

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

LUCILLE ANDERSON, SARA ALAMI,
GIANELLA CONTRERAS CHAVEZ,
DSCC, and DEMOCRATIC PARTY OF
GEORGIA, INC.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as the Georgia Secretary of State and the Chair of the Georgia State Election Board; REBECCA N. SULLIVAN, DAVID J. WORLEY, MATTHEW MASHBURN, and ANH LE, in their official capacities as Members of the Georgia State Election Board; MARY CAROLE COONEY, MARK WINGATE, VERNETTA NURIDDIN, KATHLEEN RUTH, and AARON JOHNSON, in their official capacities as Members of the FULTON County Board of Registration and Elections; SAMUEL E. TILLMAN, ANTHONY LEWIS, SUSAN MOTTER, DELE LOWMAN SMITH, and BAOKY N. VU, in their official capacities as Members of the DEKALB County Board of Registration and Elections; PHIL DANIELL, FRED AIKEN, JESSICA M. BROOKS, NEERA BAHL, and DARRYL O. WILSON, JR., in their official capacities as Members of the COBB County Board of Elections and Registration; JOHN MANGANO, BEN SATTERFIELD,

Civil Action No. 1:20-cv-03263-MLB

WANDY TAYLOR, STEPHEN DAY, and ALICE O'LENICK, in their official capacities as Members of the GWINNETT County Board of Registrations and Elections; THOMAS MAHONEY III, MARIANNE HEIMES, MALINDA HODGE, ANTWAN LANG, and DEBBIE RAUERS, in their official capacities as Members of the CHATHAM County Board of Elections; CAROL WESLEY, DOROTHY FOSTER HALL, PATRICIA PULLAR, DARLENE JOHNSON, and DIANE GIVENS, in their official capacities as Members of the CLAYTON County Board of Elections and Registrations; DONNA CRUMBLEY, DONNA MORRIS-MCBRIDE, ANDY CALLAWAY, ARCH BROWN, and MILDRED SCHMELZ, in their official capacities as Members of the HENRY County Board of Elections and Registration; MYESHA GOOD, DAVID C. FEDACK, ROBERT PROCTOR, DANIEL ZIMMERMANN, and MAURICE HURRY, in their official capacities as Members of the DOUGLAS County Board of Elections and Registration; and RINDA WILSON, HENRY FICKLIN, HERBERT SPANGLER, CASSANDRA POWELL, and MIKE KAPLAN, in their official capacities as members of the MACON-BIBB County Board of Elections,

Defendants.

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
THEIR MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

Plaintiffs submit this supplemental memorandum, as directed by the Court, providing an analysis of the data provided by the counties on planned voting machine allocation for the upcoming General Election. The data provided by Defendants demonstrates that, absent relief from this Court, crowded polling places and long lines are likely to reoccur in a number of Georgia counties and polling locations.

II. ARGUMENT

A. **The County data confirms that Plaintiffs' injuries are actual and imminent.**

Standing is “undemanding” and requires “only a minimal showing of injury.” *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008). Importantly, “[p]ast wrongs do constitute evidence bearing on whether there is a real and immediate threat of repeated injury which could be averted by the issuing of an injunction.” *Lynch v. Baxley*, 744 F.2d 1452, 1456 (11th Cir. 1984), *see also O’Shea v. Littleton*, 414 U.S. 488, 496 (1974) (same); *Dunn v. City of Fort Valley*, No.: 19-cv-00287, 2020 WL 2544792, at *17 (M.D. Ga. May 19, 2020) (pleading a complaint for prospective relief does not require “oracular vision”). In support of their Motion for Preliminary Injunction, Plaintiffs submitted expert reports, dozens of voter declarations, numerous court orders, and news articles documenting

Defendants' repeated, consistent imposition of long lines on its voters, as well as their ongoing failure to remedy these long lines. This evidence alone establishes that Plaintiffs' threatened injuries are far from hypothetical or speculative.

Lines that exceed 30 minutes are a widely used standard for what constitutes a "long" voting line, and that standard has been used by Plaintiffs' experts in their reports. ECF No. 93-61, *see also* Ex. 1 at 3. The Presidential Commission on Election Administration defined a "long" wait time as 30 minutes.¹ ECF No. 93-61, *see also* Ex. 1 at 3. The populations most affected by long wait times are those that can least afford to wait in line. ECF No. 93-61 at 16. Poor workers in urban neighborhoods often have unpredictable and unforgiving work schedules and difficult child-care arrangements. *Id.* For voters with precarious sources of income and strict policies regarding absences, waiting in line for hours to vote can lead to a serious loss of income or future employment opportunities. *Id.* Many voters simply cannot afford to wait in long lines, and are disenfranchised by them as a result.

