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

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| S.P.S., *ex rel.* SHORT, *et al.*<br><br>*Plaintiffs*,<br><br>v.<br><br>BRAD RAFFENSPERGER, *et al.*,<br><br>*Defendants*. | CIVIL ACTION<br><br>FILE NO. 1:19-CV-04960-AT |

## DEFENDANTS'[1] REPLY BRIEF IN OPPOSITION TO PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS[2]

## INTRODUCTION

Following the decision of the Eleventh Circuit Court of Appeals in *Jacobson v. Fla. Sec'y of State,* 2020 U.S. App. LEXIS 13714 (11th Cir. April 29, 2020), which dismissed a nearly identical case challenging Florida's ballot-order statute, this Court requested supplemental briefing to determine whether, and to what extent, the *Jacobson* decision impacts Plaintiffs' claims

[1] Defendants are Secretary of State Brad Raffensperger and State Election Board Members David J. Worley, Rebecca N. Sullivan, Anh Le, and Seth Harp.

[2] (Doc. 54). Defendants' note at the outset that they limit their response to addressing the threshold jurisdictional issue of standing implicated by the Eleventh Circuit decision in *Jacobson*, which resulted in this Court's request for supplemental briefing.

in this case. (Doc. 54). Plaintiffs' supplemental brief surprisingly claims "[t]hat impact is zero." (Doc. 57, p. 7[3]). But reality does not so neatly separate the *Jacobson* ruling from Plaintiffs' claims. To the contrary, the *Jacobson* ruling fully closes the door on Plaintiffs' First Amended Complaint, which this Court should dismiss with prejudice because—even at this early stage of litigation—not a single Plaintiff has adequately alleged standing under the standards explained by the *Jacobson* court, which are binding on this Court. As with the plaintiffs in *Jacobson*, Plaintiffs here can only allege an **average** impact of ballot order on elections generally and cannot (and do not) allege an impact on any particular race. As explained below, that is fatal to their claims of any injury in this case.

While Plaintiffs make much of the fact that the decision in *Jacobson* came after a full trial on the merits, the standards pronounced by the *Jacobson* court apply regardless of the stage of litigation. The only difference is what must be *shown* at each successive stage of litigation. Defendants do not dispute that generally Plaintiffs face a low burden at the pleading stage in order to survive dismissal. But even after Plaintiffs' amendment to their initial Complaint, they still failed to meet the minimal standards required of

[3] For ease of reference, the page numbers for documents in this case refers to the ECF numbering at the top of each page.

pleadings in federal court in light of *Jacobson*. And nothing in Plaintiffs' supplemental briefing (Doc. 57) can save them from the content of their own pleadings. Because Plaintiffs' claims are fundamentally flawed, this Court should not grant leave to further amend their First Amended Complaint because any further amendment would not enable them to find someone with standing.

## ARGUMENT AND CITATION OF AUTHORITY

"Federal courts have an independent obligation to ensure that subject-matter jurisdiction exists before reaching the merits of a dispute." *Jacobson*, 2020 U.S. App. LEXIS 13714 at *12. This is a "bedrock requirement." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 471 (1982). As the Supreme Court has repeatedly instructed lower courts and the litigants before it, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976). This Court is familiar with the three requirements of standing and the requirement that injuries be "certainly impending." *Jacobson,* 2020 U.S. App. LEXIS 13714 at *13, citing *Lujan v. Defs. Of Wildlife,* 504 U.S. 555, 560–561 (1992); *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 401 (2013).

Despite Plaintiffs' claims to the contrary, even at this early stage of litigation they have not alleged injury-in-fact and, even if they could, such injury-in-fact is not "certainly impending." The language of the majority opinion coupled with the concurrence in *Jacobson* by Judge William Pryor also reveals another fatal flaw in Plaintiffs' First Amended Complaint: it asks this Court to resolve a political question of the kind the Supreme Court ruled non-justiciable in the recent partisan gerrymandering case, *Rucho v. Common Cause,* 139 S. Ct. 2484 (2019).

