only led to complaints in recent elections about potential voter fraud, but it also contributed to longer lines at polling locations. *Id.* SB 202 addressed these issues by updating Georgia law to allow absentee-ballot applications to be submitted starting 78 days before Election Day. O.C.G.A. § 21-2-381(a)(1)(A).

There were also substantial issues caused at the other end of the application window, when voters did not submit applications until just four days before Election Day. Those applications rarely led to actual votes cast by absentee ballot. When voters' applications were not received until the Friday before Election Day, counties were often unable to mail the ballots until the following Monday—one day before Election Day. Germany Decl. ¶ 24. It was virtually impossible for voters to receive, complete, and return such ballots within one day. *Id.* ¶ 25. And the same was often true of applications received

in the days shortly before the Friday deadline. *Id.* ¶ 26. Although applications submitted earlier in the week before Election Day could conceivably result in a voted ballot, those applications were still much less likely to result in a cast absentee ballot than applications submitted prior to the eleven-day deadline provided for under SB 202. *Id.*

Despite the diminishing chance that such a late-arriving application would lead to a voted ballot, before SB 202, county election officials were nonetheless required to process each such application. *Id.* ¶ 27. Considering the many other tasks that county election officials must handle in the days immediately before Election Day, this was a substantial drag on resources. *Id.*

To address these issues, SB 202 sensibly moved the final deadline to submit an absentee-ballot application to eleven days before Election Day. O.C.G.A. § 21-2-381(a)(1)(A). By setting the deadline eleven days before Election Day, SB 202 ensured that county officials could complete processing applications more than one week before the election, and it ensured that any applicant would have one full week of in-person absentee voting available in case there was an issue receiving and casting the absentee-by-mail ballot. Germany Decl. ¶ 28.

As the General Assembly explained: “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.” SB 202 at 5:108–12 (Ex. B hereto).<sup>1</sup>

Thus, under the updated timeline established in SB 202, absentee-ballot applications for the November 5, 2024 General Election may be submitted between August 19 and October 25, 2024. O.C.G.A. §§ 21-2-381(a)(1)(A); 21-2-381(a)(1)(G). Additionally, a voter may vote absentee-in-person between October 15 and November 1, 2024, including on several required weekend days. O.C.G.A. § 21-2-385(d)(1); *see also* Mot. at 14 (suggesting that the ability to vote on weekend days is important for Plaintiffs’ members). Whether a Georgia voter wishes to make use of absentee-by-mail or absentee-in-person voting, Georgia allows for no-excuse absentee voting.

## **B. Procedural Background**

SB 202 was enacted on March 25, 2021. SB 202, Gen. Assemb., 2021-2022 Reg. Sess. (Ga. 2021). But Plaintiff did not file its complaint until seven months ago [Doc. 1]—over two-and-a-half years after the law’s passage—claiming that its deadline for submitting absentee-ballot applications eleven days before Election Day violates § 202(d) of the VRA, 52 U.S.C. § 10502(d).

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<sup>1</sup> In fact, SB 202 helped absentee-by-mail voting function smoothly in the 2022 midterms where Georgia performed significantly better than the national average in the number of unreturned absentee ballots. *See* Mass. Inst. Tech. Election Data + Sci. Lab, *Elections Performance Index, Georgia 2022*, available at <https://tinyurl.com/4wf4un4y> (last visited June 6, 2024).

Compl. ¶¶ 21–23. According to Plaintiff, Georgia must allow certain voters—those who will be away from their election district—to submit absentee-ballot applications to vote for President and Vice President up until seven days before Election Day, for example, until October 29 for the 2024 General Election.

After State Defendants filed a motion to dismiss [Doc. 46], Plaintiff filed an amended complaint, which advanced the same claim. Am. Compl. ¶¶ 25–28 [Doc. 62]. And, like Plaintiff’s initial complaint, Plaintiff brought its claim exclusively against the SEB members and the members of the Fulton County Board of Registration and Elections. *See id.* ¶¶ 18, 21. State Defendants again moved to dismiss Plaintiff’s claim, [Doc. 68] and briefing on that motion was completed several months ago, [Doc. 76]. That motion remains pending.

Nearly two months later, and more than six months after it filed its initial complaint, Plaintiff requested a preliminary injunction. [Doc. 83]. Specifically, Plaintiff asks the Court to preliminarily enjoin State Defendants from “requir[ing] absentee-by-mail ballot applications from individuals voting for President and Vice President who may be away from their election district or unit on election day to be submitted more than seven days prior to a presidential election.” Proposed Order at 3 [Doc. 83-2].

### ARGUMENT

The Court should deny Plaintiff’s motion because Plaintiff has failed to carry its burden of showing that: (1) it has a substantial likelihood of prevailing

on its claim; (2) it will suffer irreparable injury in the absence of an injunction; (3) the balance of equities tips in Plaintiff's favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As Justice Kavanaugh recently explained, these standards are “heighten[ed]” where, as here, “an election is close at hand.” *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). In those circumstances, Plaintiff must show that the “underlying merits are *entirely clearcut* in [its] favor[.]” *Id.* at 881 (emphasis added). Moreover, because Plaintiff seeks a *mandatory* injunction—requiring changes in existing practice rather than preserving the status quo—the standards are even higher: Such injunctions are “particularly disfavored, and should not be issued unless the facts and law clearly favor the moving party.” *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976).

As shown below, Plaintiff is not likely to succeed on the merits of its claim because Plaintiff lacks standing, lacks a private right of action, and fails to establish that the challenged law violates the VRA. Additionally, Plaintiff fails to identify any harm—let alone an *irreparable* one—that any member is likely to suffer. Moreover, Plaintiff's requested relief would impose substantial harm on election officials and voters, as it would create different deadlines across the state shortly before the 2024 General Election, and it would require substantial changes to election processes on the eve of an election. Accordingly,



the public interest weighs heavily against granting Plaintiff's motion.

## **I. Plaintiff Lacks Standing.**

As to standing, Plaintiff has failed to carry its burden of demonstrating that it has: “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 924 (11th Cir. 2020) (en banc) (quotation marks omitted). As the Eleventh Circuit explains: “In plainer language, the plaintiff needs to show that the defendant harmed him, and that a court decision can either eliminate the harm or compensate for it.” *Id.* Plaintiff has not shown injury, traceability, or redressability.

### **A. Plaintiff fails to sufficiently allege an injury.**

Plaintiff's theory of injury relies exclusively on its members' alleged harm. *See* Am. Compl. ¶ 5; Mot. at 17–20. Accordingly, Plaintiff may only establish standing by showing that “its members would otherwise have standing to sue in their own right[.]” *Ga. Republican Party v. Sec. & Exch. Comm'n*, 888 F.3d 1198, 1203 (11th Cir. 2018) (“*GRP*”). To do so, Plaintiff “must make specific allegations establishing that at least one identified member ha[s] suffered or [will] suffer harm.” *Id.* (quotation marks omitted; alteration in original). Plaintiff has not done so here.

Plaintiff is a local union of backstage professionals, such as lighting and

sound technicians for television and stage productions. Am. Compl. ¶ 12; Mot. at 1. But Plaintiff hardly makes any effort to explain how such professionals will be harmed by absentee-ballot applications being due by October 25, 2024, as required by SB 202, rather than by October 29, 2024, as Plaintiff requests. Instead, Plaintiff relies on rank speculation that its members *might* in some circumstances be harmed by SB 202's application deadline. *See* Am. Compl. ¶¶ 14–15. But speculation will not do.

First, Plaintiff assumes all voters have a right to vote absentee. Not so. *Prigmore v. Renfro*, 356 F. Supp. 427, 432 (N.D. Ala. 1972) (“The right to vote is unquestionably basic to a democracy, but the right to an absentee ballot is not.”), *aff'd mem.*, 410 U.S. 919 (1973); *accord Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 670 (2021) (fact that when VRA was passed, States typically “allowed only narrow and tightly defined categories of voters to cast absentee ballots,” was “relevant” to whether election law burdened right to vote). Moreover, there is no individual right to submit an absentee-ballot application seven days before Election Day. *See infra*, Part III(A). Accordingly, no right to vote absentee is harmed by SB 202's application deadline.

Second, Plaintiff ignores that Georgia law already allows absentee voting through (and beyond) Plaintiff's desired deadline. Indeed, Georgia provides for two types of absentee voting: absentee-by-mail and absentee-in-person. *See* O.C.G.A. §§ 21-2-381(a)(1)(A), 21-2-385(c)–(d). But Plaintiff reads into VRA

§ 202(d) a right to vote *by mail* that is not there. Mot. at 7–8. That VRA section merely addresses those absent from their “election district” on “the day such election is held[.]” 52 U.S.C. § 10502(d). Ensuring that those voters nonetheless have a mechanism to vote does not require it to be voting *by mail*. And, because Georgia allows *in-person* absentee voting until the Friday before Election Day, *see* O.C.G.A. § 21-2-385(d)(1), any of Plaintiff’s members may still vote absentee via advance voting until four days before Election Day. Thus, Plaintiff has not shown an injury to its members.

Third, even if the Court looks beyond these shortcomings, the alleged injury here is far too speculative. *City of South Miami v. Governor*, 65 F.4th 631, 638 (11th Cir. 2023). In its preliminary-injunction motion, Plaintiff relies on three declarations of members to establish the requisite injury. Mot. at 2–4. As discussed in more detail below with respect to Plaintiff’s failure to demonstrate a likelihood of irreparable injury, those declarations fall far short of showing any injury. Plaintiff does not claim, and the declarations do not establish, that any member even *plans* or *intends* to vote absentee-by-mail in the 2024 elections, let alone that they will need or require additional days to do so. *Id.* Accordingly, the submitted declarations do “not aver that at least one of [Plaintiff’s] members is certain to be injured by [the eleven-day deadline].” *GRP*, 888 F.3d at 1204; *see also Am. All. for Equal Rights v. Fearless Fund Mgmt., LLC*, -- F.4th --, No. 23-13138, 2024 WL 2812981, at \*4

(11th Cir. June 3, 2024) (identification of members by name not required, but a plaintiff must still point to a member who will suffer harm). Thus, Plaintiff relies on “speculation [that] does not suffice.” *GRP*, 888 F.3d at 1204 (quotation marks omitted).