¹ So does Defendant Raffensperger. Mark Niese, "Bill takes aim at long lines on Election Day in Georgia," Atlanta Journal-Constitution (Mar. 1, 2020) (<https://www.ajc.com/news/state--regional-govt--politics/bill-takes-aim-long-lines-election-day-georgia/vs2a3q9pj15G7FstUPVzaL/>). Other states also utilize that benchmark. South Dakota statutes state that wait times over 30 minutes constitute an "unreasonable waiting time." So. Dakota Codified Laws x12-14-4. New York Election Law requires that county boards provide sufficient voting equipment and workers so that "waiting time at a poll site does not exceed 30 minutes." *See* Ex. 1 at 3.

Irrespective of work, school, or childcare obligations, excessive wait times impose a burden on *everyone's* right to vote, particularly during a global pandemic. Voters should not have to choose between their health and safety and exercising their right to vote, which is precisely the choice that Defendants require them to make.

There is no dispute that wait times in Georgia have been increasing year after year. ECF No. 93-61 at 24-25. By 2018, Georgia had *the* longest voting wait times in the entire country. *Id.* at 25. And those wait times grew even longer for the June Primary, with many voters waiting up to eight hours to cast their vote. *See e.g.* ECF Nos. 93-1, 93-31 at ¶¶ 5-7, 93-32 at ¶¶ 3-7, 93-33 at ¶ 18, 93-34 at ¶¶ 5-9, 93-35 at ¶¶ 6-18. The causes of these long lines are readily apparent. Georgia's population has grown substantially over the past decade, adding nearly one million additional residents since 2010. ECF No. 93-61 at 3. This is particularly true in the Atlanta metropolitan area, home to seven groups of County Defendants and one of the four fastest growing metros in the United States. *Id.* at 42.

But the number of polling places has not been expanded to accommodate this massive population growth. *Id.* at 3. To the contrary, precincts continue to be consolidated, particularly in urban and minority communities. *Id.* at 39-49. Relative to other states, Georgia requires extremely large numbers of voters to cast their ballot at a single polling place, even before counties required additional consolidations in

the June primary due to COVID-19. *Id.* at 40. Not only are many of Georgia's polling places extremely overloaded, they can also be severely under-resourced. ECF No. 93-62 at 1. In relation to the June primary, Dr. Yang concluded that Georgia election officials in certain counties did not consider the distribution of voters across polling places—especially those that serve multiple precincts due to consolidation—and therefore did not allocate and distribute voting machines in a way that would optimize wait time. *Id.* Simply put, elections officials' practice of under-resourcing and under-equipping polling locations causes long wait times at the polls. *Id.* at 2.

Dr. Yang's analysis of the data provided by the Counties in response to this Court's order, ECF No. 125, confirms that—despite their representations that they are fixing this practice—many of the Counties are still failing to properly allocate equipment for the upcoming General Election, as discussed in detail below. Thirty locations across five Counties are likely to have wait lines of more than 30 minutes—many will more likely experience hours-long wait times. Because the Counties are continuing their pattern of improperly allocating and distributing voting machines, Plaintiffs' injuries are actual and imminent and they, accordingly, have standing (and have demonstrated imminent harm for the purposes of injunctive relief).

B. County Defendants' proposed allocation will not remedy the long lines.

The Court ordered each of the Defendant Counties to provide Plaintiffs with information about how they intend to allocate voting equipment at each polling location in the General Election, and also to provide the same data for the June 2020 primary. ECF No. 125 at 1. Plaintiffs were asked to examine this data and report to the Court any areas of concern.

To provide a relevant analysis as to whether Defendants' current allocation plans will likely result in long lines, Plaintiffs also requested the number of voters assigned to each polling location for the General Election. The Defendant Counties provided that data with two exceptions (Clayton and Chatham).² Plaintiffs utilized actual voter numbers from the June primary election (which, notably, would not account for those who tried to vote, but could not, because of long lines). To predict voter turnout in the General Election, Plaintiffs' expert utilized historical voter data in each county, adjusted for the expected effect of Covid-19 causing lower turnout as more voters vote absentee, thus resulting in a *conservative* estimate. ECF No. 93-62 at 40-41. Actual turnout could and likely will, of course, be much higher.

