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

THE NEW GEORGIA PROJECT, *et al.*, *Plaintiffs*, v. BRAD RAFFENSPERGER, in his official capacity as the Georgia Secretary of State, *et al.*, *Defendants*.	CIVIL ACTION FILE NO. 1:21-CV-01229-JPB

DEFENDANT GREGORY EDWARDS'
REPLY IN SUPPORT OF MOTION TO DISMISS

Defendant Gregory W. Edwards is the District Attorney for Dougherty County. Shortly after State Defendants filed their Motion to Dismiss the Amended Complaint, *see* [Doc. 45], Defendant Edwards filed his own Motion to Dismiss, *see* [Doc. 53]. In that Motion, Defendant Edwards incorporated and adopted State Defendants' points—namely, that Plaintiffs lack standing and failed to state a claim. *See id.*

In their Opposition to his Motion, Plaintiffs do not substantively respond to either of those arguments. *See* [Doc. 62]. Rather, Plaintiffs only argue that Defendant Edwards' Motion is "partial" because the "State Defendants made no motion or argument to support dismissal of Count IV of the amended complaint[.]" *Id.* at 1. Plaintiffs are mistaken—State Defendants showed that the Amended Complaint should be dismissed in its entirety and those points apply equally to the claims Plaintiffs make against Defendant Edwards, including Count IV. Accordingly, for the reasons set forth in State Defendants' Motion and Reply, *see* [Doc. 66], and discussed briefly below, the Court should dismiss the claims brought against Defendant Edwards.

First, State Defendants showed that Plaintiffs failed to carry their burden of demonstrating standing for all claims. *See* [Doc. 45 at 3–14]. Specifically, State Defendants showed that Plaintiffs had not demonstrated organizational standing because they failed to identify how their activities

would be hindered or the activities from which they would divert resources to combat SB 202's supposed impact and, moreover, they relied on speculative allegations of future harm. *See* [Doc. 45 at 4–12]; *see also Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1250 (11th Cir. 2020). Further, State Defendants showed that those same speculative allegations failed to support Plaintiffs' attempt to demonstrate associational standing. *See* [Doc. 45 at 12–13]. Finally, State Defendants showed that the Individual Plaintiffs failed to carry their burden of identifying any injury, relying again on speculative claims about potential future injuries. *See id.* at 13–14.

State Defendants did not limit those points to certain portions of the Amended Complaint. *See id.* at 3–14. Rather, they applied to all claims—including those against Defendant Edwards. Plaintiffs do not suggest otherwise in their Opposition, and they do not explain how they have standing to bring claims against Defendant Edwards. *See* [Doc. 62]. Accordingly, the Court should dismiss Plaintiffs' claims against Edwards for lack of standing.

Second, State Defendants also showed that Plaintiffs failed to state a claim regarding their challenge to SB 202's restrictions on approaching and offering something of value to voters in line to vote. *See* [Doc. 45 at 23–24]. That is the same claim Plaintiffs made against Defendant Edwards in

Count IV—that SB 202's restrictions on approaching voters in line violates the First Amendment. *See* [Doc. 39 ¶¶ 185–89].

As State Defendants explained, Georgia's General Assembly recognized that "many groups" approached voters in line during the 2020 elections and updated the State's rules to "[p]rotect[ ] electors from improper interference, political pressure, or intimidation while waiting in line to vote." SB 202 at 6:126–29 [Doc. 45-2 at 7]. In doing so, Georgia instituted rules that align with those in many other states. *See* [Doc. 45 at 23–24].

The State's important regulatory interests—averting "fraud, voter intimidation, confusion, and general disorder," *Minnesota Voters Alliance v. Mansky*, 138 S. Ct. 1879, 1886 (2018)—are more than enough to justify the minimal burden on a voter not being approached in line with an offer of food or water from a third party. *See* [Doc. 45 at 23]. In fact, the Supreme Court recently confirmed that "[e]nsuring that every vote is cast freely, without intimidation or undue influence, is . . . a valid and important state interest." *Brnovich v. Democratic Nat'l Comm.*, No. 19-1257, 2021 WL 2690267, at *13 (U.S. July 1, 2021). Whether voting lines are considered a public or private forum, SB 202's minimal restrictions are permissible; states may restrict even campaign speech and impose facially content-based restrictions in and around polling locations and precincts. *See Mansky*, 138 S. Ct. at 1886, 1888; *Burson*

v. Freeman, 504 U.S. 191, 193–94 (1992). Given the constitutional validity of those direct restrictions on speech, it is frivolous to suggest that SB 202's limits on non-speech activities violate the First Amendment. Thus, Plaintiffs failed to state a claim when challenging SB 202's restrictions on approaching voters in line. *See* [Doc. 45 at 23–24].

Here again, those points were not limited to certain claims in the Amended Complaint. *See id.* Rather, they applied to all claims Plaintiffs brought challenging the restrictions on approaching voters in line—including the claim in Count IV brought against Defendant Edwards.

In sum, State Defendants' Motion fully addressed Plaintiffs' lack of standing and failure to state a claim. Plaintiffs do not explain how they have standing to bring claims against Defendant Edwards or how they have stated a claim against Defendant Edwards regarding the restrictions on approaching voters in line. *See* [Doc. 62]. Accordingly, the Court should dismiss the claims made against Defendant Edwards.

Respectfully submitted this 12th day of July, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Reply in Support of 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/Gene C. Schaerr
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