This brief first addresses why *Jacobson* lays to rest any doubt in Defendants' initial position that the individual Plaintiffs lack standing, then turns to discuss why it similarly compels the conclusion that the Organizational Plaintiffs lack standing. Finally, the brief discusses why *Jacobson* further demonstrates that Plaintiffs' claims remain non-justiciable political questions that should nevertheless be dismissed even if they have properly alleged standing.

## I. The Individual Plaintiffs have not established injury-in-fact.

Plaintiffs claim in their Supplemental Brief that, "all nine Plaintiffs have met the requirements to establish they have standing at this pre-discovery phase of litigation." (Doc. 57, p. 2). In support, Plaintiffs cite paragraphs 15–23 of their First Amended Complaint (Doc. 17). *Id.* They

further state such allegations are "reinforced… through subsequent declarations in support of their motion for preliminary injunction." *Id.*

But Plaintiffs conflate the pre-discovery standards of review and offer nothing to support their novel position that Plaintiffs may rely on matters outside their First Amended Complaint, such as declarations in support of their preliminary-injunction motion, and still retain the high degree of deference afforded to well-pleaded allegations at the motion-to-dismiss stage. Defendants brought their Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) *and* Fed. R. Civ. P. 12(b)(1). (Doc. 37-1, pp. 2–3). Under 12(b)(6), the Court is generally limited in its scope of analysis to the four corners of the complaint, provided the Court takes all well-pleaded factual allegations as true. To the extent Plaintiffs now argue that this Court should review facts outside the complaint to determine its jurisdiction under 12(b)(1), Plaintiffs' allegations do not enjoy the same degree of deference afforded under 12(b)(6):

> Because at issue in a factual 12(b)(1) motion is the trial court's jurisdiction -- its very power to hear the case -- there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. In short, **no presumptive truthfulness attaches to plaintiff's allegations**, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. **Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist**.

*Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 732 n.9 (11th Cir. 1982) (emphasis added). Plaintiffs cannot have it both ways. If this Court reviews the Motion to Dismiss pursuant to Rule 12(b)(6), Plaintiffs may not rely on extraneous evidence like declarations from their Motion for Preliminary Injunction. And while the Court may utilize information from other sources to satisfy itself that it has adequate jurisdiction under Rule 12(b)(1), that evidence does not enjoy the presumption of truthfulness.

In either event, though, the outcome remains the same: Plaintiffs' claims cannot survive Defendants' Motion to Dismiss. By Plaintiffs' own admission, the declarations from their Preliminary Injunction Motion merely "reinforce" the claims made in their First Amended Complaint. (Doc. 57, p. 2). Those claims, even if taken as true, do not establish injury-in-fact under *Jacobson*.

Paragraphs 15–18 of (Doc. 17) allege the standing of the four individual Plaintiffs in this action. Though mildly different in substance, they all contain some flavor of the following alleged injury-in-fact:

> If the Court does not enjoin the Ballot Order Statute prior to then, Republican Party candidates will be listed in the first position on the ballot in all partisan races in which he will be voting, and they will continue to receive an artificial and unfair advantage purely as a result of their ballot position. As a result, S.P.S. will suffer serious, irreparable injury because of the Ballot Order Statute, both due to the dilution of his vote and the burden

> on his efforts to help elect Democratic Party candidates. His vote for Democratic Party candidates will be diluted relative to that of voters who cast their ballots for Republican Party candidates, because its weight and impact will be decreased—and the weight and impact of votes cast for Republican candidates increased—by the votes accruing to Republican candidates solely due to their first position on the ballot… The Ballot Order Statute, if it is not enjoined, will burden S.P.S.'s ability to engage in effective efforts to elect Democratic Party candidates by requiring substantially more time and resources to achieve his mission.

(Doc. 17, ¶ 15). Put differently, the individual Plaintiffs allege injury-in-fact in two ways: First, that the ballot-order statute causes them to suffer "vote dilution," and second, that the individuals will have to work harder to elect Democratic Party candidates due to the effects of the ballot-order statute. These two allegations are almost identical to the injuries the Eleventh Circuit found insufficient in *Jacobson:*

> Jacobson appears to identify two threatened injuries from the ballot statute. The first is that some unidentified Democratic candidates for whom she will vote in future will lose those elections because of the primacy effect. The second injury is that – regardless of the outcome of any election – the ballot statute "dilutes" the votes of Democrats relative to Republicans by allocating the windfall vote entirely to Republican candidates. **We reject both theories of injury.**

*Jacobson,* 2020 U.S. App. LEXIS 13714 at *15 (emphasis added).

