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INTRODUCTION

Georgia voters with disabilities rely heavily and disproportionately on absentee voting. Some voters with disabilities have no accessible transportation to the polls. For some, standing in line to vote in person is too strenuous. And for many, simply leaving the house is an extraordinary effort. But Senate Bill 202 (enrolled Mar. 25, 2021) (“S.B. 202”) made absentee voting less accessible to Georgians with disabilities in two key ways. First, S.B. 202 adds felony penalties to a state law that purports to prohibit anyone from returning an absentee ballot for a voter with

enacted Title II against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights” such as voting. *Tennessee v. Lane*, 541 U.S. 509, 524 (2004). The ADA applies to voting services, programs, or activities because “[v]oting is a quintessential public activity.”

To establish a Title II

consequences to such assistance unlawfully denies them equal access to absentee voting. Laws preventing or restricting individuals with disabilities from accessing needed assistance in absentee voting—

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Inc. v. Giuliani, 915 F. Supp. 622, 635-37 (S.D.N.Y. 1996) (plan to replace emergency street alarm boxes with notification systems inaccessible to the deaf violated Title II because it denied those individuals the ability to report emergencies *from the street* specifically).

C. Plaintiffs’ Proposed Modifications Are Reasonable and Necessary, and Impose No Undue Financial or Administrative Burden.

Plaintiffs’ proposed relief—to return to the status quo ante for two S.B. 202 provisions—is reasonable. “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability[.]” 28 C.F.R. § 35.130(b)(7)(i). A proposed modification is reasonable if it would not impose an undue financial or administrative burden. *See, e.g., People First*, 491 F. Supp. 3d at 1155. The burden of showing that a modification is reasonable is not “heavy.” Rather, “[i]t is enough for the plaintiff[s] to suggest the existence of a plausible accommodation, the costs of which, facially, do not clearly exceed its benefits.” *Id.* (alterations in original) (internal quotation marks omitted); *see also NFB*, 813 F.3d at 507-08.

First, enjoining enforcement of the felony provision is a reasonable modification necessary to prevent discrimination against Georgia voters with disabilities. Previously, Georgia correctly interpreted state and federal law, determining that Section 208 of the VRA “takes precedence” over the more

restrictive state law and allows voters with disabilities to obtain assistance from the person of their choice to return their absentee ballots.⁸

business hours is a reasonable modification that ensures Georgia voters with disabilities have equal access to an important component of absentee voting. *See, e.g.*, Ex. 21 (Robert Gabriel Sterling (“Sterling”) Dep. 157:16-158:19 (Chief Operating Officer in SOS’s Office testifying that “the whole point of the drop box is to have it outside”). This, too, would require no undue burden, as Defendants likewise admit. *Id.* 72:2-73:20, 162:8-11, 223:3-7 (pre-S.B. 202 drop boxes were secure); Ex. 10 (Hall Dep. 69:16-22, 72:6-12 (same)); Ex. 15 (Athens-Clarke Dep. 114:23-116:11, 121:9-122:21 (same)); *id.* 123:5-17 (would take only “about two days” to return drop boxes to pre-S.B. 202 locations).

The fact that the State has already successfully administered elections without the felony provision in place and while permitting drop boxes to be located outside and accessible 24 hours a day shows that these modifications are plausible and not unduly burdensome. *See, e.g., NFB*, 813 F.3d at 507-08 (proposed voting modification was reasonable where previously implemented). Moreover, courts find that general, program-wide accommodations like the ones proposed are reasonable and appropriate for Title II violations. *See, e.g., id.* at 507-10 (implementing online ballot marking tool for voters with disabilities); *People First*, 491 F. Supp. 3d at 1161-62 (lifting ban on curbside voting); *Am. Council of Blind of Ind.*, 2022 WL 702257, at *8, *11 (lifting prohibition on voters with disabilities completing and

May 4, 2017); *see also Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1258 (N.D. Fla. 2016). The burdens that disabled voters will bear absent an injunction, even if they ultimately find a way to vote, also constitute irreparable harm. *See Westchester Disabled on the Move, Inc. v. Cnty. of Westchester*, 346 F. Supp. 2d 473, 477-78 (S.D.N.Y. 2004) (denying disabled voters access to in-person voting “den[ies] them as much time as other voters to consider their choice” of candidate and requires them to undergo extra steps to vote absentee that create “hassle”). Irreparable harm exists where, as here, voting is so burdensome for citizens with disabilities that they may be “dissuaded from attempting to vote at all.” *Id.*; *see also Ex. 1* (Schur 25-26, 45 (accessibility obstacles faced by disabled voters discourage voting)). As discussed in Section II, *supra*, S.B. 202 imposes unique barriers to absentee voting for voters with disabilities that others are spared, and those harms cannot be remedied.

Plaintiffs face three main types of irreparable harm. First, the harms to Plaintiffs’ members or constituents constitute irreparable harm to the organizations. *See Common Cause Ga. v. Kemp*, 347 F. Supp. 3d 1270, 1295 (N.D. Ga. 2018) (harm to voting organizations is “coterminous with the harms suffered by its citizen members”); *see also Democracy N.C.*, 476 F. Supp. 3d at 236-37 (similar); *supra* p. 9 (describing Plaintiffs’ organizational interest in voting).

C. A Preliminary Injunction is in the Public Interest.

Respectfully submitted, this 17th day of May, 2023.

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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: May 17, 2023

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