In an effort to sidestep these shortcomings, Plaintiff argues (at 18) that any “small injury” is sufficient under the Eleventh Circuit’s decision in *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009). But Plaintiff has not identified *any harm*, let alone a “small” one. And *Billups* still requires that a plaintiff show “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Id.* at 1350. Here, Plaintiff has not shown anything beyond a “conjectural or hypothetical” risk of injury. *Id.* Accordingly, Plaintiff has failed to satisfy the threshold injury requirement to demonstrate standing.

**B. Plaintiff fails to demonstrate traceability or redressability.**

Even if Plaintiff had sufficiently alleged an injury, Plaintiff nonetheless fails to demonstrate traceability and redressability when pointing (at 19) to State Defendants’ authority to promulgate regulations governing absentee-ballot applications.

As to traceability, Plaintiff fails to overcome the fact that the SEB has no role in processing absentee-ballot applications. Indeed, the Eleventh Circuit has already confirmed that counties, not statewide agencies, are

responsible for processing absentee ballots. *Ga. Republican Party, Inc. v. Sec’y of State for Ga.*, No. 20-14741-RR, 2020 WL 7488181, at \*2–3 (11th Cir. Dec. 21, 2020). Accordingly, if Plaintiff’s members are harmed by the deadline for submitting absentee-ballot applications, those harms flow from counties, not State Defendants.

Ignoring this basic principle of election administration in Georgia, Plaintiff relies (at 19) on an unsupported reading of the SEB’s authority to promulgate election-related regulations. To be sure, the SEB has authority to issue regulations addressing election-related matters. But if that were enough to demonstrate traceability, there would be no limit to the election-related claims that could be brought against the SEB. Perhaps that is one reason the Eleventh Circuit has squarely rejected this same theory, explaining that traceability is not present for claims against a state’s “chief election officer” based only on the official’s “general supervision and administration of the election laws.” *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1254 (11th Cir. 2020). And an order requiring the promulgation of a rule or regulation “would raise[] serious federalism concerns” because “it is doubtful that a federal court would have authority to order it.” *Id.* at 1257.

Further, Plaintiff’s position would render meaningless the Eleventh Circuit’s recent admonition that the identified harm must be “fairly traceable” to an “action of the defendant.” *Ga. Ass’n of Latino Elected Offs., Inc. v.*

*Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1115–16 (11th Cir. 2022) (emphasis added). Inaction is not action.

These points are equally fatal to Plaintiff's attempt to demonstrate redressability, as there is no relief available against the SEB that could remedy any injury to Plaintiff's members from SB 202's deadline for returning absentee-ballot applications. The SEB has no authority to issue regulations inconsistent with Georgia law, nor can it "discipline county officials who fail to follow SEB directives, including by fining or removing them" where that directive *violates* Georgia law. O.C.G.A. § 21-2-381(e) (only permitting the SEB to issue regulations "for the implementation" of the statute); *id.* § 21-2-33.1(a) (limiting enforcement power to "directing compliance with this chapter"). Rather, the Eleventh Circuit confirms that "it must be the effect of the court's judgment on the defendant—not an absent third party—that redresses the plaintiff's injury." *Jacobson*, 974 F.3d at 1254 (emphasis omitted) (quoting *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1301 (11th Cir. 2019) (en banc) (general authority is insufficient to find traceability)). An order aimed at the SEB will not alter the obligations of counties to apply SB 202's deadline for absentee-ballot applications. *See City of S. Miami*, 65 F.4th at 645 (quoting *Walters v. Fast AC, LLC*, 60 F.4th 642, 650 (11th Cir. 2023) ("[W]e have held traceability to be lacking if the plaintiff would have been injured in precisely the same way without the defendant's alleged misconduct.")). The SEB has no

authority to override state law.

Plaintiff's proffered authorities (at 19) are readily distinguishable. In *Vote.org v. Georgia State Election Board*, the Court denied a motion to dismiss in a challenge to a different provision of SB 202 but did not analyze redressability and traceability in the context of whether State Defendants or county officials were responsible for implementing the challenged provision. 661 F. Supp. 3d 1329, 1337–38 (N.D. Ga. 2023). Plaintiff seeks to read into that decision analysis that the Court simply did not provide. And, because *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324 (N.D. Ga. 2018), was decided pre-*Jacobson*, it is thus no longer good law—since *Jacobson* made clear that a plaintiff “cannot rely on the Secretary’s general election authority to establish traceability.” *Jacobson*, 974 F.3d at 1254.

Similarly, Plaintiff cannot avoid the Court’s recent decision on standing in the consolidated action challenging several of SB 202’s provisions where the Court concluded that claims about absentee-ballot processing were not traceable to State Defendants. *In re Ga. SB 202*, No. 1:21-mi-55555-JPB, 2023 WL 5334582 (N.D. Ga. Aug. 18, 2023), *appeals docketed*, No. 23-13085 (11th Cir. Sept. 18, 2023) & No. 23-13245 (11th Cir. Oct. 2, 2023). Plaintiff fails to explain why the Court should reach a different conclusion here.

Accordingly, Plaintiff has not identified any way that its members’ alleged harm is traceable to the SEB or redressable by an order against the

SEB. For that reason alone, Plaintiff lacks standing and its motion for a preliminary injunction must be denied.

## **II. Plaintiff Has Not Demonstrated Irreparable Injury.**

For similar reasons, Plaintiff fails to carry its burden of showing that it (or its members) will suffer irreparable injury absent an injunction. As the Eleventh Circuit confirms: “A showing of irreparable injury is the *sine qua non* of injunctive relief.” *Siegel v. LePore*, 234 F.3d 1163, 1175–76 (11th Cir. 2000) (per curiam) (cleaned up). Where there is “no showing of irreparable injury,” “[a] court need not address the other elements of a preliminary injunction[.]” *Romanick v. Mitchell*, No. 2:21-cv-0065-SCJ, 2021 WL 5034369, at \*5 (N.D. Ga. July 13, 2021). Here, as shown below, Plaintiff relies on declarations that fail to show any irreparable injury. Additionally, Plaintiff relies on mischaracterizations of applicable precedent to argue that its members will be harmed. And the failures of these arguments are made clear by Plaintiff’s unjustified delay in filing its motion.

### **A. Plaintiff has not shown a risk of irreparable injury.**

Plaintiff fails to support its argument that its members will suffer irreparable injury absent an injunction. For instance, Plaintiff claims in its motion (at 3) that IATSE member Kelsey Bailey “relied on an absentee ballot to cast her vote in the 2016 presidential election[.]” But Bailey’s Declaration does not state that she voted or sought to vote absentee in that election, only



that she was traveling on Election Day in 2016. Bailey Decl. ¶ 5 [Doc. 83-4]. And Bailey's voting record confirms she did not request an absentee ballot for the 2016 general election. Germany Decl., Ex. 1 (Bailey Voter History). Her Declaration also does not claim that she might be away from her voting precinct for the 2024 General Election. Nor does her voting record show that she has had any difficulty complying with SB 202's eleven-day deadline. *Id.* Even when mentioning (¶ 6) that she once had only two weeks' notice to move out of state, Bailey does not claim that she could not have applied to vote by mail or voted early-in-person during that time. *Id.* Thus, the Bailey Declaration does not establish that she will be irreparably harmed by SB 202's application deadline in any upcoming election. *See* Bailey Decl. ¶ 9; *Winter*, 555 U.S. at 20.

Plaintiff's reliance on Justin Gamerl's Declaration suffers similar flaws. Mot. at 3–4. Plaintiff claims that Gamerl “has had to rely on absentee voting in the past.” *Id.* at 4 (discussing the 2016 election); *see* Gamerl Dec. ¶ 7 (stating that he voted absentee-by-mail in 2016 and 2018) [Doc. 83-6]. Once again, Gamerl's voting record is instructive, as he voted in-person on Election Day in 2018, not absentee-by-mail, as he claimed. Germany Decl., Ex. 2 (Gamerl Voter History). In fact, the only time Gamerl voted absentee-by-mail in Georgia was during the height of the COVID-19 pandemic in 2020, and he was able to comply with the eleven-day period in that cycle. *Id.* Since 2020, he has

consistently voted early-in person or in-person on Election Day. *Id.*

Likewise, Plaintiff points to Justin Michel's Declaration and claims that he "relied on absentee voting because he was traveling for work in 2017" and that he "will likely rely on absentee voting" this fall. Mot. at 3. But Michel did not state that he voted absentee in 2017, only that he "moved to Georgia in 2017[.]" Michel Decl. ¶ 3 [Doc. 83-5]. Michel also claims to "have relied on a combination of absentee ballots and early in-person voting when I couldn't cast my ballot on election day," but his voting history tells a different story. *Id.* ¶ 8. He only voted absentee-by-mail in Georgia one time—at the beginning of the COVID-19 pandemic for the 2020 presidential primary. Germany Decl., Ex. 3 (Michel Voter History). Otherwise, Michel has voted early in-person or in-person on Election Day before and after SB 202's enactment. *Id.* And Michel never states that he *plans* to vote absentee-by-mail in 2024—only that it might potentially be more convenient. Michel Decl. ¶ 11.

In sum, none of these members has regularly relied on absentee-by-mail voting in the past. None has had an issue voting post-SB 202. And none has claimed any intent to vote absentee-by-mail in any upcoming election cycle. Michel Decl. ¶ 11; Bailey Decl. ¶ 9; Gamerl Decl. ¶ 10.

