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

IN RE GEORGIA SENATE BILL 202	Master Case No. 1:21-MI-55555-JPB
THE NEW GEORGIA PROJECT, *et al.*, Plaintiffs v. BRAD RAFFENSPERGER, *et al.*, Defendants, REPUBLICAN NATIONAL COMMITTEE, *et al.*, Intervenor-Defendants.	Civil Action No. 1:21-CV-01229-JPB
GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*, Plaintiffs v. BRAD RAFFENSPERGER, *et al.,* Defendants, REPUBLICAN NATIONAL COMMITTEE, *et al.*, Intervenor-Defendants.	Civil Action No. 1:21-CV-01259-JPB
SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, *et al.*, Plaintiffs v. BRIAN KEMP; *et al.*, Defendants, REPUBLICAN NATIONAL COMMITTEE, *et al.*, Intervenor-Defendants.	Civil Action No. 1:21-CV-01284-JPB

ASIAN AMERICANS ADVANCING JUSTICE—ATLANTA, *et al.*, Plaintiffs, v. BRAD RAFFENSPERGER, in his official capacity as the Georgia Secretary of State, *et al.*, Defendants, REPUBLICAN NATIONAL COMMITTEE, *et al.*, Intervenor-Defendants.	Civil Action No. 1:21-CV-01333-JPB
THE CONCERNED BLACK CLERGY OF METROPOLITAN ATLANTA, INC., *et al.*, Plaintiffs v. BRAD RAFFENSPERGER, *et al.,* Defendants, REPUBLICAN NATIONAL COMMITTEE, *et al.*, Intervenor-Defendants.	Civil Action No. 1:21-CV-01728-JPB

Opposition to Intervenors' Motion for Summary Judgment

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Intervenors' motion for summary judgment is not intended to demonstrate an absence of disputes of material fact; instead, they seek to "call[] attention to some of the dispositive legal issues that warrant summary judgment." ECF No. 761-1 at 13. Yet none of the legal theories they put forth are persuasive.

In response to Plaintiffs' constitutional right to vote claims, Intervenors effectively ask this Court to ignore the Supreme Court's *Anderson-Burdick* standard—an argument this Court has already rejected. And in the same breath, Intervenors invoke *Anderson-Burdick* only to misapply it to an intentional viewpoint discrimination claim that requires a much higher level of scrutiny under which challenged laws are presumptively unconstitutional and can be justified only if the law is narrowly tailored to serve compelling state interests. Their selective application of *Anderson-Burdick* cannot be reconciled with any controlling authority and, in fact, contradicts established Supreme Court precedent.

Intervenors claim that SB 202's challenged provisions are not racially discriminatory but, again, they misinterpret the standard for what types of evidence are permitted and required to show intentional discrimination under a Section 2 Voting Rights Act claim. On Plaintiffs' First Amendment Line Relief claims, Intervenors recite the same legally flawed points trotted out by State Defendants and rejected by this Court. They ignore the extensive evidence of how voters understand

line relief as symbolic statements expressing solidarity about celebrating the importance of their vote, and Intervenors ignore how the Ban's sweep unnecessarily inhibits Plaintiffs' freedom of expression. Similarly, Intervenors' argument that this claim is an improper facial challenge is not only incorrect but has no relevance here at summary judgment. Intervenors also misinterpret the legal standards for claims under the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act, and ignore facts supporting Plaintiffs' claims under both laws.[1]

Finally, Intervenors insist that Plaintiffs must prove racial discrimination to prevail on their claim under the Materiality Provision, but this theory is in direct conflict with the statutory language and historical context of the Civil Rights Act of 1964. And Intervenors' remaining reasons for why SB 202's birthdate requirement does not violate the Materiality Provision have already been rejected by this Court when it enjoined the requirement earlier this year.

Intervenors' legal errors aside, Plaintiffs have demonstrated, at a minimum, that disputes of material fact exist as to each purported legal theory and each challenged provision raised by Intervenors, none of which should be resolved at the summary judgment stage.

[1] Intervenors' line relief, ADA, and Section 504 arguments are substantively similar to arguments put forth by State Defendants, and are addressed in Plaintiffs' responses to those motions for summary judgment, filed contemporaneously with this response.

ARGUMENT

I. Intervenors are not entitled to summary judgment on Plaintiffs' right-to-vote claims.

A court considering a right-to-vote claim must carefully balance the character and magnitude of injury to the First and Fourteenth Amendment right to vote against the justifications put forward by the state. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). A court evaluating such a claim must undertake a two-step process. First, the court must consider whether and to what extent a challenged law burdens the right to vote. *See Anderson*, 460 U.S. at 789. The "relevant" burdens are "those imposed on persons who are eligible to vote" but are impacted by the operation of the state law. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (controlling op.); *see also id.* at 199; *id.* at 212-14 (Souter, J., dissenting) (similar); *id.* at 239 (Breyer, J., dissenting) (similar).

Once a court determines the character and magnitude of the burden, the court must consider the strength of the state interests and whether they justify the burden at issue. The standard that the state must meet varies depending on the court's determination of the magnitude of the burden imposed on the relevant class or classes of voters. If the burden imposed is severe, the law is subject to strict scrutiny. *Norman v. Reed*, 502 U.S. 279, 280 (1992); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019) ("A law that severely burdens the right to vote must be narrowly drawn to serve a compelling state interest."). Burdens

that are less than severe are subject to a sliding scale under which the court must "identify and evaluate the precise interests put forward by the State as justifications" for its rule, and in so doing, consider both the "*legitimacy* and *strength* of each of those interests." *Anderson*, 460 U.S. at 789 (emphasis added).

Ultimately, for any law that burdens voters, even if that burden is less severe, the law must advance state "interest[s] *sufficiently weighty* to justify the limitation." *Norman*, 502 U.S. at 288–89 (emphasis added); *see also Crawford*, 553 U.S. at 191 (controlling op.) ("However slight" the burden on voting may appear, it still "must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'"). And despite Intervenors' argument to the contrary, ECF No. 761-1 at 14, a traditional rational basis standard, which simply asks if the challenged law is conceivably rationally related to the state's purported interest, is not appropriate when assessing burdens on the right to vote. *See McLaughlin v. N. Carolina Bd. of Elections*, 65 F.3d 1215, 1221 n.6 (4th Cir. 1995) (rejecting rational basis test for election laws that impose less substantial burdens).