² Clayton County did not timely provide data on the number of registered voters per polling location. Chatham County did not provide sufficient data in response to the Court's direction, as discussed on the telephonic conference with the Court on Friday afternoon, in time for Plaintiffs to conduct their analysis.

Plaintiffs have reviewed the data and identified multiple instances in which voting machine allocation does not keep pace with anticipated voter turnout. Voters are conservatively projected to vote in significantly higher numbers in the General Election, with increases of 200-300% in voter turnout over the June 2020 primary. So, even where voting machines have been increased in certain locations, that still constitutes a *decrease* in the number of voting machines available *per voter*.

Six of the seven Counties that provided the requisite data for the General Election have a proposed allocation of voting machines for the election that is likely to result in the same long lines that were witnessed in the June 2020 primary elections (and have persisted for over a decade).³ Plaintiffs' expert identified 30 locations that will likely experience especially long lines due to their machine

³ Plaintiffs did not timely receive the requisite data from Chatham County and, accordingly, were unable to complete a long lines analysis for that county. Plaintiffs did not receive complete data from Clayton or DeKalb counties prior to this filing. Accordingly, analysis could not be fully conducted on polling places within those counties. Where possible, a partial analysis was completed. Three counties—Fulton, Gwinnett, and Cobb—are predicted to be at a lower risk of long lines for the General Election based on machine allocation issues, provided they do in fact allocate machines as indicated in the materials provided, and those machines work as anticipated. As noted below, Chatham County did not timely provide data in response to the Court's order for analysis and Clayton County did not provide data on the number of registered voters per precinct, severely limiting Plaintiffs' ability to conduct an analysis on that county. Plaintiffs respectfully request that the Court reiterate its order with respect to those two counties and allow Plaintiffs an opportunity to examine their data as well.

allocation and, in some instances, lines that are even longer than they were for the June 2020 primary election.⁴

It is important to also note the intersection of O.C.G.A. § 21-2-367(b). That law provides that “[i]n each precinct in which optical scanning voting systems are used, the county or municipal governing authority, as appropriate, shall provide at least one voting booth or enclosure for each 250 electors therein, or fraction thereof.” It is clear that most counties are *not* providing one voting machine for every 250 registered voters, whether by precinct or polling location.⁵ Ex. 1 at 8, 14, 17, 24, 25. In other words, there appears to be a pattern or practice of under-resourcing voting locations in these counties. It is also clear that meeting this standard would reduce the risk of long lines in polling locations that are the most under-resourced although,

⁴ Dr. Muer Yang is an expert on waiting line analysis and his testimony has been accepted and credited in at least three federal courts and one state court in the last four years. ECF No. 93-62 at 2-5. No court has found his opinions to be unreliable. *Id.* Dr. Yang analyzed data inputs from the June 2020 primary election, such as BMDs, poll books, and scanners, and his analysis matched the reality on the ground. Specifically, Dr. Yang’s report, using only those data inputs, showed that there would be long lines at certain polling locations, and external reports (such as news articles and reports by voters) confirmed that long lines did, in fact, occur at those locations. *See id.* 16-40.

⁵ At least one county is including in its count any “booth” for voters to cast provisional ballots.

as discussed below, the number of available equipment like poll books and scanners matters, too, not just voting machines.⁶

The 30 polling locations that are of most concern—those with predicted maximum wait times exceeding 30 minutes—are more specifically identified and discussed below.⁷ Most of these polling locations provide at least one voting machine for every 250 registered voters assigned to that location. Some also do not allocate sufficient poll pads for checking in the large number of voters assigned to the location. Again, these particular polling locations are the ones of *most* concern. As elaborated in Dr. Yang's report, not only is predicted turnout conservative, any

⁶ For example, Fulton County appears to be supplying one voting machine for every 250 voters assigned to a polling location in the General Election and, as discussed below, their machine allocation currently does not present a risk of long lines based on machine allocation. Ex. 1 at 23.