Even Allan Herman's Declaration fails to show that any of IATSE's 200 members *found out* between the eleventh and seventh days before an election that they would need to vote by mail. Herman Decl. ¶ 21 [Doc. 83-3]. Rather,

Plaintiff points (at 14) to the Herman Declaration and argues that Plaintiff's members "have had job assignments requiring travel *during the window between Georgia's deadline and the federal deadline*["] (emphasis in original). According to Plaintiff, this means that Plaintiff's members "could lose the opportunity to apply for an absentee ballot altogether." *Id.* But Plaintiff misses the point. It is not relevant whether its members may be required to travel in or around Election Day. Rather, the question is whether Plaintiff has identified *any* member who would be unable to request an absentee ballot by SB 202's deadline (October 29), but who could request one by Plaintiff's preferred deadline (October 25). Plaintiff has not done so. And, if Plaintiff is correct that it is a near certainty that members will be required to travel around Election Day, then there is no reason why such members cannot submit an application well in advance of the application deadline.<sup>2</sup>

In sum, these declarations thus fail to show an injury under the Eleventh Circuit's holding in *GRP* because they amount to nothing more than speculation about a *possible* future injury. 888 F.3d at 1204.

**B. Plaintiff fails to identify any precedent to support its argument.**

Plaintiff also relies on inapposite and mischaracterized precedent when

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<sup>2</sup> Of course, if such travel is not sufficiently certain, then Plaintiff concedes that its theory of injury is too speculative to carry its burden of showing that an irreparable harm will occur absent an injunction.

attempting to demonstrate irreparable injury. Plaintiff principally relies (at 18) on inapplicable circuit precedent and non-binding cases to bootstrap an alleged *statutory* violation into a denial of the *constitutional* right to vote.<sup>3</sup>

For instance, in *Gonzalez v. Governor of Georgia*, the Eleventh Circuit held that “missing the opportunity to vote in an election” constitutes irreparable harm. 978 F.3d 1266, 1272 (11th Cir. 2020) (quotation marks omitted). While that may be true, it is irrelevant here, as Plaintiff has not shown that *any* member risks “missing the opportunity to vote.” *Id.* at 1272 (finding irreparable harm “[b]ecause the State’s enforcement of [the statute] would deprive Gonzalez of her right to vote.”).

Plaintiff also attempts to rely (at 13) on a decision this Court issued in the consolidated case challenging other portions of SB 202. *In re Ga. SB 202*, 2023 WL 5334582, at \*11. In that decision, the Court addressed the *rejection* of “one of Plaintiffs’ member’s absentee ballots[.]” *Id.* Plaintiff has not offered any similar evidence here, as Plaintiff has not shown that *any* member will be unable to comply with SB 202’s deadline for submitting an application, nor has Plaintiff introduced any evidence showing that any member has been unable

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<sup>3</sup> The Eleventh Circuit has also specifically warned that even *constitutional* violations do not automatically constitute irreparable harm. *See Siegel*, 234 F.3d at 1177–78 (rejecting plaintiffs’ suggestion “that a violation of constitutional rights always constitutes irreparable harm”). Thus, Georgia’s alleged *statutory* violation of VRA § 202(d)—standing alone—is insufficient to ground a finding of irreparable harm.

to vote by mail or otherwise in any election since SB 202's enactment.

The same is true of Plaintiff's remaining authority (at 13–14), which depends on allegations showing an imminent threat to the right to vote. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236, 248 (4th Cir. 2014) (refusing to enjoin reduction of early voting days while enjoining ban on same-day registration and voting due to imminent danger of vote denial); *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 218 (W.D. Tex. 2020) (relying on declarations in which “representative Plaintiffs all stated their right to vote is threatened”); *Ga. Coal. for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1345 (S.D. Ga. 2016) (closure of local elections office due to a hurricane prevented people from registering within statutory timeframe). Those decisions are irrelevant here, as Plaintiff has not come close to showing any similar threats to its members' right to vote. And Plaintiff's hypothetical harm is too speculative to support standing. *See Siegel*, 234 F.3d at 1177.

**C. Plaintiff's delay confirms that its members are not facing any risk of irreparable injury.**

The lack of any imminent injury is made even clearer by Plaintiff's delay in bringing this action and in seeking preliminary injunctive relief. Despite claiming that its members will suffer irreparable injury from SB 202's deadline for submitting absentee-ballot applications, Plaintiff waited more than two years following the enactment of SB 202 before bringing this lawsuit. Plaintiff

thus allowed the 2022 election to proceed without seeking any relief for its members.<sup>4</sup> Similarly, Plaintiff waited more than six months after filing its complaint to file a motion seeking preliminary injunctive relief. These delays are inexplicable in the context of the expedited relief sought here.

Such “lack of diligence undermines any claim that [Plaintiff] face[s] imminent irreparable harm in the absence of injunctive relief.” *Romanick*, 2021 WL 5034369, at \*5. As the Eleventh Circuit confirms, courts routinely hold that a plaintiff’s delay in commencing an action undermines a claim of irreparable harm. *Wreal 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, “a party’s failure to act with speed or urgency in moving for a preliminary injunction necessarily undermines a finding of irreparable harm.” *Id.* (citations omitted).

Plaintiff cannot escape this fact as there is no excuse for its delay. In its motion, Plaintiff makes primarily legal arguments that were substantially available to it upon the filing of its complaint. By failing to act “with speed or urgency,” Plaintiff has not shown a likelihood of irreparable harm. *Id.* at 1248;

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<sup>4</sup> Further undercutting Plaintiff’s claims of irreparable injury, Plaintiff has been unable to find *any* member who was harmed in their ability to vote absentee-by-mail in 2022 under the deadlines that Plaintiff challenges.

*accord Siegel*, 234 F.3d at 1176.<sup>5</sup>

For all those reasons, Plaintiff has failed to show irreparable injury, and that is reason alone for denying Plaintiff's motion.

### **III. Plaintiff Has Not Demonstrated a Substantial Likelihood of Success on the Merits.**

Plaintiff has also failed to demonstrate that it is substantially likely to succeed on the merits of its claim. *Winter*, 555 U.S. at 20. And Plaintiff certainly has not shown that the merits are “entirely clearcut” in its favor. *Milligan*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). As shown below, although Plaintiff asserts a violation of VRA § 202(d)’s seven-day deadline for submitting absentee-ballot applications, there is no private right of action to enforce that deadline. Additionally, even if there were a private right of action, Georgia law does not violate the VRA’s deadline.

#### **A. Plaintiff has no private right of action for its claim.**

As to the first point: It is well established that “the fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person.” *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). Rather, § 202(d) can only be enforced by

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<sup>5</sup> To the extent Plaintiff continues arguing that it was concerned about seeking relief too early, State Defendants have already demonstrated why that concern is incorrect. [Doc. 86]. In any event, that concern does not explain Plaintiff’s waiting several years to initiate this lawsuit.

the U.S. Attorney General.

As the Supreme Court explains, although “whether a statutory violation may be enforced through § 1983 is a different inquiry from ... whether a private right of action can be implied ..., the inquiries overlap in one meaningful respect—in either case it must first be determined whether Congress intended to create a federal right.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 274 (2002). Similarly, as the *en banc* Eleventh Circuit recently confirmed, “[a]bsent a clear expression of congressional intent to authorize a would-be plaintiff to sue, ‘a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.’” *In re Wild*, 994 F.3d 1244, 1255 (11th Cir. 2021) (*en banc*) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 286–87 (2001)). Thus, in this Circuit, courts must “demand[ ] clear evidence of congressional intent as a prerequisite to a private right of action.” *Id.* And Plaintiff has presented no evidence to this effect here because no such evidence exists.

Nothing in VRA § 202(d) expressly creates an individual right. As the Supreme Court explains, “[f]or a statute to create private rights, its text must be phrased in terms of the persons benefited,” with “rights-creating” language and “an unmistakable focus on the benefitted class.” *Gonzaga Univ.*, 536 U.S. at 274, 284. The clear subject of § 202(d) is “each State,” with the object of “provid[ing] by law for the casting of absentee ballots.” 52 U.S.C. § 10502(d).



Indeed, when responding to State Defendants’ motion to dismiss, Plaintiff did not dispute that there is no individual right to vote absentee. Opp’n to Mot. to Dismiss at 8 (“Opp’n”) [Doc. 69]. And, because there is no individual right to vote absentee, there can be no individual right to something even more attenuated—to apply to vote absentee within a certain time frame.

Moreover, none of the mostly 1970s-era cases cited by Plaintiff involved § 202(d)’s “not later than seven days” provision or analyzed whether other clauses of § 202(d) confer a private right. Opp’n at 25. Rather, in those cases a private right was assumed.<sup>6</sup> But the Court should not follow those decisions, which failed to engage in a rigorous analysis of rights-creating language. *See In re Wild*, 994 F.3d at 1255 (explaining that the Supreme Court “‘swor[e] off’ its old ‘habit of venturing beyond Congress’s intent’ to liberally ‘imply’ private rights of action in favor of a rigorous attention to statutory text and structure” (quoting *Sandoval*, 532 U.S. at 287)). Moreover, the fact that in a third of states, absentee-ballot applications are due more than seven days before Election Day, yet Plaintiff cannot identify a single case where the deadline was challenged under the VRA’s seven-day deadline, weighs heavily against a finding that this VRA provision confers an individual right. Thus, because

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<sup>6</sup> *See, e.g., Prigmore v. Renfro*, 356 F. Supp. 427, 429 (N.D. Ala. 1972), *aff’d mem.*, 410 U.S. 919 (1973); *Project Vote v. Madison Cnty. Bd. of Elections*, No. 1:08-cv-2266JG, 2008 WL 4445176, at \*10–11 (N.D. Ohio Sept. 29, 2008).