A. Intervenors are not entitled to summary judgment on Plaintiffs' right-to-vote claims relating to absentee voting.

Rather than discuss the evidence in the record, Intervenors rehash a legal theory this Court already conclusively—and correctly—rejected at the start of this case. Intervenors assert that Defendants are entitled to summary judgment on Plaintiffs' constitutional claims challenging absentee voting regulations because

such laws do not implicate the right to vote. ECF No. 761-1 at 14–15. But the Supreme Court has been clear in its *Anderson-Burdick* jurisprudence that there are no litmus tests to distinguish constitutional voting restrictions from unconstitutional ones. *Crawford*, 553 U.S. at 191. Intervenors' argument, however, invites this Court to conclude the exact opposite—that there *is* in fact a very broad litmus test shielding any restrictive absentee voting law from judicial review entirely. This is a view the Supreme Court has never endorsed since announcing the *Anderson-Burdick* test. And this Court has already declined Intervenors' previous attempts to summarily dispose of Plaintiffs' voting rights claims on such a theory, concluding: "the *Anderson-Burdick* framework requires the Court to evaluate the type of burden imposed by the challenged provisions and apply the corresponding level of review," and "[o]nly after weighing [the designated] factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional." Order on Mot. to Dismiss at 24, *New Ga. Project v. Raffensperger*, No. 1:21-cv-1229 (N.D. Ga. Dec. 9, 2021), ECF No. 86 ("NGP MTD Order") (second alteration in original). There is no reason for the Court to reverse its prior ruling now.

In any event, Intervenors' renewed attempt to exempt absentee voting from constitutional scrutiny misreads the Supreme Court's ruling in *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969). *See* ECF 761-1 at 15. For one, *McDonald* predates *Anderson*, *Burdick*, *Crawford*, and their progeny—all

subsequent Supreme Court cases that reject the litmus-test approach that the Defendants say *McDonald* requires.

Second, Intervenors also ignore critical distinctions between the allegations in *McDonald* and the legal claims Plaintiffs assert here. The plaintiffs in *McDonald*—unsentenced inmates awaiting trial—challenged Illinois's failure to include them among the limited categories of individuals who were permitted to vote absentee. 394 U.S. at 803. Their "claimed right to receive absentee ballots" is easily distinguishable from the plight of Georgia voters, all of whom are entitled to vote absentee under state law. O.C.G.A. § 21-2-380(b). This case implicates a different principle: "once the States grant the franchise, they must not do so in a discriminatory manner"; instead they must administer elections in accordance with federal law. *McDonald*, 394 U.S. at 807. Whether the state can lawfully impede the exercise of that right is a fact-driven inquiry that must be analyzed under *Anderson-Burdick*.

Furthermore, the Supreme Court made clear in a subsequent ruling that the "disposition of the claims in *McDonald* rested on failure of proof," and not the litmus test Intervenors advance here. *O'Brien v. Skinner*, 414 U.S. 524, 529 (1974). As the Supreme Court emphasized, there was "nothing in the record to indicate that the [challenged] statutory scheme ha[d] an impact on appellants' ability to exercise the fundamental right to vote." *McDonald*, 394 U.S. at 807. When litigants presented

such evidence in a later absentee voting case, the Court reached the opposite conclusion. *See O'Brien*, 414 U.S. at 530. Here, Plaintiffs have provided substantial evidence from voters who rely on absentee voting to exercise the franchise, which at the very least creates disputes of material fact that should not be resolved on summary judgment.

Finally, Intervenors argue that because voting in person remains "fully available" and has not been made "meaningfully more difficult," voters cannot experience a burden to their right to vote." ECF No. 761-1 at 15–16. But this ignores all of the evidence in the record that shows how SB 202 *has* in fact made even traditional in-person voting much more difficult. *See generally* Pls.' Opp. to Mot. Summ. J. on Line Relief Claims. It also disregards Plaintiffs' evidence that SB 202 burdens voters who must rely on other methods of voting in Georgia, namely absentee voting. *See, e.g.*, Pls.' Opp. to Mot. Summ. J. on Absentee Changes in Timing; Pls.' Opp. to Mot. Summ. J. on Drop Boxes; Pls.' Opp. to Mot. Summ. J. on Absentee Ballot Provisions. Thus, the availability of in-person voting does not negate any of the burdens voters experience under SB 202, particularly when the law has imposed barriers at every step of the voting process.

B. Plaintiffs are not required to show that the provisions they challenge burden all voters.

In their continued efforts to identify some categorical way for the Court to dispose of Plaintiffs' right-to-vote claims, Intervenors attempt to inject additional

litmus tests, all of which are irreconcilable with the well-established *Anderson-Burdick* standard. First, Intervenors argue that several of the provisions Plaintiffs have challenged regulate election officials, not voters, ECF No. 761-1 at 17, but Intervenors fail to explain the legal relevance of this distinction. *See Democratic Exec. Comm. of Fla.*, 915 F.3d at 1316, 1319 (applying *Anderson-Burdick* to Florida's signature-matching law that regulates whether an election official accepts or rejects a ballot). Intervenors also argue that the provisions Plaintiffs challenge are not the sorts of laws that can be analyzed under *Anderson-Burdick*. ECF No. 761-1 at 17–18. But the cases Intervenors cite do not embrace the position they urge this Court to adopt. In *Jacobson v. Florida Secretary of State*, the court explicitly noted that statutes that make it more difficult for individuals to vote have historically been evaluated under *Anderson-Burdick*. 974 F.3d 1236, 1261 (11th Cir. 2020). It did *not* hold, as Intervenors suggest, that the only laws that can be unconstitutional burdens on the right to vote are laws that either limit access to the ballot, limit the ability to freely associate with voters and candidates, or create the risk that votes will go uncounted or be improperly counted. *Id*. And the Court in *Burdick* did not limit the scope of right-to-vote claims either. In fact, the Supreme Court recognized that many types of election laws can burden an individual's right to vote. *Burdick*, 504 U.S. at 433.