⁷ Dr. Yang's reports also address average wait time. Average wait time can be deceiving, however, if proper appreciation is not made for how it should be used to optimize voting machine allocation. Average wait time does not reveal wait times during the most popular times of the day—usually the morning and evening—when crowds gather. Indeed, a polling location with an average wait time of only two minutes is likely to have times in the day where voters wait more than 30 minutes. ECF No. 93-62 at 8-9; Ex. 1 at 2. An average wait time of five minutes can result in wait times of over an hour during popular times. *Id.* at 3. This is evidenced by the data available for the June Primary. For example, at Park Side Elementary School in Fulton County, Dr. Yang had a calculated average wait time of just 2 minutes, yet there were reports of lines nearly 4 hours long during peak times. *See* <https://www.ajc.com/news/state--regional-govt--politics/voting-machines-and-coronavirus-force-long-lines-georgia-voters/VajM2D3aSHALhCz7KwDrpJ/>; *see also* ECF No. 1, ¶ 81.

location with an average wait time of two minutes or longer is at risk of long lines, Ex. 1 at 2, and he makes specific recommendations for realistic and discrete fixes, including increasing the number of poll pads at any location with 1,400 Election Day voters. *Id.* at 27.⁸

1. Henry County

In the June 2020 primary, many voters in Henry County waited in hours-long lines to vote across the county. For instance, voters were still standing in lines long after polls closed at five locations: Lowes, North Hampton, Mt. Carmel, Red Oak, and Stockbridge East-West. ECF No. 93-62 at 17. Tellingly, Dr. Yang's formula confirms long lines would be expected at these exact locations. *Id.* at 18. These lines were the result of a misallocation of voting machines, as every polling location was provided with the same number of BMDs, regardless of the registered voters assigned to that location. Ex. 1 at 10.

Henry County has adjusted its approach and now appears to allocate voting machines based on the number of registered voters assigned to a polling location. While this re-allocation addresses long lines at certain locations, there are now other

⁸ And, of course, Dr. Yang's report (and this brief) focuses on machine allocation, not other causes of long lines elaborated upon in Plaintiffs' Complaint and Motion for Preliminary Injunction. But proper machine allocation is essential to reducing long lines, just as ensuring that the machines are working and that polling places are adequately staffed with trained workers are.

polling places that are predicted to experience long lines even with re-allocation. These are not the same locations that experienced long lines in the June Primary, but it is the result of the same reason—the increase of voting machines still does not account for significant increase in predicted voters.

For example, at one location, Locust Grove, there were 729 voters in June, but 2,275 predicted in November—over three times as many. Even doubling the voting machines there, as Henry County says it will, does not address the anticipated increase in turnout. As a result, there will likely be *more* voters per machine, not fewer, despite the increased number of voting machines. This same arithmetic holds true for the other six locations noted below.

By simply reallocating voting machines, poll pads, and scanners to account for this surge in voter turnout, each of these locations can likely reduce average wait times to well under one minute. Such a reallocation would not require the county to acquire more voting machines but instead to simply reallocate existing machines within the county. Ex. 1 at 11-13.

June 2020 Primary						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)*</u>
Locust Grove	729	6	2	1	122	12
Sandy Ridge	647	6	2	1	108	1.9
Wesley Lakes	741	6	2	1	124	26
Ellenwood	699	6	2	1	117	5

Lowes	1018	6	2	1	170	139
Kelleytown	680	6	2	1	113	2.3
Cotton Indian	637	6	2	1	106	2.3

***Average wait times of even 2 minutes generally result in peak expected wait times of over 30 minutes.**

November 2020 General Election (Counties' Planned Allocations)						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)</u>
Sandy Ridge	1641	8	3	1	205	91
Wesley Lakes	2036	10	3	2	170	88
Locust Grove	2275	12	3	2	190	66
Ellenwood	1434	8	3	1	179	51
Lowes	3262	20	5	2	163	39
Kelleytown	1214	8	3	1	152	35
Cotton Indian	1578	10	3	1	158	31

November 2020 General Election (Plaintiffs' Expert's Recommended Allocations)						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)</u>
Sandy Ridge	1641	14	3	1	117	11
Wesley Lakes	2036	17	4	2	120	6
Locust Grove	2275	18	5	2	126	5
Ellenwood	1434	12	3	1	120	6
Lowes	3262	26	6	2	125	10
Kelleytown	1214	11	2	1	110	7
Cotton Indian	1578	13	3	1	121	8

2. DeKalb County

Voters in DeKalb County waited in line for up to 4.5 hours to cast their vote during the June Primary, with many voters disenfranchised because they were unable to wait for hours in the extreme heat, humidity, and rain. ECF No. 93-36 at ¶¶ 3-10.