§ 202(d) does not create an individual right, it cannot be enforced by private parties on its own terms or through § 1983.

True, the Eleventh Circuit, referencing the materiality provision of the Civil Rights Act that was later amended by the VRA, has found a private remedy as to a *different* provision of that statute. *Schwier v. Cox*, 340 F.3d 1284, 1296 (11th Cir. 2003). But the Court should not read that conclusion as reaching the VRA section Plaintiff relies on here. Indeed, the Eleventh Circuit has recently confirmed that, “when the ‘statutory structure provides a discernible enforcement mechanism ... [the court] ought not imply a private right of action’” because Congress’s “silence is controlling.” *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1295 (11th Cir. 2015) (ellipses in original; citations omitted). Here, Congress provided an enforcement mechanism through the Attorney General, and provided no evidence of an intent to provide one for individuals. That should end the inquiry. *In re Wild*, 994 F.3d at 1259.

Moreover, as the Eighth Circuit recently explained in a decision rejecting a private right of action under the VRA, it is “[i]mplausible” that “Congress decided to transform the enforcement of ‘one of the most substantial’ statutes in history by the subtlest of implications ... when measured against the explicit enforcement mechanisms found elsewhere in the [VRA].” *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1211–13 & n.4 (8th Cir. 2023) (citation omitted), *reh’g denied*, 91 F.4th 967 (8th Cir. 2024). Congress’s

“silence’ in that respect ‘is controlling.” *In re Wild*, 994 F.3d at 1260 (quoting *Freemanville Water Sys., Inc. v. Poarch Band of Creek Indians*, 563 F.3d 1205, 1209 (11th Cir. 2009)).

Additionally, reading an implied private enforcement right into yet another section of the VRA where no express right exists would run roughshod over recent Supreme Court precedent. As recently as 2021 and again in 2023, multiple Supreme Court Justices have explained that the Supreme Court had previously “assumed—without deciding—that the Voting Rights Act of 1965 furnishes an implied cause of action under § 2” and that this was thus “an open question.” *Brnovich*, 594 U.S. at 690 (Gorsuch, J., concurring); *see also Allen v. Milligan*, 599 U.S. 1, 90 n.22 (2023) (Thomas, J., dissenting) (leaving the question of private right of action in the VRA for another day because it “was not raised in this Court”). This tracks the Supreme Court’s recent explanation that it is “long past the heady days in which [the Court] assumed common-law powers to create causes of action” and that it now “appreciate[s] more fully the tension between judicially created causes of action and the Constitution’s separation of legislative and judicial power.” *Egbert v. Boule*, 596 U.S. 482, 491 (2022) (cleaned up); *see also In re Wild*, 944 F.3d at 1255 (explaining that the Eleventh Circuit has followed the Supreme Court’s jettisoning of these judicial powers since *Sandoval*).

Considering the lack of any clear statement in § 202(d) to the contrary,

this Court should heed the Supreme Court’s admonition not to assume Congress intended to create a privately enforceable right through § 202(d). This warning also provides a powerful, independent reason to deny Plaintiff’s motion for a preliminary injunction.

**B. Plaintiff cannot show that Georgia law violates the VRA.**

Even if the VRA granted Plaintiff a private right of action to enforce the seven-day deadline, Georgia’s eleven-day deadline for absentee-*by-mail* ballot applications does not violate that provision as Georgia law permits other forms of absentee voting that satisfy the VRA. *See* O.C.G.A. §§ 21-2-381(a)(1)(A), 21-2-385(c)–(d). And, because Georgia allows in-person absentee voting until the Friday before Election Day, *see* O.C.G.A. § 21-2-385(d)(1), any of Plaintiff’s members may still vote absentee via advance voting until four days before Election Day. Thus, Georgia law is consistent with VRA § 202(d) because it provides the opportunity to vote as late as four days prior to the election to anyone “who may be absent from their election district or unit in such State on the day such election is held.” 52 U.S.C. § 10502(d).

In response to this fact, Plaintiff argues (at 7–8) that Congress meant § 202(d) to refer only to absentee-*by-mail* voting. For this, Plaintiff looks to how Congress discussed absentee voting and in-person voting in a different section of the VRA, § 202(e). But that provision addresses a different situation, and, when read with care, § 202(e) does not support Plaintiff’s reading. There,

Congress addressed voters who changed their State residency “after the thirtieth day next preceding such election [of the President and Vice President],” and it gives them the option of voting in-person or by absentee ballot in their prior state. 52 U.S.C. § 10502(e). While “absentee” *may* include voting by mail, nothing about this language suggests that it means *only* absentee-by-mail. In Georgia and elsewhere, absentee voting can refer to both absentee-in-person and absentee-by-mail. Moreover, § 202(e) defines absentee voting in terms of the applicable state law. And again, in Georgia, absentee voting statutorily refers to both by-mail and in-person voting. O.C.G.A. §§ 21-2-381(a)(1)(A), 21-2-385(c)-(d).

Accordingly, Plaintiff’s motion for a preliminary injunction should be denied because it has failed to show a substantial likelihood of success on the merits. *See Winter*, 555 U.S. at 20.

#### **IV. Plaintiff’s Requested Relief is Untenable.**

Plaintiff’s motion should also be denied because it seeks relief that is untenable. As shown below, if granted, Plaintiff’s requested relief would impose different deadlines for absentee-ballot applications across Georgia, which raises serious constitutional questions. Moreover, Plaintiff requests an order that would be virtually impossible to apply in practice. And this challenge is made particularly impractical because of Plaintiff’s delay in seeking preliminary injunctive relief, which means that granting the relief

would require this Court to impose the very complications that the *Purcell* principle seeks to avoid.

**A. Plaintiffs requested relief raises serious constitutional questions.**

As demonstrated above, the SEB is the incorrect party for Plaintiff to sue to obtain relief regarding the deadline for submitting absentee-ballot applications. *See supra*, Part I(B). Instead, the Court is limited—at most—to ordering relief as to the Fulton County Defendants. But creating a separate deadline for absentee-ballot applications in Fulton County would impose substantial hardships on election officials and voters, and it would contribute to a lack of confidence in the election process and results.

For instance, voters across Georgia would undoubtedly wonder why certain counties allowed voters to request and obtain absentee ballots on a different timeline than is applicable elsewhere. Germany Decl. ¶ 19. That would not only breed confusion, but it would certainly lead to accusations of preferential treatment and fraud. *Id.*

That is why, when a court orders a remedy, “there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.” *Bush v. Gore*, 531 U.S. 98, 109 (2000). Since Plaintiff opted to sue only one county, Plaintiff’s requested relief would create unequal treatment among Georgia’s voters in the remaining 158

counties. That is reason enough to deny the motion.

**B. Plaintiff asks the Court to order unmanageable relief.**

But that is not all. Plaintiff asks the Court to preliminarily enjoin State Defendants from “requir[ing] absentee-by-mail ballot applications from individuals voting for President and Vice President who may be away from their election district or unit on election day to be submitted more than seven days prior to a presidential election.” Proposed Order at 3. But, putting aside the fact that accepting and processing absentee-ballot applications is not an SEB function, it would be nearly impossible to implement such an order.

Starting with Georgia’s absentee-ballot application, it would need to be changed in two ways. First, it does not currently include any place where an applicant can indicate the electoral contests for which the individual plans to vote. See Application for Ga. Official Absentee Ballot, available at <https://tinyurl.com/49f4s2nx>. As the VRA addresses only “vot[ing] for President or Vice President,” the application would need to be modified to allow a voter to indicate that she wishes to vote only for President or Vice President, and to explain why a later submission deadline would apply to such voters.<sup>7</sup>

Second, the application would need to be updated to allow an applicant

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<sup>7</sup> Plaintiff does not offer any theory for why a voter who would be covered by § 202(d) would also be able to apply after SB 202’s deadline to vote for contests other than President or Vice President. Plaintiff thus concedes that SB 202’s deadline for those contests is enforceable.

to identify the reason for requesting an absentee ballot; only if the voter will be away from the election district would she fall within Plaintiff's requested injunction. Proposed Order at 3. Considering that Georgia provided no-excuse absentee-voting for nearly two decades, this would also require substantial explanation on the application and updates to numerous publications and webpages that currently explain that voters do not need an excuse to vote by absentee ballot in Georgia. Here again, this would likely create voter confusion across large portions of the electorate. Germany Decl. ¶¶ 13, 15.

In addition to the application itself, the counties' processing and recordkeeping systems would need to be changed. *Id.* ¶ 10. Presently, there are no data fields where county officials track which races a voter asks to vote in or why a voter submits an application. *Id.* But that would now be necessary, as the county would need to know that, for certain applicants, they may only vote for President or Vice President. *Id.* ¶ 11.

That leads to the next complication—Georgia does not currently have a ballot that is limited to the Presidential contest. Germany Decl. ¶ 4. Georgia maintains a federal-only ballot, but that ballot includes *all* federal contests (e.g., Presidential, U.S. House of Representatives, U.S. Senate). *Id.* That ballot would not suffice for Plaintiff's requested relief. *See supra*, note 7. Accordingly, the State would need to either create a new ballot, which would be a substantial process that should not be undertaken right before an election,



or it would need to repurpose the federal-only ballot and train county officials to count only the portion of the ballot where the voter votes for President and Vice President, but that is just as unadvisable.<sup>8</sup> Germany Decl. ¶ 11. This would create significant voter confusion, undermine the perceived integrity of the election, and create substantial additional work for election officials, which increases the risk of errors. *Id.*

**C. The *Purcell* principle weighs heavily against granting Plaintiff's requested relief.**

Even if the Court could fashion a remedy that would allow for uniform treatment of Georgia's voters, it would require an extraordinary amount of time and effort to implement such an order. With the 2024 General Election just months away, it is much too late in the 2024 election cycle to enter such an injunction. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). Indeed, following *Purcell*, the Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020); *accord League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022) (“[F]ederal district courts ordinarily

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<sup>8</sup> To do so, county officials would need to duplicate ballots to ensure only the presidential vote was counted. Germany Decl. ¶ 11. That would entail county officials tracking down such absentee ballots and copying over onto a new ballot only the vote for President and Vice President. *Id.* ¶ 11.

should not enjoin state election laws in the period close to an election.”); *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020) (same).