Second, Intervenors claim that Plaintiffs must show categorical, rather than "idiosyncratic," burdens on voters, and any evidence that does not demonstrate a burden on *all* Georgia voters should be disregarded. ECF No. 761-1 at 18. But Intervenors' proposed approach runs entirely contrary to how the Supreme Court has applied the *Anderson-Burdick* framework since its inception. In *Anderson*, the Supreme Court was asked to consider the constitutionality of a deadline by which independent candidates must file to appear on the general election ballot. 460 U.S. at 782–83. The Court recognized "that the March filing deadline places a *particular burden* on an identifiable segment of Ohio's independent-minded voters," and "it is especially difficult for the State to justify a restriction that limits political participation *by an identifiable political group*[.]" *Id.* at 792–93 (emphasis added). Subsequently, in *Burdick*, although the Supreme Court upheld Hawaii's prohibition on write-in voting, it did so only after engaging in a fulsome analysis, balancing the burdens on a subset of voters who sought to write-in their candidate of choice against the state's asserted interests. The Supreme Court did not conclude—as Intervenors misleadingly suggest—that because only some voters were impacted by the law, there was no burden on the right to vote and thus the inquiry should stop there.

Similarly, in *Crawford v. Marion County Election Board*, six justices agreed that in evaluating burdens, courts should consider a law's impact on *identifiable subgroups* for whom the burden may be more severe. 553 U.S. at 199–203 (plurality

op.); *id.* at 212–23, 237 (Souter, J., dissenting); *id.* at 237 (Breyer, J., dissenting).[2] The Court did not require that every challenged statute must burden *all* voters in a state in order to be unconstitutional. *See id.* at 187–88 & n.6; 198 (focusing its burden inquiry on the 43,000 Indiana residents that lacked proper photo identification, estimated to be about one percent of Indiana's voting age population) (plurality op.). And *New Georgia Project v. Raffensperger*, 976 F.3d 1278 (11th Cir. 2020), does not suggest otherwise.[3] There, the Eleventh Circuit simply concluded that voters could not demonstrate a *severe* burden on the right to vote based on evidence that ballots are *likely* to be rejected. 976 F.3d at 1281. But this context-specific conclusion spoke to the magnitude of burden on voters, not whether there existed any cognizable burden under *Anderson-Burdick*.

Ultimately, Intervenors are wrong that the *Anderson-Burdick* framework is unconcerned with voting restrictions that burden identifiable groups, and instead requires evidence of burdens on *all* voters. This gets the law exactly backwards: *Anderson-Burdick* demands a fact-specific inquiry that Intervenors refuse to engage in, which is all the more reason the Court should deny their motion.

---

[2] Lower courts have applied this same approach. *See, e.g.*, *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024 n.2 (9th Cir. 2016); *League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d 1205, 1216–17 (N.D. Fla. 2018); *Veasey v. Perry*, 71 F. Supp. 3d 627, 686 (S.D. Tex. 2014), *vacated in part on other grounds*, 830 F.3d 216 (5th Cir. 2016) (en banc).

[3] *New Georgia Project* is also an unpublished, non-binding stay panel decision written "only for the parties' benefit." 976 F.3d at 1280 n.1.

C. The alleged state interests advanced by Intervenors do not justify the burdens imposed by SB 202.

Intervenors' arguments defending the challenged provisions do not address anything new or different beyond the State's own arguments about how the burdens on voters are justified by the State's various interests. Intervenors reassert interests in the integrity of elections, as well as conducting efficient elections, maintaining order, and quickly certifying election results. ECF No. 761-1 at 19. But under *Anderson-Burdick*, it is not enough to just show that the State has interests in a vacuum. Instead, the party must put forth the "precise interest[] . . . as justification[] for the burden imposed by" each legal rule. *Anderson*, 460 U.S. at 789. At no point do Intervenors seek to engage in any such fact-intensive inquiry, as is required. And as explained in the responses to the State's motions for summary judgment, when each burden caused by SB 202 is held up against each asserted state interest, it becomes clear that the provisions Plaintiffs challenge are unconstitutional burdens on the right to vote.

II. Intervenors are not entitled to summary judgment on the NGP Plaintiffs' viewpoint-discrimination claim.

NGP Plaintiffs' Count III challenges ten provisions of SB 202 as viewpoint discrimination in violation of the First Amendment. The Court previously denied State Defendants' and Intervenors' motions to dismiss this count, rightly recognizing that the Eleventh Circuit's decision in *Hand v. Scott*, 888 F.3d 1206, 1211–12 (11th

Cir. 2018), contemplates partisanship-oriented viewpoint-discrimination claims like Plaintiffs'. NGP MTD Order at 36. As the Eleventh Circuit explained, a law "facially or intentionally designed to discriminate based on viewpoint—say, for example, by barring Democrats, Republicans, or socialists from reenfranchisement on account of their political affiliation—might violate the First Amendment." *Hand*, 888 F.3d at 1211–12.

This unremarkable conclusion follows from settled First Amendment principles. The First Amendment, as incorporated against the states by the Fourteenth Amendment, protects voting and encouraging others to vote as expressive and associative acts. *Shapiro v. McManus*, 577 U.S. 39, 46 (2015); *Vieth v. Jubelirer*, 541 U.S. 267, 314–15 (2004) (Kennedy, J., concurring in judgment). And the First Amendment prohibits a state from restricting an expressive or associative act "because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Accordingly, when a state enacts a law restricting First Amendment–protected acts—including voting and related associational activities—*because of the viewpoints those activities express*, that law is "presumptively unconstitutional." *Id.* at 163–64. Such a law may be upheld only if it is "narrowly tailored to serve compelling state interests." *Id.*

A. Extensive evidence supports NGP Plaintiffs' allegation that SB 202 targets methods of voting favored by individuals who have supported Democrats in violation of the First Amendment.

Here, NGP Plaintiffs—individuals who support Democratic candidates, and organizations whose members and constituents have also supported Democratic candidates—challenge ten provisions of SB 202 that were enacted with the intent to discriminate against voters because of their viewpoint. NGP Plaintiffs allege that in purpose and effect, the challenged provisions retaliate against racial minorities and voters who support Democratic candidates by burdening their favored methods of voting and associating to encourage others to vote. *Id.* In denying both State Defendants' and Intervenors' motions to dismiss the viewpoint discrimination claim, the Court explained that "Plaintiffs have stated facts that could plausibly support a claim of viewpoint discrimination as acknowledged by *Hand*[,]" and indicated that whether "SB 202 was indeed enacted with such a retaliatory purpose is a question that cannot be resolved at this stage of the litigation." NGP MTD Order at 36.