Polling locations in DeKalb County were once again ordered to stay open late to avoid disenfranchisement of voters.⁹ ECF No.93-47. The data they provided for machine allocation for the General Election shows that at least three polling locations, McWilliams/Miller Grove, Clifton/Meadowview, and Boulevard, will likely experience significant wait times. The McWilliams/Miller Grove polling location is predicted to have wait times well over *three hours*, which are in large part caused by bottlenecks at check-in. The maximum wait time for this polling location could be reduced to a little over one hour if DeKalb County allocated 11 more voting machines and four poll pads. The Clifton/Meadowview and Boulevard polling locations are predicted to have maximum wait times of around forty minutes, which could be reduced to just over five minutes if they were each provided with two more poll pads and three or four more voting machines.

<u>November 2020 General Election</u> <u>(Counties' Planned Allocations)</u>						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)</u>
McWilliams/Miller Grove	2227	15	2	1	148	207
Clifton/Meadowview	1535	15	2	1	102	40
Boulevard	1502	14	2	1	107	36

⁹ DeKalb County did not timely provide data on average wait times per polling location during the June Primary, so Dr. Yang was unable to include an analysis for the June Primary.

November 2020 General Election						
(Plaintiffs' Expert's Recommended Allocations)						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)</u>
McWilliams/Miller Grove	2227	26	5	1	86	73
Clifton/Meadowview	1535	18	4	1	85	7
Boulevard	1502	18	4	1	83	6

3. Douglas County

In the June Primary, multiple polling places in Douglas County were ordered to stay open late because of long lines. Exs. 20, 48. These lines were not surprising, as all but three polling locations were provided with the same number of voting machines (ten), *regardless* of the registered voters assigned to that location. For example, a precinct with only 316 election day voters, Precinct 1276, had the same number of voting machines as a precinct with 846 election day voters, Precinct 1258.

Unfortunately, Douglas County has made few revisions to their pattern of voting machine allocation. Douglas County again plans to provide most polling locations with ten voting machines, two poll pads, and one scanner each. Only three of twenty-five locations—1258, 1275, and 736S—will receive more equipment, each receiving fifteen voting machines, three poll pads and two scanners. The polling locations that received fewer than ten voting machines for the June Primary—738, 1259, and 1274—will each receive ten voting machines for the general election.

This slight adjustment to equipment allocation is not nearly enough to prevent long lines. Wait times at four polling locations—Nos. 1272, 729, 736N, and 739—are expected to range between one to two hours. Providing just one more scanner and three to four additional voting machines would bring wait times to between 21 and 48 minutes. Ten other polling locations in Douglas County are expected to have wait times between 30 minutes to an hour. Unfortunately, Douglas County does not have enough poll pads and voting machines to reduce all of these wait times to below 30 minutes. In other words, to provide these ten polling locations with the polling pads and voting machines necessary to reduce wait times, equipment would have to be reallocated from other polling locations that also need this equipment to avoid an increase in their wait times. However, as shown below, implementing a reallocation consistent with Dr. Yang’s proposal will likely provide a significant reduction in wait times compared to Douglas County’s proposed allocation.

<u>June 2020 Primary</u>						
	<u>Actual Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD (rounded)</u>	<u>Avg. Wait (minutes)*</u>
1272	672	10	2	1	67	0.3
729	740	10	2	1	74	0.4
736N	627	10	2	1	63	0.3
739	644	10	2	1	64	0.3
1258	846	10	2	1	85	0.5
1260	569	10	2	1	57	0.2
1270	463	10	2	1	46	0.1
1275	828	10	2	1	83	0.6

785	639	10	2	1	64	0.3
736S	886	10	2	1	89	0.7
737	Not provided	10	2	1	Not provided	Not provided
730	519	10	2	1	52	0.2
1273	506	10	2	1	51	0.2
1271	523	10	2	1	52	0.2

*Average wait times of even 2 minutes generally result in wait times at peak times of over 30 minutes.