As Justice Kavanaugh explained, this principle reflects a “bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Milligan*, 142 S. Ct. at 880–81 (Kavanaugh, J., concurring). Thus, *Purcell* “heightens the showing necessary for a plaintiff to overcome the State’s extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures.” *Id.* at 881. In particular, this heightened standard requires a plaintiff to establish that “the changes in question are at least feasible before the election without significant cost, confusion, or hardship.” *Id.*; accord *League of Women Voters*, 32 F.4th at 1372–73. Here, Plaintiff has not done so, as the requested relief would require substantial changes to Georgia’s absentee ballot and application, as well as requiring extensive new training.

Indeed, these changes would be very time-consuming and unnecessarily introduce confusion in the electorate and among election officials charged with implementing the Court’s order. For instance, the Secretary of State would need to design a physical ballot layout as well as program a ballot layout for use in the State’s Ballot Marking Device (“BMD”) election system. Germany

Decl. ¶ 5. But it is uncertain whether such a ballot could even be created, let alone that one could be created, vetted, and distributed in time for the November 2024 General Election. *Id.* at ¶¶ 5–7.

Additionally, programming the BMDs and the scanning devices associated with them is time-consuming and late changes to such programming could result in otherwise avoidable errors. For instance, Georgia law requires “logic and accuracy” testing for each ballot to ensure the BMD is properly reading the ballot layout and correctly recording the selections of the user. *Id.* ¶ 7. This testing would need to be carried out for any newly designed president-only ballot.<sup>9</sup> *Id.*

Aside from issues with absentee ballots, there is no dispute that Plaintiff’s requested relief would require the State to design a new absentee-ballot *application*. Designing the current absentee-ballot application took more than six months and involved working with various vendors and county officials. *Id.* at ¶ 8. There is no time for this necessarily robust process to begin again, with absentee-ballot applications beginning to arrive on August 19, 2024—a mere two-and-a-half months from now. *Id.* ¶ 14.

However, even if the application could be designed, the Secretary of State

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<sup>9</sup> Additionally, a separate ballot would be required for Gwinnett County, which is required by federal law to offer an English and Spanish version of any ballot used. *Id.* at ¶ 8.

would also need to provide additional training for county officials. *Id.* at ¶ 18. The annual statewide training conference has already occurred for 2024, and there is no current opportunity to conduct in-person training for all county election superintendents prior to the November 2024 general election. *Id.* Rather, new training sessions would be required for officials who are conducting elections already. *Id.*

Additionally, the State would have to develop a mechanism to track the special presidential-only ballot to ensure it reaches the intended eligible voters who requested it. *Id.* at ¶ 10. This would have to be accomplished via updates to the Georgia Registered Voter Information System (“GARViS”) or by counties developing some type of off-line tracking system. The former is not possible because the Secretary of State’s office places a moratorium on making changes to system coding prior to elections to guard against the possibility that code updates might produce critical errors in GARViS in the leadup to an election. *Id.* The latter is just as problematic as it would drastically increase the risk of human errors and potential for voter confusion and disenfranchisement (*i.e.*, if the wrong voter gets a presidential-only ballot). *Id.*

Plaintiff also wrongly argues (at 15) that in the consolidated case, this Court rejected the argument that a preliminary injunction “filed in May of an election year” was “untimely.” But plaintiffs there filed in “May 2023”—“ten months before the next elections,” referring to the start of the 2024 election

cycle. *In re Ga. SB 202*, 2023 WL 5334582, at \*12. Indeed, according to the Court, “had they filed any later” than ten months before “the next elections,” “their relief may have been barred by *Purcell*.” *Id.* Plaintiff filed precisely during that time here.

Simply put, Plaintiff’s request is a recipe for a disastrous election season, and that too is sufficient reason to deny Plaintiff’s motion.

## **V. The Balance of the Equities Weighs Against Plaintiff.**

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

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”).

Beyond such state interests, the injunction would also harm the public, as enjoining the eleven-day deadline would subject Georgia voters to chaos and disparate treatment right before an election with the issuance of a separate

distinct ballot for the Presidential election. It would also lead to many voters receiving absentee ballots after Election Day, which would increase the number of cancelled ballots on Election Day. Germany Decl. ¶ 23. Moreover, as shown above, the injunction would inject confusion and hardships into the current election cycle, causing further harm to voters and creating the substantial risk of voter fraud and voter suppression narratives about the 2024 elections that SB 202 was designed to address. *See supra*, Part IV.

Because any supposed harm suffered by Plaintiff's members is substantially less than the harm to the public and the State, this final factor also weighs heavily against granting the requested relief.

### CONCLUSION

Plaintiff's request for a preliminary injunction fails at every turn, and the Court should deny the motion. Plaintiff lacks standing for its claim against the SEB, and it failed to carry its heightened burden of demonstrating that its members are likely to suffer irreparable injury absent an injunction. But even if the Court concludes otherwise, Plaintiff's motion is doomed by its failure to demonstrate any likelihood of success on the merits of its claim. Additionally, Plaintiff's requested relief would inject serious confusion into the election system on the eve of the 2024 General Election, in violation of the *Purcell* principle. For any or all these reasons, the Court should deny Plaintiff's motion.

June 7, 2024

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### **CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing brief was 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 THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

INTERNATIONAL ALLIANCE OF  
THEATER STAGE EMPLOYEES  
LOCAL 927,

*Plaintiff,*

v.

JOHN FERVIER, in his official  
capacity as member of the Georgia  
State Election Board, *et al.*,

*Defendants.*

Civil Action No.:  
1:23-CV-04929-JPB

**EXHIBIT INDEX TO  
STATE DEFENDANTS' OPPOSITION TO  
MOTION FOR PRELIMINARY INJUNCTION**

EXHIBIT	DESCRIPTION
A	Declaration of C. Ryan Germany (June 7, 2024)  Ex. 1: Voting Record of Kelsey Bailey  Ex. 2: Voting Record of Justin Gamerl  Ex. 3: Voting Record of Justin Michel
B	SB 202, Gen. Assemb., 2021-2022 Reg. Sess. (Ga. 2021) [excerpted]

# EXHIBIT A

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

INTERNATIONAL ALLIANCE OF  
THEATER STAGE EMPLOYEES  
LOCAL 927,

*Plaintiff,*

v.

JOHN FERVIER, in his official  
capacity as member of the Georgia  
State Election Board, *et al.*,

*Defendants.*

Civil Action No.:  
1:23-CV-04929-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.

1. I served as General Counsel to the Georgia Secretary of State's office from January 2014 to January 2023. During that time, I regularly worked with the State Election Board.

2. The State Election Board has no role in designing absentee ballots or absentee ballot applications.

3. The Secretary of State's office works with Georgia county election officials and other community stakeholders in designing absentee ballot applications and training county election superintendents to process those

applications using the state's voter-registration system, the Georgia Registered Voter Information System (GARViS).

4. As of the date of this declaration, a ballot that only contains the race for President and Vice President (a "presidential-only ballot") does not exist in Georgia. A ballot that contains only federal races ("federal-only") does exist and is used for permanent overseas citizens who are eligible to vote in federal but not state races. The current federal-only ballot for permanent voters includes all federal races, not presidential only. This year in Georgia, that would include both the presidential and congressional races.

5. In order to create a presidential-only ballot, the Secretary of State's office would have to design a physical ballot layout as well as program a ballot layout for use in the State's Ballot Marking Device ("BMD") election system, which includes both on-screen and assistive device versions. This new ballot would have to be part of the Election Project files for the November 2024 election. Each county in Georgia has an Election Project for each election.

6. Election Project files are typically finalized, meaning that counties have proofed and signed off on the election project and ballot proofs, between 75 and 60 days before Election Day to allow time to conduct all required equipment testing prior to the beginning of voting. In accordance with federal law, ballots start to go out to military and overseas voters beginning 49 days before Election Day (September 17, 2024 this year) and have to be sent out to



all military and overseas voters who have requested a ballot no later than 45 days before Election Day (September 21, 2024 this year).

7. State law requires logic and accuracy testing for each ballot to ensure the BMD is properly reading the ballot layout and correctly recording the selection(s) of the user. This testing would need to be carried out for any newly designed presidential-only ballot because it would be part of the Election Project Files for each county.

8. Federal law requires that Gwinnett County offer an English and Spanish ballot that would also need to be created for any presidential-only ballot.

9. Assuming that the state could overcome all the difficulties I have just laid out and does manage to build a properly functioning presidential-only ballot into all Election Project files this year, Georgia election officials would then have to determine a way to ensure voters properly get that ballot instead of a regular ballot. The options to accomplish this are both complicated and, especially on an abbreviated timeline, raise the potential to introduce errors or other mistakes into election processes.

