NOT FOR PUBLICATION

In the United States Court of Appeals
For the Eleventh Circuit

No. 25-11347
Non-Argument Calendar

COALITION FOR GOOD GOVERNANCE,
ADAM SHIRLEY,
ERNESTINE THOMAS-CLARK,
ANTWAN LANG,
PATRICIA PULLAR, et al.,

Plaintiffs-Appellants,

versus

SECRETARY OF STATE FOR THE STATE OF GEORGIA,
in his official capacities as Secretary of State and member of the Georgia State Elections Board,
MATTHEW MASHBURN,
REPUBLICAN NATIONAL COMMITTEE,
NATIONAL REPUBLICAN SENATORIAL COMMITTEE,
NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, et al.,

Defendants-Appellees,

REBECCA N. SULLIVAN, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-02070-JPB

Before JORDAN, KIDD, and WILSON, Circuit Judges.

PER CURIAM:

Plaintiffs-Appellants Coalition for Good Governance, Adam Shirley, Ernestine Thomas-Clark, Antwan Lang, Patricia Pullar, Judy McNichols, the Jackson County Democratic Committee, Georgia Advancing Progress Political Action Committee, Ryan Graham, and Rhonda Martin (collectively, Plaintiffs) appeal the district court's order granting summary judgment for Defendants-Appellees Secretary of State for the State of Georgia, Matthew Mashburn, Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, Georgia Republican Party, Sara Tindall Ghazal, Governor of the State of Georgia, Edward Lindsey, and Janice Johnston (collectively, Defendants). The district court found that Plaintiffs lack standing to challenge various provisions of Georgia Senate Bill 202 (SB 202). After careful review, we affirm.

I. Facts

In 2021, Georgia passed SB 202 in response to a variety of election issues. There are several provisions of SB 202, but Plaintiffs challenged five specific provisions:

> (1) the Suspension Rule allows the State Election Board (SEB) to "suspend the [local election] superintendent or board of registrars" for specified conduct, such as committing three violations of SEB rules. O.C.G.A. § 21-2-33.2(c), (f);
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> (2) the Observation Rule prohibits a person from "intentionally observ[ing] an elector while casting a ballot in a manner that would allow such person to see for whom or what the elector is voting." O.C.G.A. § 21-2-568.1;
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> (3) the Photography Rules proscribe the use of photographic or other electronic monitoring or recording devices to (i) "[p]hotograph or record the face of an electronic ballot marker while a ballot is being voted or while an elector's votes are displayed on such electronic ballot marker" or (ii) to "[p]hotograph or record a voted ballot." O.C.G.A. § 21-2-568.2;
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> (4) the Communication Rule precludes election "monitors" and "observers" from "[c]ommunicating any information that they see while monitoring the processing and scanning of the absentee ballots, whether intentionally or inadvertently, about any ballot, vote, or selection to anyone other than an election official who needs such information to lawfully

> carry out his or her official duties." O.C.G.A. § 21-2-386(a)(2)(B)(vii); and
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> (5) the Tally Rules prohibits any person from tallying, tabulating or estimating the absentee ballots cast, attempting to do so or causing a ballot scanner or any other equipment to produce any such tally or estimate until polls close on the day of the primary, election or runoff. O.C.G.A. §§ 21-2-386(a)(2)(A), (a)(2)(B)(vi).

The Observation Rule, the Photography Rules, the Communication Rule, and the Tally Rules all have criminal penalties related to them. The Suspension Rule does not have criminal penalties but involves removing a board member for violating SEB rules. Plaintiffs asserted that these provisions violated the U.S. Constitution; 52 U.S.C. § 10307, the Voting Rights Act; or both. Plaintiffs sought both declaratory and injunctive relief.

Plaintiffs moved for a preliminary injunction on the Observation Rule, the Photography Rules, the Communication Rule, and the Tally Rules. The district court found that Plaintiffs had alleged an injury as it relates to those provisions under the preenforcement challenge doctrine, and because the Governor was a defendant, "the injuries alleged are directly traceable to SB 202, for which he has enforcement authority." *Coal. for Good Governance v. Kemp*, 558 F. Supp. 3d 1370, 1382 (N.D. Ga. 2021). But as to the merits, the court only issued an injunction as to the Photography Rules, specifically the photography rule that makes it a crime to

photograph or record a voted ballot because it was likely overbroad. *Id.* at 1386–87.