It is important to note that that "[v]oters have no judicially enforceable interest in the **outcome** of an election… Instead, they have an interest in their ability to vote and in their vote being given the same weight as any

other." *Id.* at *16 (emphasis added). Because of this, this Court can quickly dispense with Plaintiffs' complaint that their preferred candidates will have a more difficult time winning the election than their Republican counterparts. Even if the Court assumes the validity of the allegation, the voters have no cognizable interest in the **outcome**. Thus, they cannot be injured by a statute that causes the individual Plaintiffs to allegedly have to expend "substantially more time and effort to achieve [their individual] mission" of electing Democrats when they have no cognizable interest in such an outcome in the first place.

The individual Plaintiffs' standing, then, must rely on their claim of vote dilution. But the dilution of one's vote is a **legal** conclusion, not a **factual** allegation. Even if this Court weighs this allegation under a Rule 12(b)(6) standard, this alters the calculation at the pleading phase because, as the Supreme Court has noted, a reviewing court need not accept legal conclusions as true even at the motion-to-dismiss stage. *See, e.g. Ashcroft v. Iqbal,* 556 U.S. 662, 678 – 679 (2009) (in evaluating motions to dismiss, the court must assume the veracity of well-pleaded factual allegations; however, the court does not have to accept as true legal conclusions when they are "couched as [] factual allegation[s]").

Plaintiffs' claims falter on a key point that *Jacobson* identified—they cannot show the injury to any **particular** candidate. They can only show that the candidates they will likely prefer will be subject to an "***average*** 4.2 percentage point advantage conferred upon first-listed candidates in Georgia partisan elections…" (Doc. 57, p. 20) (emphasis added). According to Plaintiffs, this measure represents the **approximate** degree of "vote dilution" their vote suffers as a result of Georgia's ballot-order statute. But as *Jacobson* instructs, even accepting Plaintiffs' allegation that the ballot-order statute confers such a statewide **average** measure of apparent windfall vote to Republicans, it cannot constitute vote dilution as to an individual race:

> Indeed, because Jacobson relies solely on an average measure of the primacy effect, we cannot know how often the primacy effect is zero and how often it is much greater than five percent. **Any estimates we might make about the variance in the primacy effect across races would be pure speculation.**

*Jacobson,* 2020 U.S. App. LEXIS 13714 at *20 (emphasis added). Although *Jacobson* is a decision following a full trial on the merits, the Eleventh Circuit clearly demonstrated that the underlying rationale has broader applicability, including at the motion-to-dismiss stage. "We need not doubt [Jacobson's] math to reach this conclusion… The reason her calculations cannot establish standing is that they are an **average** measure." *Id.*, quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1933 (2018) (emphasis added and internal

quotations omitted).[4] In other words, the Eleventh Circuit accepted the numerical calculation of Ms. Jacobson as true, but it nevertheless rejected the legal conclusion that such a numerical calculation amounted to "vote dilution," just as the Court must do here—especially when Plaintiffs' expert in this case does not identify any dilution regarding any specific race, but discusses only the **average** impact. *See* (Doc. 24-2, pp. 6, 13, 16, 23, 29-30, 38, 40-41).

As a result, the individual Plaintiffs have failed to establish Article III standing because their pleadings failed to adequately allege any legally cognizable injury. Even at this stage of litigation, *Jacobson* compels the conclusion that this Court should dismiss the individual Plaintiffs from this case.

## II. The Organizational Plaintiffs cannot establish standing.

As this Court is aware, "[a]n organization may demonstrate a concrete, imminent injury either through a 'diversion-of-resources' theory or through an 'associational-standing' theory." *Democratic Party of Ga., Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1336 (N.D. Ga. 2018) (citing *Arcia v. Fla.*

[4] If this is true where the Court takes all well-pleaded allegations as true, surely it is the case when the Court views factual allegations through a more searching lens under Fed. R. Civ. P. 12(b)(1).