10. On one hand, the State could update GARViS to add a module that would allow counties to track which voters should get a presidential only ballot. But just like changing the State's Voting System to build a presidential-only ballot in the first place, updates to GARViS are not advisable in the months

before an election due the risks of any such modification accidentally introducing potential errors into existing functionality. Indeed, the Secretary of State's office policy is to not do any code changes to GARViS starting before early voting begins. This helps to ensure no surprises in the functionality of GARViS prior to the election. Building this type of tracking system into GARViS would be a significant project and require significant work, testing, and training by Secretary of State's office staff and county election officials. It's exactly the type of project that would not be done in the leadup to an election given the risks of introducing unknown or unforeseen issues into GARViS. Alternatively, county election officials could attempt to create a system tracking who should receive a presidential-only ballot (if it could, in fact, be created) outside of GARViS, but adding a new and additional manual requirement to election officials in the lead up to the election is a recipe for mistakes, voter confusion, and potential disenfranchisement (if, for example, the wrong voter gets a presidential-only ballot).

11. If a presidential-only ballot cannot be created, utilizing the existing federal-only ballot for those voters and duplicating the ballot upon its return so that only the Presidential contest is counted introduces just as many problems and would be just as inadvisable. This would require election officials to track these voters on the front end to ensure they receive the correct ballot, and then on the back end to ensure that only the presidential election

is recorded and tallied. To accomplish this, election officials have to undertake a process known as ballot duplication. In that process, election officials, in teams of three that (since SB 202) are required to include an appointee of both political parties, remove the voted ballot from the ballot receipt envelope. They then determine the selection in the race that will count (only the presidential contest in this case) and they fill out a blank absentee ballot with only the voter's selections for that race filled in. The duplicated ballot is then sent for tabulation. The duplication team creates a unique number that ties the original and duplicated ballot together for audit and chain of custody purposes. The ballot duplication process is time consuming and manually work intensive. It also led to many complaints of fraud in 2020 as it a process where election officials are actually filling out ballots after voting has concluded. Due to these risks, ballot duplication should be minimized and very carefully undertaken. Adopting a process like this for a category of presidential-only voters would likely lead to complaints of fraud, lack of integrity, and reduced confidence in election results. It also creates substantial and complicated work for county officials at a time when they have a number of other responsibilities, along with creating opportunity for otherwise entirely unnecessary errors.

12. Designing the current absentee-ballot application took more than six months and involved working with various vendors and county officials.



And even after that careful process, further amendments were made after the redesigned application was released due to feedback that was received.

13. Conducting another redesign of the absentee-ballot application to add a portion where someone who is not going to be present in their voting jurisdiction on Election Day can so indicate would be a complicated process. It would require not only adding that portion, but also adding necessary explanatory text that clearly and accurately explains the reasons for the new portion and who it applies to, without creating confusion for other voters, who may believe that the excuse of not being present in their jurisdiction on Election Day would now be required for them to vote absentee by mail. Executing this properly would take significant time and multiple iterations, and rolling it out for the first time in Presidential election would likely cause significant voter confusion.

14. Voters can begin returning absentee-ballot applications for the 2024 general election on August 19, 2024, which is only a little more than two months from today.

15. Georgia has provided no-excuse absentee-voting for nearly two decades, so any introduction of an excuse-based system, even for a limited subset of voters, would require substantial explanation on the application and substantial revisions to various publications and webpages that currently explain that voters do not need an excuse to vote by absentee ballot in Georgia.

16. The Secretary of State's office is charged in Georgia law with the design of the absentee ballot application, not the State Election Board. Requiring Secretary of State staff to embark on a redesign of that application at this late process in the election cycle would pull them off of other important election preparation duties and increases the risk for mistakes or other issues that could negatively affect the overall administration of the election.

17. In all likelihood, an absentee-ballot application subject to a different timeline than the existing absentee-ballot applications would cause voter and election official confusion and could potentially result in the disenfranchisement of otherwise eligible voters.

18. Even if the absentee-ballot application could be designed, the Secretary of State's office would then have to undertake additional training for county superintendents on the new form and corresponding processes. County election superintendents would then have to train their staff, putting an additional requirement on all Georgia election officials who are already busily preparing for the 2024 general election. The annual statewide training conference has already occurred in 2024 and there is no current opportunity to conduct in-person training for all county election superintendents prior to the November 2024 general election.

19. Having only certain counties subject to this injunction would also raise complications across the State. Voters across Georgia would undoubtedly

and understandably wonder why certain counties allowed voters to request and obtain absentee ballots on a different timeline than is applicable elsewhere. That would not only breed confusion, but it would certainly lead to accusations of preferential treatment and fraud. It would cause confusion for election officials across Georgia as they would certainly get questions about what rules apply to that specific voter and why different rules apply in different counties, which would be an extremely difficult thing for an election official to explain.

20. If ordered to do so by this Court, creating and offering training to 159 counties on how to process a presidential-only ballot would take a significant amount of time at the Secretary of State's office. Creating training for new processes that have not been used in Georgia elections before is always work intensive and requires attempting to anticipate all potential use cases that may arise, a difficult thing to do even under regular training and implementation timelines. Presidential election years already are resource-intensive and adding requirements that require resources and processes that do not yet exist in the direct lead up to the election risks introducing errors in the system, increases the risk of mistakes by election officials, and increases potential for voter confusion and disenfranchisement.

21. Voters who know they may be called away due to work or other reasons close to Election Day can take multiple steps to maximize their ability



to vote. They can make a plan to vote early during one of Georgia's 17–19 days (depending on if their county offers Sunday voting, which most metro Atlanta counties do) of early voting. Or they could request an absentee ballot beginning 78 days prior to the election so that it is mailed to them 30 days before the election. They could then return it via mail, drop box, or in-person to their county elections office. For all the reasons set forth above, creating a new absentee-by-mail ballot request deadline for a limited subset of voters would not likely increase their actual ability to vote. Instead, it risks causing issues for a much larger set of voters. This is especially true if only certain counties change the rules, as such piecemeal changes would cause some voters to wonder why certain counties allowed voters to request and obtain absentee ballots on a different timeline than others. That would not only breed confusion, but it would certainly lead to accusations of preferential treatment and fraud.

22. In past elections, some voters who requested an absentee ballot early in that period still attempted to vote in person on Election Day, forgetting that they had previously requested an absentee ballot. When such voters who had requested an absentee ballot nonetheless wished to vote in person, county election officials had to complete the time-consuming process of cancelling the mailed absentee ballot before the voter could vote in person. That not only led

to complaints about potential voter fraud, but it also contributed to longer lines at polling locations.

23. There were also substantial issues caused on the other end of the absentee-ballot application window, when voters could submit applications until just four days before Election Day. Applications submitted close to the deadline were significantly less likely to result in a successfully cast absentee ballot than applications received in the current deadline. The late absentee ballot request deadline also led to increased cancellations of absentee ballots on Election Day because the voter's absentee ballot had not arrived, which slows down in-person voting on Election Day, leads to longer lines, and led to accusations of voter fraud in 2020.

24. When a voter's application is not received until the Friday before Election Day, the county will likely not be able to mail a ballot to the voter until the following Monday—one day before Election Day.

25. It would be virtually impossible for a voter to receive that ballot, complete it, and return it all within one day. And the same is true of applications that were received in the days shortly before the Friday deadline.

26. Applications submitted earlier in the week before Election Day were significantly less likely to result in a successfully voted absentee ballot than applications submitted prior to that week.

27. Despite the significantly reduced chance that such a late-arriving

application would lead to a voted ballot, before SB 202, county election officials were nonetheless required to process each such application. Considering the many other tasks that county election officials must handle in the days immediately before Election Day, this was a substantial drag on resources.

28. By setting the deadline eleven days before Election Day, SB 202 ensured that county officials could complete processing applications more than one week before the election, and it ensured that any applicant would have one full week of in-person absentee voting available in case there was an issue receiving and casting the absentee-by-mail ballot.

29. Attached to this Declaration as Exhibit 1 is a true and correct copy of the voting record of Kelsey Bailey contained in GARViS. Ms. Bailey has submitted a declaration on behalf of Plaintiff in this action.

30. Attached to this Declaration as Exhibit 2 is a true and correct copy of the voting record of Justin Gamerl contained in GARViS. Mr. Gamerl has submitted a declaration on behalf of Plaintiff in this action.

31. Attached to this Declaration as Exhibit 3 is a true and correct copy of the voting record of Justin Michel contained in GARViS. Mr. Michel has submitted a declaration on behalf of Plaintiff in this action.

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.

6/7/2024  
Date

  
C. Ryan Germany

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# EXHIBIT 1

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05/01/2024

## GEORGIA SECRETARY OF STATE VOTER REGISTRATION SYSTEM

Generated By: Meaghan Kelling

## INDIVIDUAL VOTER REPORT

Voter Registration #: 08662779  
 Name: KELSEY MARIE BAILEY  
 Race: White  
 Gender: Female  
 Residence Address: [REDACTED]  
 DECATUR GA [REDACTED]

## Mailing Address:

Voter Status: Active

Status Reason:

Special Designation:

State Districts Information:	CONG	SENAT	HOUSE	JUDIC	SUPCM
	004	010	089	STMT	

County Districts Information:	COMMI	SCHOL
	3	5

Municipal Districts Information:	CITYL	MUNIB
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Precinct Information	County Precinct	County Polling Place	Municipal Precinct	Municipal Polling Place	Voting Area/Combo #
	RA	RAINBOW ELEMENTARY SCHOOL 2801 KELLEY CHAPEL ROAD DECATUR GA 30034 0000			01027