Intervenors have now had a very lengthy opportunity to develop evidence that might refute NGP Plaintiffs' allegation of such a "retaliatory purpose." They have failed to do so. *See* ECF No. 761-1 at 21–22. This omission is unsurprising—all evidence on point establishes that Republican lawmakers tailored SB 202 to restrict minority and Democrat-supporting voters' expressive and associative voting

activities in the immediate aftermath of Democrats' statewide victories in the 2020 elections. In terms of intent, many Republican lawmakers expressly characterized SB 202 as an effort to restrict methods of voting favored by voters who support Democrats. Governor Kemp, for instance, remarked about Democratic victories in 2020: "I was as frustrated as anyone else with the results, especially at the federal level. And we did something about it with Senate Bill 202." SAMF ¶ 143 (Ex. 95 (Cobb 5, 62); Ex. 104 (Lichtman 45)); *see also* ECF No. 686-1 at 52 (Court's order suggesting that Speaker Ralston's support for SB 202 "was motivated by a partisan purpose."). SB 202's drafters consulted detailed statistics about partisan trends in how voters vote, then drafted a bill that restricted only methods of voting favored by voters who tend to support Democrats. SAMF ¶¶ 164–65 (Ex. 189 (CDR00063983–86); Ex. 196 (CDR00099553–54); Ex. 195 (CDR00471627–30); Lichtman 37–38). Evidence of SB 202's retaliatory partisan effects is similarly extensive. SB 202 disparately burdened voters who support Democrats by increasing the cost of using voting methods and processes on which such voters disproportionately rely—in particular, absentee-by-mail, drop box, and early voting. *See* SAMF ¶ 47 (Lichtman 9–11); SAMF ¶ 384 (Lichtman 17–26, 31–36); SAMF ¶ 387 (Lichtman 33–34).

Recognizing that intent is generally "a question of fact for the factfinder, to be determined after trial," *Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1476 (11th Cir. 1991), NGP Plaintiffs have not affirmatively moved for

summary judgment on the viewpoint-discrimination claim. But the overwhelming evidence of SB 202's retaliatory partisan intent and effects suffices to preclude summary judgment on this claim—particularly where the movant has failed to identify *any* contrary evidence.

B. Viewpoint-discrimination claims are not analyzed under *Anderson-Burdick*.

Rather than point to evidence that might warrant summary judgment, Intervenors fall back on the assertion that NGP Plaintiffs' viewpoint-discrimination claim is just "an *Anderson-Burdick* claim, restated." ECF No. 761-1 at 21–22. Not so. A viewpoint-discrimination claim challenges a law based on improper motive and differential treatment of speakers with different viewpoints—in this instance, partisan viewpoints. *Hand*, 888 F.3d at 1211–12; *cf. N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016) (explaining that state legislatures may not "restrict access to the franchise based on the desire to benefit a certain political party"). Such a claim is separate and distinct from an *Anderson-Burdick* claim, which challenges a law based on its *generalized* burden on the right to vote. Specifically, because viewpoint discrimination entails invidious discrimination against certain viewpoints and those who hold them, the First Amendment requires courts to apply a more rigorous degree of scrutiny than is applied to a law burdening the right to vote under *Anderson-Burdick*. *See Reed*, 576 U.S. at 164–65. As the Court explained in denying Intervenors' motion to dismiss, "[r]egulation of speech

based on the topic discussed or the idea or message expressed is presumptively unconstitutional and may be justified only if the government proves that the regulation is narrowly tailored to serve compelling state interests." NGP MTD Order at 35 (citing *Reed*, 576 U.S. at 165).[4] *Anderson* and *Burdick*, by contrast, prescribe a generalized inquiry into "the character and magnitude of the asserted injury" and "the legitimacy and strength of each of [the state's] interests." *Anderson*, 460 U.S. at 789; *see also Burdick*, 504 U.S. at 434. Analyzing NGP Plaintiffs' viewpoint-discrimination claim under *Anderson-Burdick* would thus disregard the Supreme Court's careful differentiation of the varying frameworks to be applied to different First Amendment claims.

Democratic Executive Committee of Florida v. Lee does not hold otherwise. 915 F.3d at 1319. That case addressed a claim of "a *generalized* burden on the fundamental right to vote," not a claim of targeted viewpoint discrimination, as NGP Plaintiffs have alleged here. *Id.* at 1319 & n.9 (emphasis added). Intervenors' out-of-circuit authorities are no more persuasive. *Mazo v. New Jersey Secretary of State*,

[4] Intervenors conceded this point in their motion to dismiss brief, which explained that "viewpoint discrimination *normally* violates the First Amendment," Intervenors. Br. in Supp. of Mot. to Dismiss at 16, *New Ga. Project v. Raffensperger*, No. 1:21-cv-1229 (N.D. Ga. July 12, 2021), ECF No. 73-1 at 16 (emphasis added)—a concession which the Court noted in denying the motion, NGP MTD Order at 34 ("Intervenor Defendants . . . acknowledge that retaliating against Georgians who elected Democrats would 'normally' constitute viewpoint discrimination in violation of the First Amendment.").

54 F.4th 124, 143 (3rd Cir. 2022), explained that courts "do *not* mechanically apply *Anderson–Burdick* balancing any time a state election law is challenged." (emphasis added). And *Mazo* recognized that laws that discriminate against an identifiable political group whose members share a particular viewpoint impose "severe burdens" on speech. *Id.* at 146. *Soltysik v. Padilla*, 910 F.3d 438, 449 (9th Cir. 2018), is also distinct; it concerned a candidate's challenge to a restriction on his own party identification on the ballot, not a claim that the state targeted voting restrictions at a certain identifiable group because of their partisan viewpoints.[5]