Defendants moved to dismiss the complaint because Plaintiffs lacked standing and failed to state a claim. The district court denied the motion, finding that Plaintiffs had both standing and claims for relief. As to the Suspension Rule, for standing purposes, the court found that Shirley, a member of the Athens-Clarke County Board, alleged a concrete injury. The court explained that the Athens-Clarke County Board was "under the threat of removal pursuant to the Suspension Rule because the board has already committed the number of violations of SEB rules necessary to trigger the Suspension Rule." *Coal. for Good Governance v. Kemp*, No. 1:21-CV-02070-JPB, 2021 WL 12299010, at *5 (N.D. Ga. Dec. 9, 2021). The court also noted that there were proceedings against Fulton County Board of Registration and Elections under the Suspension Rule. *Id.* As it relates to the remaining rules, the district court explained that there was a credible threat of prosecution because Plaintiffs alleged that they were worried about engaging in unlawful conduct and Defendants did not dispute their intent to vigorously prosecute violations of SB 202. *Id.* at *4. The court noted that Defendants "address only the injury prong of the standing analysis and do not address the traceability and redressability prongs," finding that the argument was thus waived. *Id.* at *3 n.6.

After discovery, Defendants moved for summary judgment, arguing that Plaintiffs lack standing and alternatively that each claim fails on the merits. The district court divided its discussion

into Plaintiffs' standing as to the Suspension Rule and Plaintiffs' standing as to the remaining rules, which are criminal in nature. As to the Suspension Rule, the court explained that Plaintiffs lack an impending injury because it would require an attenuated chain of events to occur before Plaintiffs would be removed from the board—their claimed injury.

As to the remaining rules, the district court found that Plaintiffs could not show traceability or redressability. The court explained that although the Governor has general enforcement authority, that is not enough for a claim to survive at the summary judgment stage. Unlike at the motion to dismiss stage, Defendants argued that Plaintiffs presented no evidence of traceability or redressability when it came to the Governor's general enforcement authority and its relationship to SB 202, including the Governor's enforcement of SB 202. The district court agreed. The court also explained that issuing an injunction against the Governor would not redress Plaintiffs' injury because district attorneys could still bring charges against them. Plaintiffs did not provide any evidence that Defendants had the ability to control a district attorney or order a district attorney to stop a prosecution. In a footnote, the district court also found that the general enforcement authority of SEB for referrals for civil penalties and criminal prosecutions—like the Governor—failed to show traceability and redressability. Ultimately, the court granted Defendants' motion for summary judgment, agreeing that Plaintiffs lacked standing. Plaintiffs timely appealed.

II. Analysis

"We review standing determinations *de novo*." *BBX Cap. v. Fed. Deposit Ins. Corp.*, 956 F.3d 1304, 1312 (11th Cir. 2020) (per curiam). To establish Article III standing, "[t]he plaintiff must have (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." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

The plaintiff bears the burden to show that he has standing, and "each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). At the summary judgment stage, "the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true." *Id.* (citation modified).

The first element, an injury in fact, "must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (internal quotation marks omitted). The Supreme Court has "repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact," and that allegations of *possible* future injury are not sufficient." *Id.* (citation modified).

But when "plaintiffs file a preenforcement, constitutional challenge to a state statute, the injury requirement may be satisfied by establishing a realistic danger of sustaining direct injury as a result of the statute's operation or enforcement." *Georgia Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1257 (11th Cir. 2012) (hereinafter *GLAHR*) (internal quotation marks omitted). "A plaintiff may meet this standard in any of three ways: (1) the plaintiff was threatened with application of the statute; (2) application is likely; or (3) there is a credible threat of application." *Id.* at 1257–58 (citation modified).

"The latter two requirements—traceability and redressability—often travel together, and where, as here, a plaintiff has sued to enjoin a government official from enforcing a law, he must show, at the very least, that the official has the authority to enforce the particular provision that he has challenged, such that an injunction prohibiting enforcement would be effectual." *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021) (internal citation omitted).

A. Suspension Rule

Plaintiffs argue that the district court used the wrong standing doctrine when determining whether they had shown an injury as to the Suspension Rule.[1] Plaintiffs assert that the district court

[1] We pause to note that the district court did find that Plaintiffs had standing at the motion to dismiss stage. The evidentiary burden at that stage requires allegations, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, (1992), that the district court took as true, *Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1337

should have used the doctrine for preenforcement challenges because even though there are no criminal charges, that doctrine can be used in enforcement actions, like the one at the heart of the Suspension Rule.

We disagree. The preenforcement doctrine allows a plaintiff to challenge a law that proscribes arguably constitutionally protected conduct by either breaking the law on purpose to initiate prosecution or not engaging in conduct that he "believes to be constitutionally protected activity." *Steffel v. Thompson*, 415 U.S. 452, 462 (1974).; *see also Bankshot Billiards, Inc. v. City of Ocala*, 634 F.3d 1340, 1350 (11th Cir. 2011). The Suspension Rule—unlike the remaining rules—does not forbid any conduct. Instead, it establishes potential consequences if election officials were to engage in violations of other laws. Thus, Plaintiffs cannot use the preenforcement doctrine to establish standing.