**Election History**

Voter Name	Voter Registration #	Status
KELSEY MARIE BAILEY	08662779	Active

Election Date	Election Name	Election Type	Election Category	Party	County Vote Cast in	How Voted	Challenged
12/06/2022	12/06/2022 GENERAL/SPECIAL ELECTION RUNOFF	General Election runoff	STATE WIDE		DEKALB	Regular	No
11/08/2022	11/08/2022 GENERAL/SPECIAL ELECTION	General	Statewide		DEKALB	Absentee	No
05/24/2022	05/24/2022 GENERAL PRIMARY/SPECIAL ELECTION	General Primary	STATE WIDE	Democrat	DEKALB	Regular	No
01/05/2021	JANUARY 5, 2021 FEDERAL RUNOFF ELECTION	General Election runoff	Statewide		DEKALB	Absentee	No
11/03/2020	NOVEMBER 3, 2020 GENERAL/SPECIAL ELECTION	General	Statewide		DEKALB	Absentee	No
11/06/2018	NOVEMBER 6, 2018 GENERAL/SPECIAL ELECTION	General	Statewide		DEKALB	Absentee	No
06/20/2017	JUNE 20, 2017 FEDERAL SPECIAL ELECTION RUNOFF	Special Election Runoff	Statewide		DEKALB	Absentee	No
11/06/2012	SPECIAL	Special Election	STATE WIDE		DEKALB	Regular	No
08/21/2012	SPECIAL	Special Election	STATE WIDE		DEKALB	Regular	No
07/31/2012	SPECIAL	Special Election	STATE WIDE	Republican	DEKALB	Regular	No

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## Participation History

Voter Name	Voter Registration #	Status
KELSEY MARIE BAILEY	08662779	Active

Date Voted	Election Type	Election Category	Ballot Type	Prov/Chall	Party	Counted	County Vote Cast in
12/06/2022	General Election runoff	STATE WIDE	Regular	false		true	DEKALB
10/28/2022	General	Statewide	Early In-Person	false		true	DEKALB
05/24/2022	General Primary	STATE WIDE	Regular	false	DEMOCRAT	true	DEKALB
01/02/2021	General Election runoff	Statewide	Electronic Ballot Delivery	false		true	DEKALB
10/28/2020	General	Statewide	Early In-Person	false		true	DEKALB
10/20/2018	General	Statewide	Electronic Ballot Delivery	false		true	DEKALB
06/13/2017	Special Election Runoff	Statewide	Electronic Ballot Delivery	false		true	DEKALB
11/06/2012	Special Election	STATE WIDE	Regular	false		true	DEKALB
08/21/2012	Special Election	STATE WIDE	Regular	false		true	DEKALB
07/31/2012	Special Election	STATE WIDE	Regular	false	REPUBLICAN	true	DEKALB

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## Petition History

Voter Name	Voter Registration #	Status
KELSEY MARIE BAILEY	08662779	Active

Petition Name	Date Signed	Signature Status	Rejection Reason
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## Absentee Ballots

 VIEW SIGNATURE

HIDE/UNHIDE COLUMNS

SELECT	DUPLICATION SEQUENCE #	ABSENTEE BALLOT #	DATE REQUESTED	APPLICATION STATUS	DATE ISSUED/MAILED	ELECTION DATE	ELECTION CATEGORY	BALLOT RECEIVED DATE	BALLOT STATUS	BALLOT STATUS REASON
<a href="#">VIEW</a>	1	04797	10/28/2022	Accepted	10/28/2022	11/08/2022	Statewide	10/28/2022	Accepted	
<a href="#">VIEW</a>	1	02940	03/04/2020	Accepted	11/21/2020	01/05/2021	Statewide	01/02/2021	Accepted	
<a href="#">VIEW</a>	1	01473	03/04/2020	Accepted	09/16/2020	11/03/2020	Statewide		Cancelled	Other
<a href="#">VIEW</a>	2	14704	10/28/2020	Accepted	10/28/2020	11/03/2020	Statewide	10/28/2020	Accepted	
<a href="#">VIEW</a>	1	00476	03/04/2020	Accepted	04/04/2020	06/09/2020	Statewide		Rejected	Ballot Received after Dead
<a href="#">VIEW</a>	1	00438	03/04/2020	Accepted	03/05/2020	03/24/2020	Statewide			
<a href="#">VIEW</a>	1	00012	05/10/2017	Accepted	11/25/2018	12/04/2018	Statewide			
<a href="#">VIEW</a>	1	00050	05/10/2017	Accepted	09/19/2018	11/06/2018	Statewide	10/20/2018	Accepted	
<a href="#">VIEW</a>	1		05/10/2017	Accepted	06/06/2018	07/24/2018	Statewide			
<a href="#">VIEW</a>	1		05/10/2017	Accepted	04/05/2018	05/22/2018	Statewide			
<a href="#">VIEW</a>	1	00472	05/10/2017	Accepted	05/10/2017	06/20/2017	Statewide	06/13/2017	Accepted	
<a href="#">VIEW</a>	1		02/18/2016	Rejected		04/18/2017	Statewide			
<a href="#">VIEW</a>	1	00004	02/01/2016	Accepted	02/01/2016	03/01/2016	Statewide		Cancelled	Other
<a href="#">VIEW</a>	2	00113	02/18/2016	Accepted	02/18/2016	03/01/2016	Statewide		Rejected	Other

DECEMBER 4, 2018 STATE AND LOCAL ELECTION RUNOFF	12/4/2018	GENERAL ELECTION RUNOFF	5/10/2017	11/25/2018				NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
NOVEMBER 6, 2018 GENERAL/SPECIAL ELECTION	11/6/2018	GENERAL	5/10/2017	9/19/2018	10/20/2018	ACCEPTED		NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
JULY 24, 2018 GEN. PRI. RO/GEN. NP RO/SPEC. RO EL	7/24/2018	GENERAL PRIMARY RUNOFF	5/10/2017	6/6/2018				NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
MAY 22, 2018 GEN. PRI./GEN. NP/SPEC. ELECTION	5/22/2018	GENERAL PRIMARY	5/10/2017	4/5/2018				NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
JUNE 20, 2017 FEDERAL SPECIAL ELECTION RUNOFF	6/20/2017	SPECIAL ELECTION RUNOFF	5/10/2017	5/10/2017	6/13/2017	ACCEPTED		NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
APRIL 18, 2017 FEDERAL SPECIAL ELECTION	4/18/2017	SPECIAL ELECTION	2/18/2016					NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
MARCH 1, 2016 PPP/SPECIAL ELECTION	3/1/2016	PPP	2/1/2016	2/1/2016		CANCELLED	OTHER	NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
MARCH 1, 2016 PPP/SPECIAL ELECTION	3/1/2016	PPP	2/18/2016	2/18/2016		REJECTED	BALLOT NOT RETURNED BY ELECTION DAY	NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD



## Absentee Ballot History

ELECTION NA...	ELECTION DATE	ELECTION TYPE	BALLOT REQU...	BALLOT ISSUE...	BALLOT RECEI...	ABSENTEE/EA...	BALLOT STAT...	ELDERLY/DISA...	UOCAVA STAT...
11/08/2022 GENERAL/SPECIAL ELECTION	11/8/2022	GENERAL	10/28/2022	10/28/2022	10/28/2022	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
JANUARY 5, 2021 FEDERAL RUNOFF ELECTION	1/5/2021	GENERAL ELECTION RUNOFF	3/4/2020	11/21/2020	1/2/2021	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
NOVEMBER 3, 2020 GENERAL/SPECIAL ELECTION	11/3/2020	GENERAL	3/4/2020	9/16/2020		CANCELLED	OTHER		NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
NOVEMBER 3, 2020 GENERAL/SPECIAL ELECTION	11/3/2020	GENERAL	10/28/2020	10/28/2020	10/28/2020	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
JUNE 9, 2020 GEN. PRI./GEN. NP/SPEC. ELECTION	6/9/2020	GENERAL PRIMARY	3/4/2020	4/4/2020		REJECTED	BALLOT RECEIVED AFTER DEADLINE		NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
MARCH 24, 2020 PPP/SPECIAL ELECTION	3/24/2020	PPP	3/4/2020	3/5/2020					NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
DECEMBER 4, 2018 STATE AND LOCAL ELECTION RUNOFF	12/4/2018	GENERAL ELECTION RUNOFF	5/10/2017	11/25/2018					NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD

## **EXHIBIT 2**

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05/01/2024

## GEORGIA SECRETARY OF STATE VOTER REGISTRATION SYSTEM

Generated By: Meaghan Kelling

## INDIVIDUAL VOTER REPORT

Voter Registration #: 11620775  
 Name: JUSTIN M GAMERL  
 Race: White  
 Gender: Male

Residence Address: [REDACTED]  
 CANTON GA [REDACTED]

Mailing Address:

Voter Status: Active

Status Reason:

Special Designation:

State Districts Information:	CONG	SENAT	HOUSE	JUDIC	SUPCM
	011	021	023	BLRD	

County Districts Information:	COMMI	SCHOL
	003	006

Municipal Districts Information:	CITYL	MUNIB
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Precinct Information	County Precinct	County Polling Place	Municipal Precinct	Municipal Polling Place	Voting Area/Combo #
	036	RIVER GREEN HERITAGE CLUB 201 CLUBHOUSE DR CANTON GA 30114 0000			00276

**Election History**

Voter Name	Voter Registration #	Status
JUSTIN M GAMERL	11620775	Active

Election Date	Election Name	Election Type	Election Category	Party	County Vote Cast in	How Voted	Challenged
12/06/2022	12/06/2022 GENERAL/SPECIAL ELECTION RUNOFF	General Election runoff	STATE WIDE		CHEROKEE	Regular	No
11/08/2022	11/08/2022 GENERAL/SPECIAL ELECTION	General	Statewide		CHEROKEE	Absentee	No
01/05/2021	JANUARY 5, 2021 FEDERAL RUNOFF ELECTION	General Election runoff	Statewide		COBB	Absentee	No
11/03/2020	NOVEMBER 3, 2020 GENERAL/SPECIAL ELECTION	General	Statewide		COBB	Absentee	No
06/09/2020	JUNE 9, 2020 GEN. PRI./GEN. NP/SPEC. ELECTION	General Primary	Statewide	Democrat	COBB	Absentee	No
11/06/2018	NOVEMBER 6, 2018 GENERAL/SPECIAL ELECTION	General	STATE WIDE		COBB	Regular	No