III. Intervenors are not entitled to summary judgment on Plaintiffs' Section 2 claims.

Intervenor Defendants make the same arguments that State Defendants assert

[5] Intervenors also quote a passing remark in *Hand* that the "First Amendment provides no greater protection for voting rights than is otherwise found in the Fourteenth Amendment." ECF No. 761-1 at 22 (quoting *Hand*, 888 F.3d at 1211). But Intervenors are taking that quote out of context to create a false implication. *Hand*—which expressly recognizes the validity of partisan viewpoint-discrimination claims—took the proposition in question from footnotes in two earlier opinions. *See Hand*, 888 F.3d at 1211 (quoting *Cook v. Randolph County*, 573 F.3d 1143, 1152 n.4 (11th Cir. 2009); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1188 n.9 (11th Cir. 1999)). Those footnotes, in turn, derive from the Fourth Circuit's decision in *Washington v. Finlay*, 664 F.2d 913, 927–28 (4th Cir. 1981), which held that where "the only challenged governmental act is the continued use of an at-large election system, and where there is no device in use that directly inhibits participation in the political process, the first amendment, like the thirteenth, offers no protection of voting rights beyond that afforded by the fourteenth or fifteenth amendments." That narrow and unrelated holding does not foreclose NGP Plaintiffs' viewpoint-discrimination claim, as Intervenors seem to imply.

in the concurrently filed intent motion. *See* ECF No. 761-1 at 11-16; *see generally* ECF No. 759. Plaintiffs have addressed these arguments at length in their opposition to that motion and will not duplicate them here. Plaintiffs emphasize, however, that Intervenors' contention that Plaintiffs may not rely on evidence of past discrimination in showing discriminatory intent misstates the law. *See* ECF No. 761-1 at 12-13. Evidence of past discrimination is quite relevant in both Section 2 and constitutional intentional discrimination claims. *See McCrory*, 831 F.3d at 223 (noting in the context of *Arlington Heights* that "[e]xamination of [a state's] history of race discrimination and recent patterns of official discrimination, combined with the racial polarization of politics" are relevant in intentional discrimination inquiries); *Thornburg v. Gingles*, 478 U.S. 30, 37 (1968) (courts take into account the "extent to which members of the minority group . . . bear the effects of discrimination in such areas as education, employment and health" in Section 2 cases). And in any event, Plaintiffs proffer more than enough evidence to create a factual dispute. *See generally* Pls.' Opp. to Mot. Summ. J. on Discriminatory-Intent Claims. The Court should therefore deny Intervenors' motion.

IV. The Birthdate Requirement violates the Materiality Provision, 52 U.S.C. § 10101(a)(2)(B).

The Materiality Provision prohibits any "person acting under color of law" from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or

other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B). It was intended to prohibit states from requiring unnecessary information for voter registration that would increase errors and omissions on the application form, thus providing an excuse to disqualify potential voters. *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003). As this Court has already correctly concluded, SB 202's birthdate requirement mandates that Georgia election officials do precisely what the Materiality Provision forbids: exclude otherwise valid ballots from qualified voters based on purported failures to comply with irrelevant formal requirements. 8/18/2023 PI Order at 22–23, ECF No. 613.

A. The Materiality Provision does not require a showing of racial discrimination.

Intervenors argue that there is no violation of the Materiality Provision without proof of racial discrimination. ECF No. 761-1 at 53–57. In support, they cite only provisions of Section 10101 *other* than the Materiality Provision. *Id*. This is presumably because "the Materiality Provision's text says nothing about race or racial discrimination." *E.g.*, *Vote.org v. Byrd*, No. 4:23-CV-111-AW-MAF, 2023 WL 7169095, at *5 (N.D. Fla. Oct. 30, 2023). And, indeed, contrary to Intervenors' argument, the "fact that Congress specified a racial motivation in some portions of the statute, but not in others, indicates that Congress did ***not*** intend to impose a racial motive qualifier uniformly across Section 10101." *League of Women Voters of*

Arkansas v. Thurston, No. 5:20-CV-05174, 2023 WL 6446015, at *16 (W.D. Ark. Sept. 29, 2023), *judgment entered*, 2023 WL 6445795 (W.D. Ark. Sept. 29, 2023) (declining to add element of racial discrimination to Section 10101(a)(2)(B)) (emphasis in original); *accord PA. State Conf. of the NAACP v. Schmidt*, No. 1:22-CV-00339, 2023 WL 8091601, at *23 n.31 (W.D. Pa. Nov. 21, 2023).

Lacking a textual argument, Intervenors appeal to "[s]tatutory context" to infer that "§ 10101 violations require evidence of racial discrimination." ECF No. 761-1 at 46, 55. But Intervenors' argument misinterprets history. The Fifteenth Amendment prohibits denial of the right to vote "by any State on account of race."[6] U.S. Const. amend. XV, § 1. It does not preclude Congress from enacting prophylactic legislation that prohibits states from denying the right to vote because of immaterial errors or omissions in voting documents. *See Vote.org v. Callanen*, No. 22-50536, 2023 WL 8664636, at *19 (5th Cir. Dec. 15, 2023) ("prohibit[ing] those acting under color of law from using immaterial omissions, which were historically used to prevent racial minorities from voting, from blocking any

[6] Intervenors are also wrong to suggest that the Fifteenth Amendment is the only source of Congress's power to regulate elections. The Elections Clause provides that "[t]he Times, Places and Manner of holding" federal elections "shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." U.S. Const., art. I, § 4, cl. 1. Congress's "comprehensive" power to regulate federal elections pursuant to the Elections Clause "is paramount, and may be exercised at any time, and to any extent which it deems expedient." *E.g.*, *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8–9 (2013) (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880)).

individual's ability to vote . . . is a congruent and proportional exercise of congressional power"). The Materiality Provision therefore addressed three common means by which states imposed ostensibly non-discriminatory barriers to voting that had the effect of disenfranchising voters: (1) application of different "standard[s], practice[s], or procedure[s]" to different voters within a county, 52 U.S.C.§ 10101(a); (2) rejection of votes for immaterial errors or omissions, *id.*§ 10101(b); and (3) literacy tests, § 10101(c). Congress enacted these prohibitions precisely because it was unable to combat systematic disenfranchisement solely through the Fifteenth Amendment and prior Civil Rights Acts addressing overt racial discrimination in voting. *See* Civil Rights Act of 1960, Pub. L. 86-449, 74 Stat. 86. § 601 (right to vote may not be infringed "on account of race or color").