*Sec'y of State*, 772 F.3d 1335, 1341–42 (11th Cir. 2014)). In addition to addressing the nature of an injury to an individual, *Jacobson* also instructs that it is not sufficient to merely allege resource "diversion," but also to state what those resources are being diverted away *from*. *Jacobson*, 2020 U.S. App. LEXIS 13714 at *26. "To establish associational standing, an organization must prove that its members 'would otherwise have standing to sue in their own right.'" *Id*. at *22. Because the individual Plaintiffs lack standing, this brief first addresses the Organizational Plaintiffs' claim of associational standing before explaining their lack of standing under a diversion-of-resources theory.

### *A. The Organizational Plaintiffs have not established associational standing.*

Plaintiffs claim this case is distinguishable from *Jacobson* on associational standing in a number of ways. Plaintiffs note that in *Jacobson,* "the plaintiffs there failed to identify specific members at trial would be harmed by Florida's ballot order statute," and that such a standard is inapplicable at this phase of this litigation. They also claim that even if it were applicable, they nevertheless, "*have* identified individual member-equivalents who will be directly harmed… [including] eight formal members, four of whom are elected officials and candidates for public office in

Georgia…" (Doc. 57, p. 14). In so doing, Plaintiffs creatively reinterpret *Jacobson.*

As with the primacy effect itself, the *Jacobson* court **assumed** the organizational plaintiffs had alleged members and candidate-members of the organization that were harmed by the ballot-order statute. But that assumption did not change the ruling of the court. With respect to the candidate-members, the court noted, "**even if we accept as true** the allegation of the complaint that the [Democratic National] Committee's members include Democratic voters and candidates in Florida, the Committee still has not proved that one of those unidentified members will suffer an injury." *Jacobson,* 2020 U.S. App. LEXIS 13714 at *23 (emphasis added). The Court continued, "[a]ny voters and candidates in Florida face the same problem as [individual plaintiff] Jacobson. That is, because the Committee relies solely on an **average** measure of the primacy effect, we have no basis to conclude that the primacy effect will impact **any particular** voter or candidate in any particular election." *Id.* (emphasis added).

This is fatal to all Organizational Plaintiffs' claims of associational standing because they all suffer the same fundamental defect—they rely on a statistical **average** primacy effect as the foundation for all the injuries they allege. *Jacobson* squarely rejects this claimed basis for injury, and the

Plaintiffs here never allege a primacy effect for a **particularized** pending election with any degree of specificity because they cannot.

The Organizational Plaintiffs cannot show associational standing. They must rely entirely, then, on a diversion-of-resources theory. But *Jacobson* renders the fate of this theory the same as all the others.

*B. The Organizational Plaintiffs cannot show standing under a diversion-of-resources theory.*

The Plaintiffs claim their First Amended Complaint successfully alleged resource diversion for at least two of the Organizational Plaintiffs:

> Priorities USA, for instance, must divert funds from its efforts to persuade and mobilize voters in other states to combat the Ballot Order Statute's effects in Georgia. Doc. 17 ¶ 23. Further, the D[emocratic] N[ational] C[ommittee] must commit *more* resources to Georgia than it would otherwise have to absent the Ballot Order Statute. *Id.* ¶ 19.

(Doc. 57, p. 17) (emphasis original).[5]

Like the individual Plaintiffs, the harms alleged by the Organizational Plaintiffs follow a similar tune: the organizations claim they are harmed by the ballot-order statute because they either have had to and/or will have to:

[5] Any remaining claims of resource diversion Plaintiffs offer come only from their Motion for Preliminary Injunction. As discussed in greater detail above, this does not help them survive a Motion to Dismiss on their pleadings because this Court is generally limited to reviewing the allegations of the First Amended Complaint. If the Court goes outside the pleadings, then the presumption of truthfulness of Plaintiffs' declarations vanishes.

> expend and divert funds that otherwise would have supported GOTV and other mission-critical efforts in order to combat the effects of the Ballot Order Statute to assist in getting Democratic candidates elected in Georgia, including specifically in anticipation of the 2020 general election.