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**Participation History**

Voter Name	Voter Registration #	Status
JUSTIN M GAMERL	11620775	Active

Date Voted	Election Type	Election Category	Ballot Type	Prov/Chall	Party	Counted	County Vote Cast in
12/06/2022	General Election runoff	STATE WIDE	Regular	false		true	CHEROKEE
11/04/2022	General	Statewide	Early In-Person	false		true	CHEROKEE
12/29/2020	General Election runoff	Statewide	Early In-Person	false		true	COBB
10/22/2020	General	Statewide	Absentee by mail	false		true	COBB
05/04/2020	General Primary	Statewide	Absentee by mail	false	DEMOCRAT	true	COBB
11/06/2018	General	STATE WIDE	Regular	false		true	COBB

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## Petition History

Voter Name	Voter Registration #	Status
JUSTIN M GAMERL	11620775	Active

Petition Name	Date Signed	Signature Status	Rejection Reason
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## Absentee Ballots

 VIEW SIGNATURE

HIDE/UNHIDE COLUMNS

SELECT	DUPLICATION SEQUENCE #	ABSENTEE BALLOT #	DATE REQUESTED	APPLICATION STATUS	DATE ISSUED/MAILED	ELECTION DATE	ELECTION CATEGORY	BALLOT RECEIVED DATE	BALLOT STATUS	BALLOT STATUS REASON	PARTY
<a href="#">VIEW</a>	1	15219	11/04/2022	Accepted	11/04/2022	11/08/2022	Statewide	11/04/2022	Accepted		
<a href="#">VIEW</a>	1	01513	12/29/2020	Accepted	12/29/2020	01/05/2021	Statewide	12/29/2020	Accepted		
<a href="#">VIEW</a>	1	01480	10/02/2020	Accepted	10/05/2020	11/03/2020	Statewide	10/22/2020	Accepted		
<a href="#">VIEW</a>	1	00010	04/03/2020	Accepted	04/21/2020	06/09/2020	Statewide	05/04/2020	Accepted		DEMOCRAT

## Absentee Ballot History

ELECTION NAME	ELECTION DATE	ELECTION TYPE	BALLOT REQUEST DA...	BALLOT ISSUED DATE	BALLOT RECEIVED D...	ABSENTEE/EARLY VO...	BALLOT STATUS REA...	ELDERLY/DISABLED ...	UOCAVA STATUS
11/08/2022 GENERAL/SPECIAL ELECTION	11/8/2022	GENERAL	11/4/2022	11/4/2022	11/4/2022	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
JANUARY 5, 2021 FEDERAL RUNOFF ELECTION	1/5/2021	GENERAL ELECTION RUNOFF	12/29/2020	12/29/2020	12/29/2020	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
NOVEMBER 3, 2020 GENERAL/SPECIAL ELECTION	11/3/2020	GENERAL	10/2/2020	10/5/2020	10/22/2020	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
JUNE 9, 2020 GEN. PRI./GEN. NP/SPEC. ELECTION	6/9/2020	GENERAL PRIMARY	4/3/2020	4/21/2020	5/4/2020	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD

## **EXHIBIT 3**

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05/01/2024

## GEORGIA SECRETARY OF STATE VOTER REGISTRATION SYSTEM

Generated By: Meaghan Kelling

## INDIVIDUAL VOTER REPORT

Voter Registration #: 11697483  
 Name: JUSTIN THOMAS MICHEL  
 Race: White  
 Gender: Male  
 Residence Address: [REDACTED]  
 DECATUR GA [REDACTED]

## Mailing Address:

Voter Status: Active

Status Reason:

Special Designation:

State Districts Information:	CONG	SENAT	HOUSE	JUDIC	SUPCM
	004	010	089	STMT	

County Districts Information:	COMMI	SCHOL
	3	5

Municipal Districts Information:	CITYL	MUNIB
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Precinct Information	County Precinct	County Polling Place	Municipal Precinct	Municipal Polling Place	Voting Area/Combo #
	RA	RAINBOW ELEMENTARY SCHOOL 2801 KELLEY CHAPEL ROAD DECATUR GA 30034 0000			01027



**Election History**

Voter Name	Voter Registration #	Status
JUSTIN THOMAS MICHEL	11697483	Active

Election Date	Election Name	Election Type	Election Category	Party	County Vote Cast in	How Voted	Challenged
12/06/2022	12/06/2022 GENERAL/SPECIAL ELECTION RUNOFF	General Election runoff	STATE WIDE		DEKALB	Regular	No
11/08/2022	11/08/2022 GENERAL/SPECIAL ELECTION	General	Statewide		DEKALB	Absentee	No
05/24/2022	05/24/2022 GENERAL PRIMARY/SPECIAL ELECTION	General Primary	STATE WIDE	Democrat	DEKALB	Regular	No
01/05/2021	JANUARY 5, 2021 FEDERAL RUNOFF ELECTION	General Election runoff	Statewide		DEKALB	Absentee	No
11/03/2020	NOVEMBER 3, 2020 GENERAL/SPECIAL ELECTION	General	Statewide		DEKALB	Absentee	No
03/24/2020	MARCH 24, 2020 PPP/SPECIAL ELECTION	PPP	Statewide	Democrat	DEKALB	Absentee	No
12/04/2018	DECEMBER 4, 2018 STATE AND LOCAL ELECTION RUNOFF	General Election runoff	STATE WIDE		COBB	Regular	No
11/06/2018	NOVEMBER 6, 2018 GENERAL/SPECIAL ELECTION	General	STATE WIDE		COBB	Regular	No
05/22/2018	MAY 22, 2018 GEN. PRI./GEN. NP/SPEC. ELECTION	General Primary	STATE WIDE	Democrat	COBB	Regular	No

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## Participation History

Voter Name	Voter Registration #	Status
JUSTIN THOMAS MICHEL	11697483	Active

Date Voted	Election Type	Election Category	Ballot Type	Prov/Chall	Party	Counted	County Vote Cast in
12/06/2022	General Election runoff	STATE WIDE	Regular	false		true	DEKALB
10/28/2022	General	Statewide	Early In-Person	false		true	DEKALB
05/24/2022	General Primary	STATE WIDE	Regular	false	DEMOCRAT	true	DEKALB
12/29/2020	General Election runoff	Statewide	Early In-Person	false		true	DEKALB
10/27/2020	General	Statewide	Early In-Person	false		true	DEKALB
03/17/2020	PPP	Statewide	Absentee by mail	false	DEMOCRAT	true	DEKALB
12/04/2018	General Election runoff	STATE WIDE	Regular	false		true	COBB
11/06/2018	General	STATE WIDE	Regular	false		true	COBB
05/22/2018	General Primary	STATE WIDE	Regular	false	DEMOCRAT	true	COBB

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## Petition History

Voter Name	Voter Registration #	Status
JUSTIN THOMAS MICHEL	11697483	Active

Petition Name	Date Signed	Signature Status	Rejection Reason
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## Absentee Ballots

 VIEW SIGNATURE

HIDE/UNHIDE COLUMNS

SELECT	DUPLICATION SEQUENCE #	ABSENTEE BALLOT #	DATE REQUESTED	APPLICATION STATUS	DATE ISSUED/MAILED	ELECTION DATE	ELECTION CATEGORY	BALLOT RECEIVED DATE	BALLOT STATUS	BALLOT STATUS REASON	PARTY
<a href="#">VIEW</a>	1	04798	10/28/2022	Accepted	10/28/2022	11/08/2022	Statewide	10/28/2022	Accepted		
<a href="#">VIEW</a>	1	04114	12/29/2020	Accepted	12/29/2020	01/05/2021	Statewide	12/29/2020	Accepted		
<a href="#">VIEW</a>	1	00614	09/21/2020	Accepted	09/21/2020	11/03/2020	Statewide		Cancelled	Ballot was Undelivered	
<a href="#">VIEW</a>	2	13999	10/27/2020	Accepted	10/27/2020	11/03/2020	Statewide	10/27/2020	Accepted		
<a href="#">VIEW</a>	1	00145	04/21/2020	Accepted	04/21/2020	06/09/2020	Statewide				DEMOCRAT
<a href="#">VIEW</a>	1	00015	03/03/2020	Accepted	03/03/2020	03/24/2020	Statewide	03/17/2020	Accepted		DEMOCRAT

## Absentee Ballot History

ELECTION NA...	ELECTION DATE	ELECTION TYPE	BALLOT REQU...	BALLOT ISSUE...	BALLOT RECEI...	ABSENTEE/EA...	BALLOT STATU...	ELDERLY/DISA...	UOCAVA STATUS
11/08/2022 GENERAL/SPECIAL ELECTION	11/8/2022	GENERAL	10/28/2022	10/28/2022	10/28/2022	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
JANUARY 5, 2021 FEDERAL RUNOFF ELECTION	1/5/2021	GENERAL ELECTION RUNOFF	12/29/2020	12/29/2020	12/29/2020	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
NOVEMBER 3, 2020 GENERAL/SPECIAL ELECTION	11/3/2020	GENERAL	9/21/2020	9/21/2020		CANCELLED	BALLOT WAS UNDELIVERED		NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
NOVEMBER 3, 2020 GENERAL/SPECIAL ELECTION	11/3/2020	GENERAL	10/27/2020	10/27/2020	10/27/2020	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
JUNE 9, 2020 GEN. PRI./GEN. NP/SPEC. ELECTION	6/9/2020	GENERAL PRIMARY	4/21/2020	4/21/2020					NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD
MARCH 24, 2020 PPP/SPECIAL ELECTION	3/24/2020	PPP	3/3/2020	3/3/2020	3/17/2020	ACCEPTED			NO UOCAVA STATUS FOUND IN YOUR VOTER RECORD

# EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

- 1 -

**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.