Indeed, as the Eleventh Circuit has already held in addressing the Materiality Provision, "Congress in combating specific evils might choose a broader remedy," and thus "[t]he text of the resulting statute, and not the historically motivating examples of intentional and overt racial discrimination, is thus the appropriate starting point of inquiry." *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1173 (11th Cir. 2008). Since the text of Section 10101(a)(2)(B) prohibits all immaterial voting requirements and guarantees "[a]ll citizens" the right to vote, 52 U.S.C. § 10101(a)(1), it is thus "unsurprising that the Eleventh Circuit has found a Materiality Provision violation without mentioning racial discrimination." *Vote.org*,

2023 WL 7169095, at *5 & n.7 (collecting cases).

Citing *Shelby County v. Holder*, 570 U.S. 529 (2013), Intervenors argue that "current conditions" "can no longer justify the application of § 10101 without a showing of racial discrimination," so the Court should construe Section 10101(a)(2)(B) to include discrimination as an element to avoid "serious constitutional problems." ECF No. 761-1 at 56. But Intervenors fail to identify any "constitutional problem" that enforcing Congress's prohibition on immaterial voting restrictions might raise, much less a "serious" one. And the Materiality Provision does not raise any federalism issues like those at the core of the *Shelby* decision. *See generally Shelby Cnty*, 570 U.S. at 534–36, 542–51.

Nor can Intervenors argue that Congress lacks authority to enact remedial statutes that apply beyond race-based discrimination. "[L]imiting the Materiality Provision's reach as the Intervenors suggest would require rewriting the provision—not just interpreting it," *Vote.org*, 2023 WL 7169095, at *5, and is "plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988). Indeed, all three judges in a recent Fifth Circuit panel decision reached the same conclusion, flatly rejecting both the argument that racial discrimination is a prerequisite for a materiality claim, and that this prophylactic legislation exceeded Congressional power to enact. *Vote.org*, 2023 WL 8664636, at *19. This Court should likewise reject Intervenor's attempt to read

a discrimination element into the Materiality Provision.

B. Intervenors' remaining arguments are the same ones that State Defendants raise, and they fail for the same reasons.

Intervenors' other arguments concerning Plaintiffs' materiality claim are identical to those made by State Defendants. *Compare* ECF No. 761-1 at 46–53, *with* ECF No. 763 at 87–95. These are also the same ones that this Court correctly rejected in granting Plaintiffs' request for preliminary injunction as to the County Defendants. *See generally* 8/18/2023 PI Order, ECF No. 613. Nothing in Intervenor or State Defendants' briefing provides cause for this Court to reconsider its prior holdings.

First, Defendants' argument that the Materiality Provision does not govern ballot casting procedures like SB 202's birthdate requirement, and instead applies only to voter registrations and/or ballot applications is wrong. ECF No. 761-1 at 46–47; *see also* ECF No. 763 at 87. As this Court has already explained, "[i]t has never been the law that the Materiality Provision only applies to that initial determination of whether a voter is qualified to vote." 8/18/2023 PI Order at 28. To the contrary, the Materiality Provision governs "any . . . act requisite to voting," 52 U.S.C. § 10101(a)(2)(B), and the CRA's broad definition of "vote" applies to "all action necessary to make a vote effective" including "having such ballot counted and included in the appropriate totals of votes cast." *Id.* § 10101(e). Simply put, "returning the absentee ballot and completing the outer envelope is 'requisite to, or

essential to, completion of the act of voting,'" 8/18/2023 PI Order at 27, and thus the Materiality Provision applies to errors or omissions in completing the birthdate requirement on outer voting envelopes.[7]

Second, Defendants cannot overcome their admission that the birthdate requirement is immaterial to voter qualification—which they do not dispute—by contending that it is somehow material to *casting* an absentee ballot. ECF No. 761-1 at 51–53; *see also* ECF No. 763 at 81–84. Accepting that argument would render the Materiality Provision meaningless, as this Court previously acknowledged. *See* 8/18/2023 PI Order at 26 n.17; *see also, e.g.*, *La Unión del Pueblo Entero v. Abbott*, 604 F. Supp. 3d 512, 540 (W.D. Tex. 2022). And Congress enacted the Materiality Provision specifically to combat states' "use of plainly arbitrary procedures" to deny the right to vote, such as "rejection for insignificant errors in filling out forms." U.S. Comm'n on Civil Rights, Report of the U.S. Comm'n on Civil Rights 1963, at 22 (1963); *accord Browning*, 522 F.3d at 1173. For a requirement to survive scrutiny under the Materiality Provision, it must be material to voter *qualification*, and this Court has already determined that the "uncontroverted facts show that a voter's

[7] Intervenors also argue that "[i]t is only in the last two or three years that courts began extending the materiality provision to ordinary requirements for casting a ballot." ECF No. 761-1 at 49. Recent law is, obviously, good law, and it is perhaps no surprise that this issue is arising more frequently now; until quite recently (*i.e.*, following the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013)), many voting laws and regulations, including for the state of Georgia, were subject to federal pre-clearance.

ability to correctly provide his or her birthdate on the outer envelope of an absentee ballot is not material" to this matter." 8/18/2023 PI Order at 22.[8]

Third, Intervenors' contention that "[t]he materiality provision applies to ad hoc executive actions, not state laws that are duly enacted by the Legislature," ECF No. 761-1 at 51–53; *see also* ECF No. 763 at 91, lacks support and is contrary to the plain language of Section 10101. 52 U.S.C. § 10101(a)(1) ("All citizens of the United States who are otherwise qualified by law to vote . . . shall be entitled and allowed to vote . . .; *any constitution, law, custom, usage, or regulation of any State* or Territory, or by or under its authority, to the contrary notwithstanding." (emphasis added)). Courts routinely enforce the Materiality Provision against state statutes that impose immaterial voting requirements. *See, e.g.*, *PA. State Conf. of the NAACP*, 2023 WL 8091601, at *20 (Pennsylvania date requirement for mail-in ballots); *see also Washington Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1271 (W.D. Wash. 2006) (enjoining enforcement of Washington "matching" statute).

Indeed, precedent in this very District illustrates the fatal flaw in Intervenors' sweeping position. This District has twice held that prior Georgia laws requiring

[8] The availability of a "cure" mechanism—which is, in all events, demonstrably insufficient (SAMF ¶ 211 (Ex. 308 (Pulgram Decl. ¶¶ 20, 23, 25, 27, 30-32)))—is also irrelevant. *See* ECF No. 761-1 at 50. Section 10101 "provides that state actors may not deny the right to vote based on errors or omissions that are not material; it does not say that state actors may initially deny the right to vote based on errors or omissions that are not material as long as they institute cure processes." *La Unión del Pueblo Entero*, 604 F.Supp.3d at 541.

absentee voters to provide birthdates on ballot return envelopes violate the CRA. *See Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018); *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324 (N.D. Ga. 2018) (the "*Crittenden* cases"). Intervenors argue that the *Crittenden* cases are irrelevant because the Georgia state law before SB 202 *permitted*, but did not require, rejection of absentee ballots based on failure to meet Georgia's then-applicable birthyear requirement. ECF No. 761-1 at 52. But that was not the basis of the holding in those cases, which focused on the birthdate *requirement*, not on any question concerning state discretion: "a voter's ability *to correctly recite his or her year of birth on the absentee ballot* envelope is not material to determining said voter's qualifications under Georgia law." *Martin*, 347 F. Supp. 3d at 1308–09 (emphasis added).