(Doc. 17, ¶ 19). Several Organizational Plaintiffs also claim they will be utilizing more funds in Georgia because of the challenged ballot-order statute. As a result, the Organizational Plaintiffs allege they will not be able to use those funds in other states.

As Defendants already stated in their original brief in support of their Motion to Dismiss, the Organizational Plaintiffs' conclusory allegations that they are "diverting resources" fall flat when one considers that their "core function" is the election of Democrats—and they only allege that the ballot-order statute makes fulfilling that purpose more difficult. Put differently, even if this Court takes Plaintiffs' Amended Complaint as true, the Organizational Plaintiffs are not diverting resources to some ancillary project. To the contrary, they are simply *concentrating* resources on what is their self-described existential purpose.

*Jacobson* does nothing to change this analysis. Indeed, *Jacobson* indicates that a more particularized and actual diversion of resources is required. Simply pouring more resources into a state in an effort to better fulfill your mission is not sufficient:

> Although resource **diversion** is a concrete injury, neither [organization] explained what activities [they] would divert resources away **from** in order to spend additional resources on combatting the primacy effect, as precedent requires. See *Havens Realty,* 455 U.S. at 379 n.21; see also *Browning*, 522 F.3d at 1166 ("These resources would otherwise be spent on registration drives and election-day education and monitoring."); *Common Cause/Ga.*, 554 F.3d at 1350 (explaining that resources would be diverted "from 'getting voters to the polls' to helping them obtain acceptable photo identification" (alteration adopted)); *Ga. Latino All. for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1260 (11th Cir. 2012) (observing that an immigration organization "cancelled citizenship classes to focus on" increased inquiries about a new law).

*Jacobson,* 2020 U.S. App. LEXIS 13714, *26 (emphasis in original). None of the Organizational Plaintiffs here make any particularized allegations in the First Amended Complaint. Instead, they allege they will utilize funds earmarked for "mission critical efforts" to "assist in getting Democrats elected in Georgia," which, by the Organizational Plaintiffs' own description is, itself, a "mission critical effort." (Doc. 17, ¶ 19).

Organizational Plaintiffs' vague claims of diversion are in reality a simple question of resource allocation—and that does not measure up to the requirements of *Jacobson*. The Organizational Plaintiffs entirely fail to allege an actual diversion of resources **from** anything in response to the ballot-order statute in their First Amended Complaint—a statute which has been in effect for more than 50 years and only now prompts the ire of Plaintiffs.

*C. Alleged harm to a candidate's electoral prospects does not confer standing to the Organizational Plaintiffs.*

Relying solely on case law outside of the Eleventh Circuit, Plaintiffs briefly state in their Supplemental Brief that, "harm to a candidate's electoral prospects is sufficient to establish Article III injury on behalf of the candidate's political party." (Doc. 57, p. 18). But unlike the distinguishable cases from other circuits cited by Plaintiffs in support of this position, **this** Circuit declined to entertain the question of whether a political party could bring an action on behalf of a candidate allegedly harmed by the ballot-order statute because, "[a]s discussed, the **average** measure of partisan advantage on which the organizations rely tells us nothing about whether ballot order has affected or will affect any particular candidate in any particular election." *Jacobson,* 2020 U.S. App. 13714 at *27–28 (emphasis added). Thus, Plaintiffs' claims on this point are entirely speculative and do not confer standing.

**II. Traceability and redressability need not be addressed because there is no injury.**

Plaintiffs correctly note that Georgia law differs from Florida law on which entity builds ballots for an election. (Doc. 57, p. 7). While Defendants disagree with Plaintiffs' characterizations on the extent to which Defendants can effectively control the actions of local officials, there is no reason to reach those issues given the lack of any injury in this case.

## III. *Jacobson* underscores Defendants' explanation that Plaintiffs' claims involve a non-justiciable political question.