November 2020 General Election (Counties' Planned Allocations)						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)</u>
1272	2008	10	2	1	201	119
729	1990	10	2	1	199	116
736N	1812	10	2	1	181	83
739	1755	10	2	1	176	75
1258	2444	15	3	2	163	57
1260	1596	10	2	1	160	51
1270	1592	10	2	1	159	50
1275	2393	15	3	2	160	50
785	1597	10	2	1	160	49
736S	2365	15	3	2	158	46
737	1525	10	2	1	153	45
730	1505	10	2	1	150	36
1273	1484	10	2	1	148	33
1271	1462	10	2	1	146	31

November 2020 General Election (Plaintiffs' Expert's Recommended Allocations Based on Existing Supply)						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)</u>
1272	2008	14	3	1	143	48
729	1990	14	3	1	142	43
736N	1812	13	3	1	139	27
739	1755	13	3	1	135	21
1258	2444	19	3	2	129	54
1260	1596	11	2	1	145	49

1270	1592	11	2	1	145	50
1275	2393	18	3	2	133	48
785	1597	11	2	1	145	50
736S	2365	17	3	2	139	47
737	1525	12	2	1	127	39
730	1505	11	2	1	137	35
1273	1484	10	2	1	148	33
1271	1462	10	2	1	146	30

4. Macon-Bibb County

Voters in Macon-Bibb County have faced long lines at polling locations since at least 2012. *See* ECF No. 93-23. This problem will likely persist in the upcoming elections: Dr. Yang estimates that at least two precincts, HA3 and HO3, will once again experience long lines under the County's current plan for allocating voting equipment. The County plans to allocate twelve ballot marking devices to each of those locations, which will likely cause voters to wait in lines of thirty minutes or more. While these locations are not known to have had long lines in the June Primary (and therefore a chart is not included), the current number of assigned voters and expected turnout for the General Election means lines will likely be long. By reallocating those resources to add eight more ballot marking devices in each of those locations, the County could reduce those maximum wait times to just two minutes each.

<u>November 2020 General Election</u> <u>(Counties' Planned Allocations)</u>						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)</u>

HA3	1968	12	5	2	183	32
HO3	1949	12	5	2	183	30

November 2020 General Election						
(Plaintiffs' Expert's Recommended Allocations)						
	<u>Predicted Voters</u>	<u>BMDs</u>	<u>Poll Pads</u>	<u>Scanners</u>	<u>Voters per BMD</u>	<u>Peak Expected Wait Time (minutes)</u>
HA3	1961	20	5	2	110	2
HO3	1949	19	5	2	116	2

5. Cobb County, Fulton County, and Gwinnett County

Cobb County, Fulton County, and Gwinnett County have made significant changes to their voting machine allocation and, due to those re-allocations, appear to be at a lower risk for voting lines of over 30 minutes long, at least due to machine allocation. Cobb County does not have any locations that are predicted to have voting lines of over 30 minutes during peak times due to voting machine allocation. Both Fulton County and Gwinnett County each have two polling locations that are predicted to have voting lines of over 30 minutes long at peak times in light of voting machine allocation, but minor equipment changes can lower those predicted times to under 30 minutes. Notably, Fulton County has represented that they plan to provide at least one voting machine (i.e., BMD) per 250 voters assigned to each polling location. In Fulton, location 08E/09F is predicted to have 39-minute lines at

peak times, and location MI03/MI07A/B is expected to have 31-minute lines at peak times. Each of these locations can reduce peak line times to under 30 minutes with the addition of one scanner. For Gwinnett County, location Harbins A and location Duncans D are each expected to have 31-minute lines at peak times. Both locations can reduce peak wait times to under 30 minutes with the addition of one poll pad.

It is important to note, again, that these predictions are based on expected turnout for the General Election and that the estimates are conservative. To the extent the Counties are expecting significantly higher turnout than 2016, the Counties should consider additional equipment at large locations, especially poll pads. Moreover--as is true for all Counties--these predictions focus on machine allocation, and issues such as set up, failure, technical support, number of poll workers, and training will all impact long lines.