In short, Intervenors' arguments do nothing to undermine the correctness of the Court's prior preliminary injunction order, and the Court should deny Intervenors' motion for summary judgment as to SB 202's birthdate requirement.

CONCLUSION

For these reasons, Intervenors' Motion for Summary Judgment should be denied.

Respectfully submitted,

This 19th day of January 2024

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
1201 W. Peachtree St., NW
One Atlantic Center, Suite 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlwafirm.com
sparks@khlawfirm.com

/s/ Uzoma N. Nkwonta
Uzoma N. Nkwonta*
Jacob D. Shelly*
Melinda K. Johnson*
Tina Meng Morrison*
Marcos Mocine-McQueen*
Samuel T. Ward-Packard*
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW
Suite 400
Washington, D.C. 20001
Telephone: (202) 968-4490
unkwonta@elias.law
jshelly@elias.law
mjohnson@elias.law
tmengmorrison@elias.law
mmcqueen@elias.law
swardpackard@elias.law

**Admitted pro hac vice*
Attorneys for Plaintiffs New Georgia Project, Black Voters Matter Fund, Rise, Inc. Elbert Solomon, Fannie Marie Jackson Gibbs, and Jauan Durbin

Caitlin May (Ga. Bar No. 602081)
cmay@acluga.org
Cory Isaacson (Ga. Bar No. 983797)
cisaacson@acluga.org
ACLU FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, Georgia 30357
Telephone: (678) 981-5295
Facsimile: (770) 303-0060

Leah C. Aden*
laden@naacpldf.org
Alaizah Koorji*
akoorji@naacpldf.org
John S. Cusick*
jcusick@naacpldf.org
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, New York 10006
Telephone: (212) 965-2200
Facsimile: (212) 226-7592

Anuja Thatte*
athatte@naacpldf.org
NAACP LEGAL DEFENSE AND EDUCATION FUND, INC.
700 14th Street, NW

George P. Varghese (pro hac vice)
george.varghese@wilmerhale.com
Stephanie Lin (pro hac vice)
stephanie.lin@wilmerhale.com

WILMER CUTLER PICKERING HALE AND DORR LLP
250 Greenwich Street
New York, New York 10007
Telephone: (212) 230-8800

/s/ Davin M. Rosborough
Davin M. Rosborough*
drosborough@aclu.org
Sophia Lin Lakin*
slakin@aclu.org
Jonathan Topaz*
jtopaz@aclu.org
Dayton Campbell-Harris*^
dcampbell-harris@aclu.org
Casey Smith*
csmith@aclu.org
ACLU FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Telephone: (212) 519-7836
Facsimile: (212) 549-2539

Susan P. Mizner (pro hac vice)
smizner@aclu.org
ACLU FOUNDATION, INC.
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0781

Brian Dimmick (pro hac vice)
bdimmick@aclu.org
ACLU FOUNDATION, INC.
915 15th Street NW
Washington, D.C. 20005
Telephone: (202) 731-2395
Washington, DC 20005
Telephone: (202) 682-1300

Debo P. Adegbile (pro hac vice)
debo.adegbile@wilmerhale.com
Alexandra Hiatt (pro hac vice)
alexandra.hiatt@wilmerhale.com

Tania Faransso (pro hac vice)
tania.faransso@wilmerhale.com

Facsimile: (212) 230-8888

Mikayla Foster (pro hac vice)
mikayla.foster@wilmerhale.com
Sofie C. Brooks (pro hac vice)
sofie.brooks@wilmerhale.com
Lucas L. Fortier (pro hac vice)
lucas.fortier@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, Massachusetts 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

Laura Powell (pro hac vice)
laura.powell@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, D.C. 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363

Nana Wilberforce (pro hac vice)
nana.wilberforce@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Avenue, Suite 2400
Los Angeles, California 90071
Telephone: (213) 443-5300
Facsimile: (213) 443-5400

**Admitted pro hac vice*
^ Practice limited to federal court

Attorneys for Plaintiffs Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Georgia ADAPT, Georgia Advocacy Office, and Southern Christian Leadership Conference

/s/ Pichaya Poy Winichakul
Pichaya Poy Winichakul (Bar 246858)
poy.winichakul@splcenter.org
Bradley E. Heard (Bar 342209)
bradley.heard@splcenter.org
Matletha N. Bennette*
matletha.bennette@splcenter.org
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, Georgia 30031-1287
Telephone: (404) 521-6700
Facsimile: (404) 221-5857

Jess Unger*
jess.unger@splcenter.org
Sabrina S. Khan*
sabrina.khan@splcenter.org
SOUTHERN POVERTY LAW CENTER
1101 17th Street NW, Suite 705
Washington, DC 20036
Telephone: (202) 728-9557

Adam S. Sieff*
adamsieff@dwt.com
Daniel Leigh*
danielleigh@dwt.com
Brittni Hamilton*
brittnihamilton@dwt.com
DAVIS WRIGHT TREMAINE LLP
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Facsimile: (213) 633-6899

Matthew Jedreski*
mjedreski@dwt.com
Grace Thompson*
gracethompson@dwt.com
Danielle Eun Kim*
daniellekim@dwt.com
Kate Kennedy*
katekennedy@dwt.com
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104-1610
Telephone: (206) 622-3150
Facsimile: (206) 757-7700

David M. Gossett*
davidgossett@dwt.com
DAVIS WRIGHT TREMAINE LLP
1301 K Street NW, Suite 500
Washington, D.C. 20005-7048
Telephone: (202) 973-4288
Facsimile: (202) 973-4499

**Admitted pro hac vice*

Attorneys for Plaintiffs Georgia Muslim Voter Project, Women Watch Afrika, Latino Community Fund Georgia, and The Arc of the United States