Even if this Court were to determine that Plaintiffs had successfully pleaded an injury and that those injuries were fairly traceable to the Defendants and redressable by a favorable ruling of this Court, it is precluded from passing judgment on Plaintiffs' claims by the political-question doctrine. As Defendants previously explained, the District Court in *Jacobson,* "failed to engage in any substantive analysis of the justiciability issue, deciding that it would simply not apply *Rucho* outside the gerrymandering context and moving on." (Doc. 43, p. 12). But the Eleventh Circuit did not give the issue such short shrift. The majority opinion of the court made several references to the political nature of the claims at issue, and Judge William Pryor's concurrence dug deep into the history of ballot-ordering practices and explained precisely why the political-question doctrine bars Plaintiffs' claims entirely. Judge William Pryor's concurrence is instructive.[6]

As the concurrence points out, the *Jacobson* plaintiffs' claims were rooted in the concept "that each party must be influential in proportion to its number

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[6] Another judge in this District recently applied the reasoning in Judge William Pryor's concurrence to a case seeking massive changes to Georgia's election system in light of the COVID-19 pandemic. *See Coalition for Good Governance v. Raffensperger*, 2020 U.S. Dist. LEXIS 86996 (N.D. Ga. May 14, 2020).

of supporters." *Jacobson,* 2020 U.S. App. LEXIS 13714 at *59–60 (Pryor, Wm., concurring), citing *Rucho v. Common Cause,* 139 S. Ct. 2484, 2501:

> Their complaint is that some voters who are neither Democrats nor Republicans will vote for the Republican candidate solely because the Republican is listed first, giving Republicans an advantage beyond their actual number of supporters. But the Supreme Court has never accepted that baseline as providing a justiciable standard in any context. It has instead emphatically rejected the idea that federal courts are "responsible for vindicating generalized partisan preferences." *Id. (*quoting *Gill v. Whitford*, 138 S. Ct. 1916, 1933… (2018)).

*Id.* at *60, (Pryor, Wm., concurring). This reference to *Gill,* which rejected an attempt to obtain judgment on issues of partisan preferences, is significant because the majority opinion cites the same case at length. The *Jacobson* majority leaned on *Gill* for the proposition that the plaintiffs could not vindicate their rights under any primacy effect because, like the plaintiffs in *Gill,* Jacobson was merely relying on an "average measure" of "partisan asymmetry":

> [L]ike the average measures at issue in *Gill*, Jacobson's calculations "measure something else entirely: the effect that [ballot order and the primacy effect have] on the fortunes of political parties" across many elections. And complaints about that effect are based on nothing more than "generalized partisan preferences," **which federal courts are "not responsible for vindicating."**

*Jacobson,* 2020 U.S. App. LEXIS 13714 at *20–21 (emphasis added). So, while the majority opinion primarily finds that average measure of the primacy effect

across many elections does not prove any **particular** injury, it also relies on *Gill* to emphasize that the primacy effect implicates questions of partisan preference, which the judiciary is ill-equipped to vindicate. And like the majority opinion in *Jacobson*, the Supreme Court relied on *Gill* for the same proposition in *Rucho* when it ruled that partisan gerrymandering was a nonjusticiable political question.

Based on the clear direction of the Court in *Jacobson,* as well as its reliance on *Gill* and the reasoning of Judge William Pryor's political-question concurrence, even if this Court finds Plaintiffs have standing, it should still dismiss Plaintiffs' claims because they squarely occupy the space of "partisan preferences, which federal courts are not responsible for vindicating" under the political-question doctrine. *Id.*

## CONCLUSION

Despite Plaintiffs' best efforts to explain away the impact of *Jacobson*, that decision further reinforces multiple reasons why this Court should dismiss Plaintiffs' case. Plaintiffs cannot demonstrate any injury in a particular election. At most, they can only show an average impact. That fact alone is fatal to any allegation of injury. But even if Plaintiffs have shown an injury, this Court should dismiss the case as a nonjusticiable political question.

Plaintiffs seek only to vindicate generalized partisan preferences. They have branches of government available to them to advocate for those preferences. But this Court is not the proper entity under the Constitution to decide which political party should benefit from a particular election practice and it should dismiss this case.

Respectfully submitted this 29th day of May, 2020.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing DEFENDANTS' REPLY BRIEF IN OPPOSITION TO PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

*/s/ Bryan P. Tyson*
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