As the district court noted, Plaintiffs' injury in fact as to the Suspension Rule is too remote to confer standing. We agree because under this rule, the suspension of an election official requires an "attenuated chain of possibilities." *Clapper*, 568 U.S. at 410. First, an official must either commit at least three election-law violations over two election cycles or show repeated nonfeasance, malfeasance, or gross negligence. Then a petition for performance

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(11th Cir. 2021). But that is not the burden at summary judgment, and as the district court noted, Plaintiffs failed to produce any affidavits or specific facts that would show they suffered an injury as required at the summary judgment stage. *See Lujan*, 504 U.S. at 561.

review must be filed by either the local election superintendent or board of registrars, after which the SEB conducts a preliminary investigation and hearing to decide whether to move forward. Even after a full hearing, suspension is allowed only if at least three SEB members find sufficient evidence—either a preponderance of evidence for three violations or clear and convincing evidence of serious misconduct over two cycles. Considering these steps,[2] Plaintiffs have not shown that the threatened injury is "*certainly impending* to constitute injury in fact." *Id.* at 409.

Thus, the district court did not err in finding that Plaintiffs failed to show they have suffered an injury in fact as to the Suspension Rule.

B. Remaining Rules

Plaintiffs argue that the district court erred when it found that Plaintiffs could not show traceability and redressability for the Observation Rule, the Photography Rules, the Communication Rule, and the Tally Rules.[3] The district court found that the

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[2] As the district court correctly noted, there is undisputed evidence that no election official has ever been suspended under this section nor has any of the boards been subject to a performance review.

[3] Plaintiffs point out that the district court, in its order on Defendants' motion to dismiss, found that traceability and redressability was met. But that is not the case. Instead, Defendants failed to argue the issue of traceability and redressability, so the district court found those elements were waived. And as we have said many times before, the court always has a duty to make sure it has standing at every juncture of the case. *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 255 (1994).

Governor's general criminal enforcement power was not enough to show that the Governor has a special relationship to SB 202 and its enforcement or that the Governor had any role in criminal proceedings under SB 202.

Plaintiffs do not quarrel with the district court's finding that the Governor's general enforcement power is not enough to establish traceability. Instead, Plaintiffs challenge the district court's determination that the Governor does not control state attorneys. The court found that even if the Governor was enjoined, Plaintiffs could still be susceptible to criminal prosecution by nonparties. But Plaintiffs' argument fails to engage with the district court's central determination that the Governor's general enforcement authority is not enough to show traceability and redressability.[4] Plaintiffs failed to provide evidence that the Governor has more than general power to direct criminal proceedings, especially as it relates to SB 202. Nor have Plaintiffs offered anything to prove that the Governor enforced or threatened to enforce SB 202. *See City of S. Miami v. Governor*, 65 F.4th 631, 641 (11th Cir. 2023).

Plaintiffs also argue that the district court erred in finding that Plaintiffs cannot show traceability and redressability as to the

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[4] But even still the district court did not err in focusing on the fact that an injunction against the Governor would not redress Plaintiffs' injuries because the state attorneys, nonparties, would still be able to enforce SB 202 against Plaintiffs. *See Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1253 (11th Cir. 2020) ("[A] plaintiff's injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." (internal quotation marks omitted)).

SEB. Plaintiffs assert that an injunction would prevent the SEB from instituting civil proceedings, which can result in fines and possible referrals for criminal prosecutions. But again, like the district court correctly noted, Plaintiffs failed to present any evidence that the SEB has referred any cases to the Attorney General.[5] And the general authority of the SEB is not enough to show traceability and redressability.

Thus, the district court did not err in finding that Plaintiffs failed to show traceability and redressability as to the remaining rules.

III. Conclusion

The district court correctly found that Plaintiffs failed to establish standing to challenge these provisions of SB 202. Thus, we affirm summary judgment for Defendants.

AFFIRMED.

[5] Plaintiffs reference Coalition for Good Governance Executive Director Marilyn Marks, who received report of an investigation about her conduct. But that investigation related to her presence at an election place where she was not in a capacity as a poll watcher or poll officer. The report suggested that she violated O.C.G.A. § 21-2-413(f), which is not any of the challenged provisions.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
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Atlanta, Georgia 30303

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Clerk of Court

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January 22, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-11347-GG
Case Style: Coalition for Good Governance, et al v. Secretary of State for the State of Georgia, et al
District Court Docket No: 1:21-cv-02070-JPB

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing.

Costs
Costs are taxed against Appellant(s) / Petitioner(s).

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

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OPIN-1 Ntc of Issuance of Opinion