/s/Meredyth L. Yoon
MEREDYTH L. YOON
(Georgia Bar No. 204566)
LAURA MURCHIE*
ASIAN AMERICANS ADVANCING JUSTICE-ATLANTA
5680 Oakbrook Parkway, Suite 148
Norcross, Georgia 30093
404 585 8446 (Telephone)
404 890 5690 (Facsimile)
myoon@advancingjustice-atlanta.org
lmurchie@advancingjustice-atlanta.org

/s/Niyati Shah
NIYATI SHAH*
TERRY AO MINNIS*º
NOAH BARON*
ASIAN AMERICANS ADVANCING JUSTICE-AAJC
1620 L Street, NW, Suite 1050
Washington, DC 20036
202 815 1098 (Telephone)
202 296 2318 (Facsimile)
nshah@advancingjustice-aajc.org
tminnis@advancingjustice-aajc.org

/s/Eileen Ma
EILEEN MA*
KIMBERLY LEUNG*
ASIAN AMERICANS ADVANCING JUSTICE-ASIAN LAW CAUCUS
55 Columbus Avenue
San Francisco, CA 94111
415 896 1701 (Telephone)
415 896 1702 (Facsimile)
eileenm@advancingjustice-alc.org
kimberlyl@advancingjustice-alc.org

**Admitted pro hac vice*
º Not admitted in D.C.

/s/R. Adam Lauridsen
LEO L. LAM*
R. ADAM LAURIDSEN*
CONNIE P. SUNG*
CANDICE MAI KHANH NGUYEN*
LUIS G. HOYOS*
RYLEE KERCHER OLM*
NIHARIKA S. SACHDEVA*
ELIZABETH A. HECKMAN*
KEKER, VAN NEST AND PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
415 391 5400 (Telephone)
415 397 7188 (Facsimile)
llam@keker.com
alauridsen@keker.com
csung@keker.com
cnguyen@keker.com
lhoyos@keker.com
rolm@keker.com
nsachdeva@keker.com

Attorneys for Plaintiffs Asian Americans Advancing Justice–Atlanta, Steven J. Paik, Nora Aquino, Angelina Thuy Uddullah, and Anjali Enjeti-Sydow

/s/ Bryan L. Sells
Bryan L. Sells
Georgia Bar No. 635562
THE LAW OFFICE OF BRYAN SELLS, LLC
PO Box 5493
Atlanta, Georgia 31107
Tel: (404) 480-4212
Email: bryan@bryansellslaw.com

Jon Greenbaum (pro hac vice)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (pro hac vice)
erosenberg@lawyerscommittee.org
Julie M. Houk (pro hac vice)
jhouk@lawyerscommittee.org
Jennifer Nwachukwu (pro hac vice)
jnwachukwu@lawyerscommittee.org
Heather Szilagyi (pro hac vice)
hszilagyi@lawyerscommittee.org
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, D.C. 20005
Telephone: (202) 662-8600
Facsimile: (202) 783-0857

Vilia Hayes (pro hac vice)
vilia.hayes@hugheshubbard.com
Neil Oxford (pro hac vice)
neil.oxford@hugheshubbard.com
Gregory Farrell (pro hac vice)
gregory.farrell@hugheshubbard.com
Mana Ameri
mana.ameri@hugheshubbard.com
William Beausoleil
william.beausoleil@hugheshubbard.com
James Henseler (pro hac vice)
james.henseler@hugheshubbard.com
HUGHES HUBBARD & REED LLP
One Battery Park Plaza New York,
New York 10004-1482
Telephone: (212) 837-6000
Facsimile: (212) 422-4726

Gerald Weber
Georgia Bar No. 744878
Law Offices of Gerry Weber, LLC
Post Office Box 5391
Atlanta, Georgia 31107
Telephone: 404.522.0507
Email: wgerryweber@gmail.com

/s/ Laurence F. Pulgram
Laurence F. Pulgram (pro hac vice)
lpulgram@fenwick.com
Molly Melcher (pro hac vice)
mmelcher@fenwick.com
Armen Nercessian (pro hac vice)
Anercessian@fenwick.com
Ethan Thomas (pro hac vice)
EThomas@fenwick.com
FENWICK & WEST LLP
555 California Street
San Francisco, CA 94104
Telephone: (415) 875-2300

Joseph S. Belichick (pro hac vice)
jbelichick@fenwick.com
FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041-2008
Telephone: (650) 988-8500

Catherine McCord (pro hac vice)
cmccord@fenwick.com
FENWICK & WEST LLP
902 Broadway, Suite 14
New York, NY 10010
Telephone: (212) 430-2690

Attorneys for Plaintiffs Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., League of Women Voters of Georgia, Inc., GALEO Latino Community Development Fund, Inc., Common Cause, and the Lower Muskogee Creek

/s/ Kurt Kastorf
Kurt Kastorf (GA Bar No. 315315)
KASTORF LAW, LLC
1387 Iverson Street, N.E., Suite 100
Atlanta, GA 30307
Telephone: 404-900-0330
kurt@kastorflaw.com

Judith Browne Dianis*
Matthew A. Fogelson*
Angela Groves*
ADVANCEMENT PROJECT
1220 L Street, N.W., Suite 850
Washington, DC 20005
Telephone: (202) 728-9557
JBrowne@advancementproject.org
MFogelson@advancementproject.org
AGroves@advancementproject.org

Clifford J. Zatz*
Justin D. Kingsolver*
William Tucker*
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Telephone: (202) 624-2500
CZatz@crowell.com
JKingsolver@crowell.com
WTucker@crowell.com

Jordan Ludwig*
CROWELL & MORING LLP
515 South Flower Street, 40th Floor
Los Angeles, CA 90071
Telephone: (213) 443-5524
JLudwig@crowell.com

*Admitted *pro hac vice*

Attorneys for Plaintiffs The Concerned Black Clergy of Metropolitan Atlanta, Inc., The Justice Initiative, Inc., Metropolitan Atlanta Baptist Ministers Union, Inc., First Congregational Church, United Church of Christ Incorporated, Georgia Latino Alliance for Human Rights, Inc.

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: January 19, 2024

/s/ Uzoma N. Nkwonta
Counsel for NGP Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: January 19, 2024

/s/ Uzoma N. Nkwonta
Counsel for NGP Plaintiffs