6. Clayton County

As noted above, Clayton County failed to timely provide Plaintiffs with the number of registered voters assigned to each polling location, information required to conduct an analysis of their planned voting machine allocation for the General Election. Counsel has explained that the county is “unable to move forward with identify[ing] specific boundaries for the seven new precincts until after the conclusion of the recent special election” because it is still awaiting final registration

numbers from the State.¹⁰ This did not prevent seven other counties, including two participating in the same special election, from providing these data. Clayton County's failure to provide data, however, does not excuse them from this action and it does not alleviate Plaintiffs concern that voters in Clayton County will experience long voting lines in November. On the contrary, Clayton County's inability to provide the same basic planning information as other counties have provided increases Plaintiffs concerns that Clayton County is again failing to properly plan for the General Election. This would be consistent with Clayton County's history of poor election administration that has resulted in long voting lines. For more than a decade, Clayton County voters have stood in long voting lines. In the June 2020 Primary, voters reported wait times of over *nearly four hours* on the last day of early voting and long lines on Election Day. ECF No. 93-40 at ¶¶ 3-13. Clayton County's inability to produce its planning data is just another indicator of systematic poor planning and election administration that results in burdens on the right to vote. Clayton County should be ordered to provide this information immediately.

¹⁰ Ex. 2 (October 4, 2020 email from J. Hancock to M. Haggard).

7. Chatham County

Chatham County did not timely provided the data necessary to calculate its average wait times in the June Primary or in the upcoming general election.¹¹ Chatham voters have been standing in long lines for years, and that trend has continued through the June Primary. *See* Pls.’ Mot. for Prelim. Injunction, Exs. 15, 16 (reporting long lines in 2018); Exs. 17, 18 (long lines in June Primary). The problem was so severe the Superior Court of Chatham County extended voting hours for nearly forty polling locations during the June Primary. ECF No. 93-42. Noting that the delays were “caused by problems with the new voting equipment, set-up and implementation of the new voting system,” *id.*, the court was forced to intervene to mitigate the County’s systematic and unconstitutional disenfranchisement of its voters.

For both Chatham and Clayton counties, Plaintiffs respectfully request that the Court reiterate its order with respect to those two counties and allow Plaintiffs an opportunity to examine their data and provide an analysis to the Court.

8. Universal recommendations for all Counties

Again, the locations discussed are likely to have the most serious wait lines. Dr. Yang’s report identifies other locations that are risk of bottlenecks and

¹¹ *See* Ex. 3.

significant wait times during peak hours. To prevent bottlenecks, Dr. Yang recommends that at least three poll pads should be assigned to polling locations with over 1,400 Election Day voters and at least four poll pads should be assigned to polling locations with over 2,100 Election Day voters. Ex. 1 at 27. Polling locations with over 1,500 Election Day voters should have at least two scanners and those with over 3,000 Election Day voters should have at least three scanners. *Id.* at 28. It is important to note that changes in voter turnout will impact the predicted wait times above, especially at polling locations that serve a large number of voters. *Id.* As election day approaches, election officials should allocate additional voting machines if the number of voters who vote on election day will be larger than the numbers they provided in response to the court's order. *Id.*

C. Improper machine allocation is a specific practice that this Court can remedy under *Anderson-Burdick*.

When election procedures and processes are challenged under the First and Fourteenth Amendments, courts apply the *Anderson-Burdick* balancing test, under which the Court “weigh[s] ‘the character and magnitude of the asserted injury to the rights . . . the plaintiff seeks to vindicate’ against the ‘precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the

plaintiff's rights.” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

The *Anderson-Burdick* standard is intended to address injury to the right to vote. *See id.* (a challenge under *Anderson-Burdick* weighs “the character and magnitude of the asserted injury” on the right to vote against the precise interests identified by the state). While this often looks at a specific state law, courts have recognized that injury to the right to vote can also present itself in the form of election administration patterns or practices.

In fact, another court in this District recently granted. In fact, another court in this District recently granted injunctive relief after considering “whether Georgia’s *practices and procedures* for administering voter access to the ballot at the polls unconstitutionally impact the voting process and unduly burden the exercise of qualified citizens to choose their elected representatives.” *Curling v. Raffensperger*, No.: 17-cv-2989, 2020 WL 5757809, at *1 (N.D. Ga. Sept. 28, 2020) (emphasis added). The court did not find that a specific state law was unconstitutional or that a state law had been violated. *Id.* at *24-25. Rather, applying *Anderson-Burdick*, the court concluded that given the repeated failure of electronic pollbooks and the lack of an articulated state interest or significant burden to the state of implementing relief, plaintiffs were “likely to succeed on the merits of their claim regarding the

