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

et al. *Plaintiffs* *et al.*, *Defendants,* *et al.* *Intervenor-Defendants.*	

et al.

Plaintiffs,

et al.

Defendants,

INTRODUCTION

On August 19, 2022, this Court held that Plaintiffs were "substantially likely to succeed on the merits" of their claim that Georgia Senate Bill ("S.B.") 202's criminal prohibition on providing food and drink to voters waiting in line ("line relief") violates the First Amendment as it applies to individuals more than 150 feet from the outer edge of a polling place but within 25 feet from any voter (the "Supplemental Zone"). ECF No. 241 at 56. Nevertheless, it declined to enjoin the ban on line relief in the Supplemental Zone for the "November 2022 general elections and any related early voting period and runoff elections." *Id.* at 74 n.30. The Court withheld a preliminary injunction solely because it determined that, under "the *Purcell* doctrine," *id.* at 71, there was a risk that implementing a change a few months before the election "would impair the state's interests in avoiding voter confusion," *id.* at 72; *see Purcell v. Gonzalez*, 549 U.S. 1 (2006).

Now, with respect to relief for 2024 elections and beyond—with almost a year before Georgia's next likely statewide primary election[1] and over 18 months before the next statewide general election—the *Purcell* doctrine is not implicated. Yet, the merits of Plaintiffs' challenge to the line relief ban in the Supplemental Zone

not changed, and the equitable factors still strongly favor an injunction. Indeed, the evidence revealed during months of discovery tilts the balance even more in Plaintiffs' favor. For example, two of the State Defendants' witnesses—who had testified during the July 2022 preliminary injunction hearing—have now affirmed that the ban was primarily focused on addressing concerns related to the area that extends 150 feet from the outer edge of any building (the "Buffer Zone") rather than the Supplemental Zone. Germany Dep. 96–98, 100 (Ex. A); Mashburn Dep. 93–94 (Ex. B). Mr. Germany also confirmed the ban was enacted for content-based reasons: fear that voters would perceive line relief as attempts at partisan influence, irrespective of partisan intent. Germany Dep. 96–98. Several county election officials, including State Defendants' witness Lynn Bailey, similarly focused their purported concerns with line relief on the 150-foot zone rather than the Supplemental Zone, *see* Bailey Dep. 140 (Ex. C); Athens-Clarke Dep. 151–52 (Ex. D), or expressed no concerns about line relief occurring, *see* Kidd Dep. 137 (Ex. E).

Plaintiffs therefore renew their Preliminary Injunction Motion to enjoin S.B. 202's

BACKGROUND

Plaintiffs incorporate by reference their factual evidence and briefing from their initial preliminary injunction motion, *see* ECF Nos. 171, 171-1–27, 216, 216-1–5, and do not repeat it here for efficiency purposes. Plaintiffs address relevant new evidence obtained during discovery below.

ARGUMENT

A preliminary injunction issues when the moving party demonstrates: (1) a substantial likelihood of success on the merits; (2) irreparable injury absent an injunction; (3) injury to the movant that outweighs whatever damage the p581 2t10 Tw r(p581

PLAINTIFFS’

This Court found “

activities and the message that those activities are intended to communicate to voters. And the record still "shows that beneficiaries of Plaintiffs' line warming activities understand the general purpose and message underlying Plaintiffs' efforts." ECF No. 241 at 11. Plaintiffs' line relief efforts therefore remain expressive conduct protected by the First Amendment.

B. Strict Scrutiny Applies Because The Line Relief Ban Is A Content-Based Restriction Of Speech In A Public Forum.

This Court correctly recognized that restrictions which "are justified only by

under five months before the election), *and Jacksonville Branch of NAACP v. City of Jacksonville*, No. 3:22-CV-493-MMH-LLL, 2022 WL 7089087, at *4 (M.D. Fla. Oct. 12, 2022) ("application of the *Purcell* principal is not warranted" where "the election itself is over five months away" and neither the "Eleventh Circuit or the Supreme Court has applied *Purcell* under similar timeframe."

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county to implement."); Hall Dep. 61 (Ex. Q) ("Q. "If the ban on line relief activities in S.B. 202 were to be changed or removed, would your office have to undertake any changes to adapt to that change? A. I don't believe so."); Cobb Dep. 144 ("we wouldn't have to implement anything."). And if the Court does not act now, there is no certainty, based on the present schedule and lack of a trial date, that a final decision or permanent injunction could be issued before the 2024 elections, much

Matletha N. Bennette (pro hac vice)

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 Lower Muskogee Creek Tribe

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: April 24, 2023

/s/ *Davin M. Rosborough*
Davin M. Rosborough
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2023, 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: April 24, 2023

/s/ *Davin M. Rosborough*
Davin M. Rosborough
Counsel for Plaintiffs