security and reliability of the voter registration database and electronic pollbook system,” and were entitled to “narrowly tailored” injunctive relief that required defendants to “provide at least a modicum of the voting backup tools essential to protecting voters’ constitutionally protected ability and right to cast a ballot that is counted and given the same weight as any other on this coming November 3rd general election day and thereafter.” *Id.* at *21-22, *25-26. Much like the relief Plaintiffs are asking for here, the relief sought by the *Curling* plaintiffs was “a limited common sense remedy to the real and repetitive *voting impediments* Plaintiffs have experienced at the precinct threshold and the substantial threat that they will face from these impediments anew in the 2020 general election if preliminary injunctive relief is not granted.” *Id.* at *1 (emphasis added).

Other cases, too, recognize that practices or procedures may burden the right to vote, even in the absence of—or compliance with—existing state law. *See, e.g. League of Women Voters of Ohio v. LaRose*, No.: 20-cv-3843, 2020 WL 5757453, at *13 (S.D. Ohio Sept. 27, 2020) (applying *Anderson-Burdick* to challenges to “ad hoc procedures adopted by county boards of elections for signature matching on absentee ballot applications and absentee ballots, [as] a result of the State’s failure to impose uniform standards”); *Nat’l Ass’n for Advancement of Colored People State Conf. of Pa. v. Cortes*, 591 F. Supp. 2d 757, 764-67 (E.D. Pa. 2008) (entering

injunction requiring Secretary of State to direct all county boards of election to immediately switch to paper ballots if 50% or more of voting machines in a precinct became inoperable, despite apparent compliance with Secretary's directive and training calling for such action if 100% of voting machines became inoperable, because "the malfunctioning of DRE voting machines, either because of human error or mechanical failure, causes a significant injury whenever voters are effectively denied the right to cast their ballots").

The failure of Defendants to supply and allocate voting machines at polling locations to reduce lines to 30 minutes or lower is a consistent practice or procedure that has posed real, repetitive, and well documented impediments to exercising the right to vote. Under *Anderson-Burdick*, this Court can and should order injunctive relief tailored to remedying this longstanding practice and the severe burdens it places on the right to vote.

III. CONCLUSION

Plaintiffs respectfully request that the Court grant their Motion for Preliminary Injunction.

Dated: October 5, 2020

Respectfully submitted,

Adam M. Sparks

Halsey G. Knapp, Jr.

Georgia Bar No. 425320

Joyce Gist Lewis

Georgia Bar No. 296261

Adam M. Sparks

Georgia Bar No. 341578

KREVOLIN & HORST, LLC

One Atlantic Center

1201 W. Peachtree Street, NW, Ste. 3250

Atlanta, GA 30309

Telephone: (404) 888-9700

Facsimile: (404) 888-9577

hknapp@khlawfirm.com

jlewis@khlawfirm.com

sparks@khlawfirm.com

Marc E. Elias*

Amanda R. Callais*

Jacki L. Anderson*

Tre Holloway*

PERKINS COIE LLP

700 Thirteenth Street, N.W., Suite 600

Washington, D.C. 20005-3960

Telephone: (202) 654-6200

Facsimile: (202) 654-6211

MElias@perkinscoie.com

ACallais@perkinscoie.com

JackiAnderson@perkinscoie.com

THolloway@perkinscoie.com

Kevin J. Hamilton*

Amanda J. Beane*

Heath Hyatt*

PERKINS COIE LLP

1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000
KHamilton@perkinscoie.com
ABeane@perkinscoie.com
HHyatt@perkinscoie.com

Marcus Haggard*
PERKINS COIE LLP
1900 Sixteenth Street, Suite 1400
Denver, CO 80202-5255
Telephone: (303) 291-2300
Facsimile: (303) 291-2400
MHaggard@perkinscoie.com

Molly Mitchell*
PERKINS COIE LLP
1111 West Jefferson Street, Suite 500
Boise, ID 83702-5391
Telephone: (208) 343-3434
Facsimile: (208) 343-3232
MMitchell@perkinscoie.com

**Admitted Pro Hac Vice*

Attorneys for Plaintiffs

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

LUCILLE ANDERSON, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

Civil Action No. 1:20-cv-03263-MLB

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: October 5, 2020

Adam M. Sparks
Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: October 5, 2020

Adam M. Sparks
Counsel for Plaintiffs